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**Supplement 16-4 to the  
Arizona Administrative Code**

The official compilation of Arizona Rules

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

For rules filed in the fourth quarter  
between October 1 - December 31, 2016

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Questions about the rulemaking process? E-mail us at: [pubs@azsos.gov](mailto:pubs@azsos.gov). Questions about subscriptions? Call (602) 364-3223.

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Dear Subscriber:

Enclosed is Arizona Administrative Code supplement 16-4. Supplement updates are printed by full chapter. Rules updated in this supplement were filed in the fourth quarter between October 1 - December 31, 2016.

This supplement contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

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 All superseded material should be retained in a separate binder for reference.

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

This supplement contains the following chapters:

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## **Replacement Check List**

For rules filed within the  
4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.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 Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 2. Administration**

### **Chapter 8. State Retirement System Board**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R2-8-126, R2-8-201 and R2-8-207, R2-8-602 through R2-8-607, R2-8-704 and R2-8-706

REMOVE Supp. 16-3  
Pages: 1 - 30

REPLACE with Supp. 16-4  
Pages: 1 - 29

The agency's contact person who can answer questions about rules in Supp. 16-4:

For expired rules R2-8-201 and R2-8-207 contact:

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State  
Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



## State Retirement System Board

## TITLE 2. ADMINISTRATION

## CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

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## State Retirement System Board

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

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

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

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

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

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-104. Definitions**

- A.** The definitions in A.R.S. § 38-711 apply to this Chapter.
- B.** Unless otherwise specified, in this Chapter:
  1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
  2. “Authorized employer representative” means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
  3. “Contribution” means:
    - a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to the ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;
    - b. Any voluntary amounts paid to the ASRS by a member to be placed in the member’s account; and
    - c. Amounts credited by transfer under A.R.S. § 38-924.
  4. “Day” means a calendar day, and excludes the:
    - a. Day of the act or event from which a designated period of time begins to run; and

- b. Last day of the period if a Saturday, Sunday, or official state holiday.
5. “Designated beneficiary” means the same as in A.R.S. § 38-762(G).
6. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.
7. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
8. “Investment return rate” means a percentage of total return on an asset.
9. “Party” means the same as in A.R.S. § 41-1001(14).
10. “Person” means the same as in A.R.S. § 41-1001(15).
11. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.
12. “Retirement account” means the same as in A.R.S. § 38-771(J)(2).
13. “Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. “System” means the same as “defined contribution plan” in A.R.S. § 38-769(O)(7), and as administered by the ASRS.
15. “Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. “United States” means the same as in A.R.S. § 1-215(39).

**Historical Note**

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) “required” corrected to “required” (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-105. Repealed****Historical Note**

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

**R2-8-106. Reserved****R2-8-107. Reserved****R2-8-108. Reserved****R2-8-109. Reserved****R2-8-110. Reserved****R2-8-111. Reserved****R2-8-112. Reserved****R2-8-113. Emergency Expired**

**Historical Note**

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

**R2-8-114. Emergency Expired****Historical Note**

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

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

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

1. "Acceptable documentation" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
5. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
6. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number;
3. The member's current mailing address;
4. The member's daytime telephone number, if applicable;
5. The member's birth date;
6. The date of termination;
7. Dated signature of the member certifying that the member:
  - a. Is no longer employed by any ASRS employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;
  - c. Is not currently in a leave of absence status with an ASRS employer;
  - d. Understands that each of the member's former ASRS employers will complete a payroll verification

form if payroll transactions occurred with the ASRS employer within the six months before the process date;

- e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
  - f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
  - g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;
8. Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be transferred to an eligible retirement plan, or
  - c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and
9. If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify:
- a. The type of eligible retirement plan;
  - b. The eligible retirement plan account number, if applicable; and
  - c. The name and mailing address of the eligible retirement plan.
- E. If the member requesting the withdrawal has been inactive for five years or more, and if the member's account balance is \$1,000 or more, the member requesting the withdrawal shall provide a copy of a driver license or a form of other government issued identification to the ASRS.
- F. If a payroll transaction for the member occurred with any ASRS employer within six months before the process date each ASRS employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
1. The member's full name;
  2. The member's Social Security number;
  3. The member's termination date;
  4. The member's final pay period ending date;
  5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;

6. The ASRS employer's name and telephone number;
  7. The employer number;
  8. The name and title of the authorized employer representative;
  9. Certification by the authorized employer representative that:
    - a. The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;
    - b. There is no agreement to re-employ the member; and
    - c. The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and
  10. The signature of the authorized employer representative and date of signature.
- G.** If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H.** If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I.** Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- J.** Upon the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, acceptable documentation that is on file with the ASRS that was received prior to the date of the member's death, unless otherwise provided by law.
- K.** If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(E). The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall:
1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
  2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
  3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number,
    - c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
      - i. Full name;
      - ii. Mailing address;
      - iii. Contact telephone number;
      - iv. Date of birth, if applicable; and
      - v. Social Security number or Tax ID number, if applicable.

**Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1).

**R2-8-116. Alternate Contribution Rate**

- A.** For purposes of this section, the following definitions apply:
1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B.** An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C.** In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D.** The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E.** If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial interest rate listed in R2-8-118(B).
- F.** A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

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

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made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2).

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

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

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

**A.** Application of interest from inception of the ASRS through the present is as follows:

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

**B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:

1. Employer and employee contributions;
2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
3. Amounts credited by transfer under A.R.S. § 38-924; and
4. Interest credited in previous years.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1).

**R2-8-119. Expired****Historical Note**

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

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

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

1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
2. "Joint and survivor annuity" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
3. "Period certain and life annuity" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
4. "Spouse" means the individual to whom a member is married under Arizona law.

**B.** Effective July 1, 2013, a married member:

1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless:
  - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
  - b. The spouse consents to an alternate beneficiary; and
2. Who retires shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.

**C.** Application of subsection (B).

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

**D.** Changing a beneficiary designation:

1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
  2. If a married member who retired before July 1, 2013, and:
    - a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
    - b. Chose a period certain and life annuity or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).
- E. Re-retirement.** A married member who re-retires, as described in A.R.S. § 38-766:
1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
  2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).
- F. Involuntary cancellation of retirement.** If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.
- G. Survivor benefits:**
1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and
  2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
    - a. Notify both the spouse and designated beneficiary and:
      - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
      - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
    - b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.
- H. Effect of legal documents.** In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.
- I. Spousal waiver and consent; consent revocation**
1. The current spouse of a member has a right to:
    - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
    - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
  2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.
  3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-121. Repealed****Historical Note**

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

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

- A.** Remittance of employee member contributions: Each state department and employer member of the ASRS, including, any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS, together with such detailed report as may be required by the ASRS to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ASRS.
- B.** Remittance of employer contributions: Each state department and employer member of the ASRS, including, any county, municipality or political subdivision, shall remit the amount of employer contributions to the ASRS not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the ASRS.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1).

**R2-8-123. Actuarial Assumptions and Actuarial Value of Assets**

- A.** For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B.** The Board adopts the following actuarial assumptions and asset valuation method:
1. The interest and investment return rate assumptions are determined by the Board.
  2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**Table 1. Expired****Historical Note**

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

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

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

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

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

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

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

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

**Table 3B. Expired**



**Historical Note**

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

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

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

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

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

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

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

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

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

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

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5

repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

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

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

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

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

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

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

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

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp.

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82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-126. Calculating Optional Forms of Benefits**

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

1. "Prior service credit" means a "service credit" listed in R2-8-501(24), credited service that is earned pursuant to A.R.S. § 38-739, or a service credit that is transferred or redeemed pursuant to A.R.S. §§ 38-730, 38-771, or 38-921 et seq.
2. "Original retirement date" means:
  - a. The date a member retires from the ASRS for the first time; or
  - b. The date a member retires from the ASRS after returning to active membership for 60 consecutive months or more pursuant to A.R.S. § 38-766(C).

B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect an option of life annuity with a term certain.

C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect the options of life annuity with ten years certain or life annuity with 15 years certain.

D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect the option of life annuity with 15 years certain.

E. As authorized under A.R.S. § 38-764(F), if the life annuity of any member is less than a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using appropriate actuarial assumptions.

F. The ASRS shall calculate a member's or beneficiary's benefits, based on the attained age of the member or beneficiary, determined in years and full months, as of:

1. The date of the member's retirement; or
2. The date of the member's death, if the beneficiary is eligible to elect the survivor benefit as monthly income for life pursuant to A.R.S. § 38-762(C).

G. Before the ASRS applies the calculation for an optional form of retirement benefit provided in A.R.S. § 38-760, the ASRS shall include any prior service credit benefit that is applicable to the life annuity of the member.

H. A member who is ten years and one day, or more, older than the member's non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 years and one day, or more, older than the member's non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.

I. For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% joint-and-survivor option, if:

1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.

J. For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% joint-and-survivor option, if:

1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and

2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.

K. Notwithstanding subsection (F), for purposes of determining whether a member is eligible to participate in a joint-and-survivor option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant.

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4).

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

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed****Historical Note**

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

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

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

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1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

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

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

**Table 5. Repealed****Historical Note**

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

**Table 6. Repealed****Historical Note**

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

**Table 7. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed****Historical Note**

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

**Table 9. Repealed****Historical Note**

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

1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed****Historical Note**

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

**Table 11. Repealed****Historical Note**

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

**Exhibit A. Repealed****Historical Note**

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

**Exhibit B, Table 1. Repealed****Historical Note**

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

**Exhibit B, Table 2. Repealed****Historical Note**

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

**Exhibit B, Table 3. Repealed**







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December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 6. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 7. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 1. Repealed****Historical Note**

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

**Exhibit M, Table 2. Repealed****Historical Note**

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

**Exhibit M, Table 3. Repealed****Historical Note**

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

**Exhibit M, Table 4. Repealed****Historical Note**

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

**Exhibit M, Table 5. Repealed****Historical Note**

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

**Exhibit M, Table 6. Repealed****Historical Note**

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

**ARTICLE 2. EXPIRED****R2-8-201. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4).

**R2-8-202. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final

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

**R2-8-203. Expired****Historical Note**

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

**R2-8-204. Expired****Historical Note**

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

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

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

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

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

**R2-8-207. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4).

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

“Appealable agency action” means the same as in A.R.S. § 41-1092(3).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

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

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

**Historical Note**

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

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

- A. Except as provided in subsection (H), any party in an appealable agency action aggrieved by a final decision may file with the Board a written motion for rehearing or review of the final decision specifying the particular grounds not later than 30 days after service of the decision.
- B. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party’s rights:
  1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  2. Misconduct of the Board, the hearing officer, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;



5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
  7. That the decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- E.** Not later than 10 days after the decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F.** When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G.** The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- H.** If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).
- ARTICLE 5. PURCHASING SERVICE CREDIT**
- R2-8-501. Definitions**
- The following definitions apply to this Article unless otherwise specified:
1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than active reserve duty.
  2. "Active duty termination date" means the day a member:
    - a. Separates from active military duty;
    - b. Is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
    - c. Dies as a result of active military duty.
  3. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
  4. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
    - a. Member's current years of credited service to the nearest month;
    - b. Member's age to the nearest day;
    - c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
    - d. Member's current annual compensation.
  5. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.
  6. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable Payroll Deduction Authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.
  7. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
  8. "Direct rollover" means distribution of eligible funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
  9. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
  10. "Eligible member" means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
  11. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, indirect IRA rollover, indirect rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.
  12. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
  13. "Immediate family member" means:
    - a. A member's spouse or life partner;
    - b. A member's natural, step, or adopted sibling;
    - c. A member's natural, step, or adopted child;
    - d. A member's natural, step, or adoptive parent; or
    - e. An individual for whom the member has legal guardianship.
  14. "Indirect IRA rollover" means funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.
  15. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
  16. "Irrevocable Payroll Deduction Authorization" means an irrevocable contract between an eligible member, an ASRS employer, and the ASRS that requires the ASRS employer to withhold payments from a member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
  17. "Life partner" means an individual who lives with a member as a spouse, but without being legally married.
  18. "Military Call-up" means a member is called to active duty in a branch of the United States uniformed services.
  19. "Military service" means active duty or active reserve duty with any branch of the United States uniformed services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
  20. "Military service record" means a United States uniformed services or National Oceanic and Atmospheric

Administration document that provides the following information:

- a. The member's full name;
  - b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active duty dates, if applicable; or
  - e. Active reserve duty dates, if applicable; and
  - f. Point history for reserve duty dates, if applicable.
21. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
  22. "PDA pay-off letter" means written correspondence from the ASRS to a member that specifies the amount necessary to be paid by the member to complete an Irrevocable Payroll Deduction Authorization and receive the credited service specified in the Irrevocable Payroll Deduction Authorization.
  23. "Plan Administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
  24. "Service credit" means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and Military Call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.
  25. "SP invoice" means a written correspondence from the ASRS informing an eligible member of the amount of money required to purchase a specified amount of service credit.
  26. "Termination pay distribution" means an ASRS employer's payment to the ASRS of an eligible member's termination pay to purchase service credit as specified in A.R.S. § 38-747(B)(2).
  27. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
  28. "Transfer employment" means to terminate employment with one ASRS employer with which a member has an Irrevocable Payroll Deduction Authorization:
    - a. After accepting an offer to work for a new ASRS employer, or
    - b. While working as an active member for a different ASRS employer.
  29. "Trustee-to-trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program listed in R2-8-515(A) from which, at the time of the transfer, a member is not eligible to receive a distribution.
  30. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, and the Commissioned Corps of the Public Health Service.
  31. "Window credit" means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### Historical Note

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

at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

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

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

#### Historical Note

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

final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

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

- A.** To purchase service credit at the amount provided in an SP invoice, an eligible member shall purchase the service credit by check or money order, or request an Irrevocable Payroll Deduction Authorization, rollover, transfer or termination pay distribution as specified in this Article, by the due date specified on the SP invoice.
- B.** An eligible member may purchase all of the service credit or a portion of the service credit. If the eligible member wishes to purchase only a portion of the service credit, the eligible member shall specify, on the Service Purchase Payment Request form identified in R2-8-502(D)(2):
  1. The dollar amount the eligible member wishes to purchase, up to the amount specified on the SP invoice, or
  2. The number of years or partial years the eligible member wishes to purchase, not exceeding the years or partial years specified on the SP invoice.
- C.** If the eligible member elects to purchase only a portion of the service credit, the cost and amount of service credit the eligible member identifies on the Service Purchase Payment Request form is only an estimate and may be more or less than the actual cost or amount of service credit purchased by the eligible member.
- D.** The eligible member shall not request to purchase additional service credit based on the SP invoice until the member has completed the purchase of the previously requested portion of service credit or cancel the request as specified in subsection (F).
- E.** ASRS shall not consider more than one active request at a time from a member to purchase service credit in a single category. The categories are:
  1. Leave of absence,
  2. Military service,
  3. Presidential Call-up service,
  4. Forfeited service, and
  5. Other public service.
- F.** An eligible member may cancel an active request to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.
- G.** If an eligible member is entitled to a window credit, the eligible member may apply the window credit to purchase service credit. To apply a window credit to a purchase of service credit, the eligible member shall make a request to the ASRS in writing by the due date specified on the SP invoice and include the following information:
  1. The amount the member wants to apply,
  2. The member's signature, and
  3. The date of the member's signature.
- H.** The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).
- I.** On or before the due date specified on the SP Invoice, ASRS shall extend the time for an eligible member to respond to an SP invoice as follows:
  1. If the member notifies the ASRS of an ASRS error, the time is extended 30 days after the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;
  2. If an ASRS internal review is made of the member's service credit purchase request, the time is extended 30 days

after the date ASRS sends notification to the member that the review is completed;

3. If the member appeals an issue regarding the SP invoice under Article 4 of this Chapter, the time is extended 30 days after the date ASRS sends notification to the member that a decision on the appeal has been made; or
4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, and the member notifies the ASRS of the event, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.

#### **Historical Note**

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

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

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

#### **Historical Note**

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

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

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

#### **Historical Note**

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

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

- A.** For leave of absence service credit, military service credit, and other public service credit, the ASRS shall calculate, as of the date of the request to purchase service credit:
  1. The actuarial present value of the future retirement benefit for the member including the service credit that the eligible member requests to purchase, and
  2. The actuarial present value of the future retirement benefit for the member without the service credit that the eligible member requests to purchase.
- B.** The cost for purchasing the service credit that the member requests to purchase is the difference between the actuarial present value in subsection (A)(1) and the actuarial present value in subsection (A)(2).

#### **Historical Note**

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

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

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

#### Historical Note

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

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

- A. An eligible member may request to purchase service credit for an approved leave of absence from an ASRS employer under A.R.S. § 38-744. To request to purchase service credit for an approved leave of absence the eligible member shall provide to the ASRS:
1. An Approved Leave of Absence form that includes:
    - a. The following information completed by the eligible member:
      - i. The eligible member's full name and, if applicable, other names used while working for the ASRS employer;
      - ii. The eligible member's Social Security number;
      - iii. The eligible member's mailing address;
      - iv. The eligible member's daytime telephone number;
      - v. A statement that the eligible member understands that up to one year of leave of absence service credit may be purchased for each approved leave of absence, if the eligible member returns to work for the employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
      - vi. A statement that the eligible member understands that the ASRS uses the actuarial present value calculation method to determine the cost of the service purchase request;
      - vii. A statement that the eligible member authorizes the ASRS employer to provide any necessary personal information to ASRS in order to process this request; and
      - viii. The member's dated signature; and
    - b. The following information completed by the ASRS employer:
      - i. The beginning date and ending date of the approved leave of absence;
      - ii. The date the eligible member returned to work or a statement of why employment was not resumed;
      - iii. Name of the employer;
      - iv. The authorized employer representative's name;
      - v. The authorized employer representative's telephone number and, if applicable, fax number; and
      - vi. The authorized employer representative's dated signature verifying that the approved leave of absence benefited or was in the best interest of the employer; and
  2. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.
- B. The amount the member shall pay to purchase service credit for leave of absence is determined as provided in R2-8-506.

#### Historical Note

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

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

- A. An eligible member may request to purchase military service credit under A.R.S. § 38-745(A) and (B). To request to purchase military service credit, the eligible member shall provide to the ASRS:
1. The items listed in R2-8-507(A)(1);
  2. A copy of the eligible member's military service record; and
  3. A completed, signed, dated, and notarized Affidavit of Military Service form that contains:
    - a. The member's full name;
    - b. The member's Social Security number;
    - c. The branch of the uniformed services the member was in;
    - d. Whether the member was active duty or active reserve duty;
    - e. The years and months by fiscal year that the member was in active duty or active reserve duty for which the member wishes to purchase service credit;
    - f. Acknowledgement that the member has attached:
      - i. Proof of honorable discharge for each type of military service listed on the form; and
      - ii. The member's military service record that supports all of the service listed on the affidavit;
    - g. The following statements of understanding initialed by the member:
      - i. I understand that any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793;
      - ii. I understand this transaction is subject to audit and if any errors or misrepresentations are discovered as a result of this audit, my total credited service with the ASRS will be adjusted as necessary and if I am retired, my retirement benefit will also be adjusted;

- iii. I understand that the service listed on this affidavit does not include time that I either volunteered or was ordered into active duty military service as part of a Presidential Call-up. This service is purchased under Presidential Call-up and requires a Presidential Call-up form to be completed by your employer; and
  - iv. I understand that any time I have listed on this affidavit for Reserve or National Guard time reflects the months that I attended at least one drill or assembly for each month listed.
- B.** The amount the eligible member pays to purchase military service credit is determined as provided in R2-8-506.
- C.** ASRS determines the amount of service credit an eligible member receives for active duty and active reserve duty time by the time listed on the Affidavit of Military Service form, if the service listed is supported by the information contained in the member's military service record.

**Historical Note**

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

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

- A.** An eligible member or the eligible member's beneficiary who meets the requirements under A.R.S. § 38-745(C) shall receive up to 60 months of Presidential Call-up service under A.R.S. § 38-745(C) through (I). In order to determine the amount of contributions the ASRS employer owes to purchase service credit for Presidential Call-up service, the eligible member's ASRS employer shall provide to the ASRS a copy of the eligible member's military service record and a completed Military Call-up form that includes the following:
1. The member's full name;
  2. The member's Social Security number;
  3. The start date of Presidential Call-up Service;
  4. The end date of Presidential Call-up Service;
  5. Whether the member received paid leave while on Presidential Call-up;
  6. The date the member returned to work for the ASRS employer;
  7. The salary for each fiscal year while the member is on Presidential Call-up, including any salary increases the eligible member would have received had the member not left employment due to Presidential Call-up, if applicable;
  8. The ASRS employer's name and address;
  9. The name of a contact individual for the ASRS employer, and that individual's business and fax telephone numbers;
  10. The contact individual's signature and date of signature;
  11. If applicable, the earlier of:
    - a. The date that the member was released from the hospital for injuries sustained as a result of participating in a Presidential Call-up; or
    - b. The date that the member was hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; and
  12. A copy of the member's death certificate, if applicable.
- B.** An ASRS employer shall make the request to purchase service credit for Presidential Call-up service within 30 days after the member's active duty termination date.
- C.** The ASRS calculates the amount the ASRS employer pays to purchase Presidential Call-up service by multiplying the eligible member's salary at the time active duty commences, by the

contribution rate in effect for the period of active duty, and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. Included in the calculation are any salary increases the member would have received if the member had not left work to participate in a Presidential Call-up.

- D.** The ASRS shall send the ASRS employer a statement of cost for purchase of the Presidential Call-up service credit, based on the calculation in subsection (B). Within 90 days from the date on the ASRS statement of cost, the ASRS employer shall pay to the ASRS the amount on the statement. If the ASRS employer fails to make full payment within the 90 days, interest shall accrue on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect on the date of the statement of cost.
- E.** If an ASRS employer deducts retirement and long-term disability contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, the ASRS shall return the contributions to the ASRS employer after the ASRS receives the information in subsection (A).
- F.** If an ASRS employer deducts retirement contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, and the eligible member does not return to the ASRS employer after separation from active military service, the ASRS shall apply the retirement contributions to the member's credited service.

**Historical Note**

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

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

- A.** An eligible member who requests to purchase other public service credit under A.R.S. § 38-743 shall provide to the ASRS a completed Affidavit of Other Public Service form, signed and dated by the member, and notarized, that includes the following:
1. The member's full name;
  2. The member's Social Security number;
  3. Other names used by the member during employment with the other public service employer, if applicable;
  4. The name and mailing address of the other public service employer;
  5. The position the member held while working for the other public service employer;
  6. A contact name and telephone number of an individual in the other public service employer's human resources department who can verify employment, if known;
  7. The years and months by fiscal year of other public service the member worked and wishes to purchase;
  8. If the other public service employer was a non-ASRS employer, a statement of whether the member participated in the non-ASRS employer's retirement plan;
  9. If the member participated in a non-ASRS public service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the member took a return of retirement contributions;
    - b. The plan is non-contributory and the member is not eligible for benefits from the plan; or
    - c. That, if not using all of the retirement contributions as a pre-tax rollover, the member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the

ASRS with documentation that the member has forfeited all rights to benefits from the plan no later than the due date specified on the SP invoice; and

10. Acknowledgement that:
  - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793;
  - b. The service purchase transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's total credited service with the ASRS, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit; and
  - c. If an audit determines that the member is eligible for a benefit from the other public service employer's retirement plan, the member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the service credit purchase listed on this application will be revoked and any funds paid to purchase the service credit will be refunded to the member.
- B. The amount the member shall pay to purchase other public service credit is determined as provided in R2-8-506.

#### Historical Note

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

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

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

#### Historical Note

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

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

- A. An eligible member may purchase service credit by Irrevocable Payroll Deduction Authorization.
- B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).
- C. If the eligible member elects to pay for service credit by Irrevocable Payroll Deduction Authorization, ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to

the eligible member for signature. The member shall ensure that the ASRS receives the signed Irrevocable Payroll Deduction Authorization within 30 days after the date on the Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.

- D. At the time the eligible member signs the Irrevocable Payroll Deduction Authorization the eligible member may elect to use termination pay towards the balance of the Irrevocable Payroll Deduction Authorization if the eligible member terminates employment. If the eligible member chooses this option, the eligible member shall complete the Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization and return it to the ASRS along with the remainder of the Irrevocable Payroll Deduction Authorization that includes the following:
  1. A statement that the member:
    - a. Understands and agrees that the member must continue working at least three full calendar months after the date of submission of the form before termination pay may be used on a pre-tax basis;
    - b. Understands that if the termination payment exceeds the balance owed on the Irrevocable Payroll Deduction Authorization, the overage will be returned to the ASRS employer to be distributed to the member; and
    - c. Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the Irrevocable Payroll Deduction Authorization if all scheduled payroll deductions have not been completed upon termination of service; and
  2. A statement that either all termination pay or a specified amount of termination pay is to be applied to the balance of the Irrevocable Payroll Deduction Authorization.
- E. The ASRS shall:
  1. Charge interest on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect at the time the authorization was entered into;
  2. Limit the payroll deduction time period to a maximum of 20 years; and
  3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 year of service credit per payroll period, whichever is greater.
- F. The ASRS shall transmit the Irrevocable Payroll Deduction Authorization to the active member's ASRS employer, and the ASRS employer shall implement the deduction on the first pay period after receiving the Irrevocable Payroll Deduction Authorization.
- G. If a deduction is not made under an Irrevocable Payroll Deduction Authorization within six months after the member signs the authorization, the authorization lapses and the member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H. A period of leave of absence, long-term disability, or Presidential Call-up shall not cancel the Irrevocable Payroll Deduction Authorization. The ASRS employer shall resume deductions immediately upon the member's return to that employment. The period during which the member is on leave of absence, on long-term disability, or leaves work because of a Presidential Call-up is not included in the 20-year payment time limitation under subsection (E)(2). If the member does not return to active working status, whether due to termination of employ-

ment or retirement, the member may elect to purchase the balance of unpaid service under the Irrevocable Payroll Deduction Authorization at the time of termination or retirement as specified in this Section.

- I. Deductions made pursuant to an Irrevocable Payroll Deduction Authorization continue until the:
  1. Irrevocable Payroll Deduction Authorization is completed;
  2. Member retires, whether or not the member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(J); or
  3. Member terminates all ASRS employment without transferring employment.
- J. If a member retires or terminates employment from all ASRS employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable Payroll Deduction Authorization, the member's purchase of service credit is canceled unless the member notifies the ASRS in writing during the period 14 days before to 14 days after retirement or termination from all ASRS employment of the intent to purchase the remaining amount due in a lump sum.
- K. When the member notifies ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable Payroll Deduction Authorization, the ASRS shall send the member a PDA pay-off letter to the mailing address given by the member. The ASRS shall calculate the amount owed by the member and reduce the amount owed by any excess interest that the member has paid.
- L. Within 30 days of the date of the PDA pay-off letter, the member shall ensure that the ASRS receives the completed SP Payment Request form with the information specified in R2-8-502(D)(2). The member may purchase the remaining service credit by one or more of the following methods:
  1. By check, cashier's check, or money order made out to the ASRS under R2-8-512;
  2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer within 90 days of the date of the PDA pay-off letter; or
  3. By termination pay distribution under R2-8-519, if the member authorized this option at the time the member signed the Irrevocable Payroll Deduction Authorization.

#### Historical Note

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

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

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

#### Historical Note

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

#### **R2-8-513.02 Termination Date**

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

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

#### Historical Note

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

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

- A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization by direct rollover at retirement or termination of employment without transferring employment.
- B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).
- C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.
- D. The member shall ensure that the ASRS receives the Direct Rollover/Transfer Certification to Purchase Service Credit form completed by the member and the plan making the distribution within 90 days after the issue date of the SP Invoice.
- E. The information requested on the Direct Rollover/Transfer Certification to Purchase Service Credit form includes:
  1. Member's full name;
  2. Member's Social Security number;
  3. Member's mailing address;
  4. Member's daytime telephone number;
  5. The amount of each rollover or transfer, if applicable;
  6. The account number of each plan, if applicable;
  7. The member's signature certifying that the member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase service credit, and has read and understands the

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Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information sheets;

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

**Historical Note**

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

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

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

**Historical Note**

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

**R2-8-516. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-



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1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed****Historical Note**

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

**R2-8-519. Purchasing Service Credit by Termination Pay Distribution**

- A.** To purchase service credit using termination pay distribution, an eligible member shall, no more than six months before the date the eligible member plans to retire or terminate employment, request to purchase service credit as specified in R2-8-502 and specify that the member wants to use termination pay distribution to pay for the service credit. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.
- B.** Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:
  1. SP invoice stating the cost to purchase the requested amount of service credit and the date the payment is due, and
  2. Service Purchase Payment Request form as described in R2-8-502(D)(2).
- C.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form.
- D.** Upon receipt of the Service Purchase Request form, if the member indicates the member wishes to purchase service credit by termination pay distribution, the ASRS shall send the member a Termination Pay Authorization for the Purchase of Service Credit form to complete and return within the time limitation specified in subsection (E) that includes:
  1. Member's full name,
  2. Member's Social Security number,
  3. Member's daytime telephone number,
  4. The Request ID number listed on the SP invoice,
  5. Name of ASRS employer,
  6. Whether the member elects to use all termination pay or a specific amount of termination pay to purchase service credit,
  7. Signature of the member, certifying that the member understands that:
    - a. The member is required to continue working at least three full calendar months after the date the member submits the Termination Pay Authorization for the Purchase of Service Credit form before termination pay may be used on a pre-tax basis;

- b. If the member terminates employment more than six months after the date on the SP invoice, the member may purchase the service credit at a newly calculated rate and possibly at a higher cost;
- c. The Termination Pay Authorization for the Purchase of Service Credit form is binding and irrevocable;
- d. The member's employer is required to make payment directly to the ASRS after mandatory deductions are made, and the member does not have the option of receiving the funds directly from the employer;
- e. The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member by the Termination Pay Authorization for the Purchase of Service Credit form;
- f. If the member elects to purchase with termination pay only a portion of the service credit that the member is entitled to purchase, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit does not alter, amend, or revoke the terms of the Termination Pay Authorization for the Purchase of Service Credit form;
- g. It is the member's responsibility to ensure that the member's employer properly deducts termination pay, as provided the Termination Pay Authorization for the Purchase of Service Credit form; and
- h. The amount of termination pay the member is allowed to apply to purchase service credit is subject to federal laws.

- E.** In addition to the other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete and sign the Termination Pay Authorization for the Purchase of Service Credit form, and the member shall ensure that the ASRS receives the Termination Pay Authorization for the Purchase of Service Credit form at least three full calendar months before the member retires or terminates employment.
- F.** The ASRS shall not apply a termination pay distribution to a service credit purchase covered by an Irrevocable Payroll Deduction Authorization in effect at the time of termination unless the eligible member signed a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in R2-8-513(D) at the time the member signed the Irrevocable Payroll Deduction Authorization.
- G.** If a member elects to use all of the member's available termination pay to purchase service credit, ASRS shall not apply any other form of payment to the service credit purchase until the ASRS receives the termination pay.

**Historical Note**

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

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

- A.** If a member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing service credit by an Irrevocable Payroll Deduction Authorization and requests return of retirement contributions, the ASRS shall return any payments made for the purchase of service credit

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including interest earned on those payments as determined by the Board.

- B. If a member dies while purchasing service credit, the ASRS shall credit the member's account with:
  1. The service credit for which the ASRS received payment before the member's death,
  2. Interest earned on payment through the date of distribution at the valuation rate established by the Board, and
  3. All service purchase payments.
- C. If a member dies while purchasing service credit, the ASRS shall not permit the survivor to purchase the remaining balance.
- D. The ASRS shall not refund interest charged as part of an Irrevocable Payroll Deduction Authorization as specified in R2-8-513(E)(1).

**Historical Note**

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

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

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

**Historical Note**

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

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING****R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

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

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

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
  1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
  1. The name and current address of the person submitting the petition,
  2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  3. The signature of the person submitting the petition, and
  4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
  1. The name and current address of the person submitting the objection;
  2. Identification of the rule;

3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
  4. The signature of the person submitting the objection; and
  5. The date the person signs the objection.
- B.** The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

- A.** A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
  2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B.** The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C.** A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  4. Explain the background and general content of the proposed rulemaking;
  5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.

- D.** A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

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

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 418 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, employer letter or spreadsheet, completed State Personnel Action Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ASRS employer-provided form that includes:
  - a. Whether the employee was covered under the ASRS employer's 218 agreement prior to July 24, 2014,
  - b. The number of hours worked or length of time the member was employed by the ASRS employer, or
  - c. The compensation paid to the member by the ASRS employer.
3. "Eligible service" means employment with an ASRS employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member worked a minimum of 20 hours per week for at least 20 weeks in a service

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year for at least one ASRS employer from 7/1/1999 to the present.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).  
Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-702. General Information**

- A. Verified eligible service that occurred more than 15 years before the date ASRS receives the information identified in R2-8-704(A)(1) is considered public service credit as provided in A.R.S. § 38-738(D), and is not applied under this Article.
- B. The ASRS employer shall pay the ASRS employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not:
  - 1. The member has withdrawn contributions as specified in R2-8-115; or
  - 2. The member pays the member's portion of the contributions.
- C. The person who initiates the claim that contributions were not withheld for eligible service has the burden to prove a contribution error was made.
- D. ASRS shall not waive payment of contributions or interest owed under this Article.
- E. If a member is not able to establish eligibility for service credit for which contributions were not withheld, but is able to establish a period of employment by an ASRS employer the member may request to purchase service credit for that period under A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

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

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

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

**Historical Note**

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

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

If a member believes that an Employer has not withheld contributions for the member for a period of eligible service, the member shall:

- A. Provide the Employer with documentation of the member's claim and request that the Employer provide a letter that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:
  - 1. The member's full name;
  - 2. Other names used by the member;
  - 3. The member's Social Security number;
  - 4. Whether the position was covered under the Employer's 218 agreement prior to July 24, 2014;
  - 5. The position title the member held at the time the contributions should have been withheld;
  - 6. The eligibility of the member at the time the contributions should have been withheld;

- 7. The following statements of understanding and agreements certified by the authorized Employer representative's signature indicating:
  - a. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and
  - b. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the Employer may incur a substantial financial obligation. I understand that I may receive an invoice for the member contributions I owe.
- 8. The following information by fiscal year:
  - a. All pay period end dates;
  - b. The hours per week worked within each pay period; and
  - c. The compensation earned by the member within each pay period.
- 9. The name of the Employer;
- 10. The printed name and signature of the authorized Employer representative;
- 11. The daytime telephone number of the authorized Employer representative;
- 12. The title of the authorized Employer representative; and
- 13. The date the authorized Employer representative signed the form;
- B. Provide the ASRS with the completed Verification of Contributions Not Withheld form; and
- C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the documentation the member believes supports the allegation that contributions should have been withheld, that includes proof:
  - 1. That the employee was covered under the Employer's 218 agreement prior to July 24, 2014,
  - 2. Of the number of hours worked,
  - 3. Of the length of time the member was employed by the Employer, and
  - 4. Of the compensation paid to the member by the Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4).

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

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

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

**Historical Note**

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

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

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for a member who met active membership requirements while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  - 2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C. Except for returning to work under A.R.S. § 38-766.01(D), the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D. If there is any discrepancy between the documentation provided by the Employer and the documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E. The ASRS shall provide to the Employer and the member a written statement that includes:
  - 1. The dates of eligible service for which contributions were not withheld,
  - 2. The dollar amount of contributions that should have been made,
  - 3. The dollar amount of the contributions to be paid by the Employer,
  - 4. The interest on the Employer contributions and member contributions to be paid by the Employer,
  - 5. The dollar amount of contributions to be paid by the member, and
  - 6. The various payment options that may apply to the member, as specified in R2-8-512 through R2-8-519.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4).

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

- A. Within 90 calendar days after the ASRS notifies the ASRS employer in writing of the amount due, the ASRS employer shall pay all ASRS employer contributions, including accrued interest on both the ASRS employer and member contribu-

tions, from the date the contributions were due to the date the ASRS notifies the ASRS employer of the amount due. An ASRS employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the ASRS employer's amount due within 90 calendar days after the ASRS notifies the ASRS employer of the amount due, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(3), will accrue from the 91st day until the ASRS employer pays the full amount.

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

**Historical Note**

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

**R2-8-708. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

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

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

**Historical Note**

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

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 2. Administration**

### **Chapter 20. Citizens Clean Elections Commission**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R2-20-101, R2-20-104, R2-20-105, R2-20-107, R2-20-109, R2-20-110, R2-20-111, R2-20-112,  
R2-20-402.01, R2-20-402.02, R2-20-703

REMOVE Supp. 16-3  
Pages: 1 - 27

REPLACE with Supp. 16-4  
Pages: 1 - 26

The agency's contact person who can answer questions about rules in Supp. 16-4:

Agency: Citizens Clean Elections Commission  
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Address: 1616 W. Adams St., Suite 110, Phoenix, AZ 85007  
Phone: (602) 364-3477  
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E-mail: [thomas.collins@azcleanelections.gov](mailto:thomas.collins@azcleanelections.gov)

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



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

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

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

**ARTICLE 1. GENERAL PROVISIONS**

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

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

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

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

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

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 23 A.A.R. 113, effective December 15, 2016 (Supp. 16-4).

**R2-20-102. Repealed****Historical Note**

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

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

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.
- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a

copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

**Historical Note**

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

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

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-941(B), but later chooses to run as a participating candidate, shall:
  1. Make the change to participating candidate status during the exploratory and qualifying periods only;
  2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
  3. Return all Political Action Committee (PAC) monies received;
  4. Not have made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
  5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
  6. Return all contributions received from another candidate's candidate committee.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
  1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
  2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(24); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
  3. Remitting the money to the Fund; or
  4. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.
- C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date. In the application, a candidate shall certify under oath that the candidate:
  1. Agrees to use all Clean Elections funding for direct campaign purposes only;
  2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;

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3. Will comply with all requirements of the Act and Commission rules;
  4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
  5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
  6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
  7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
  8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
  9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
  10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
  11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.
- D.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
  2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
  3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
  4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
  5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
    - a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
    - b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
  6. Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.
- E.** Loans. A participating candidate may accept an individual contribution as a loan or may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the contribution received or personal funds and loans shall not exceed the expenditure limits set forth in A.R.S. § 16-941(A)(1) and (2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a financial institution or bank, to a candidate used for the purpose of influencing that candidate's election shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F.** A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- G.** Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1420, effective April 30, 2010 (Supp. 09-3). Subsection R2-20-104(C)(8) amended by exempt rulemaking at 19 A.A.R. 1685, effective October 6, 2011; Subsection R2-20-104(D)(5) amended by exempt rulemaking at 19 A.A.R. 1685, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 115, effective December 15, 2016 (Supp. 16-4).

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

- A.** After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B.** A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candi-

date's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.

- C. A candidate may accept electronic \$5 qualifying contributions for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic \$5 qualifying. A \$5 contribution must accompany every \$5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or debit card. A non-refundable transaction fee may be assessed on electronic \$5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report in a manner that indicates the transaction fees have been accumulated and transferred.
- D. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. If a contribution is received unsolicited, the candidate or contributor may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. Nothing in this rule shall prohibit the use of direct mail or the internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection (C) of this Section, the residential address and signature of the solicitor is not required.
- E. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
  - 1. Unsigned by the contributor;
  - 2. Undated; or
  - 3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- F. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.
- G. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the

amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.

- H. In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
  - 1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
  - 2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
  - 3. The period for filing qualifying contributions slips has not expired.
- I. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2). Subsection R2-20-105(C) amended by exempt rulemaking at 19 A.A.R. 1688, effective October 6, 2011; Subsection R2-20-105(J) amended by exempt rulemaking at 19 A.A.R. 1688, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 117, effective January 1, 2017 (Supp. 16-4).

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

- A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
  - 1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
    - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or

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- b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
- 2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
- 3. Determine whether the candidate is opposed in the election.
- B.** In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- C.** The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- D.** Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.
- E.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no expenditures from general election funds from the date of the canvass.
- F.** The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.
- G.** Pursuant to A.R.S. § 16-953(A), a participating candidate shall return to the Fund all of his or her primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.

**Historical Note**

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

**R2-20-107. Candidate Debates**

- A.** The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in the subsection below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.
- B.** In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:
  - 1. There are more candidates appearing on the ballot than there are seats available for the political party's nomination for general election candidates, and
  - 2. At least one of the candidates is a participating candidate.
- C.** The following candidates will not be invited to participate in debates as follows:
  - 1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  - 2. In the general election, write-in candidates.
- D.** In the event that there is no participating candidate in a primary or general election but there is an election involving candidates who are not unopposed, a candidate may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
  - 1. A nonparticipating candidate who requests a debate pursuant to this rule shall complete and return the invitation form sent to the candidate by the Commission by the deadline identified on the form. Forms received by the Commission past the deadline may still be considered at the discretion of the Commission. Commission staff shall notify all invited candidates if a debate will be sponsored by the Commission and which candidates will participate.
  - 2. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed \$10,000 for a non-participating candidate for the legislature and \$25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.
- E.** Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.
- F.** Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined \$500.00. For purposes of this Section, each primary or general election shall be considered a separate election.

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- G.** A participating candidate may request to be exempt from participating in a required debate by doing the following:
1. Submit a written request to the Commission at least one week prior to the scheduled debate, and
  2. State the reasons and circumstances justifying the request for exemption.
- H.** After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
1. Beyond the control of the candidate; or
  2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- I.** A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.
1. The candidate's request for excused absence shall:
    - a. State the reason the candidate failed to participate in the debate, and
    - b. State the reason the candidate failed to request an exemption in advance, and
    - c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
  2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
    - a. Beyond the control of the candidate; or
    - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- J.** When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.
- K.** In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 1690, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 4213, effective November 21, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 21 A.A.R. 1627, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 119, effective December 15, 2016 (Supp. 16-4).

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

- A.** A candidate may voluntarily request termination of his or her participating candidate status at any time prior to notification

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

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

**Historical Note**

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

**R2-20-109. Independent Expenditure Reporting Requirements**

- A.** In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:
1. Expressly provided otherwise by another Commission rule; or
  2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a substitute process.
- B.** Independent Expenditure Reporting Requirements.
1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
  2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply



- to reports pursuant to A.R.S. §§ 16-941(D) and 16-958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
  - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
  - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
    - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
    - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
    - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
  4. For the purposes of A.A.C. R2-20-109(B)(3), the following apply:
    - a. An entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.
      - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
      - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
      - iii. For purposes of this provision, grants to other organizations shall be treated as follows:
        - (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
        - (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
      - vi. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (F)(12)(a)(v) shall count as a reportable contribution or reportable expenditure.
      - v. Notwithstanding subsections (F)(12)(a)(iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
        - (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
        - (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
      - b. Notwithstanding subsection (a), the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

#### Historical Note

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

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3). Subsection R2-20-109(D) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 29, 2015; subsection R2-20-109(F) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 30, 2015 (Supp. 15-4). Amended by exempt rulemaking at 22 A.A.R. 2892, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 121, effective January 1, 2017 (Supp. 16-4).

#### **R2-20-110. Participating Candidate Reporting Requirements**

- A.** All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:
1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
  2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
  3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
    - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
    - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
    - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
  4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost

of goods and services with one or more candidates, subject to the following:

- a. Joint expenditures must be allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
  - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
  - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
  - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
  - e. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:
    - i. The activity includes express advocacy of the election or defeat of more than 2 candidates;
    - ii. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
    - iii. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
    - iv. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
    - v. The timing of the material or activity in relation to the election of a second candidate;
    - vi. The distribution of the material or the activity is targeted to a second candidate's electorate; or
    - vii. The amount of control a second candidate has over the material or activity.
  5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.
- B.** Timing of reporting expenditures.
1. Except as set forth in subsection (A)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
  2. In the alternative to reporting in accordance with subsection (A)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
    - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to termi-

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nate the contract or agreement and avoid such future periodic payment elapses.

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

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

1. In addition to any campaign finance report required by Chapter 6 of Title 16, Arizona Revised Statutes, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
  - a. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.
  - b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
    - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
    - ii. If the campaign finance report shows any amount of unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited in the Fund.
  - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
  - b. The campaign finance report for the general election shall be filed within five days after the general election day and shall reflect all activity through the general election day.
3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor

through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1629, effective July 23, 2015 (Supp. 15-3). Section R2-20-110 renumbered to Section R2-20-114; new Section R2-20-110 made by exempt rulemaking at 22 A.A.R. 2897, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 124, effective January 1, 2017 (Supp. 16-4).

**R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits**

- A.** Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:
- B.** Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):
  1. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  2. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  3. The penalties in (B)(1) and (B)(2) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
  4. The dollar amounts in items (B)(1) and (B)(2), and the spending limits in item (B)(3) are subject to adjustment of A.R.S. § 16-959.
- C.** Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.
- D.** Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

- E. The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.
- F. Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final exempt rulemaking at 21 A.A.R. 1631, effective July 23, 2015 (Supp. 15-3). Section R2-20-111 renumbered to R2-20-115 at 22 A.A.R. 2904; new Section R2-20-111 made by exempt rulemaking at 22 A.A.R. 2899 effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 126, effective January 1, 2017 (Supp. 16-4).

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

The provisions of A.R.S. § 16-911(B)(4) shall apply to a candidate, whether participating or nonparticipating, who becomes a nominee as defined in A.R.S. § 16-901(38).

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by final exempt rulemaking at 23 A.A.R. 128, effective January 1, 2017 (Supp. 16-4).

#### R2-20-113. Candidate Statement Pamphlet

- A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. § 16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot.
- B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:
  1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election: write in candidates.

#### Historical Note

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

31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 15 A.A.R. 1567, effective September 2, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1200, effective January 8, 2010 (Supp. 10-2). Repealed by exempt rulemaking at 19 A.A.R. 1694, effective October 6, 2011 (Supp. 13-2).

New Section made by final exempt rulemaking at 21 A.A.R. 1633, effective July 23, 2015 (Supp. 15-3).

#### R2-20-114. Candidate Campaign Bank Account

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

#### Historical Note

New Section R2-20-114 renumbered from R2-20-110 by exempt rulemaking at 22 A.A.R. 2897 and 22 A.A.R. 2902, effective January 1, 2017 (Supp. 16-3).

#### R2-20-115. Books and Records Requirements

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
  1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
    - a. All contributions or other monies received by or on behalf of the candidate.
    - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
    - c. Cumulative totals contributed by each individual or political committee.
    - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
    - e. All periodic bank statements or other statements for the candidate's campaign bank account.
    - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
  2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
  3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a con-

tribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.

4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
  5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
  6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
  2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
  3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
  4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
    - a. All papers, records, or other items sought in the public inspection request;
    - b. No later than two business days after the date of the subpoena; and
    - c. To the Commission's office during regular business hours.
  5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

#### Historical Note

New Section R2-20-115 renumbered from R2-20-111 by exempt rulemaking at 22 A.A.R. 2899 and 22 A.A.R. 2904, effective January 1, 2017 (Supp. 16-3).

### ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

#### R2-20-201. Scope

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

#### Historical Note

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

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

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

#### Historical Note

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

#### R2-20-203. Complaints

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

#### Historical Note

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

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

- A. Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and provide each respondent a copy of the complaint.

- B. If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be provided with the notification to each respondent.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by final exempt rulemaking at 21 A.A.R. 1634, effective July 23, 2015 (Supp. 15-3).

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

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.
- C. The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1636, effective July 23, 2015 (Supp. 15-3).

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

- A. Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:
1. May recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;
  2. May recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A); or
  3. May close the complaint generated matter without a reason to believe recommendation from the Executive Director based upon Respondent complying with the statute or rule on which the complaint is founded and in such case shall notify the Commission.
- B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.

- C. If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.
- D. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 20 A.A.R. 1332, effective May 22, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1638, effective July 23, 2015 (Supp. 15-3).

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

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

#### Historical Note

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

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

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

which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

#### Historical Note

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

#### R2-20-209. Investigation

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

#### Historical Note

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

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

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

#### Historical Note

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

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

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

#### Historical Note

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

#### R2-20-212. Repealed

#### Historical Note

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

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

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accom-

panying such application with a brief statement of the reasons therefore.

- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

#### Historical Note

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

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

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

#### Historical Note

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

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

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

#### Historical Note

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

rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-216. Conciliation**

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

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

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

repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

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

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

**Historical Note**

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

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

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

**Historical Note**

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

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

- A. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed \$1,000 for a participating candidate for the legislature and 5,000 for a participating candidate for statewide office.
- B. If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate



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is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed \$1,000.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

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

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

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

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

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 2921, effective July 1, 2011; filed in the Office October 27, 2015 (Supp. 15-4).

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

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

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

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

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

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

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

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

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

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

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

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

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

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

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

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

**R2-20-229. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

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

**R2-20-230. Repealed**

**Historical Note**

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

**R2-20-231. Repealed****Historical Note**

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

**ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES****R2-20-301. Purpose and Applicability**

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

**Historical Note**

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

**R2-20-302. Definitions**

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

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

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

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

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

**Historical Note**

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

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

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

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

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

**Historical Note**

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

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

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

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

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

#### Historical Note

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

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

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

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

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

#### Historical Note

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

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

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

#### Historical Note

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

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

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

#### Historical Note

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

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

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

**Historical Note**

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

**ARTICLE 4. AUDITS****R2-20-401. Purpose and Scope**

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

**Historical Note**

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

**R2-20-402. General**

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

**Historical Note**

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

**R2-20-402.01. Random Audits of Participating Legislative Candidates**

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

**Historical Note**

New Section made by exempt rulemaking at 13 A.A.R. 3529, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1700, effective October 6, 2011 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1640, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 130, effective December 15, 2016 (Supp. 16-4).

**R2-20-402.02. Audits of Participating Statewide Candidates**

All participating statewide candidates shall be audited after each primary election period and each general election period.

**Historical Note**

New Section made by final exempt rulemaking at 23 A.A.R. 131, effective December 15, 2016 (Supp. 16-4).

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

A. The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created

by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than two days after service of the Commission's request.

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

course of carrying out its responsibilities. The procedures set forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

#### Historical Note

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

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

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

#### Historical Note

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

### ARTICLE 5. RULEMAKING

#### R2-20-501. Purpose and Scope

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

#### Historical Note

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

#### R2-20-502. Procedural Requirements

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

#### Historical Note

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

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

- A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should

be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.

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

#### Historical Note

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

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

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

#### Historical Note

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

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

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

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

#### Historical Note

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

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

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

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

**Historical Note**

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

**ARTICLE 6. EX PARTE COMMUNICATIONS****R2-20-601. Purpose and Scope**

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

**Historical Note**

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

**R2-20-602. Definitions**

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

**Historical Note**

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

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

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

and deliver the statement to the Executive Director for placement in the applicable case file.

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

**Historical Note**

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

**R2-20-604. Sanctions**

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

**Historical Note**

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

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

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

**Historical Note**

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

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

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

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- c. Tuition payments, other than those associated with training campaign staff.
  - d. Mortgage, loan, rent, lease or utility payments:
    - i. For any part of any personal residence of the candidate or a member of the candidate's family; or
    - ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
  - e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
  - f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
  - g. Gifts or donations.
  - h. Extended warranties or other similar purchase options that extend beyond the campaign.
4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.
- D.** Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.
- E.** During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
- 1. The sum of early contributions received plus public funds disbursed through the primary election period; less
  - 2. All other expenditures made during and for the exploratory, qualifying and primary election periods.
- F.** During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
- 1. The amount of public funds disbursed during and for the general election period; less
  - 2. All other expenditures made during and for the general election period.
- G.** Transportation expenses.
- 1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  - 2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
    - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
3. Use of airplanes.
- a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
  - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and (ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2).



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Amended by exempt rulemaking at 22 A.A.R. 2906, effective January 1, 2017 (Supp. 16-3).

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

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

**Historical Note**

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

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

- A. In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
  2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
  3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fundraising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- C. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

**Historical Note**

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

A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by final exempt rulemaking at 21 A.A.R. 1641, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 133, effective January 1, 2017 (Supp. 16-4).

**R2-20-704. Repayment**

- A. In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
  2. The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than one year after the day of the election.
  3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
  4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.
  5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
  2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
  3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
  4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
  5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an

amount equal to the amount determined to be income, less any federal, state or local taxes on such income.

6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
  1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
  2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D. Repayment period.
  1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
  2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
  3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:
    - a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
    - b. The amount actually earned on the funds set aside or to be repaid under this Section.

#### Historical Note

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

Amended by final exempt rulemaking at 21 A.A.R. 1643, effective July 23, 2015 (Supp. 15-3).

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

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

#### Historical Note

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

#### R2-20-706. Repealed

#### Historical Note

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

#### R2-20-707. Repealed

#### Historical Note

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

#### R2-20-708. Repealed

#### Historical Note

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

#### R2-20-709. Repealed

#### Historical Note

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

#### R2-20-710. Repealed

#### Historical Note

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



## **Replacement Check List**

For rules filed within the  
4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

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

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## **Title 3. Agriculture**

### **Chapter 2. Department of Agriculture - Animal Services Division**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R3-2-205, R3-2-403, R3-2-621, R3-2-622

REMOVE Supp. 16-3  
Pages: 1 - 42

REPLACE with Supp. 16-4  
Pages: 1 - 38

*The agency's contact person who can answer questions about expired rules in Supp. 16-4:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State  
Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

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

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

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

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

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

**ARTICLE 1. GENERAL PROVISIONS**

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

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

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

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

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(Authority: A.R.S. § 3-601 et seq.)

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

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

(Authority: A.R.S. § 3-701 et seq.)

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

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**ARTICLE 10. AQUACULTURE**

(Authority: A.R.S. § 3-2901 et seq.)

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

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

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

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

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

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

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

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

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

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

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

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

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

“USDA” means the United States Department of Agriculture.

“VS” means the Veterinary Services branch of APHIS.

**Historical Note**

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

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

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

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

2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant’s right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

**Historical Note**

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

**R3-2-103. Recodified****Historical Note**

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

**R3-2-104. Recodified****Historical Note**

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

**R3-2-105. Recodified****Historical Note**

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

**R3-2-106. Recodified****Historical Note**

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

**R3-2-107. Recodified****Historical Note**

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

**R3-2-108. Recodified****Historical Note**

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

**R3-2-109. Recodified****Historical Note**

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

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

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

**Historical Note**

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

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

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

1. "Animal" means any steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ratite, or poultry.
2. "Dead animal" means an animal that died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. "Inedible meat" means:



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- a. Meat or meat food product from an animal that died by slaughter or was processed in an inspected slaughterhouse, but which an inspector did not pass as fit for human consumption; or
  - b. Meat condemned by a federal or state inspector.
4. "Rendering" means the conversion of packinghouse waste or dead animal carcasses and parts into industrial fat, oil, or other product unfit for human consumption.

**Historical Note**

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

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

All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2016, as amended by 80 FR 75590-01 (December 2, 2015), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-202 renumbered from Section R3-9-202 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 465, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1971, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 15 A.A.R. 1890, effective October 21, 2009 for 180 days (Supp. 09-4). Emergency expired; Section amended by final rulemaking at 16 A.A.R. 351, effective April 3, 2010 (Supp. 10-1). Amended by emergency rulemaking at 19 A.A.R. 150, effective January 9, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 1789, effective July 9, 2013 (Supp. 13-3). Amended by final rulemaking at 22 A.A.R. 2167, effective October 2, 2016 (Supp. 16-3).

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

- A. Any person operating a business in any of the following categories shall obtain the appropriate license from the Department.
- 1. Types of slaughter licenses.
    - a. Official slaughter – the slaughtering of animals in a slaughterhouse for sale for human consumption.
    - b. Exempt slaughter.
      - i. Exempt non-mobile slaughter – the slaughtering or dressing of an animal in a stationary building for human consumption, that is not sold or offered for sale.

- ii. Exempt mobile slaughter – the slaughtering or dressing of an animal for human consumption by using a mobile structure on the property of the animal's owner, that is not sold or offered for sale.

## 2. Types of meat licenses.

- a. Broker – any person, firm or corporation engaged in buying or selling carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments. A broker negotiates purchases or sales of these products other than for the broker's own account, as an employee of another person, and is paid a commission.
- b. Exempt – any person, firm, or corporation engaged in processing meat or poultry products without meat inspection, for an individual owner of meat that is not for sale.
- c. Distributor – any person, firm, or corporation engaged in receiving carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments and storing or distributing these products to commercial outlets, processors, or individuals. A distributor does not process any of these products.
- d. Jobber – any person, firm, or corporation with an established place of business that buys meat or poultry food products and offers the products for sale to someone other than the end-use consumer.
- e. Pet food manufacturer – any person, firm, or corporation engaged in manufacturing animal food from meat or poultry unfit for human consumption.
- f. Processor – any person, firm, or corporation that changes meat or poultry food products by cutting, mixing, blending, canning, curing or otherwise preparing meat or meat food products wholesale for human consumption.
- g. Renderer – any person, firm, or corporation that renders and tallows and any person, firm, or corporation engaged commercially in the hide, hair, or pelt removal, cutting up, or rendering of animals.

## B. Applications for a license or registration pursuant to A.R.S. § 3-2081(A), shall be made on forms provided by the Department and shall contain the following:

- 1. The name of the applicant and the applicant's partners, officers or directors of the business, if any;
- 2. The business name, mailing address, telephone number, and Social Security number of the applicant;
- 3. The exact location of the business, if different from subsection (B)(2).

## C. All persons licensed or registered under this Section, and all other persons described in A.R.S. § 3-2081, shall maintain the records required under A.R.S. § 3-2081 for a minimum of one year. In addition, all registered dead animal haulers, licensed rendering and tallow plants, and pet food manufacturing plants shall prepare and submit the reports required under A.R.S. § 3-2695 and shall include copies of those reports as part of records maintained under this Section and A.R.S. § 3-2081.

## D. During fiscal year 2016, the fee to obtain or renew a license to slaughter is:

- 1. For not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: \$250.
- 2. For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: \$300.
- 3. For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: \$450.

E. During fiscal year 2016, the fee to obtain or renew a meat license is:

1. For a broker, \$450.
2. For exempt processing, \$300.
3. For a distributor, \$500.
4. For a jobber, \$450.
5. For a pet food manufacturer, \$300.
6. For a processor, \$300.
7. For meat storage, \$450.
8. For transportation, \$300.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-208 renumbered from Section R3-9-208 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-203 renumbered to R3-2-208; new Section R3-2-203 renumbered from Section R3-2-208 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3).

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

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

1. Cattle.
  - a. A metal knocking box or concrete box with metal door to confine the animals prior to stunning;
  - b. A separately drained, dry landing area at least five feet wide in front of the knocking box;
  - c. A curbed-in bleeding area at least eight feet wide and seven feet long, located so that blood will not splash upon stunned animals lying in the dry landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide;
  - d. A separately drained area at least five feet from the curbed-in bleeding area to the siding bed;
  - e. A distance of at least 14 feet from the vertical of the dropoff to the vertical of the hoist where carcasses are eviscerated. For multiple-bed plants, this distance shall be increased to 16 feet;
  - f. A distance of at least 14 feet between the vertical of the hoist where carcasses are eviscerated and the header rail leading to the cooler. This distance may be shortened when a single rail hang-off is used;
  - g. A distance of at least three feet from the header rail to the adjacent wall;
  - h. A bleeding rail with its top at least 16 feet above the floor or a traveling hoist on an I-beam which will provide an equivalent distance of the carcass from the floor;
  - i. Floor space for a head-flushing cabinet and head inspection rack with removable hooks;
  - j. When hides are dropped to a room below, a hide chute near the point where hides are removed from the carcasses. The chute shall have a vented hood with a self-closing, push-in door. The vent shall be approximately 10 inches in diameter and extend to a point above the roof. Additional chutes, which meet the requirements of this subsection, for inedible and condemned materials shall be provided separate from the hide chutes;
- k. A two-level viscera inspection truck for evisceration, except when a moving top viscera inspection table is used;
- l. An area for washing and shrouding carcasses which shall be curbed and sloped to a separate drain or have a slope of approximately 1/2 inch to the foot leading to a separate drain;
- m. Dressing rails and cooler rails at least 11 feet in height.
2. Calves and sheep.
  - a. A bleeding rail with its top approximately 11 feet from the floor. The floor of the bleeding area shall be curbed and separately drained;
  - b. Dressing and cooler rails of such height as to provide a clearance of at least eight inches from the carcasses to the floor. Calves which are of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transferred manually and unaided to the inspection stand, shall be skinned and eviscerated as cattle;
  - c. Facilities for washing hides of calves before any incision is made (except the sticking wound) when carcasses are dressed hide on. The heads of calves and veal slaughtered by the Kosher method shall be skinned prior to the washing of the carcasses;
  - d. Facilities for flushing, washing, and inspecting calf heads, including head-flushing cabinet and head inspection rack with removal calf loops;
  - e. Facilities for the inspection of the viscera. A hopped metal stand shall be provided which accommodates two removal inspection pans. One inspection pan is for the thoracic viscera; the other is for the abdominal viscera. The pans shall have perforated bottoms and handles or hand holes for removal. A sterilizing receptacle shall be provided for sterilization of contaminated pans;
  - f. Facilities for washing sheep carcasses after removal of the pelt. Calves and sheep shall be washed again after they have been eviscerated.
3. Hogs.
  - a. Facilities for bleeding hogs in a hanging position, over a separately drained, curbed-in bleeding area;
  - b. A scalding vat and gambreling table, including the platforms, of metal construction;
  - c. A shaving rail to assure that carcasses are cleaned;
  - d. A hopped metal stand for the inspection of viscera. A sterilizing receptacle shall be provided at a convenient location for the sterilization of contaminated pans;
  - e. Dressing and cooler rails at least nine feet high or of such height as to provide a clearance of at least eight inches between the lowest point of the carcass, or head if left attached, and the floor.
4. Coolers. A chill cooler and separate holding coolers may be provided or both may be combined in one room. The chill cooler shall have floors of concrete sloped to a drain. The walls shall be smooth, light colored, impervious, and the room shall be sealed. The other coolers shall have floors of concrete; the walls shall be smooth, free of cracks, light colored, impervious, and the room shall be sealed. The door between the slaughtering department

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and the chill cooler shall be clad with rust-resistant metal. Rails shall be spaced at least two feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact with the carcasses. Header rails shall be three feet from the walls. When overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them and the pans connected to the drainage system. If wall coils are installed, a drip gutter of impervious material and connected with the drainage system shall be installed beneath the coils. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area shall be separately drained.

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

- leys. Scale shall not be permitted to accumulate on metal equipment.
- c. Sterilizing receptacles equipped with drains to permit draining and cleaning shall be placed at convenient locations in the slaughtering department for the cleaning and sterilization of contaminated tools and equipment. Water wasting from equipment shall not flow across the floor.
  - d. Shovels used for transferring ice or other edible materials from one container to another shall not touch the floor.
12. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to assure the absence of dust, masking odors, or steam vapors. Points where inspection is conducted may require special lighting. The glass area shall be at least 1/4 of the floor area in all nonrefrigerated work rooms. To assure adequate lighting at all times and at all places, natural lighting must be supplemented by well-distributed artificial lighting.
  13. Water supply, wash basins, sterilizing facilities.
    - a. Hot and cold running water, under pressure, shall be available at all parts of the establishment and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.
    - b. Foot-pedal operated wash basins shall be placed in or near dressing rooms. These wash basins shall be equipped with running hot and cold water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The drainage outlet shall lead directly into the sewage lines. Soap and towels, and a receptacle for dirty paper towels or other trash, shall be convenient to the wash basin.
    - c. One or more wash basins shall be located in the slaughtering department, and one or more in the sausage manufacturing room and at any other place in the establishment essential to ensure cleanliness of all persons handling products. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.
    - d. Water for sterilizing purposes shall be maintained at a temperature of at least 180° F. One or more sterilizing receptacles of rust-resisting, impervious material shall be placed at convenient locations in the slaughtering department for the sterilization of all implements that have been contaminated or used on a diseased carcass or part of a diseased carcass. The sterilizer shall be equipped with a cold water and steam line, or other means to maintain water at a temperature of at least 180° F during slaughtering operations. The sterilizer shall contain a drain so that water may be completely drained out for daily cleaning. Boilers and water heaters shall not be located in

the slaughtering department or in any edible products department. To prevent possible back siphonage, vacuum breakers shall be provided on all steam and water lines when open ends are submerged or connected to equipment.

14. Protection against flies, rodents, or other vermin.
  - a. Plants must be kept free of flies, rats, mice, roaches, and other pests or vermin. The plant shall be constructed to prevent entrance of rodents to the premises and to eliminate their breeding places from the surrounding areas and in the establishment. Construction of the plant shall be such as to eliminate roach and other insect harbors. Windows, doors, and other openings to the plant shall be provided with insect screens, or other measures to prevent entrance of flies or other insects. The screens shall be kept in good repair. Sprays containing residual-acting chemicals shall not be used in edible products departments.
  - b. Animal-handling facilities such as stock pens and runways shall be cleaned as often as necessary and the manure or other waste materials removed shall not be permitted to accumulate at or near the plant.

#### Historical Note

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

#### R3-2-205. Expired

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-205 renumbered from Section R3-9-205 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

#### R3-2-206. Purchase, Sale, Collection, Transportation, Disposition, and Use of Meat or Meat Food Products; Dead Animals; Animal Bone, Animal Fat, Animal Offal

- A. A person shall not buy, sell, offer for sale, store, transport, receive, or collect any meat or meat food product except as provided in this subsection.
  1. Any of the following meat or meat food products may be bought, sold, or offered for sale as animal food and may be stored, transported, received, or collected anywhere within the state:
    - a. Any meat or meat food product that is processed in an animal food manufacturing plant licensed by the Department;
    - b. Any meat or meat food product that comes from an animal that died by slaughter or is approved or passed for animal food by either state or federal meat inspectors;
    - c. Any meat or meat food product that is thoroughly cooked at a minimum temperature of 180° F for 30 minutes and is certified by a state or a federal meat inspector having jurisdiction at the place of processing.
  2. A carcass with the hide, hair, or pelt still on the carcass may be bought, sold, offered for sale, collected and transported to or received by the following only:
    - a. A rendering or tallow plant;
    - b. A state or county diagnostic laboratory, a veterinarian's clinic, or crematory;

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- c. An animal food manufacturing plant;
  - d. A landfill regulated by the Arizona Department of Environmental Quality;
  - e. An out-of-state landfill regulated by that state's landfill regulatory authority; or
  - f. A landfill located on a Native American reservation that is regulated by equivalent standards to those prescribed by the Arizona Department of Environmental Quality.
3. Any meat or meat food product described in subsection (A)(1) or a carcass with the hide, hair, or pelt still on the carcass from an official state or federal slaughter establishment shall be denatured with a denaturant that will not leave a toxic residue and is removable when steam-distilled at atmospheric pressure.
  4. Any meat or meat food product that has been condemned by state or federal meat inspectors shall be treated as provided in 9 CFR 314.3, which has been incorporated by reference in R3-2-202, and may be disposed of as provided in that rule or may be collected and transported to or received by a rendering or tallow plant or a state or county diagnostic laboratory or crematory.
- B.** A person engaged commercially in the collection or transportation of dead animal carcasses or inedible meat shall register with the Department as a dead animal hauler as prescribed in R3-2-203(B) and shall maintain and keep all records for the time required by R3-2-203(C).
- C.** A vehicle or other means of conveyance used to transport a dead animal carcass or inedible meat shall be:
1. Leak-proof,
  2. Constructed of impervious materials that permit thorough cleaning and sanitizing,
  3. Equipped to control insects and odors and prevent the spread of disease, and
  4. Comply with the Department of Environmental Quality vehicle requirements prescribed in R18-13-310(A) and (B).
- D.** Except as provided in subsection (E), a dead animal carcass may be rendered or made into animal food only at a licensed rendering or animal food manufacturing plant as prescribed in A.R.S. § 3-2088 and this Article.
- E.** Dead animals diagnosed with anthrax or an animal disease foreign to the United States shall be handled as directed by the State Veterinarian.
- F.** Discarded animal bone, animal fat, and animal offal generated by a wholesale food manufacturer shall be transported to and received by only a:
1. Licensed rendering plant, or
  2. Landfill, as prescribed in subsections (A)(2)(d), (A)(2)(e), and (A)(2)(f).
- Historical Note**
- Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-206 renumbered from Section R3-9-206 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Citation in subsection (B) corrected to R3-2-203(C) from R3-2-208(C) under R1-1-109(C) (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3015, effective July 10, 2002 (Supp. 02-3).
- R3-2-207. Meat from Dead Animals Processed and Decharacterized for Use as Animal Food**
- A.** The following are minimum requirements for animal food manufacturing plants:
1. Hot and cold water shall be provided with facilities for its distribution in the plant which shall conform with the minimum requirements of the state Department of Health Services. The hot water shall be at least 180° F and shall be used for the cleaning of equipment, floors, and walls.
  2. There shall be a drainage and plumbing system and a sewage disposal system that will not serve as a breeding place for flies, constitute a hazard, or endanger public health. Both systems shall meet the minimum requirements of the state Department of Health Services.
  3. The floors, walls, ceilings, partitions, posts, doors, and other parts of all structures shall be of materials, construction, and finish that are capable of being thoroughly cleaned. The floors shall be tile, cement or other material impervious to water and shall have sufficient drainage to preclude stagnant accumulations of moisture.
  4. All outside windows and doors shall be screened.
  5. All rooms shall have natural or artificial lighting and well-distributed ventilation sufficient to prevent uncontrolled mold growth and filth or bacteria that may endanger health.
  6. The plant shall be kept free from flies, rats, mice, and other vermin. Dogs and cats shall be excluded from the plants.
  7. Tables, benches, and other equipment shall be provided so that processing can be performed free from filth or bacteria that may endanger health.
  8. Each plant shall provide toilets, wash basins, towels, hot and cold running water, and soap for the employees with separate facilities when both sexes are employed. Toilets and wash basins shall be kept free from filth or bacteria that may endanger health. The rooms in which the toilet facilities are located shall be ventilated and shall be separated from the rooms in which the animal food is manufactured.
  9. Coolers shall be maintained below 40° F. Freezers shall be maintained below 10° F.
- B.** Decharacterizing or denaturant agents: The following USDA-approved denaturant agents may be used: Charcoal (finely powdered) with a minimum 1 lb. per 100 lbs. meat, F-D & C Blue 1, F-D & C Blue 2, F-D & C Green 3, or liquid charcoal.
1. In addition to the application of the denaturing agents listed, meat or meat products shall be identified with the following information:
    - a. The kind of animal,
    - b. The following phrases:
      - i. For pet food only from dead animals,
      - ii. Denatured with \_\_\_\_\_,
    - c. The correct statement of net weight, and
    - d. The name and address of processor or manufacturer.
  2. Before the denaturing agents are applied to pieces more than four inches in diameter, the pieces shall be freely slashed or sectioned. The application of any of the denaturing agents listed in this Section to the outer surfaces of molds or blocks of boneless meat, meat by-products, or meat food products shall not be considered adequate. The denaturing agent shall be mixed thoroughly with all of the material to be denatured and shall be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. Denaturant shall be used to give the meat, meat by-products, raw animal fat, or rendered animal fats and oils, a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.
  3. All denaturing shall be done immediately upon condemnation of the meat or product, or immediately after the meat or product is prepared or during preparation.
  4. True containers shall be legibly marked with the words "Beef or horse meat from dead animals for pet food only

and not for human consumption” in letters at least 3/4 inch in height, on all sides and in at least two places if the container has less than four sides.

5. Every carrying container in which meat obtained from a dead animal is packaged shall have an exterior surface sufficiently absorbent so that the markings on at least two sides, in letters two inches high “Pet food only,” will not become illegible during handling, storage, or transportation of the container.
- C. Sales of meat obtained from a dead animal are permitted only to kennels, zoos, and animal food manufacturing plants registered by the Department, and records of sales shall be maintained by the purchaser and animal food manufacturing plant.
- D. Each vehicle used for the transportation of fresh or frozen pet food shall be clearly and legibly marked with the name of the manufacturer in letters not less than four inches in height on both sides of the cab or body.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-207 renumbered from Section R3-9-207 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3).

#### R3-2-208. Diseased and Injured Animals

##### A. Diseased animals.

1. No meat from any diseased animal shall be processed, sold or stored at premises where food is sold or prepared for human consumption, unless it is decharacterized and clearly identified “Not for Human Consumption.”
2. Subsection (A)(1) does not apply to meat from animals affected by any disease that does not render the meat unfit for human consumption if the affected animals are slaughtered in establishments where meat inspection is maintained under A.R.S. § 3-2051 and 9 CFR, Chapter III, Subchapter A, which is incorporated by reference in R3-2-202(A).

##### B. Injured animals. An injured animal may be slaughtered by:

1. The animal’s owner at the owner’s premises if the meat is used solely for consumption by the owner, the owner’s immediate family, or employees. The owner shall keep the animal’s hide until it has been inspected and marked or tagged by a livestock officer under A.R.S. § 3-2011.
2. An official slaughter establishment, if:
  - a. The animal is inspected by a livestock officer at origin; or
  - b. The animal is transported to the official slaughter establishment with a self-inspection certificate; or
  - c. The animal is transported to an official slaughter establishment with a waiver from the Associate Director and the waiver is documented by the livestock officer.
3. An exempt slaughterer, if the meat is used solely for consumption by the animal’s owner, the owner’s immediate family or employees, and if:
  - a. The animal’s body temperature is 103° F or less and except for the injury its condition appears normal; and
  - b. The animal is inspected by a livestock officer at origin who verifies the temperature and condition of the animal and approves it for slaughter; or
  - c. The Associate Director waives the inspection and the waiver is documented by the livestock officer, and the exempt slaughterer verifies the temperature and condition of the animal.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-203 renumbered from Section R3-9-203 (Supp. 91-

4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-208 renumbered to R3-2-203; new Section R3-2-208 renumbered from Section R3-2-203 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

#### R3-2-209. Exempt Non-mobile Slaughter Establishments

In addition to A.R.S. § 3-2050 and the material incorporated in R3-2-202(A), the following shall be provided when slaughtering animals in an exempt non-mobile slaughter establishment:

1. General.
  - a. A metal knocking box or concrete box with metal door to confine the animal before stunning;
  - b. A distance of at least three feet from the header rail to the adjacent wall;
  - c. A bleeding rail with its top at least 16 feet above the floor; and
  - d. Dressing rails and cooler rails placed so the lowest part of the carcass is at least 12 inches from the floor.
2. Coolers. A chill cooler and separate holding cooler may be provided or both may be combined in one unit. The walls shall be light colored, smooth, free from cracks, and impervious to moisture. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant material. Rails shall be spaced at least two feet from walls, columns, refrigeration equipment, or other fixed equipment to prevent contact with the carcasses.
3. Disposal of blood. If blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises.
4. Drainage.
  - a. Floors that require flushing during operations shall have sloped floor drains to carry off the effluent. Drainage systems shall conform to state and local plumbing codes.
  - b. Grease recovery systems shall not mask odors or create a harborage for pests.
5. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to ensure the absence of dust, masking odors, or steam vapors. To ensure adequate lighting at all times and at all places, natural lighting shall be supplemented by well-distributed artificial lighting.
6. Potable water supply, wash basins, sterilizing facilities.
  - a. Hot and cold running water, under pressure, shall be available in all parts of the plant and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.
  - b. One or more wash basins shall be located in the slaughtering department. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.

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- c. The tool sterilizer shall be maintained at 180° F and be in operation at all times during slaughter activities.
- 7. Protection against flies, rodents, or other vermin.
  - a. Establishments shall be free of flies, rats, mice, roaches, and other pests or vermin. The establishment shall be constructed and maintained to prevent entrance of pests to the premises and to eliminate breeding places from the surrounding area and in the establishment.
  - b. Animal handling facilities such as stock pens and runways shall be clean and manure or other waste materials removed shall not accumulate at or near the establishment.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

**ARTICLE 3. FEEDING OF ANIMALS****R3-2-301. Operation of Beef Cattle Feedlots**

- A. An operator shall manage a feedlot under the standards prescribed in A.R.S. § 3-1454(A) and R3-2-406.
- B. An operator shall comply with applicable federal, state, and local laws.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-301 renumbered from Section R3-9-301 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

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

A swine garbage feeding permit holder or applicant for a permit to feed garbage to swine shall comply with the following requirements:

- 1. An approved cooker is installed and in operating condition on the premises, and fenced off from all swine.
- 2. A concrete slab, trough, other easily cleanable area, and equipment for feeding garbage is provided.
- 3. Premises utilized for swine garbage feeding are reasonably clean, free of litter, adequately drained, and provide for removal of animal excrement and garbage not consumed.
- 4. Individually operated swine garbage feeding premises are separated from other swine premises by a minimum distance of 200 feet in all directions and constructed to prevent the escape of any swine.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-302 renumbered from Section R3-9-302 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL****R3-2-401. Definitions**

The following terms apply to this Article:

“Accredited veterinarian” means a veterinarian approved by the State Veterinarian and the Deputy Administrator of VS to perform functions required by cooperative State-Federal animal disease control and eradication programs.

“Biologicals” means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

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

“Equine infectious anemia” or “EIA” means a viral disease, also known as Swamp Fever, of members of the family equidae.

“Restricted feeding pen” means an enclosed area in a designated feedlot, located at least eight feet from other pens, where cattle are maintained for feeding in a drylot without provisions for pasturing or grazing.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-401 renumbered from Section R3-9-401 (Supp. 91-4). Former Section R3-2-401 renumbered to R3-2-402; new Section R3-2-401 adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories**

All veterinarians and laboratories performing diagnostic services on animals shall:

- 1. Notify the State Veterinarian at (602) 542-4293, within four hours of diagnosing or suspecting any Office of International Epizootics List A disease, Eighth Edition, 1999, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State, chronic wasting disease, or the following List B diseases:
  - Anthrax
  - Aujeszky's disease
  - Babesiosis
  - Bovine brucellosis
  - Bovine spongiform encephalopathy
  - Bovine tuberculosis
  - Caprine and ovine brucellosis
  - Contagious caprine pleuropneumonia
  - Contagious equine metritis
  - Dourine
  - Enterovirus encephalomyelitis
  - Epizootic lymphangitis
  - Equine infectious anaemia
  - Equine piroplasmiasis
  - Equine viral arteritis
  - Equine viral encephalomyelitis
  - Fowl typhoid
  - Glanders
  - Heartwater
  - Horse pox
  - Infectious haematopoietic necrosis of fish
  - Nairobi sheep disease
  - Ovine epididymitis
  - Paratuberculosis
  - Porcine brucellosis
  - Pullorum disease
  - Q fever
  - Rabies
  - Scrapie

Screwworm  
Spring viraemia of carp  
Surra  
Theileriosis  
Trypanosomiasis  
Viral haemorrhagic septicaemia of fish

2. Notify the State Veterinarian by facsimile at (602) 542-4290 by the end of the month, after diagnosing any Office of International Epizootics List B disease, Eighth Edition, 1999, not specified in subsection (1). This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
3. Follow the reporting criteria listed in the National Animal Health Reporting system Manual, January 1, 1999 when making an Epizootics List B notification specified in subsection (2). This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-402 renumbered from Section R3-9-402 (Supp. 91-4). Former Section R3-2-402 renumbered to R3-2-403; new Section R3-2-402 renumbered from R3-2-401 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-403. Expired

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-403 renumbered from Section R3-9-403 (Supp. 91-4). Former Section R3-2-403 repealed; new Section R3-2-403 renumbered from Section R3-2-402 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

#### R3-2-404. Importation, Manufacture, Sale, and Distribution of Biologicals and Semen

- A. Any person importing, manufacturing, selling, or distributing any biological intended for diagnostic or therapeutic treatment of animals shall request, in writing, permission from the State Veterinarian.
- B. The State Veterinarian shall deny approval of the importation, manufacture, sale, or distribution of any biological that will interfere with the State disease control program.
- C. A person shall import semen only from boars in pseudorabies Stage IV or V states.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-404 renumbered from Section R3-9-404 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-

1).

#### R3-2-405. Depopulation of Animals Infected with a Foreign Disease

When a foreign animal disease is diagnosed, the State Veterinarian shall order the owner to immediately depopulate and dispose of all infected and exposed animals on the premises if necessary to prevent the spread of the disease among animals.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-405 renumbered from Section R3-9-405 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

#### R3-2-406. Disease Control; Feedlots

- A. A restricted feeding pen shall:
  1. Be isolated from all other pens,
  2. Have separate loading and unloading chutes, alleys, and handling facilities from all other pens,
  3. Not share water or feeding facilities accessible to other areas,
  4. Be posted at all corners with permanently affixed signs stating "Restricted Feeding Area,"
  5. Have a minimum of eight feet between restricted and other pens and facilities, and
  6. Have no common fences or gates with other pens.
- B. An operator may place cattle in a restricted feeding pen as follows:
  1. All cattle, except steers and spayed heifers, shall be branded with an "F", at least two inches in height, on the jaw or adjacent to the tailhead before entering the pen; and
  2. Imported cattle, any age and from any area if accompanied by a permit number and an official health certificate; or
  3. Native Arizona cattle accompanied by an Arizona livestock inspection certificate.
- C. An operator may remove cattle from a restricted feeding pen as follows:
  1. All animals, except steers and spayed heifers, shall be moved only to slaughter, to another designated feedlot, or to an auction market approved by the State Veterinarian or APHIS for sale to slaughter.
  2. A steer or spayed heifer may be moved to any location.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-406 renumbered from Section R3-9-406 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

#### R3-2-407. Equine Infectious Anemia

- A. The Arizona official test for EIA is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS, and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
- B. Disposal of equine testing positive.



1. When an Arizona equine tests positive to EIA, the testing laboratory shall immediately notify the State Veterinarian by telephone or fax.
  2. The EIA-positive equine shall be quarantined to the premises where tested, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian within two weeks of the notification.
  3. Within 14 days of being notified by the testing laboratory of a positive test conducted under subsection (B)(2), the State Veterinarian or the State Veterinarian's designee shall brand the equine on the left side of its neck with "86A" not less than two inches in height.
  4. Within 10 days after being branded, the EIA-positive equine shall be:
    - a. Humanely destroyed,
    - b. Confined to a screened stall marked "EIA Quarantine" that is at least 200 yards from other equine, or
    - c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
  5. Offspring of mares testing EIA-positive shall be quarantined, segregated from other equine, and tested for EIA at six months of age. Offspring testing positive shall be handled as prescribed in subsections (B)(3) and (B)(4).
  6. If an EIA-positive equine is located on premises other than those of the owner at the time a quarantine under this Section is effective, the State Veterinarian may authorize movement of the EIA-positive equine to the owner's premises if requested by the owner. Movement shall be under the direct supervision of the State Veterinarian or the State Veterinarian's designee. If the owner lives in another state, the owner may move the equine to that state with the permission of the chief livestock health official of the state and APHIS.
- C. The State Veterinarian shall require testing of any equine located in the same facility as the EIA-positive equine or any equine considered exposed to the EIA-positive equine. The owner of the equine tested shall pay the expenses for the testing.
- D. The owner of any equine found to be EIA-positive shall not be indemnified by the state for any loss caused by the destruction or loss of value of the equine.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-407 renumbered from Section R3-9-407 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

#### R3-2-408. Disposition of Livestock Exposed to Rabies

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the National Association of State Public Health Veterinarians' Compendium of Animals Rabies Control, 1999, Part III, Section 5. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-408 renumbered from Section R3-9-408 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-409. Rabies Vaccines for Animals

All animals in Arizona vaccinated against rabies shall be vaccinated as prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 1999, Part II. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-409 renumbered from Section R3-9-409 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-410. Restricted Swine Feedlots

- A. The State Veterinarian shall approve restricted swine feedlots for feeding swine from herds not known to be infected with pseudorabies and not tested for pseudorabies before importation if the imported swine meet all requirements in Article 6. Swine moved from a restricted swine feedlot shall be transported directly to a state or federal slaughter facility for immediate slaughter.
- B. No breeding swine shall be located on or within 1/4 mile of a restricted swine feedlot.
- C. If pseudorabies is diagnosed in swine at a restricted swine feedlot, the feedlot shall be immediately quarantined and shall not receive any additional shipments of swine until the herd at the feedlot is declared free of pseudorabies or all swine are depopulated from the premises and the premises are cleaned and disinfected.
- D. A restricted swine feedlot owner or agent shall submit monthly feedlot records to the State Veterinarian, listing the animal's origin, health certificate number, permit number, slaughter destination, and shipping date.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-411. Exhibition Swine

An exhibit official shall deny entry to any swine not individually identified by the following:

1. Imported swine:
  - a. The health certificate prescribed in R3-2-606 and individual permanent identification by a method prescribed in R3-2-606(A)(5)(c)(i), and
  - b. The import permit prescribed in R3-2-607.
2. Native Arizona swine. Individual permanent identification by a method prescribed in R3-2-606(A)(5)(c)(i).

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25,

effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3).

### **R3-2-412. Exhibition Sheep and Goats**

An exhibit official shall deny entry to any sheep or goat not individually identified by the following:

1. Imported sheep or goat.
  - a. The health certificate prescribed in R3-2-606 and the animal identification required in R3-2-614, and
  - b. The import permit prescribed in R3-2-607.
2. Native Arizona sheep or goat. A method prescribed in 9 CFR 79.2(a)(2) for a non-neutered sheep or goat, and a neutered sheep or goat more than 18 months of age.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3).

### **R3-2-413. Sheep and Goats; Intrastate Movement**

- A. Before intrastate movement of a sheep more than 18 months of age, or a sheep or goat of any age not in a slaughter channel, the producer shall identify the animal to the flock of birth before leaving the flock of birth. A sheep or goat not in a slaughter channel includes an animal not for sale, transfer, or movement to:
  1. A slaughter facility,
  2. Custom slaughter, or
  3. A feeding operation before movement to slaughter.
- B. Subsection (A) does not apply if:
  1. The first point of commingling with animals other than those in the flock of birth is an Arizona auction market, and
  2. The auction market acts as the owner's agent to identify the sheep or goat to the flock of birth.
- C. This Section is effective January 1, 2003.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3628, effective January 1, 2003 (Supp. 02-3).

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

### **R3-2-501. Tuberculosis Control and Eradication Procedures**

- A. Procedures for tuberculosis control and eradication in cattle, bison, and goats shall be as prescribed in the USDA publication, Bovine Tuberculosis Eradication – Uniform Methods and Rules, effective February 3, 1989. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
- B. Cattle or bison willfully exposed to quarantined cattle or bison are not eligible for the tuberculosis depopulation indemnity provided in A.R.S. § 3-1745.
- C. Procedures for tuberculosis control and eradication in cervidae not listed as restricted live wildlife in A.A.C. R12-4-406 shall be as prescribed in the USDA publication, Tuberculosis Eradication in Cervidae – Uniform Methods and Rules, effective May 15, 1994, including 1995 amendments. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective October 16, 1986 (Supp. 86-5). Section R3-2-501 renumbered from Section R3-9-501 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1).

### **R3-2-502. Repealed**

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-502 renumbered from Section R3-9-502 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-503. Brucellosis Control and Eradication Procedures**

- A. Procedures for brucellosis control and eradication in cattle and bison shall be as prescribed in the USDA publication Brucellosis Eradication – Uniform Methods and Rules, effective February 1, 1998. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
- B. Procedures for brucellosis control and eradication in swine shall be as prescribed in the USDA publication, Swine Brucellosis Control/Eradication, State-Federal-Industry – Uniform Methods and Rules, revised February 1995. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
- C. Procedures for brucellosis control and eradication in Cervidae not listed as restricted live wildlife in A.A.C. R12-4-406, shall be as prescribed in the USDA publication, Brucellosis in Cervidae: Uniform Methods and Rules, effective September 30, 1998, and the May 14, 1999 revision. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-503 renumbered from Section R3-9-503 (Supp. 91-4). Amended March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-504. Pseudorabies Procedures for Eradication**

Procedures for pseudorabies control and eradication in swine shall be as prescribed in the USDA publication, Pseudorabies Eradication, State-Federal-Industry Program Standards, effective January 1, 1999. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### **Historical Note**

Adopted effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the

Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-505. Scrapie Procedures for Eradication**

The Department controls and eradicates scrapie using the procedures outlined in 9 CFR 54; 66 FR 43963-44003, August 21, 2001. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department and the Office of the Secretary of State.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3).

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

### **R3-2-601. Definitions**

The following terms apply to this Article:

“Animal” means livestock, feral swine, ratite, bison, water buffalo, oxen, llama, and any exotic mammal not regulated as restricted live wildlife by the Arizona Game and Fish Department.

“Certified copy” means a copy of an official health certificate that includes an additional original signature from the authorizing veterinarian.

“Macaque” means any monkey of the genus *Macaca* in the family *Ceropithecidae*.

“Official eartag” means an identification tag providing unique identification for individual animals. An official eartag that contains or displays an AIN with an 840 prefix must bear the US shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the USDA. The official eartag must be tamper-resistant and have a high retention rate in the animals. Official eartags must adhere to one of the following number systems:

National Uniform Eartagging System,  
Animal identification number (AIN),  
Premises-based number system. The premises-based number system combines an official premises identification number (PIN) with a producer’s livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag, or

Any other numbering system approved by the Administrator of APHIS for the identification of animals in commerce.

“Specifically approved stockyard” means a stockyard specifically approved by VS and the State Veterinarian for receiving from other states cattle and bison that are not brucellosis-reactor, brucellosis-suspect, or brucellosis-exposed.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-601 renumbered from Section R3-9-601 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1).

Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney

general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

### **R3-2-602. Importation Requirements**

A. All animals and poultry transported or moved into the state of Arizona, unless otherwise specifically provided for in this Article, must be accompanied by:

1. An official health certificate from the state of origin or a permit number, or both; and
2. The health documentation shall be attached to the waybill or in the possession of the driver of the vehicle or person in charge of the animals.

B. When a single health certificate and permit number is issued for animals being moved in more than one vehicle, the driver of each vehicle shall retain the original or a certified copy of the health certificate and permit number.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-602 renumbered from Section R3-9-602 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

### **R3-2-603. Importation of Diseased Animals**

A. An animal affected with or recently exposed to any infectious, contagious, or communicable disease, or which originates in a state or federal quarantine area, shall not be transported or moved into the state of Arizona unless a permit for the entry is first obtained from the Arizona State Veterinarian’s Office. All conditions for the movement of animals from a quarantined area established by the quarantining authority or APHIS shall be met.

B. The owner or owner’s agent shall obtain prior permission from the State Veterinarian to ship or move into Arizona any animal from a lot or herd from which an animal shows a suspicious or positive reaction to a test required for admission to Arizona.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-603 renumbered from Section R3-9-603 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

### **R3-2-604. Livestock Permit Requirements; Exceptions**

A. Livestock may not enter the state of Arizona unless accompanied by an Arizona permit. Except as discussed in subsection (B), this requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state.

B. Exceptions:

1. Horses, mules, and asses; or
2. Livestock consigned directly to slaughter at a state or federally licensed slaughter establishment.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-604 renumbered from Section R3-9-604 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective

November 9, 2002 (Supp. 02-3).

### **R3-2-605. Quarantine for Animals Entering Illegally**

- A.** Animals entering the state without a valid health certificate or permit number, or both if required, or in violation of any Section under 3 A.A.C. 2, shall be held in quarantine at the risk and expense of the owner until released by an authorized representative of the State Veterinarian. Animals under quarantine for noncompliance with this Article may be released only after the State Veterinarian is satisfied by testing, dipping, or observation over time, that the animals are not a threat to the livestock industry.
- B.** The State Veterinarian may request that an imported animal failing to meet entry requirements be returned to the state of origin, consigned directly to slaughter, confined to a designated feedlot, or consigned to a feedlot in another state within two weeks of the request. Any extension to this time-frame shall be approved in writing by the State Veterinarian.
- C.** If the owner or owner's agent fails to comply with a request to return an animal to the state of origin within the time-frame required in subsection (B), the Department shall require that the animal be immediately gathered at the owner's risk and expense to avoid exposure of Arizona animals. The owner shall pay the expenses no later than five days after receipt of the bill, or an auction of sufficient livestock to pay the just expenses shall be held within 10 days at a livestock auction market. If additional expenses occur due to lack of cooperation by the owner or the owner's agent, the Director shall order the further sale of livestock.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Former Section R3-9-605 renumbered to R3-2-605 (Supp. 91-4).

Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

### **R3-2-606. Health Certificate**

- A.** A health certificate is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:
  1. The name and address of the shipper and receiver;
  2. The origin of the animal;
  3. The animal's final destination;
  4. Cattle.
    - a. The number of animals covered by the health certificate, an accurate description and, except for steers, spayed heifers, or "F" branded heifers consigned to a designated feedlot identified by brand, one of the following individual identifications:
      - i. The official eartag number that, for dairy cattle, identifies the herd of birth, or
      - ii. The registration tattoo number and the registration brand of a breed association recognized by VS.
    - b. The health status of the animals, including date and result of an inspection, dipping, test, or vaccination required by Arizona;
    - c. The method of transportation; and
    - d. For bulls subject to testing under R3-2-612(J), a statement that the bulls:
      - i. Tested negative for *Tritrichomonas foetus* within one month prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart; and
      - ii. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.

5. Swine.
  - a. Evidence that the swine have been inspected by the veterinarian issuing the health certificate within 10 days before the shipment,
  - b. A statement that:
    - i. The swine have never been fed garbage, and
    - ii. The swine have not been vaccinated for pseudorabies;
  - c. Except for feeder swine consigned to a restricted swine feedlot:
    - i. A list of the individual permanent identification for each exhibition swine, using an ear notch that conforms to the universal swine-ear notch system or for each commercial swine, using other individual identification, and the premises identification using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
    - ii. The validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd;
    - iii. The pseudorabies status of the state of origin; and
    - iv. The pseudorabies qualified negative herd number, if applicable;
  - d. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to an exhibition, and swine from a farm of origin in a state recognized by APHIS as a pseudorabies Stage V state, a statement that the swine shall be quarantined on arrival at destination and kept separate and apart from all other swine until tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry into Arizona; and
  - e. Feeder swine consigned to a restricted swine feedlot shall be identified by premises of origin using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
6. Sheep and goats.
  - a. Individual identification prescribed in R3-2-614;
  - b. A statement that:
    - i. The sheep or goats are not infected with blue-tongue, or exposed to scrapie, and do not originate from a scrapie-infected or source flock;
    - ii. Breeding rams have been individually examined and are free of gross lesions of ram epididymitis; and
  - c. A statement that the sheep or goat test negative for *Brucella ovis* if a test is required by R3-2-614(B); and
7. Equine.
  - a. An accurate identification for each equine covered by the health certificate including age, sex, breed, color, name, brand, tattoo, scars, and distinctive markings; and

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- b. A statement that the equine has a negative test for EIA, as required in R3-2-615, including:
      - i. The date and results of the test;
      - ii. The name of the testing laboratory; and
      - iii. The laboratory accession number.
  - B. Additions, deletions, and unauthorized or uncertified changes inserted or applied to a health certificate renders the certificate void. Uncertified photocopies of health certificates are invalid.
  - C. The veterinarian issuing a health certificate shall certify that the animals shown on the health certificate are free from evidence of any infectious, contagious, or communicable disease or known exposure.
  - D. An accredited veterinarian shall inspect animals for entry into the state.
  - E. The Director may limit the period for which a health certificate is valid to less than 30 days if advised by the State Veterinarian of the occurrence of a disease that constitutes a threat to the livestock industry.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-606 renumbered from Section R3-9-606 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

**R3-2-607. Permit Number**

- A. A permit number may be obtained from the Office of the State Veterinarian, by calling (602) 542-4293. Any person applying for a permit number shall provide the following information:
  - 1. The name and address of the shipper and receiver;
  - 2. The number and kind of animals;
  - 3. The origin of shipment;
  - 4. The shipment's final destination;
  - 5. The method of transportation; and
  - 6. Any other information required by the State Veterinarian.
- B. A permit number is valid for 15 calendar days from the date of issuance unless otherwise specified.
- C. A permit number shall be issued if the animals listed on the permit are in compliance with this Article. To cope with changing disease conditions, the State Veterinarian may refuse to issue a permit number or may require additional conditions not specifically established in this Article if necessary to protect animal health in Arizona.
- D. The permit number issued shall be affixed or written on the health certificate, brand inspection certificate, and any other official documents as follows: "Arizona Permit No. \_\_\_\_\_" followed by the serialized number.
- E. The State Veterinarian shall refuse to grant a permit number to any person who repeatedly commits the following:
  - 1. Giving false information concerning a permit number for transportation of animals,
  - 2. Failing to fulfill the conditions of a permit number, or
  - 3. Failing to obtain a permit number.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section

R3-2-607 renumbered from Section R3-9-607 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

**R3-2-608. Consignment of Animals**

The owner, or owner's agent, of an animal transported or moved into Arizona, except an exhibition or show animal, shall consign the animal to or place it in the care of an Arizona resident or an entity authorized to do business in Arizona.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-608 renumbered from Section R3-9-608 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

**R3-2-609. Diversion; Prohibitions**

A person consigning, transporting, or receiving an animal into the state of Arizona shall not authorize, order, or carry out diversion of the animal to a destination or consignee other than as set forth on the health certificate and permit, if required, without first obtaining permission from the State Veterinarian.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-609 renumbered from Section R3-9-609 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

**R3-2-610. Tests; Official Confirmation**

A state or federal animal diagnostic laboratory or APHIS-approved laboratory shall perform or confirm any animal testing required by a state or federal authority as a condition for entry into Arizona.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-610 renumbered from Section R3-9-610 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

**R3-2-611. Transporter Duties**

- A. All owners and operators of railroads, trucks, airplanes, or other conveyances transporting animals into or through the state shall possess a valid health certificate under R3-2-606, and a permit number issued by the State Veterinarian, if required by R3-2-607. These documents shall be attached to the waybill, or be in the possession of the vehicle driver, or person in charge of the animals. When a single health certificate or permit number is issued for animals being moved in more than one vehicle, the driver of each vehicle shall possess

the original or a certified copy of the health certificate containing the permit number, if required.

- B. The owner of a railroad car, truck, airplane, or other conveyance used to transport animals into or through the state shall maintain the conveyance in a clean and sanitary condition.
- C. The owners and operators of railroads, trucks, airplanes, or other conveyances who transport animals into the state in violation of this Section shall clean and disinfect the conveyance in which the animals were illegally brought into the state before using the conveyance for transporting more animals. The cleaning and disinfection shall be performed under the supervision of an authorized representative of the State Veterinarian or the USDA.
- D. The owners and operators of railroads, trucks, airplanes, or other conveyances shall follow the USDA requirements, Department and Arizona Commerce Commission rules, and Arizona statutes in the humane transport of animals into, within, or through the state.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-611 renumbered from Section R3-9-611 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

#### R3-2-612. Importation of Cattle and Bison

- A. The owner of cattle and bison entering Arizona or the owner's agent shall comply with the requirements in R3-2-602 through R3-2-611 and the following conditions:
  - 1. Pay the expenses incurred to quarantine, test, and retest the imported cattle or bison or return them to the state of origin.
  - 2. For imported beef breeding cattle, breeding bison, and dairy cattle, ensure that an accredited veterinarian applies an official eartag to each animal.
- B. Arizona shall not accept:
  - 1. Cattle or bison from brucellosis infected, exposed, or quarantined herds regardless of their vaccination or test status, or both, except:
    - a. Steers and spayed females, and
    - b. Animals shipped directly for immediate slaughter to an official state or federal slaughter establishment;
  - 2. Cattle or bison of unknown brucellosis exposure status, unless consigned for feeding purposes to a designated feedlot;
  - 3. Dairy cattle from a state or region within a foreign country without brucellosis status comparable to a Class-Free State, or without tuberculosis status comparable to an Accredited-Free State;
  - 4. Dairy and dairy cross steers, and dairy and dairy cross spayed heifers from Mexico;
  - 5. Beef breeding cattle or breeding bison from a state or region within a foreign country without brucellosis status comparable to a Class A State, or without tuberculosis status comparable to a Modified Accredited State.
- C. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
  - 1. The owner or owner's agent shall ensure that an official calfhood vaccinate is tested negative for brucellosis within 30 days before entering Arizona if the official calfhood vaccinate is:
    - a. 18 months or older,
    - b. Cutting the first set of permanent incisors, or
    - c. Parturient or postparturient.
  - 2. The owner or owner's agent shall ensure that bulls and non-vaccinated heifers test negative for brucellosis if 12 months of age or older, unless consigned for feeding purposes to a designated feedlot. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless the State Veterinarian grants permission to apply the "F" brand upon arrival. All "F" branded cattle or bison that leave the designated feedlot shall be shipped directly to:
    - a. An official state or federal slaughter establishment for immediate slaughter,
    - b. Another designated feedlot, or
    - c. Another state if shipping is permitted by the State Veterinarian in the state of destination.
  - 3. If cattle or bison originate from a Certified Brucellosis-Free Herd and the herd certification number is documented on the health certificate and import permit, no brucellosis test is required.
  - 4. If native ranch cattle are from a brucellosis Class-Free State that does not have free-ranging brucellosis infected bison or wildlife, no brucellosis test is required as long as:
    - a. The native ranch cattle are moved directly from the ranch of origin to an Arizona destination and the official eartag numbers are listed on a health certificate; or
    - b. The native ranch cattle are from a state that has a brand inspection program approved by the State Veterinarian and the owner's brand is listed on a brand inspection certificate or health certificate.
  - 5. Health and brand inspection certificates issued for the movement shall be forwarded to the State Veterinarian in Arizona within two weeks of issue.
  - 6. The owner or owner's agent:
    - a. Shall ensure that beef breeding cattle or breeding bison from a Class A State remain under import quarantine and isolation until the cattle test negative for brucellosis. The test shall be performed no earlier than 45 days and no later than 120 days after entry.
    - b. Shall retest dairy cattle if the State Veterinarian determines there is a potential risk of the introduction of brucellosis in the state.
    - c. Is not required to quarantine or test for brucellosis official calfhood vaccinates less than 18 months of age, if permission is granted by the State Veterinarian.
  - 7. The owner or owner's agent:
    - a. Shall notify the State Veterinarian within seven days of moving cattle or bison that are under import quarantine from the destination listed on the import permit and health certificate.
    - b. Shall notify the State Veterinarian at the time animals are retested for brucellosis, if the animals are under import quarantine and are not moved from the destination listed on the import permit and health certificate.
    - c. Is not required to notify the State Veterinarian if the cattle or bison are shipped directly to an official state

- or federal slaughter establishment for immediate slaughter.
8. Beef breeding cattle, breeding bison, and dairy cattle meeting the criteria of subsections (C)(1) or (C)(2) and not meeting the criteria of subsection (C)(3) may be imported without a brucellosis test if moved to a specifically approved stockyard and tested before sale or movement from the stockyard. The owner or owner's agent shall not commingle these cattle or bison with other cattle or bison until these cattle or bison are tested and found to be brucellosis negative.
  9. Within seven days after importation, the owner or owner's agent shall ensure that the individual official eartag identification for imported dairy cattle is the same as that listed on the health certificate and. The owner or the owner's agent shall report any discrepancies between the official eartag and the health certificate to the State Veterinarian. Any dairy cattle shipped into Arizona not documented on the health certificate shall be tested for brucellosis and tuberculosis by the receiver within one week of arrival.
- D.** Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from Mexico.
1. Before entry into Arizona, beef breeding cattle, breeding bison, or dairy cattle from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427, January 1, 2007, edition. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
  2. The owner or owner's agent shall ensure that beef breeding cattle, breeding bison, and dairy cattle from Mexico remain under import quarantine and isolation until tested negative for brucellosis. The test shall not be performed earlier than 60 days nor later than 120 days after entry into Arizona. The test shall be performed again on breeding cattle and breeding bison 30 days after calving, unless the animals were consigned to a designated feedlot. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless the State Veterinarian grants permission to apply the "F" brand on arrival. Unless neutered, all beef breeding cattle, breeding bison, and dairy cattle leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official eartag identification records are kept on all incoming consignments and then submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all cattle and bison leaving the designated feedlot. A copy of the form shall accompany the cattle or bison to slaughter and a copy shall be submitted to the State Veterinarian.
- E.** Except for the following, all female dairy cattle four months of age or older, imported into Arizona, shall be official calfhood vaccinates, properly identified, certified, and legibly tattooed:
1. Show cattle for exhibition,
  2. Cattle from a Certified Brucellosis-Free Herd with permission of the State Veterinarian,
  3. Cattle from a brucellosis-free state or country with permission of the State Veterinarian,
  4. Cattle consigned directly to an official state or federal slaughter establishment for immediate slaughter, and
  5. Cattle consigned for feeding purposes to a designated feedlot under import permit.
- F.** When imported breeding cattle, breeding bison, or dairy cattle under import quarantine and isolation are sold at a specifically approved stockyard, the owner or owner's agent shall, at the time of the sale, identify those cattle to the new owner as being under import quarantine. If market cattle identification testing for brucellosis is conducted at the auction, the owner or owner's agent shall ensure that the cattle or bison are tested before the sale. The new owner shall segregate the cattle or bison and retest for brucellosis 45 to 120 days after the animals entered the state.
- G.** Tuberculosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. No tuberculosis test is required for:
    - a. Beef breeding cattle, breeding bison, or dairy cattle from an accredited herd if the herd accreditation number is documented on the health certificate and import permit;
    - b. Native commercial and purebred beef breeding cattle from an Accredited-Free State if its accredited-free status is documented on the health certificate; and
    - c. Steers and spayed heifers.
  2. Unless from an accredited herd, prescribed in subsection (G)(1), the owner or owner's agent shall ensure that purebred beef breeding cattle from modified accredited states, breeding bison, dairy females, and bulls for breeding dairy cattle test negative for tuberculosis within 60 days before entry into Arizona.
- H.** Tuberculosis testing requirements for cattle and bison imported into Arizona from Mexico.
1. Before entry into Arizona, cattle and bison from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427, incorporated by reference in subsection (D)(1).
  2. Steers and spayed heifers from states or regions in Mexico shall not enter the state if they have not been determined by the State Veterinarian to have fully implemented the Control, Eradication, or Free Phase of the bovine tuberculosis eradication program of Mexico.
  3. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Control Phase of the bovine tuberculosis eradication program of Mexico shall not be imported into Arizona without permission of the State Veterinarian.
  4. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Eradication Phase of the bovine tuberculosis eradication program of Mexico may be imported into Arizona, if they have either:
    - a. Tested negative for tuberculosis in accordance with procedures equivalent to the Bovine Tuberculosis Eradication – Uniform Methods and Rules within 60 days before entry into the United States, or
    - b. Originated from a herd that is equivalent to an accredited herd in the United States and are moved directly from the herd of origin across the border as a single group and not commingled with other cattle or bison before arriving at the border.
  5. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have achieved the Free Phase of the bovine tuberculosis eradication program of Mexico may move directly into Arizona without testing or further restrictions if they are moved as a single

group and not commingled with other cattle before arriving at the border.

6. Beef breeding cattle and breeding bison from states or regions in Mexico may be imported into Arizona if the State Veterinarian determines the Eradication or Free Phase of the bovine tuberculosis eradication program of Mexico has been fully implemented and the breeding cattle and breeding bison remain under import quarantine and isolation until retested negative for tuberculosis in accordance with the Bovine Tuberculosis Eradication - Uniform Methods and Rules. The test shall be performed not earlier than 60 days but not later than 120 days after entry unless consigned to a designated feedlot for feeding purposes only. Unless neutered, all beef breeding cattle or breeding bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona, unless permission is granted by the State Veterinarian to apply the "F" brand on arrival. All beef breeding cattle or breeding bison leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official eartag identification records are kept on all incoming consignments and submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all beef breeding cattle and breeding bison leaving the designated feedlot. A copy of the form shall accompany the cattle and bison to slaughter and a copy shall be submitted to the State Veterinarian.

**I. Bovine scabies requirements.**

1. The owner or owner's agent shall ensure that no cattle or bison affected with or exposed to scabies is shipped, trailed, driven, or otherwise transported or moved into Arizona except cattle or bison identified and moving under permit number and seal for immediate slaughter at an official state or federal slaughter establishment.
2. The owner or owner's agent of cattle or bison from an official state or federal scabies quarantined area shall comply with the requirements of 9 CFR 73, Scabies in Cattle, January 1, 2007, edition, before moving the cattle or bison into Arizona. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
3. The State Veterinarian may require that breeding and feeding cattle and bison from known scabies infected areas and states be dipped or treated even if the animals are not known to be exposed. The State Veterinarian shall require that dairy cattle be dipped only if the animals are known to be exposed; otherwise a veterinarian's examination and certification shall be sufficient.

**J. Trichomoniasis requirements for bulls imported into Arizona from other states.**

1. The owner or owner's agent shall ensure bulls:
  - a. Test negative for *Tritrichomonas foetus* within 30 days prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart, except for bulls:
    - i. Less than one year of age,
    - ii. Consigned directly to a state or federal licensed slaughter facility,
    - iii. Consigned directly to a dairy,
    - iv. Consigned directly to an exhibition or rodeo,

- v. Consigned directly to a licensed feedlot for castration on arrival,
  - vi. Branded with an "F" adjacent to the tailhead and consigned directly to a designated feedlot for feeding and later movement directly to slaughter, and
  - b. Have no breeding activity during the interval between the collection of a sample and the date of shipment.
2. An accredited veterinarian approved to collect samples for *Tritrichomonas foetus* testing by the state animal health official in the state of origin shall collect the *Tritrichomonas foetus* test samples.
  3. A laboratory approved to conduct tests for *Tritrichomonas foetus* by the state animal health official in the state of origin shall perform the test for *Tritrichomonas foetus*.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-612 renumbered from Section R3-9-612 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1).

Amended effective February 4, 1998 (Supp. 98-1).

Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

**R3-2-613. Swine**

- A. The owner of swine entering Arizona, or the owner's agent, shall comply with the requirements of Article 6 and the following conditions:
  1. Pay the expenses incurred to quarantine, test, and retest the imported swine; and
  2. Obtain an official health certificate specified in R3-2-606 and permit specified in R3-2-607.
- B. Brucellosis test requirements. Breeding swine imported into Arizona from other states shall:
  1. Originate from a validated swine brucellosis-free herd or from a swine brucellosis-free state; or
  2. Test negative for brucellosis within 30 days before entry.
- C. Pseudorabies test requirements. Swine imported into Arizona from other states shall:
  1. Be shipped directly from:
    - a. The farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state,
    - b. The farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage III state if the swine are:
      - i. Consigned directly to a terminal exhibition of only neutered swine,
      - ii. Tested negative within 15 days before entry, and
      - iii. Transported directly to a state or federally inspected slaughter facility immediately after the exhibition in a truck sealed by the State Veterinarian or agent;
    - c. A pseudorabies monitored feeder pig herd in a pseudorabies Stage II or Stage III state if the swine is consigned to a restricted swine feedlot; or
    - d. A sale in a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state if all swine entered in the sale are from a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state.
  2. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to exhibition, and swine from a farm of origin in a state recognized by USDA-



APHIS as a pseudorabies Stage V state, remain under import quarantine and isolation at the location specified on the import permit and health certificate, with the following restrictions, until tested negative for pseudorabies no sooner than 15 days or later than 30 days after entry:

- a. The isolation pen shall be at least 200 feet from straying pigs, other livestock, pets, or working dogs, and not be accessible to normal traffic flow;
  - b. Equipment, tools, and implements shall not be moved from an isolation pen and used at another pen;
  - c. Workers shall disinfect their shoes and clothing before working with other livestock or the main herd; and
  - d. The distance between an isolation pen barrier and another swine pen barrier shall be at least 200 feet and the isolation pen shall be double-fenced to prevent exposure to accidental strays.
  - e. Imported quarantined swine testing positive after entry shall be shipped directly to a state or federal slaughter establishment within 15 days after the positive identification and shall be accompanied by a USDA-VS Form 1-27. The remainder of exposed animals shall be quarantined until the herd is declared free of the disease, or all exposed animals are depopulated and the premises cleaned and disinfected.
3. If swine move directly to exhibition from a herd in a Stage IV state, and remain in the state, the swine shall be held under import quarantine at a location disclosed by the exhibitor. The exhibitor shall disclose the location of the quarantine facility to the Department within three days of the end of the exhibition. The swine shall be quarantined according to the restrictions identified in subsections (C)(2)(a) through (C)(2)(e) until tested negative for pseudorabies no sooner than 15 days or later than 30 days after entry into the state.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 29, 1984 (Supp. 84-3). Section R3-2-613 renumbered from Section R3-9-613 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-614. Sheep and Goats

- A. The owner of a sheep or goat entering Arizona, or the owner's agent, shall comply with the requirements of:
  1. Article 6 and pay the expenses incurred to quarantine, test, and retest the sheep or goat; and
  2. Animal identification prescribed in 9 CFR 79, January 1, 2007, edition. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
- B. A breeding ram six months of age or older shall test negative for *Brucella ovis* within 30 days of entry or originate from a certified brucellosis-free flock. An exhibition ram that returns to the out-of-state flock of origin within five days of the conclusion of the exhibit is exempt from the testing requirement of this subsection.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-614 renumbered from Section R3-9-614 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

#### R3-2-615. Equine Importation

- A. Except for R3-2-607, an equine may enter the state as prescribed in R3-2-602 through R3-2-611.
- B. A person shall not import an equine with fistulous withers or poll evil.
- C. All equine six months of age or older shall, using a test established in R3-2-407(A), be tested negative for EIA within 12 months before entry. Testing expenses shall be paid by the owner.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-615 renumbered from Section R3-9-615 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3).

#### R3-2-616. Cats and Dogs

A dog or cat shall be accompanied by a health certificate that documents the animal is currently vaccinated against rabies according to the requirements of the National Association of State Public Health Veterinarians' Compendium of Animals Rabies Control, incorporated by reference in R3-2-409.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-616 renumbered from Section R3-9-616 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

#### R3-2-617. Poultry

The Department has no entry requirements on poultry provided the poultry appear healthy, do not originate from a poultry quarantine area, comply with all interstate requirements of APHIS, and are accompanied by a health certificate or Form 9-3 from the National Poultry Improvement Program.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-617 renumbered from Section R3-9-617 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Repealed by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

#### R3-2-618. Psittacine Birds

- A. The owner or the owner's agent of a psittacine bird entering Arizona shall obtain a health certificate issued by a veterinarian within 30 days of entry, certifying:
1. The bird is not infected with the agent that causes avian chlamydiosis, and
  2. The bird was not exposed to birds known to be infected with avian chlamydiosis within the past 30 days.
- B. The health certificate shall accompany the psittacine bird at the time of entry into Arizona.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-618 renumbered from Section R3-9-618 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Repealed by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

**R3-2-619. Repealed****Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-619 renumbered from Section R3-9-619 (Supp. 91-4). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

**R3-2-620. Zoo Animals**

- A. An owner or owner's agent may transport or move zoo animals into the state of Arizona if the animals are accompanied by an official health certificate, and consigned to a zoo or in the charge of a circus or show.
- B. The owner, or owner's agent, of an animal in a "Petting Zoo" shall have the animal tested for tuberculosis within 12 months before importation. A negative test result is required for entry into Arizona.
- C. A business that transports or exhibits zoo animals shall be licensed by the Arizona Game and Fish Department.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-620 renumbered from Section R3-9-620 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

**R3-2-621. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

**R3-2-622. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25,

effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

**ARTICLE 7. LIVESTOCK INSPECTION****R3-2-701. Department Livestock Inspection**

- A. A Division employee shall inspect range cattle, as defined in R3-2-702(A), at a ranch if the owner or agent is:
1. Moving cattle out-of-state,
  2. Transferring cattle ownership, or
  3. Shipping cattle for custom slaughter.
- B. A Division employee shall inspect cattle at a feedlot or dairy if the cattle are being shipped for custom slaughter.
- C. The Department shall not issue a self-inspection certificate to an owner, agent, or operator of a ranch, dairy, or feedlot if that individual has been convicted of a felony under A.R.S. Title 3 within the three-year period before the date on the self-inspection application. A Division employee shall inspect livestock if an applicant is denied self-inspection authority.
- D. During fiscal year 2016, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of \$10 plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-701 renumbered from Section R3-9-701 (Supp. 91-4). Section R3-2-701 repealed; new Section R3-2-701 adopted effective February 4, 1998 (Supp. 98-1). Error in subsection (A)(3) corrected under R1-1-109, filed with the Office of the Secretary of State October 18, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3).

**R3-2-702. Livestock Self-inspection**

- A. Definitions.
- "Description" means sex, breed, color, and markings, as applicable to the type of livestock.
- "Exhibition" means an event including a fair, show, or field day that has as its primary purpose the opportunity for a member of a youth livestock organization, including 4-H and FFA, to display an animal raised by the youth in a judged competition.
- "Identification" means brand, back tag number, ear mark, tattoo, metal eartag, plastic eartag, and premises identification number, as applicable to the type of livestock.
- "Livestock" means cattle, sheep, goats, and exhibition swine.

"Range" means every character of lands, enclosed or unenclosed, outside of cities and towns, upon which livestock is

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permitted by custom, license or permit to roam and feed. A.R.S. § 3-1201(7)

*"Range cattle" means cattle customarily permitted to roam upon the ranges of the state, whether public domain or in private control, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes. A.R.S. § 3-1201(8)*

**B. Application.**

1. Movers of livestock and an owner or operator of a dairy or feedlot shall request a book of self-inspection certificates from the Department. The applicant shall submit a written application form obtained from the Department and provide the following information:
  - a. Name, mailing address, physical address, telephone number, and fax;
  - b. Name of ranch, dairy, or business and type of operation;
  - c. Whether the applicant has been convicted of a felony under A.R.S. Title 3 within the past three years, and if so, the case number, court, charge, and sentence;
  - d. Recorded brand and brand location;
  - e. Individual designated to sign self-inspection certificates, if applicable; and
  - f. Signature and date.
2. The holder of a self-inspection book shall advise the Department by phone within 30 days of any change to the information provided on an application form.
3. The holder of a self-inspection book shall renew registration with the Department every two years from the date the initial or renewal application form is signed.
4. Prior to a department employee issuing a book of self-inspection certificates, the owner shall submit the following payment amount and the department shall receive the payment in full prior to issuing the book:
  - a. \$25.00 for a twenty five page feedlot book;
  - b. \$20.00 for a twenty page dairy book; or
  - c. \$10.00 for a ten page non-range, range, sheep, goat, or swine book.

**C. Self-inspection certificate.**

1. An owner, agent, or operator shall provide the following information, as applicable, on a self-inspection certificate whenever livestock subject to self-inspection are moved or ownership is transferred:
  - a. Name, address, and signature of the owner or agent;
  - b. Date of the shipment or transfer of ownership;
  - c. If moved, location from which and to which the livestock are moved, including the name of the auction, feedlot, arena, slaughter establishment, pasture, or other premises, and physical location;
  - d. Name of transporter;
  - e. Number and description of livestock;
  - f. Official identification of each dairy cattle and sexually intact cattle over 18 months of age shipped out of state and back tag numbers of culled dairy cattle;
  - g. Brand number, expiration date, and location;
  - h. Name and address of buyer;
  - i. Number of head of cattle sold for which Beef Council fees are payable under A.R.S. §§ 3-1236 and 3-1238.
2. The owner or owner's agent of livestock or the owner or operator of a dairy or feedlot shall complete a self-inspection certificate, except when livestock are subject to inspection by a Division employee under R3-2-701, and distribute copies of the certificate as follows:
  - a. One copy and any fees that are owed under subsection (C)(1)(j) shall be sent to the Department within 10 days after the end of the month in which ownership is transferred;
  - b. If the livestock are shipped, the original certificate shall accompany the livestock whenever they are in transit and one copy shall be retained by the person transporting the livestock; or
  - c. If ownership of the livestock is transferred without shipment, two copies shall be provided to the new owner or agent; and one copy shall be retained by the seller.

3. A certificate may be used once to either transfer livestock ownership or to move livestock to a specific destination. If the livestock are diverted to a destination other than that stated on the self-inspection certificate, the certificate is void. The owner, agent, or operator shall complete a new certificate and send both the voided and new certificates to the Department within 10 days after the end of the month in which the certificates are issued or voided.
4. An owner, agent, or operator shall use a self-inspection certificate only with a shipment of livestock matching the description for which the certificate is issued and only for the self-inspection issued date. If any of the information on the self-inspection certificate changes, the certificate is void and the owner, agent, or operator shall complete a new certificate.
5. An altered, erased, completed but unused, or defaced self-inspection certificate is void. A voided certificate shall be returned to the Department within 10 days after the end of the month in which it is voided.
6. Upon request, unused certificates shall be returned to the Department by the owner, agent, or operator. If a commercial operation licensed for self-inspection is sold, leased, transferred, or otherwise disposed of, the owner, agent, or operator shall notify the Department and return all self-inspection certificates to the Department within 30 days of the transaction.

- D. Sale of livestock.** A seller shall document a sale by completing a self-inspection certificate as prescribed in subsection (C) and providing a bill of sale to the purchaser as required under A.R.S. § 3-1291.

**E. Feedlot receiving form.**

1. The operator of a feedlot shall document receipt of incoming cattle on a form obtained from the Department. The operator shall include the following information on the form:
  - a. Name of feedlot and location;
  - b. Month and year for which report is made;
  - c. Number of cattle received, date received, and name and address of owner;
  - d. Description of the cattle;
  - e. If not Arizona native cattle, the import permit and health certificate numbers;
  - f. If native Arizona cattle, self-inspection form number or Department inspection certificate number; and
  - g. Pen number to which cattle are initially assigned.
2. The operator shall return the completed form within 10 days after the end of the month of the reporting period.

- F. Quarantine.** Livestock under quarantine by the Department shall not be shipped or sold by use of a self-inspection certificate.

- G. Violations.** The Department shall process violations of this Section as prescribed under A.R.S. § 3-1203(D).

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section

R3-2-702 renumbered from Section R3-9-702 (Supp. 91-

4). Section R3-2-702 repealed; new Section R3-2-702 adopted effective February 4, 1998 (Supp. 98-1).

Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3).

### **R3-2-703. Seasonal Self-inspection Certificate**

#### **A. Exhibition cattle, sheep, goats, and swine.**

1. An applicant for a seasonal self-inspection certificate prescribed under A.R.S. § 3-1346 shall call the Department at (602) 542-6407 to request a seasonal self-inspection certificate. The applicant shall provide the answers to the following questions, as applicable:
  - a. Name, mailing address, physical address if different from mailing address, telephone number, and fax;
  - b. Name of 4-H or FFA group, and group leader;
  - c. Description and identification of the animal;
  - d. Permit number and health certificate number for an animal imported from another state; and
  - e. Name of seller and self-inspection certificate number for an animal purchased from an Arizona seller.
2. The Department employee who records the information required in subsection (A)(1) shall advise the applicant of the required fee prescribed under A.R.S. § 3-1346(A). The Department shall issue a seasonal self-inspection certificate upon receipt of the fee.
3. An exhibitor shall provide the following information, as applicable, on a seasonal self-inspection certificate whenever an animal subject to seasonal self-inspection is moved or ownership is transferred:
  - a. Name, address, telephone number, and signature;
  - b. Date of movement;
  - c. Name of exhibition and location;
  - d. Final disposition of the animal (sale, death, or retention) and date of occurrence; and
  - e. If the animal is sold, name of purchaser (person or slaughter plant).
4. The holder of a seasonal self-inspection certificate shall return the certificate to the Department within two weeks of the sale or slaughter of the animal or at the end of the show season if the animal is retained.

#### **Historical Note**

Adopted effective November 27, 1987 (Supp. 87-4). Section R3-2-703 renumbered from Section R3-9-703 (Supp. 91-4). Section R3-2-703 repealed; new Section R3-2-703 adopted effective February 4, 1998 (Supp. 98-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3).

### **R3-2-704. Repealed**

#### **Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

### **R3-2-705. Repealed**

#### **Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003

(Supp. 03-1).

### **R3-2-706. Repealed**

#### **Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

### **R3-2-707. Ownership and Hauling Certificate for Equines; Fees**

The fee for a new, transferred, or replacement Ownership and Hauling Certificate for Equines as prescribed under A.R.S. §§ 3-1344(B) and 3-1345(B) is \$10 per certificate.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3932, effective August 22, 2002 (Supp. 02-3).

### **R3-2-708. Equine Rescue Facility Registration**

- A. "Arizona Equine Rescue Standards" means the American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities, 2004 Edition. This material, which includes the Veterinary Checklist for Rescue/Retirement Facilities, is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007. A copy of this material may also be obtained from the American Association of Equine Practitioners web site at [http://www.aaep.org/pdfs/rescue\\_retirement\\_guidelines.pdf](http://www.aaep.org/pdfs/rescue_retirement_guidelines.pdf). The American Association of Equine Practitioners is located at 4075 Iron Works Parkway, Lexington, Kentucky 40511.
- B. An equine rescue facility shall pay the annual registration fee and file the following documents with the Department's Animal Services Division for the facility to be included on the Department's registry of equine rescue facilities:
  1. An application form containing the facility's name, address, and contact person and the contact person's phone number.
  2. A copy of documents filed with the Arizona Corporation Commission demonstrating the facility's current status as a nonprofit corporation in good standing in this state.
  3. A letter from a licensed veterinarian, dated within 15 days of filing, certifying that the facility is not inadequate with respect to any of the Arizona Equine Rescue Standards and attaching a signed copy of the completed Arizona Equine Rescue Standards' veterinary checklist.
- C. Registration is valid for one year. Registration may be renewed annually by complying with subsection (B).
- D. The annual registration fee is \$75.
- E. A nonprofit corporation owning multiple equine rescue facilities must file the letter and checklist described in subsection (B)(3) and pay the annual registration fee for each location it wants included on the registry.
- F. The Department shall remove a facility from the registry if it determines that the facility is not presently incorporated as a nonprofit corporation in this state or is inadequate with respect to any of the Arizona Equine Rescue Standards.

#### **Historical Note**

New Section made by final rulemaking at 16 A.A.R. 876, effective July 3, 2010 (Supp. 10-2).

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

### **R3-2-801. Definitions**

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

“3-A Sanitary Standards” and “3-A Accepted Practices,” as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanability of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at <http://www.3-A.org>.

“C-I-P” means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

“Converted” means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

“Fluid trade product” means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

“Food establishment” means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

“Frozen desserts mix” or “mix” means any frozen dessert before being frozen.

“Grade A raw milk” means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

“Parlor” and “milk room” mean the facilities used for the production of Grade A raw milk for pasteurization.

“Plant” means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

“Manufacturing plant” means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

“Handling plant” means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

“PMO” means the Grade A Pasteurized Milk Ordinance, 2013 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007. A copy of the incorporated material may also be viewed at <http://agriculture.az.gov>.

“Retail food store” means any establishment offering packaged or bulk goods for human consumption for retail sale.

#### Historical Note

Former Regulations 1-11. Section R3-2-801 renumbered from R3-5-01 (Supp. 91-4). R3-2-801 renumbered to R3-2-803; new Section R3-2-801 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 2215, effective May 9, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 3030, effective September 30, 2006

(Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 889, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired.

Amended by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3). Amended by final rulemaking at 22 A.A.R. 2169, effective October 2, 2016 (Supp. 16-3).

#### R3-2-802. Milk and Milk Products Standards

Unless specifically mentioned in A.R.S. Title 3, Chapter 4, Article 1, or in this Article, all milk and milk products, except frozen desserts, sold or distributed for human consumption shall meet the PMO standards for production, processing, storing, handling, and transportation.

#### Historical Note

Former Regulations 1, 2. Section R3-2-802 renumbered from R3-5-02 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4).

#### R3-2-803. Milk and Milk Products Labeling

- A. The manufacturer or processor shall ensure that milk and milk products listed in A.R.S. § 3-601(10), and Sections 1 and 2 of the PMO are designated by the name of the product and shall conform to its definition.
- B. The manufacturer or processor of milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, amended April 1, 2002. This CFR material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department and the Office of the Secretary of State.
- C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor that has plants in other states shall use a code number or letter to designate the state in which a carton or closure is manufactured or processed. If a manufacturer or processor has a plant within Arizona, the Dairy Supervisor shall issue a code number or letter for each plant and shall keep a record of the number or letter issued. Manufacturers and processors shall include the Arizona code, 04, with the plant code assigned by the Dairy Supervisor.
- D. If milk or milk products are manufactured or processed and packaged at a plant for other retailers and the container or closure is not labeled the same as the manufacturer’s or processor’s like product, the manufacturer or processor shall include the statement “Manufactured or Processed at (name and address of plant or code number or letter)” on the carton or closure. The carton or closure may also contain the statement, “Distributed by: (name of person or firm).”
- E. Any person planning to use a new or modified label on a container shall submit the proposed label to the Dairy Supervisor for review.
  1. If the proposed label does not meet labeling standards specified in subsection (B), the Dairy Supervisor shall note the required changes on the proposed label, and sign and return the proposed label to the applicant.
  2. A person who requests additional time to use the inventory amounts of slow moving cartons or closures before using a modified label shall submit a written request to the Dairy Supervisor. The Dairy Supervisor may approve continued use of the existing cartons and closures if:
    - a. The use does not present a public health issue, and
    - b. The information on the cartons and closures is not misleading.

**Historical Note**

Former Regulations 1 - 21; Amended effective August 4, 1978 (Supp. 78-4). Section R3-2-803 renumbered from R3-5-03 (Supp. 91-4). R3-2-803 renumbered to R3-2-804; new Section R3-2-803 renumbered from R3-2-801 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2).

**R3-2-804. Trade Products**

- A. Any fluid trade product containing milk solids shall be regulated as a fluid milk product.
- B. Advertising, display, and sale:
  - 1. Any retail food store may submit its methods and techniques for the advertising, display, and sale of trade products and real products to the Dairy Supervisor to determine compliance with this Section.
  - 2. No food establishment shall sell or provide any patron or employee, for use as food, any trade product or food whose main ingredient is a trade product, unless one of the following disclosures is posted for each trade product, in a prominent place on the premises, or is plainly visible on each menu where other food items are described:
    - a. “\_\_\_\_\_ served here  
(brand or common name of trade product)  
instead of \_\_\_\_\_”  
(common name of dairy product)
    - b. “Nondairy products served here.”
  - 3. No food establishment shall advertise or otherwise represent to the public that it serves, or uses in the preparation of a food, a real product when it actually serves or uses a trade product.
- C. Labeling: Except as follows, all labels shall comply with the PMO and 21 CFR 101, 131, and 133.
  - 1. The Dairy Supervisor shall approve a new or modified trade product label before the label is used. The applicant shall file a written request with duplicate copies of the proposed label and any supporting materials necessary to establish the truthfulness, reasonableness, relevancy, and completeness of the label.
  - 2. Unless each ingredient of a trade product is homogenized or pasteurized, the whole product shall not be labeled or advertised as an homogenized or pasteurized product. Individual ingredients that are homogenized or pasteurized may be identified as homogenized or pasteurized in the listing of ingredients.
  - 3. Except for combined ingredients constituting less than 1% of the whole product or unless each ingredient of a trade product qualifies as grade A, the whole product shall not be labeled or advertised as a grade A product. Ingredients that qualify as grade A may be identified as grade A in the listing of ingredients.
  - 4. Any trade product produced outside the state and labeled as prescribed in R3-2-802, may be sold within the state provided that the product meets the requirements of A.R.S. §§ 3-663 and 3-665.

**Historical Note**

Former Regulations 1 - 8; Amended effective December 7, 1976 (Supp. 76-5). Correction, subsection (A)(2) through (H) omitted, Supp. 76-5 (Supp. 79-4). Section R3-2-804 renumbered from R3-5-04 (Supp. 91-4). R3-2-804 renumbered to R3-2-805; new Section R3-2-804 renumbered from R3-2-803 and amended effective December 2, 1998 (Supp. 98-4).

**R3-2-805. Grade A Raw Milk For Consumption**

- A. All cattle from which Grade A raw milk is produced shall be tested and found free of tuberculosis before any milk is sold. All herds shall be tested for tuberculosis at least every 12 months. All cattle from which Grade A raw milk is produced shall be tested and found free of brucellosis before any milk is sold, and shall be tested every 12 months or have negative ring tests for brucellosis, or both, as determined by the State Veterinarian.
- B. Grade A raw milk shall be cooled immediately after completion of milking to 45° F or less and shall be maintained at that temperature until delivery.
- C. Grade A raw milk shall be bottled on the farm where it is produced. Bottling and capping shall be done in a sanitary manner on approved equipment. Hand-capping is prohibited. Caps and cap stock shall be kept in sanitary containers until used.
- D. All vehicles used for the distribution of Grade A raw milk shall prominently display the distributor's name.
- E. Grade A raw milk shall be labeled as prescribed in R3-2-803.

**Historical Note**

Former Regulations 1, 2. Section R3-2-805 renumbered from R3-5-05 (Supp. 91-4). Section R3-2-805 repealed; new Section R3-2-805 renumbered from R3-2-804 and amended effective December 2, 1998 (Supp. 98-4).

**R3-2-806. Parlors and Milk Rooms**

- A. Construction Plans.
  - 1. Any person constructing or extensively altering a parlor or milk room shall submit the plans and specifications to the Dairy Supervisor for written approval before work begins. The Dairy Supervisor shall approve or deny the plans within 10 business days.
  - 2. Plans shall consist of a scaled plot design with elevations and pertinent dimensions.
  - 3. Any deviations from the requirements in this Section and from approved plans and specifications may be made only after written approval of the Dairy Supervisor.
- B. Site.
  - 1. The parlor and milk room shall be located in a place free from contaminated surroundings.
  - 2. Feed racks, calf pens, bull pens, hog pens, poultry pens, horse stables, horse corrals, and shelter sheds shall not be closer than 100 feet to the milk room or closer than 50 feet to the parlor.
- C. Surroundings.
  - 1. Dirt or unpaved corrals and unpaved lanes shall not be closer than 25 feet to the parlor or closer than 50 feet to the milk room; corrals shall be constructed to remove runoff from the lowest point of the grade.
  - 2. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the parlor. This paved area shall be curbed sufficiently high enough to contain waste material and water used to clean this area.
- D. Drains and waste disposal systems shall be adequate to drain the volume of water used in rinsing and cleaning, as well as the waste created by animals in the parlor. Instead of natural drainage, automatic pumps or other means shall be provided for drainage disposal.
- E. Milk room.
  - 1. The milk room shall consist of one or more rooms for the handling of the milk and the cleaning, sanitization, and storage of the milk-handling equipment. Hot and cold running water outlets shall be provided as needed for sanitation. There shall be a minimum of five feet between a farm milk tank at the widest point and the milk room wall where the wash vats are installed. Except for currently

- installed milk tanks, there shall be at least three feet between any farm tank or farm tank appurtenance and the milk room walls.
2. Passageway. The passageway between the milk room and parlor shall have at least a 3-foot clearance for ingress and egress. Equipment such as milk receivers, dump tanks, or coolers that are part of an enclosed milk line system may be installed in the passageway if:
    - a. A 3-foot clearance is allowed for the walkway;
    - b. Space is provided between walls and equipment to permit the disassembly of equipment for cleaning or inspection;
    - c. The passageway between the parlor and the milk room may be closed at one end. The parlor may be separated from the passageway by a pipe rail fence if the slope of the parlor floor is away from the passageway. If the slope of the parlor floor is toward the passageway, a concrete wall between the passageway and parlor floor of at least 12 inches in height shall be provided.
    - d. Rustless pipe sleeves with tight-fitting flanges and protective closures shall be installed where the milk lines, hoses for tankers, and wash lines go through the walls of the passageway.
  3. Floors.
    - a. The floors of the milk room, and passageway, if provided, shall be constructed of four-inch thick concrete, or other impervious material troweled smooth. The milk room floor shall slope at least 1/4 inch per 12 inches to a vented trapped drain. The passageway floor shall slope at least one inch per 10 feet toward a drain or gutter. All floor and wall junctions shall have at least a two-inch radius cove.
    - b. Drainage from the milk room may be independent from or connected to the parlor drainage. Floor drains shall be vented, have a water trap, and a clean-out plug. All floor drains and pipes under the milk room and parlor floor shall meet all applicable plumbing codes.
  4. Walls and ceilings.
    - a. All walls and ceilings shall be constructed of a light colored, impervious material with a smooth finish. If concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete.
    - b. The main ceiling height shall allow sufficient room for access to, and sampling from, the bulk milk storage tank.
  5. Doors and windows.
    - a. All opening windows shall have at least 16-inch mesh screen.
    - b. Exterior doors of the milk room shall open outward, be solid, self-closing, and tight fitting. Any door from the passageway shall be a solid door, metal covered on both sides of the bottom half. Wooden door jambs or frames shall terminate six inches above the floor, and the concrete floor cove shall extend to the jambs or frames.
    - c. All working areas in the milk room shall contain at least 30 foot-candles of natural and/or artificial lighting.
  6. Ventilation. The milk room shall provide adequate ventilation to minimize condensation on ceilings, walls and equipment. Vents shall be protected from the penetration of insects, dust and other contaminants. The milk room shall contain one or more ceiling vents. Ceiling vents shall not be installed directly above bulk milk storage tanks.
  7. Tanker loading area. A tanker-loading area, at least 10 feet by 12 feet, paved, curbed, and sloped to drain, shall be provided adjacent to the milk room where milk is transferred from a farm tank to a milk tanker. If a tanker is used instead of a farm tank, a tanker shelter shall be provided that complies with the construction, light, drainage, and general maintenance requirements of the milk room.
  8. Farm tank installations. All farm tanks for the cooling and storing of milk shall be installed in the milk room. Bulk milk tanks equipped with agitator shaft opening seals may, if approved by the Dairy Supervisor, be bulk-headed through a wall.
- F. Parlor.**
1. Floors.
    - a. The floors shall be constructed of four-inch thick concrete or other, light-colored, impervious material, finished smooth. The floors, alleys, gutters, mangers, and curbs shall slope lengthwise toward a drain or gutter. The cow standing platform in the elevated stall parlor shall slope sufficiently to provide for adequate drainage and cleaning.
    - b. Floor and wall junctions shall have at least a two-inch radius cove and shall be an integral part of the floor.
    - c. The cow standing platform, litter alley, holding corral and concrete lane shall be treated to prevent slipping.
  2. Walls. All walls shall be constructed of a light-colored, impervious material. If necessary, means shall be provided to prevent the entrance of swine, fowl and other prohibited animals. All walls shall be finished smooth on the inside with the top ledge rounded on open walls. If a parlor wall forms a part of the holding corral or an entrance or exit lane, it shall be finished smooth on the outside. If a concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete. In elevated stall parlors, the wall under the cow standing platform adjacent to the milking area shall be finished smooth and designed to prevent leakage.
  3. Stalls. A tandem stall and a herringbone stall shall have a smooth, flat, non-absorbent splash panel behind each cow.
  4. Light. Natural and/or artificial light shall be at least 30 foot-candles at the floor level and located to minimize shadows in the milking area.
  5. Gutters.
    - a. All parlors shall have gutters to catch the defecation of cows while in the stall and for any water used for rinsing.
    - b. Pipe used for parlor gutter drainage shall be at least four inches in diameter and meet applicable plumbing codes.
  6. Curbs.
    - a. In elevated stall parlors, the cow standing platform shall be curbed on the side next to the milking alley and the curb shall be at least six inches in height with the top rounded to retain the elevated stall floor washings. This curb may be lowered to not less than two inches at the area where the milking machines are applied. Metal curbs shall be free of voids and sealed to stall and floor or wall.
    - b. Floor level parlors shall contain a curb under the stanchion line at least six inches wide, 12 inches

high from the stall floor, except if metal mangers are used the top of this curb shall be rounded.

7. Stanchions.
  - a. The stanchion shall be metal or other impervious, easily cleanable material.
  - b. Mangers and feed boxes in all types of parlors shall be constructed of impervious materials, finished smooth, and provided with drainage outlets at low points.
8. Ventilation. Adequate ventilation shall be provided in the parlor, holding corral, and wash area, if roofed.
- G. Roof drainage from parlors and milk rooms shall not drain into a corral unless the corral is paved and properly drained.
- H. If animals are fed in the parlor, feed storage facilities shall be provided. Feed storage rooms, when installed, shall be partitioned from the parlor and shall be fly and rodent proof. The feed discharge area of the bulk feed storage shall be concrete or other impervious material that is curbed and drained. Bulk feed may discharge directly into the parlor. A bulk feed tank located opposite the passageway shall be at least six feet from the milk room. Overhead feed storage is permissible if it is fly, rodent, and dust tight. Feed shall be conveyed to the manger or feed box in a tightly closed dust-free system. Overhead metal feed tanks may be used.
- I. Facilities to store dairy supplies shall be provided. Only supplies that come in contact with the milk or milk contact surface of the milk-handling equipment may be stored in the milk room and shall be protected from toxic materials, vectors, and dust.

#### Historical Note

Former Regulations 1 - 11. Section R3-2-806 renumbered from R3-5-06 (Supp. 91-4). Section amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 22 A.A.R. 2169, effective October 2, 2016 (Supp. 16-3).

### R3-2-807. Frozen Dessert Plant and Processing Standards

#### A. Plant and Processing Standards.

1. The plant area shall be clean, orderly and free from refuse, rubbish, smoke, dust, air pollution and strong or foul odors originating on the premises. A drainage system shall be provided for the rapid drainage of water away from the building. If unsatisfactory conditions occur in the plant area, with respect to smoke, dust, air pollution, or odors, provision shall be made to protect the frozen desserts and ingredients from contamination.
2. Sewage and industrial waste shall be disposed in accordance with the provisions of the state or county environmental laws. Refuse, unless in appropriate containers, shall not accumulate on the premises.
3. Roads, driveways, yards, and parking areas adjacent to the plant shall be paved or treated to prevent dust and shall be smooth and well drained to prevent accumulation of stagnant liquid.
4. Buildings.
  - a. The building exterior and interior shall be kept clean and in good repair.
  - b. In processing and packaging areas, outside doors, windows, skylights, transoms, or other openings shall be protected and operated to preclude the entrance of dust, insects, vermin, rodents, and other animals. Outside doors shall be self-closing wherever practical. Window sills on new construction shall slope inward at least 45-degrees. Outside conveyor openings and other outside openings shall be protected by doors, screens, flaps, fans, or tunnels.

Pipes shall be sealed where they extend through exterior walls. Outside pipe openings shall be covered when not in use.

- c. Rooms. All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be constructed to ensure clean and orderly operations.
  - i. Boiler and tool rooms shall be separate from rooms where milk products are received, where processing and packaging is done, or where equipment, facilities, and containers are washed and stored.
  - ii. Toilets and dressing rooms shall be conveniently located and toilets shall not open directly into any room where milk products, ingredients, or frozen desserts are handled, processed, packaged, or stored. Toilet and dressing room doors shall be self-closing. Toilets and dressing rooms shall be well vented to the outer air, and contain hand-washing facilities, hot and cold running water, soap, single-service towels or air dryers. Hand-washing signs shall be posted. Fixtures shall be kept clean and in good repair.
  - iii. Rooms for receiving milk and other raw ingredients and materials shall be separated from the processing area to avoid contamination of frozen desserts in the processing operations, except that products in cans or other closed containers may be received and transferred to a cooler or other storage without being received in a separate room.
  - iv. If tank truck deliveries of milk, milk products, or frozen desserts mix are made, other than occasional deliveries, a tank truck room large enough to accommodate the entire truck shall be provided with equipment for cleaning. A covered outside unloading pad may be used for truck tankers with filter dome vents, if washing and sanitizing facilities are provided. If a tank truck room is not located on the premises of an existing plant, facilities for washing and sanitizing tank trucks shall be provided at another location where the washing and sanitizing facility is free from dust and extreme weather conditions.
  - v. Except for existing processing and packaging rooms, there shall be at least three feet clearance between installations and the wall to prevent overcrowding and to facilitate cleaning. Existing facilities not meeting this requirement shall be permitted if cleaning can be accomplished and permission is obtained from the Dairy Supervisor or the Dairy Supervisor's designee. All processing and packaging rooms shall be equipped with hand-washing facilities including hot and cold running water, soap, single-service towels, or air-dryer.
  - vi. Refrigeration rooms and units shall be constructed of impervious material and shall be kept clean and sanitary.
  - vii. Separate rooms shall be provided so that the manufacturing, processing, and packaging are



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- separate from the cleaning and sterilizing of utensils and containers.
- viii. No person shall reside or sleep in a frozen desserts plant or in any room connected with it. No animal shall be kept or permitted in a frozen desserts plant.
- d. Walls and ceilings shall be constructed of smooth, washable, impervious material. They shall be light-colored, kept clean and sanitary, and refinished when discolored. A darker color material may be used to a height not exceeding 60 inches from the floor.
- e. Floors shall be an impervious, smooth-surfaced material that may be flushed clean with water. Except for hardening rooms, floors shall slope 3/16 to 1/4 inch per foot to one or more trapped outlets. No open channel drainage is permitted in new construction or in extensive remodeling of existing plants. Floor drains are not required in freezers used for storing frozen desserts or frozen ingredients. However, the floors shall be sloped to drain to at least one exit and shall be kept clean. Floors in new construction or extensive remodeling shall be joined and coved with the walls to form water-tight joints. Smooth wood floors may only be permitted in rooms where there will be no spillage of product or ingredients, such as rooms where wrapped or packaged frozen products are packed in multiple-pack containers. Toilets and dressing rooms shall have impervious floors and smooth walls.
- f. Plumbing shall be installed to prevent back-up of sewage or odors into the plant.
- g. All rooms and compartments, including storage space for materials, ingredients, and packages, and toilets and dressing rooms, shall be ventilated to maintain sanitary conditions, and to minimize or eliminate condensation and odors.
- h. Lighting, whether natural or artificial, shall be well distributed in all rooms and compartments. Light bulbs and fluorescent tubes shall be protected so that broken glass cannot fall into any product or equipment.
- i. Rooms where frozen desserts are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 footcandles of light on all working surfaces;
- ii. Areas where dairy products are examined for condition and quality shall have at least 50 footcandles of light; and
- iii. All other rooms shall have at least 20 footcandles of light 30 inches above the floor.
- i. Containers for collecting and holding waste other than dry waste paper and other dry packaging material shall be constructed of metal or other impervious material, covered with tight-fitting lids or covers, and emptied or disposed of daily or at least once during the shift. Clothing, tools, equipment, and other material not used with the frozen desserts operations shall not accumulate in the work areas or in the storage rooms.
- j. A room or other space separate from any room or space where milk products or frozen desserts are received, handled, processed, packaged, or stored, shall be provided where employees may change and store clothing. This area shall contain hand-washing facilities, with hot and cold running water, soap or other detergents, and single-service towels or air dryers. Self-closing containers shall be provided for used towels and other wastes.
- k. Approval of plans. The Dairy Supervisor may allow variances to the requirements in this Section, if protection from contamination is provided for all products handled.
5. Water and steam.
- a. Potable hot and cold water shall be available in sufficient quantity for all plant operations and facilities. Non-potable water may be used for boiler feed and condenser water, if the water lines are separated from the water lines carrying the potable water supply and the equipment is constructed to preclude contamination of any product or product contact surface. If water for washing frozen desserts equipment and utensils and for use in rehydration or as an ingredient in any frozen desserts is obtained from other than a regulated municipal supply, a bacteriological examination shall be made of the water supply at least once every six months by a bacteriologist to determine potability. If the examination indicates contamination of the water supply, a device shall be installed to eliminate the contamination.
- b. If steam is used, it shall be provided in sufficient volume and pressure for the operation of equipment or for sterilization, or both. Steam that comes in contact with frozen desserts, ingredients, or with the product contact surface, shall be steam of culinary quality as prescribed in Appendix H, Part III, Culinary Steam – Milk and Milk Products, of the PMO.
6. Equipment and utensils.
- a. New equipment shall meet applicable 3-A Sanitary Standards. All equipment, including connections, coming in contact with frozen desserts or ingredients during processing, manufacturing, handling, or packaging, shall be made of stainless steel. No equipment shall be permitted that is rusted, corroded, or in any other condition that may result in contamination of the frozen desserts. Non-metallic parts with product contact surfaces shall consist of material that meets 3-A Sanitary Standards for Plastic or Rubber and Rubber-like Materials or shall be of plastic approved by the United States Food and Drug Administration. Equipment, apparatus, and piping shall be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Stationary equipment, including welded sanitary lines and apparatus that permit in-place-cleaning, may be used if prior approval from the Dairy Supervisor has been obtained. C-I-P piping and welded sanitary pipeline systems shall be permitted if engineered and installed according to 3-A Accepted Practices for Permanently Installed Sanitary Product and Solution Pipelines and Cleaning Systems. If rigid pipelines are not practical, plastic pipelines listed in the 3-A Accepted Practices may be used. Product pumps shall be sanitary and easily dismantled for cleaning or shall be constructed to allow C-I-P procedures. All parts of interior surfaces of equipment, pipes (except C-I-P piping), or fittings, including valves and connections shall be accessible for inspection. The Dairy Supervisor may require other equipment, apparatus or pip-

- ing if stationary equipment, apparatus or piping cannot or is not being effectively cleaned-in-place.
- b. Equipment for storage and distribution of liquid sweetening agents shall be constructed of metals, alloys, or other material that will withstand corrosive action by the ingredient. The equipment and the ingredients shall be protected from contamination.
  - c. Pasteurizing equipment shall meet the standards prescribed in 3-A Accepted Practices for Sanitary Construction, Installation, Testing and Operation of High-Temperature-Short-Time Pasteurizers and 3-A Sanitary Standards for Non-Coiled Type Batch Pasteurizers. Batch-type pasteurizers shall be provided with close-coupled outlet valves protected against leakage and shall be equipped with thermometers that record the information of each day's operation on separate charts. Air space thermometers and indicating thermometers shall be provided to check the recording thermometers. The recording thermometer chart shall contain the date, the identity of the pasteurizing number, the batch and product name, and the signature of the employee responsible for this information. The record shall be kept on file at the plant for at least six months. The accuracy of the thermometer shall be checked weekly and the date and name of the person responsible for the weekly accuracy check shall be recorded.
  - d. Every plant shall contain hardening rooms, refrigerating rooms, or refrigerated cabinets with space for storage of frozen desserts and perishable ingredients.
  - e. All utensils used in the receiving, storing, processing, manufacturing, packaging, and handling of frozen desserts or any ingredients shall be of smooth, stainless steel, or plastic listed in the 3-A Accepted Practices and shall have flush seams. Utensils that are badly worn, rusted, or corroded or that cannot be rendered clean and sanitary by washing shall not be used. Lead solder shall not come in contact with milk or milk products or frozen desserts.
7. Cleaning and sanitizing.
- a. Cleaning and sanitizing. Equipment, sanitary piping and utensils used in receiving, storing, processing, manufacturing, packaging, and handling frozen desserts and ingredients, and all product contact surfaces of homogenizers, high pressure pumps, packing glands on agitators, pumps and vats, and lines shall be kept clean. Before use, all equipment coming in contact with milk products or frozen desserts shall have a bactericidal or sanitizing treatment. Equipment not designed for C-I-P cleaning shall be disassembled, thoroughly cleaned and sanitized. Biodegradable dairy cleaners, wetting agents, detergents, sanitizing agents, or other similar material that does not adversely affect or contaminate the frozen desserts or ingredients may be used. Steel wool or metal sponges shall not be used to clean any equipment or utensils with product contact surfaces. C-I-P cleaning shall be used only on equipment and pipeline systems designed, engineered, and installed for that type of cleaning. Other equipment and areas in the plant shall be thoroughly cleaned with a commercial vacuum cleaner or other means and the material obtained shall be burned or disposed of so that any insects are destroyed and milk products and frozen desserts will not be contaminated. Exhaust stacks, elevators and elevator pits, conveyors and similar facilities shall be inspected and cleaned regularly.
  - b. Equipment shall be sanitized by using one of the following methods:
    - i. Using 180° F water for at least two minutes.
    - ii. Using steam under pressure for at least two minutes or until all parts of the equipment being sanitized have reached 180° F, or the condensate off the equipment remains at 180° F for at least two minutes.
    - iii. Using chlorine with a residual of at least 50 ppm after one minute contact with equipment, or if sprayed, with a residual of at least 100 ppm after five minutes.
    - iv. Using any other sanitizing substance prescribed in Appendix F of the PMO.
8. Pasteurization and cooling.
- a. All frozen desserts mix, except for flavoring agents used in frozen desserts, shall be pasteurized.
  - b. Frozen desserts mix shall be pasteurized by heating every particle to:
    - i. 155° F for 30 minutes,
    - ii. 160° F for 15 minutes,
    - iii. 165° F for 10 minutes,
    - iv. 175° F for 25 seconds,
    - v. 180° F for 15 seconds,
    - vi. 200° F for three seconds, or
    - vii. 210° F with no holding time.
  - c. High-temperature-short-time pasteurizers shall have the thermal limit controller set and sealed so that forward flow of the product cannot start unless the temperature at the controller sensor is above the required temperature and forward flow of the product cannot continue during descending temperatures if the temperature is below the required temperature. The seal shall be applied by the Dairy Supervisor or the Supervisor's designee after testing and shall not be removed without immediately notifying the Dairy Supervisor or the Supervisor's designee. The system shall be designed so that no product can bypass the controller sensor. The controller sensor shall not be removed from its proper position during the pasteurization process.
  - d. After pasteurization all mix shall be cooled immediately to 45° F or less and shall be maintained at that temperature until frozen. Milk, cream, and other fluid milk products other than sterilized, evaporated or sweetened condensed milk in hermetically sealed containers shall be stored at 45° F or less.
    - i. Refrigerated vehicles or approved insulated containers shall be used when transporting frozen desserts mix from the manufacturing or other plant to a retail manufacturer, and
    - ii. Mix shall be moved from coolers or refrigeration units in a manufacturing plant to freezers by using pipes, tubing, or other means listed in the Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants section of the 3-A Accepted Practices.
9. Storage.
- a. Utensils and equipment. Utensils and portable equipment used in processing, handling, or packaging of frozen desserts shall be stored above the floor in clean, dry locations and in a self-draining position

- on racks constructed of impervious, corrosion-resistant material.
- b. Supplies and containers. Whenever possible, supplies shall be kept in a room separate from the processing, handling, and packaging of frozen desserts and under conditions that result in keeping the materials clean and free from dust, moisture, insects, rodents, or other possible contamination. Supplies shall be arranged to permit cleaning of the area and easy inspection and access. Insecticides and rodenticides shall be plainly labeled, segregated, and stored in a separate room or cabinet away from the edible material or packaging supplies. Caps, parchment papers, wrappers, liners, gaskets, and single-service sticks, spoons, covers, and containers for frozen desserts or ingredients shall be stored only in sanitary tubes, wrappings, or cartons and kept in a clean, dry place until used and shall be handled in a sanitary manner.
  - c. Raw milk products. Raw products for use in frozen desserts that are conducive to bacterial growth shall be handled and stored to minimize bacterial growth. When stored, raw products shall be maintained at 45° F or lower until processing commences.
  - d. Non-refrigerated products. Products such as non-fat dry milk and other frozen desserts ingredients that do not require refrigeration for proper storing shall be placed in dry storage to be easily accessible for inspection and removal, and for adequate cleaning of the room. Dunnage, pallets or other similar method of elevation shall be used. Frozen desserts or ingredients shall not be stored with any product that would damage them or impair their quality. Opened containers of ingredients shall be protected from contamination.
  - e. Refrigerated products. All products that require refrigeration shall, except as otherwise specified, be stored under conditions of temperature and humidity that best maintain quality and condition. Products shall not be stored directly on wet floors or be exposed to foreign odors or conditions such as dripping or condensation that may cause package or product damage.
10. Notification of change in products to be manufactured. Any person manufacturing only frozen desserts with butterfat, or only frozen desserts with fats other than butterfat, and uses the other type of fat shall first notify the Dairy Supervisor.
  11. Clearing lines and equipment. If the same equipment is used for processing, pasteurizing, and packaging frozen desserts made with dairy products and frozen desserts made with vegetable fats, oils, or proteins, any remaining product shall be completely removed from the lines and equipment and sanitized before introducing another product into the lines and equipment. All equipment and lines shall be sanitized either at the end or beginning of each day's operations.
  12. Packaging and containers.
    - a. Frozen desserts shall be packaged in commercial containers using packaging material that protects the product from contamination. The packaging, cutting, molding, dispensing, and other handling or preparation of frozen desserts and their ingredients shall be in a sanitary manner. Frozen dessert containers shall be filled at the place of pasteurization using approved mechanical equipment. Existing manual processes may be permitted if done in a manner that prevents all contact surface contamination and is approved by the Dairy Supervisor.
    - b. Multi-use containers for frozen desserts shall be kept clean and dry. If used for transporting frozen desserts, the containers shall be:
      - i. Rinsed immediately after emptying,
      - ii. Cleaned upon return to the plant, and
      - iii. Protected from contamination during storage.
    - c. Metal cans and containers shall be free from rust and corrosion.
    - d. Paper and plastic containers, liners, covers, or other materials coming in contact with frozen desserts shall be free from contamination.
    - e. Single-service containers shall not be reused.
- B. Personnel.**
1. Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. Employees shall keep their hands clean and follow good hygienic practices while on duty. Expecting or using tobacco in rooms or compartments where frozen desserts or ingredients are exposed is prohibited. Clean, white, or light-colored, washable outer garments shall be worn by all employees engaged in handling dairy products, mix or frozen desserts. Hair coverings for head and facial hair shall be worn by all employees engaged in the processing, pasteurizing, packaging, handling, and storage of frozen desserts, product containers, and utensils.
  2. Frozen desserts shall be handled so that there is no direct contact between an employee's hands and the product.
  3. A person who has a discharging or infected wound, sore or lesion on hands, arms or other exposed portions of the body shall not work in any plant processing or packaging room or in any capacity resulting in contact with milk products or frozen desserts or equipment used in the processing or handling of milk products or frozen desserts. An employee returning to work following illness from a communicable disease shall provide a certificate from a physician attesting to the employee's complete recovery before processing or handling milk products or frozen desserts.
- C. Quality standards.**
1. Milk products used in the manufacture of frozen desserts shall meet the following standards:
 

Product	Standard	Plate Count	Not to Exceed
Raw Milk		500,000 per ml.	
Pasteurized Milk		50,000 per ml.	
Raw Cream		500,000 per ml.	
Pasteurized Cream		100,000 per ml.	
  2. Butter, 80% cream, plastic cream, mixtures of butterfat, sugar or sweetening agent, moisture and flavoring, condensed milk, mixes and all other similar products shall meet the following standards:
 

Bacterial Standards	Not to Exceed
Standard Plate Count	50,000 per gram
Coliform Count	20 per gram
Yeast	50 per gram
Mold	50 per gram
  3. Powdered non-fat dry milk, dry whey, and dry buttermilk shall meet the PMO standards.
  4. Fats and oils other than from milk shall meet the standards of the United States Food, Drug and Cosmetic Act as amended, or those of any applicable state regulation for fats and oils of food grade standards.

5. Frozen desserts in broken or opened containers or in containers from which the product has been partially used may be returned to the plant for examination but shall not be used or sold for making frozen desserts.
6. All reconstituted frozen desserts shall be pasteurized before packaging.

**D. Labeling.**

1. All packages of frozen desserts, including cans or other containers of frozen desserts mix but not including frozen desserts packaged in accordance with a customer's request and in the presence of the customer, shall be labeled as prescribed in the federal Food, Drug and Cosmetic Act, as amended.
2. Each frozen dessert package shall contain:
  - a. The code number assigned by the Dairy Supervisor, identifying the specific manufacturing plant; or
  - b. The name and address of the frozen dessert manufacturer.

- E. License suspension.** The Dairy Supervisor may suspend the license of a frozen dessert plant whenever the bacteria count, coliform determination, yeast or mold count exceeds the quality standards for frozen desserts in three out of the last five samples taken on separate days. In addition, the Dairy Supervisor may suspend the permit of a frozen dessert plant for failure to comply with any of the provisions of this Section.

**Historical Note**

Adopted effective December 7, 1976 (Supp. 76-5).  
 Amended effective December 5, 1977 (Supp. 77-6). Section R3-2-807 renumbered from R3-5-07 (Supp. 91-4).  
 Amended effective December 2, 1998 (Supp. 98-4).

**R3-2-808. Frozen Desserts Reconstituted from Powdered Mixes**

Except for R3-2-807(A)(8), retail establishments that reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the requirements prescribed in R3-2-807 and the following standards:

1. All equipment, containers, and utensils shall be washed and air-dried after each use and shall be sanitized before each use, in accordance with the sterilization standards established in subsection R3-2-807(A)(7)(b).
2. When not in use, all equipment, utensils, and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents, or other possible sources of contamination.
3. Excess quantities of the reconstituted frozen dessert shall not be made from the powdered mix in advance and stored outside the dispensing machine.
4. Frozen desserts shall be reconstituted according to the directions provided by the powdered mix manufacturer.

**Historical Note**

Adopted effective May 11, 1977 (Supp. 77-3). Section R3-2-808 renumbered from R3-5-08 (Supp. 91-4). Section R3-2-808 renumbered to Section R3-2-809; new Section R3-2-808 adopted effective December 2, 1998 (Supp. 98-4).

**R3-2-809. Medicinal, Chemical, and Radioactive Residues in Milk**

- A.** All dairies shall comply with the following procedures to exclude medicinal, chemical, and radioactive residues from milk intended for human consumption:

1. Identify all cows that have been treated with or have consumed medicinal, chemical, and radioactive agents capable of being secreted in milk;

2. Maintain a written record of the date of treatment, type, and quantity of the medicine or chemical administered to each cow;
3. Milk all treated cows last, or with separate equipment to prevent contamination of the wholesome milk supply;
4. Clean and sanitize all equipment, utensils, and containers used in the handling of milk from the treated cows before the equipment is used in the handling of any milk intended for human consumption; and
5. Discard all milk from the treated cows for the period of time recommended by the attending veterinarian or as indicated on the package or label of the medicine used in the treatment of the cow.

**B. Enforcement.**

1. When the residue of a chemical, medicinal, or radioactive agent is found in the milk of a dairy and the Dairy Supervisor determines that the residue may be deleterious to human health, the Director shall immediately suspend the dairy from further selling, offering for sale, or distributing milk for human consumption until:
  - a. The Dairy Supervisor determines that the practice causing the contamination of the milk has been corrected and the dairy is in compliance with the procedures established in subsection (A);
  - b. Any milk that has not been excluded from human consumption as required by subsection (A) is appropriately discarded; and
  - c. The first milk shipment following suspension indicates negative test results for medicinal, chemical, or radioactive residues.
2. If the Dairy Supervisor determines that a dairy is not in compliance with the procedures established in subsection (A), the Dairy Supervisor may suspend the dairy until the prescribed procedures are observed.

**Historical Note**

Section R3-2-809 renumbered from R3-2-808 and amended effective December 2, 1998 (Supp. 98-4).

**R3-2-810. License Fees**

During fiscal year 2016, an applicant shall pay the following fee to obtain or renew a dairy license:

1. For a license to operate a milk distributing plant or business: \$300 plus \$2,500 per pasteurizer.
2. For a license to operate a manufacturing milk processing plant: \$100.
3. For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: \$150 plus \$2,500 per pasteurizer.
4. For a license to engage in the business of producer-distributor: \$150.
5. For a license to engage in the business of producer-manufacturer: \$25.
6. For a license to engage in the manufacture of trade products: \$100.
7. For a license to engage in the business of selling at wholesale milk or dairy products, or both: \$100.
8. For a license to sample milk or cream: an initial fee of \$50 and a renewal fee of \$30.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by

exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3).

### R3-2-811. Dairy Farm Permit

- A. A dairy farm, as defined in the PMO, may apply for a PMO milk producer permit by submitting the following information about the dairy farm on a form provided by the Department:
1. Legal name,
  2. Physical and mailing address,
  3. Telephone number,
  4. Owner's name,
  5. Herd size,
  6. Daily milk production,
  7. Water source,
  8. Waste water disposal system,
  9. Number of bulk storage tanks, and
  10. Certification that the dairy farm facilities comply with Grade A requirements.
- B. An applicant for a dairy farm permit shall demonstrate compliance with the minimum standards set out in the PMO by a Department inspection.
- C. A permittee shall maintain compliance with the minimum standards set out in the PMO and shall be subject to inspection by the Department in accordance with the PMO.
- D. The Department may suspend a permit for a permittee's failure to comply with the minimum standards and may revoke a permit if the permittee fails to correct deficiencies within a reasonable time.
- E. Dairy farm permits are not transferable.

#### Historical Note

New Section made by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired; new Section made by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3).

## ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

### R3-2-901. Definitions

In addition to the definitions provided in A.R.S. §§ 3-701, 3-702, 3-703 and 3-704, the following shall apply to this Article:

"Lot" means any quantity of two or more eggs.

"Spot-check" sample means any sample less than a representative sample described in the chart in R3-2-903(B).

"United Egg Producers Animal Husbandry Guidelines" means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2008 Edition. This material is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.

"United Egg Producers Certified" means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.

"United Egg Producers Certified logo" means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.

#### Historical Note

Former Rule 1; Amended as an emergency effective

November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-01 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-901 (Supp. 82-1). Section R3-6-101 renumbered to R3-2-901 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

### R3-2-902. Standards, Grades, and Weight Classes for Shell Eggs

All standards, grades, and weight classes for shell eggs shall be as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the United States Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Ave., S.W., Washington, DC 20250-0259, or online at [www.ams.usda.gov/poultry/standards/index.htm](http://www.ams.usda.gov/poultry/standards/index.htm). "AMS" means Agricultural Marketing Service, United States Department of Agriculture.

#### Historical Note

Former Rule 2; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-02 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-902 (Supp. 82-1). Section R3-6-102 renumbered to R3-2-902 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 892, effective May 3, 2008 (Supp. 08-1).

### R3-2-903. Sampling: Schedule and Methods for Evidence

- A. An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907(B).
- B. Representative egg sampling, under A.R.S. § 3-710(G), shall be based on the following table. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907(B) shall receive a warning notice hold tag.

Minimum Number of Cases and Cartons Comprising a Representative Sample			
Lot size of cartons	Minimum eggs for inspection	Lot size of 30 doz. per case	Minimum cases for inspection <sup>1</sup>
1 - 4 cartons	All	1 case	1 case
5 - 30 cartons inclusive	50	2 - 10 cases inclusive	2 cases
31 - 120 cartons inclusive	100	11 - 25 cases inclusive	3 cases
120 - 210 cartons inclusive	200	26 - 50 cases inclusive	4 cases
211 - 315 cartons inclusive	300	51 - 100 cases inclusive	5 cases
		101 - 200 cases inclusive	8 cases

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		201 - 300 cases inclusive	11 cases
		301 - 400 cases inclusive	13 cases
		401 - 500 cases inclusive	14 cases
		501 - 600 cases inclusive	16 cases
		For each additional 50 cases or fraction of a case in excess of 600 cases	1 case
<sup>1</sup> An inspector shall take 100 eggs from each case for inspection.			

1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
2. When loose eggs are out of the case, the sample shall be based on a carton.
3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall convert the quantity of eggs to the equivalent 30-dozen-case basis to establish the official sample size.

**Historical Note**

Former Rule 3; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-03 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-903 (Supp. 82-1). Section R3-6-103 renumbered to R3-2-903 (Supp. 91-4). Section repealed, new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-904. Quarterly Report Periods**

Quarterly reports are due as prescribed in A.R.S. § 3-716(D). The quarterly report periods for inspection fees are:

1. July 1 to September 30,
2. October 1 to December 31,
3. January 1 to March 31, and
4. April 1 to June 30.

**Historical Note**

Former Rule 4; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-04 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-904 (Supp. 82-1). Section R3-6-104 renumbered to R3-2-904 (Supp. 91-4). Section repealed, new Section R3-2-904 renumbered from R3-2-907 and amended effective July 13, 1995 (Supp. 95-3).

**R3-2-905. Inspection Fee Rate**

- A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).
- B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per

pound on all egg products sold as prescribed in A.R.S. § 3-716(A).

**Historical Note**

Former Rule 5; Former Section R3-6-05 renumbered as Section R3-2-905 (Supp. 82-1). Section R3-6-105 renumbered to R3-2-905 (Supp. 91-4). Section repealed, new

Section R3-2-905 renumbered from R3-2-908 and amended effective July 13, 1995 (Supp. 95-3). Amended by emergency rulemaking at 12 A.A.R. 4063, effective October 1, 2006 for 180 days (Supp. 06-4). Emergency renewed at 13 A.A.R. 1509, effective April 9, 2007 for 180 days (Supp. 07-2). Amended by final rulemaking at 13 A.A.R. 1639, effective June 30, 2007 (Supp. 07-2).

**R3-2-906. Violations and Penalties**

- A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:

1. Category A:

- a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
- b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
- c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
- d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container, unless the eggs are exempt under A.R.S. § 3-715(K);
- e. Failing to maintain records and reports required by this Article;
- f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, if applicable under R3-2-907(B), the United Egg Producer Certified logo;
- g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
- h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
- i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products.
- j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907(B).
- k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907(A).

2. Category B:

- a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(10); or
- b. Advertising, representing, or selling out-of-state eggs as local eggs.

3. Category C:

- a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
- b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower; or
- c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F.

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- B. Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.
- C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is:

Number of Violations	Category A	Category B	Category C
1	Warning	Warning	Warning
2	\$50	\$50	\$100
3	\$100	\$100	\$200
4		\$150	\$400
5		\$200	\$500
6		\$250	
7		\$300	

**Historical Note**

Former Rule 6; Amended effective February 19, 1982. Former Section R3-6-06 renumbered as Section R3-2-906 (Supp. 82-1). Section R3-6-106 renumbered to R3-2-906 (Supp. 91-4). Former Section R3-2-906 renumbered to R3-2-903, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4058, effective October 7, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-907. Poultry Husbandry; Standards for Production of Eggs**

- A. All egg-laying hens in this state shall be raised according to United Egg Producers Animal Husbandry Guidelines.
- B. All eggs sold in this state produced by hens shall be from hens raised according to the United Egg Producers Animal Husbandry Guidelines. All eggs shall display the United Egg Producers Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.
- C. This rule does not apply to egg producers operating or controlling the operation of one or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs and also does not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.

**Historical Note**

Former Rule 7; Former Section R3-6-07 renumbered as Section R3-2-907 (Supp. 82-1). Section R3-6-107 renumbered to R3-2-907 (Supp. 91-4). Section R3-2-907 renumbered to R3-2-904 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-908. Sanitary Standards; Egg Processing**

All egg producers in this state shall meet the facility and sanitary operation requirements prescribed by the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR 56, effective March 30, 2008. This material is incorporated by reference, does not include any later editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007.

**Historical Note**

Former Rule 8; Amended effective October 1, 1979 (Supp. 79-5). Former Section R3-6-08 renumbered as Section R3-2-908 (Supp. 82-1). Amended effective January 1, 1985 (Supp. 84-6). Amended effective December

30, 1987 (Supp. 87-4). Amended effective March 23, 1990 (Supp. 90-1). Section R3-6-108 renumbered to R3-2-908 (Supp. 91-4). Section R3-2-908 renumbered to R3-2-905 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-909. Repealed****Historical Note**

Former Rule 9; Former Section R3-6-09 renumbered as Section R3-2-909 (Supp. 82-1). Section R3-6-109 renumbered to R3-2-909 (Supp. 91-4). Section repealed effective July 13, 1995 (Supp. 95-3).

**ARTICLE 10. AQUACULTURE****R3-2-1001. Definitions**

In addition to the definitions provided in A.R.S. § 3-2901, the following shall apply unless the context otherwise requires:

1. "Certificate of Aquatic Health" is an official document from an issuing state or an equivalent form published by the United States Fish and Wildlife Service or the United States Department of Agriculture attesting that the live aquatic animals described thereon have been inspected and are free of the diseases and causative agents set forth in R3-2-1009.
2. "Department" means the Arizona Department of Agriculture.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2).

**R3-2-1002. Fees for Licenses; Inspection Authorization and Fees**

- A. License fees are established as follows:
1. Aquaculture facility: \$100 annually.
  2. Fee fishing facility: \$100 annually.
  3. Aquaculture processor: \$100 annually.
  4. Aquaculture transporter: \$100 annually.
  5. Special licenses: \$10 annually.
- B. An expired license may be renewed within 90 days after expiration by payment of a \$50 late fee.
- C. Upon request of the licensee, the Department shall assess the licensed facility and, if applicable, certify the facility is free from infectious diseases and causative agents listed in R3-2-1009 before issuing a Certificate of Aquatic Health. All expenses properly incurred in the certification procedure of the inspection, including time, travel, and laboratory expenses, shall be paid to the Department by the licensee requesting certification.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-1003. General Licensing Provisions**

- A. An applicant for a license to operate an aquaculture facility or a fee fishing facility, or to operate as an aquaculture processor or aquaculture transporter shall provide the following information on a form furnished by the Department:
1. Whether the applicant is an individual, corporation, partnership, cooperative, association, or other type of organization;
  2. The name and address of the applicant;
  3. A corporation shall specify the date and state of incorporation;
  4. The principal name of the business, and all other business names that may be used;

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5. The name, mailing address, and telephone number of the applicant's authorized agent;
  6. The street address or legal description of the location of the facility to be licensed; and
  7. The signature of the person designated in subsection (A)(5), and the date the application is completed for submission to the Department.
- B.** The Department shall grant a license when all conditions are met and assign a Department establishment number to each facility.
- C.** All licenses expire on December 31 for the year issued.
- D.** A licensee shall advise the Department in writing of any change in the information provided on the application during the license year. This information shall be provided within 30 calendar days of the change.
- E.** To prevent the spread of diseases and causative agents listed in R3-2-1009, the Department may inspect and take samples from any facility or shipment being transported. A licensee shall notify the Department within 72 hours of becoming aware of the presence of any disease or causative agent listed in R3-2-1009. Aquatic animals found to be infected with a disease or causative agent listed in R3-2-1009 are prohibited from interstate or intrastate movement without prior written Department approval.
- F.** The Department shall quarantine or seize aquatic animals, alive or dead, plants, or products for examination or diagnostic study when there is a potential for spread of a disease or causative agent listed in R3-2-1009, or any other disease or causative agent that could constitute a threat to aquatic animals or plants of the state. The Department shall issue a written notice to the licensee specifying:
1. The reason for the Department's action; and
  2. The licensee's right to request a hearing as prescribed in A.R.S. § 3-2906.
- G.** A licensee shall conspicuously mark all quarantined aquatic products and quarantined areas in a manner specified by the Department.
- H.** A licensee shall pay all diagnostic, quarantine, and destruction costs.
2. Anticipated adverse effects from introducing the species, as it may affect indigenous or game fish, including hybridization;
  3. Anticipated diseases inherent to introducing the species;
  4. Suggestions for post-introduction evaluation of status and impacts of the introduced species; and
  5. Structural and operational methods implemented to prevent escape of the species, if applicable.
- C.** Each body of water serving a facility shall be contained within the boundaries of the land owned or leased by the licensee.
- D.** A facility using public waters having natural or artificial inlets, rivers, creeks, washes, or canals shall provide mechanical screening approved by the Department to prevent live aquatic animals and plants, including eggs and fry, from escaping beyond the aquaculture facility boundaries or into public bodies of water.
- E.** An applicant for a special license under A.R.S. § 3-2908(A) shall also provide the following information to the Department at the time of application:
1. A written narrative describing the project in detail, the project purpose, the hypothesis, and the project duration; and
  2. The proposed disposition of the aquatic animals or plants upon completion of the project.
- F.** The Department shall consider the recommendations of the Arizona Game and Fish Department, under A.R.S. § 3-2903, when determining whether to issue a license or an import permit under R3-2-1010. The Department may issue a license excluding some of the aquatic animal or plant species listed in the application.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1005. Fee Fishing Facility**

A licensee shall not allow an aquatic animal to be removed from a fee fishing facility unless:

1. The aquatic animal is dead, and
2. The licensee provides the person removing the aquatic animal with written proof of sale identifying the:
  - a. Facility, by name, address, and Department establishment number issued under R3-2-1003(B);
  - b. Date of harvest; and
  - c. Number and species of aquatic animals transported from the facility.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1004. Specific Licensing Provisions; Aquaculture Facility; Fee Fishing Facility; Special License Facility**

- A.** In addition to the application requirements in R3-2-1003, an applicant for a license to operate an aquaculture facility, a fee fishing facility, or a special license facility under A.R.S. § 3-2908(A) shall provide the following information on a form provided by the Department:
1. Water sources, transmission, and conveyances;
  2. Method used to dispose of tailing waters and solid wastes;
  3. Number and size of ponds, raceways, and tanks, if applicable;
  4. Whether hatchery facilities are included;
  5. A list of all animals and plants to be authorized under the license by genus, species, and common name.
- B.** An application to culture or possess an aquatic animal or plant that has not previously occurred in the drainage where the facility is located shall be accompanied by a written proposal. The applicant's proposal shall include:
1. Anticipated benefits from introducing the species;

**R3-2-1006. Processor License**

- A.** In addition to complying with the application requirements of R3-2-1003, applicants for a license to operate as an aquaculture processor as defined in A.R.S. § 3-2901(12) shall provide the following information on a form furnished by the Department:
1. Water sources, transmission, conveyances, and annual consumption in gallons or acre feet;
  2. Method used to dispose of tailing waters and solid wastes;
- B.** A processing facility shall operate in a clean and sanitary condition during all periods of operation. The following are the minimum requirements for such establishments.
1. Each establishment shall have sanitary floors and walls impervious to water.



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2. All outside windows and doors shall be screened.
3. There shall be a supply of potable water.
4. There shall be a sewage disposal system of such a type as not to be a breeding place for insects and not to constitute a hazard or to endanger public health.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2).

**R3-2-1007. Transporter License; Transport; Delivery**

- A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate as an aquaculture transporter of live aquatic animals as defined in A.R.S. § 3-2901(15) shall, on a form provided by the Department:
  1. Designate whether the license is for interstate or intrastate transport, or both;
  2. List aquatic transporting equipment to be used, including tanks and vehicles, and vehicle license number; and
  3. State prior year volume or anticipated annual tonnage of live aquatic animals transported.
- B. A transporter shall ensure that the aquatic transporting equipment has adequate water and oxygen at a temperature and in a quantity normal for the health of the live aquatic animals and shall be clearly marked, "Live Fish."
- C. In addition to a copy of the Certificate of Aquatic Health, a transporter shall transport each container of live aquatic animals within the state with a document identifying:
  1. Consignor's name, address, and telephone number;
  2. Consignee's name, address, and telephone number;
  3. Quantity and size of the aquatic animal being transported;
  4. Genus, species, and common name of the aquatic animal being transported;
  5. Date of shipment; and
  6. Department establishment number.
- D. A transporter shall deliver live aquatic animals only to a retail outlet, as prescribed at A.R.S. § 3-2907(J) or to a person listed in R3-2-1010(B).

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1008. Repealed****Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1009. Disease Certification**

- A. A licensee requesting and receiving a Certificate of Aquatic Health shall have their facility inspected and all live aquatic animals, fertilized eggs and milt shall be found free of, but not limited to, the following diseases and causative agents:
  1. Causative agent: Egtved Virus. Disease: VHS, Viral Hemorrhagic Septicemia of Salmonids.
  2. Causative agent: Infectious Hematopoietic Necrosis Virus. Disease: IHN, Infectious Hematopoietic Necrosis of Salmonids.
  3. Causative agent: Infectious Pancreatic Necrosis Virus. Disease: IPN, Infectious Pancreatic Necrosis of Salmonids.
  4. Causative agent: *Ceratomyxa shasta*. Disease: Ceratomyxosis of Salmonids.
  5. Causative agent: *Rhabdovirus carpio*. Disease: Spring Viremia of carp. Certification is required in this case only when the original origin of the shipment is from outside the United States.

6. Causative agent: *Renibacterium salmoninarum*. Disease: BKD, Bacterial Kidney Disease of Salmonids.
7. Causative agent: *Aeromonas salmonicida*. Disease: Furunculosis.
8. Causative agent: *Myxobolus cerebralis*. Disease: Whirling Disease of Salmonids.

- B. The Department may require inspection for any disease or causative agent not listed in subsection (A) when there is evidence that the disease or causative agent may constitute a threat to aquatic animals or plants, aquatic wildlife or the aquaculture industry. The Department shall send written notice to all licensees pursuant to this Chapter when implementing this subsection, naming the disease or causative agent of concern. Action to quarantine or seize aquatic animals or plants pursuant to this subsection shall not be subject to delay pending such written notice.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2).

**R3-2-1010. Importation of Aquatic Animals**

- A. The owner, or owner's agent, importing live aquatic animals into the state shall ensure the animals are accompanied by the following:
  1. A Certificate of Aquatic Health as defined in R3-2-1001, based upon an inspection of the originating facility within the 12 months preceding the shipment;
  2. A transporter license issued under R3-2-1007; and
  3. An import permit number issued by the Department under this Section, legibly written or typed on the certificate of aquatic health.
- B. The owner, or owner's agent, of live aquatic animals, except those imported by a retail outlet as prescribed in A.R.S. § 3-2907(J), shall ensure that the animals are consigned to or in the care of:
  1. An Arizona resident;
  2. An aquaculture facility, fee fishing facility, or special license holder licensed by the Department;
  3. A holder of an aquatic wildlife stocking permit issued by the Arizona Game and Fish Department; or
  4. A holder of any aquatic animal license issued by the Arizona Game and Fish Department.
- C. The owner, or owner's agent, may obtain an import permit number from the Department, Office of the State Veterinarian, by providing the following information:
  1. Consignor's name, address, and telephone number;
  2. Consignee's name, address, and telephone number;
  3. Consignee's Department establishment number issued by the Department or a copy of an aquatic wildlife stocking permit or the license issued by the Arizona Game and Fish Department;
  4. Origin of the shipment;
  5. Genus, species, and common name of aquatic animals to be imported; and
  6. Quantity and size classification of aquatic animals to be imported.
- D. An import permit number remains valid for 15 calendar days from the date of issuance by the Department.
- E. The Department shall refuse entry to any shipment that does not comply with this rule.
- F. The Department shall quarantine and require destruction of any shipment, after its arrival, that it determines is infected with or was previously exposed to any causative agent or disease listed in R3-2-1009.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective Novem-

ber 9, 2002 (Supp. 02-3).

**ARTICLE 11. EXPIRED****R3-2-1101. Expired****Historical Note**

Section R3-2-1101 recodified from R3-2-101 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1102. Expired****Historical Note**

Section R3-2-1102 recodified from R3-2-102 (Supp. 97-1). Amended effective October 8, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1103. Expired****Historical Note**

Section R3-2-1103 recodified from R3-2-103 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1104. Expired****Historical Note**

Section R3-2-1104 recodified from R3-2-104 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1105. Expired****Historical Note**

Section R3-2-1105 recodified from R3-2-105 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1106. Expired****Historical Note**

Section R3-2-1106 recodified from R3-2-106 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1107. Expired****Historical Note**

Section R3-2-1107 recodified from R3-2-107 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1108. Expired****Historical Note**

Section R3-2-1108 recodified from R3-2-108 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1109. Expired****Historical Note**

Section R3-2-1109 recodified from R3-2-109 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 4. Professions and Occupations**

### **Chapter 6. Board of Behavioral Health Examiners**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-6-101, R4-6-205, R4-6-211, R4-6-212, R4-6-212.01, R4-6-214, R4-6-301, R4-6-304, R4-6-306, R4-6-402, R4-6-403, R4-6-502, R4-6-503, R4-6-601, R4-6-602, R4-6-603, R4-6-701 through R4-6-705, R4-6-802

REMOVE Supp. 15-4  
Pages: 1 - 25

REPLACE with Supp. 16-4  
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*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS**

*Editor's Note: Former 4 A.A.C. 6 repealed; new 4 A.A.C. 6 made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004. Under Laws 2003, Ch. 65, the rules for the Board of Behavioral Health Examiners are repealed and replaced with new rules, and the Board is exempt from the Administrative Procedure Act for one year. The former rules and all Historical Notes are on file in the Office of the Secretary of State (Supp. 04-2).*

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**ARTICLE 1. DEFINITIONS****R4-6-101. Definitions**

The definitions at A.R.S. § 32-3251 apply to this Chapter. Additionally, the following definitions apply to this Chapter, unless otherwise specified:

1. "Applicant" means:
  - a. An individual requesting a license by examination, temporary license, or a license by endorsement by submitting a completed application packet to the Board; or
  - b. A regionally accredited college or university seeking Board approval of an educational program under R4-6-307.
2. "Application packet" means the required documents, forms, fees, and additional information required by the Board of an applicant.
3. "ARC" means an academic review committee established by the Board under A.R.S. § 32-3261(A).
4. "Assessment" means the collection and analysis of information to determine an individual's behavioral health treatment needs.
5. "ASWB" means the Association of Social Work Boards.
6. "Behavioral health entity" means any organization, agency, business, or professional practice, including a for-profit private practice, which provides assessment, diagnosis, and treatment to individuals, groups, or families for behavioral health related issues.
7. "Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.
8. "CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.
9. "Client record" means collected documentation of the behavioral health services provided to and information gathered regarding a client.
10. "Clinical social work" means social work involving clinical assessment, diagnosis, and treatment of individuals, couples, families, and groups.
11. "Clinical supervision" means direction or oversight provided either face to face or by videoconference or telephone by an individual qualified to evaluate, guide, and direct all behavioral health services provided by a licensee to assist the licensee to develop and improve the necessary knowledge, skills, techniques, and abilities to allow the licensee to engage in the practice of behavioral health ethically, safely, and competently.
12. "Clinical supervisor" means an individual who provides clinical supervision.
13. "COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.
14. "Clock hour" means 60 minutes of instruction, not including breaks or meals.
15. "Contemporaneous" means documentation is made within 10 business days.
16. "Continuing education" means training that provides an understanding of current developments, skills, procedures, or treatments related to the practice of behavioral health, as determined by the Board.
17. "Co-occurring disorder" means a combination of substance use disorder or addiction and a mental or personality disorder.
18. "CORE" means the Council on Rehabilitation Education.
19. "Counseling related coursework" means education that prepares an individual to provide behavioral health services, as determined by the ARC.
20. "CSWE" means Council on Social Work Education.
21. "Date of service" means the postmark date applied by the U.S. Postal Service to materials addressed to an applicant or licensee at the address the applicant or licensee last placed on file in writing with the Board.
22. "Day" means calendar day.
23. "*Direct client contact*" means, beginning November 1, 2015, the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients. A.R.S. § 32-3251.
24. "Direct supervision" means responsibility and oversight for all services provided by a supervisee as prescribed in R4-6-211.
25. "Disciplinary action" means any action taken by the Board against a licensee, based on a finding that the licensee engaged in unprofessional conduct, including refusing to renew a license and suspending or revoking a license.
26. "Documentation" means written or electronic supportive evidence.
27. "Educational program" means a degree program in counseling, marriage and family therapy, social work, or substance use or addiction counseling that is:
  - a. Offered by a regionally accredited college or university, and
  - b. Not accredited by an organization or entity recognized by the Board.
28. "Electronic signature" means an electronic sound, symbol, or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
29. "Family member" means a parent, sibling, half-sibling, child, cousin, aunt, uncle, niece, nephew, grandparent, grandchild, and present and former spouse, in-law, step-child, stepparent, foster parent, or significant other.
30. "Gross negligence" means careless or reckless disregard of established standards of practice or repeated failure to exercise the care that a reasonable practitioner would exercise within the scope of professional practice.
31. "Inactive status" means the Board has granted a licensee the right to suspend behavioral health practice temporarily by postponing license renewal for a maximum of 48 months.
32. "Independent contractor" means a licensed behavioral health professional whose contract to provide services on behalf of a behavioral health entity qualifies for independent contractor status under the codes, rules, and regulations of the Internal Revenue Service of the United States.
33. "Independent practice" means engaging in the practice of marriage and family therapy, professional counseling, social work, or substance abuse counseling without direct supervision.
34. "*Indirect client service*" means, beginning November 1, 2015, training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation. A.R.S. § 32-3251.
35. "Individual clinical supervision" means clinical supervision provided by a clinical supervisor to one supervisee.

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36. "Informed consent for treatment" means a written document authorizing treatment of a client that:
  - a. Contains the requirements of R4-6-1101;
  - b. Is dated and signed by the client or the client's legal representative, and
  - c. Beginning on July 1, 2006, is dated and signed by an authorized representative of the behavioral health entity.
37. "Legal representative" means an individual authorized by law to act on a client's behalf.
38. "License" means written authorization issued by the Board that allows an individual to engage in the practice of behavioral health in Arizona.
39. "License period" means the two years between the dates on which the Board issues a license and the license expires.
40. "NASAC" means the National Addiction Studies Accreditation Commission.
41. *"Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this Chapter. A.R.S. § 32-3251.*
42. *"Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:*
  - a. *Assessment, appraisal and diagnosis.*
  - b. *The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.*
43. *"Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:*
  - a. *Facilitate human development and adjustment throughout the human life span.*
  - b. *Assess and facilitate career development.*
  - c. *Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.*
  - d. *Manage symptoms of mental illness.*
  - e. *Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.*
44. *"Practice of social work" means the professional application of social work theories, principles, methods and techniques to:*
  - a. *Treat mental, behavioral and emotional disorders.*
  - b. *Assist individuals, families groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.*
  - c. *Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.*
45. *"Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:*
  - a. *Assessment, appraisal, and diagnosis.*
  - b. *The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.*
46. "Progress note" means contemporaneous documentation of a behavioral health service provided to an individual that is dated and signed or electronically acknowledged by the licensee.
47. *"Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health." A.R.S. § 32-3251.*
48. "Quorum" means a majority of the members of the Board or an ARC. Vacant positions do not reduce the quorum requirement.
49. "Regionally accredited college or university" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Commission on Higher Education,
  - c. North Central Association,
  - d. Northwest Commission on Colleges and Universities,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
50. "Significant other" means an individual whose participation a client considers to be essential to the effective provision of behavioral health services to the client.
51. "Supervised work experience" means practicing clinical social work, marriage and family therapy, professional counseling, or substance abuse counseling for remuneration or on a voluntary basis under direct supervision and while receiving clinical supervision as prescribed in R4-6-212 and Articles 4 through 7.
52. *"Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between a behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to A.R.S. § 36-3602. A.R.S. § 32-3251.*
53. "Treatment" means the application by a licensee of one or more therapeutic practice methods to improve, eliminate, or manage a client's behavioral health issue.
54. "Treatment goal" means the desired result or outcome of treatment.
55. "Treatment method" means the specific approach a licensee used to achieve a treatment goal.
56. "Treatment plan" means a description of the specific behavioral health services that a licensee will provide to a client that is documented in the client record, and meets the requirements found in R4-6-1102.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 3895, effective September 16, 2008 (Supp. 08-3). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**ARTICLE 2. GENERAL PROVISIONS****R4-6-201. Board Meetings; Elections**

- A.** The Board:
1. Shall meet at least annually in June and elect the officers specified in A.R.S. § 32-3252(E);
  2. Shall fill a vacancy that occurs in an officer position at the next Board meeting; and
  3. May hold additional meetings:
    - a. As necessary to conduct the Board's business; and
    - b. If requested by the Chair, a majority of the Board members, or upon written request from two Board members.
- B.** The Board shall conduct official business only when a quorum is present.
- C.** The vote of a majority of the Board members present is required for Board action.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-202. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-203. Academic Review Committee Meetings; Elections**

- A.** Each ARC:
1. Shall meet at least annually in June and elect a Chair and Secretary;
  2. Shall fill a vacancy that occurs in an officer position at the next ARC meeting; and
  3. May hold additional meetings:
    - a. As necessary to conduct the ARC's business; and
    - b. If requested by the Chair of the ARC, a majority of the ARC, or upon written request from two members of the ARC.
- B.** An ARC shall conduct official business only when a quorum is present.
- C.** The vote of a majority of the ARC members present is required for ARC action.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-204. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-205. Change of Contact Information**

- A.** The Board shall communicate with a licensee or applicant using the contact information provided to the Board including:

1. Home address and telephone number,
2. Address and telephone number for all places of employment,
3. Mobile telephone number, and
4. E-mail address.

- B.** To ensure timely communication with the Board, a licensee or applicant shall notify the Board in writing within 30 days after any change of the licensee's or applicant's contact information listed in subsection (A). The licensee or applicant shall ensure that the written notice provided to the Board includes the new contact information.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-206. Change of Name**

A licensee or an applicant shall notify the Board in writing within 30 days after the applicant's or licensee's name is changed. The applicant or licensee shall attach to the written notice:

1. A copy of a legal document that establishes the name change; or
2. A copy of two forms of identification, one of which includes a picture of the applicant or licensee, reflecting the changed name.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-207. Confidential Records**

- A.** Except as provided in A.R.S. § 32-3282, the following records are confidential and not open to public inspection:
1. Minutes of executive session;
  2. Records classified as confidential by other laws, rules, or regulations;
  3. College or university transcripts, licensure examination scores, medical or mental health information, and professional references of applicants except that the individual who is the subject of the information may view or copy the records or authorize release of these records to a third party.
  4. Records for which the Board determines that public disclosure would have a significant adverse effect on the Board's ability to perform its duties or would otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the records no longer exists, the record shall be made available for public inspection and copying; and
  5. All investigative materials regarding any pending or resolved complaint.
- B.** As provided under A.R.S. § 39-121, a person wanting to inspect Board records that are available for public inspection may do so at the Board office by appointment.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1,



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2015 (Supp. 15-4).

#### **R4-6-208. Conviction of a Felony or Prior Disciplinary Action**

The Board shall consider the following factors to determine whether a felony conviction or prior disciplinary action will result in imposing disciplinary sanctions including refusing to renew the license of a licensee or to issue a license to an applicant:

1. The age of the licensee or applicant at the time of the felony conviction or when the prior disciplinary action occurred;
2. The seriousness of the felony conviction or prior disciplinary action;
3. The factors underlying the conduct that led to the felony conviction or imposition of disciplinary action;
4. The length of time since the felony conviction or prior disciplinary action;
5. The relationship between the practice of the profession and the conduct giving rise to the felony conviction or prior disciplinary action;
6. The licensee's or applicant's efforts toward rehabilitation;
7. The assessments and recommendations of qualified professionals regarding the licensee's or applicant's rehabilitative efforts;
8. The licensee's or applicant's cooperation or non-cooperation with the Board's background investigation regarding the felony conviction or prior disciplinary action; and
9. Other factors the Board deems relevant.

##### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

#### **R4-6-209. Deadline Extensions**

- A. Deadlines established by date of service may be extended a maximum of two times by the chair of the Board or the chair of the ARC if a written request is postmarked or delivered to the Board no later than the required deadline.
- B. The Board shall not grant an extension for deadlines regarding renewal submission or late renewal submission.
- C. If a deadline falls on a Saturday, Sunday, or official state holiday, the Board considers the next business day the deadline.

##### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

#### **R4-6-210. Practice Limitations**

The following licensees shall not engage in the independent practice of behavioral health but rather, shall practice behavioral health only under direct supervision as prescribed in R4-6-211:

1. Licensed baccalaureate social worker,
2. Licensed master social worker,
3. Licensed associate counselor,
4. Licensed associate marriage and family therapist,
5. Licensed substance abuse technician,
6. Licensed associate substance abuse counselor, or
7. Temporary licensee.

##### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27,

2005 (Supp. 05-2). Section repealed; new Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

#### **R4-6-211. Direct Supervision: Supervised Work Experience: General**

- A. A licensee working under direct supervision shall not:

1. Have an ownership interest in, operate, or manage the entity with immediate responsibility for the behavioral health services provided by the licensee;
2. Receive supervision from:
  - a. A family member;
  - b. An individual whose objective assessment may be limited by a relationship with the licensee; or
  - c. An individual not employed or contracted by the same behavioral health entity as the licensee;
3. Engage in the independent practice of behavioral health; or
4. Be directly compensated by behavioral health clients.

- B. To meet the supervised work experience requirements for licensure, supervision shall:

1. Meet the specific supervised work experience requirements contained in Articles 4, 5, 6, and 7;
2. Be acquired after completing the degree required for licensure and receiving certification or licensure from a state regulatory entity;
3. Be acquired before January 1, 2006, if acquired as an unlicensed professional practicing under an exemption provided in A.R.S. § 32-3271;
4. Meet the direct supervision requirements specified in subsection (A);
5. Involve the practice of behavioral health; and
6. Be for a term of no fewer than 24 months.

- C. If the Board determines that an applicant engaged in unprofessional conduct related to services rendered while acquiring hours under supervised work experience, including clinical supervision, the Board shall not accept the hours to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706. Hours accrued before and after the time during which the conduct that was the subject of the finding of unprofessional conduct occurred, as determined by the Board, may be used to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706 so long as the hours are not the subject of an additional finding of unprofessional conduct.

##### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

#### **R4-6-212. Clinical Supervision Requirements**

- A. The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, and was provided by one of the following:

1. A clinical social worker, professional counselor, independent marriage and family therapist, or independent substance abuse counselor who:
  - a. Holds an active and unrestricted license issued by the Board, and

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- b. Has complied with the educational requirements specified in R4-6-214;
  - 2. A mental health professional who holds an active and unrestricted license issued under A.R.S. Title 32, Chapter 19.1 as a psychologist and has complied with the educational requirements specified in R4-6-214; or
  - 3. An individual who:
    - a. Holds an active and unrestricted license to practice behavioral health,
    - b. Is providing behavioral health services in Arizona:
      - i. Under a contract or grant with the federal government under the authority of 25 U.S.C. § 450-450(n) or § 1601-1683, or
      - ii. By appointment under 38 U.S.C. § 7402 (8-11), and
    - c. Has complied with the educational requirements specified in R4-6-214.
- B. Unless an exemption was obtained under R4-6-212.01, the Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision was provided by an individual who:
  - 1. Was qualified under subsection (A), and
  - 2. Was employed by the behavioral health entity at which the applicant obtained hours of clinical supervision.
- C. The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision includes all of the following:
  - 1. Reviewing ethical and legal requirements applicable to the supervisee's practice, including unprofessional conduct as defined in A.R.S. § 32-3251;
  - 2. Monitoring the supervisee's activities to verify the supervisee is providing services safely and competently;
  - 3. Verifying in writing that the supervisee provides clients with appropriate written notice of clinical supervision, including the means to obtain the name and telephone number of the supervisee's clinical supervisor;
  - 4. Contemporaneously written documentation by the clinical supervisor of at least the following for each clinical supervision session:
    - a. Date and duration of the clinical supervision session;
    - b. Description of topics discussed. Identifying information regarding clients is not required;
    - c. Beginning on July 1, 2006, name and signature of the individual receiving clinical supervision;
    - d. Name and signature of the clinical supervisor and the date signed; and
    - e. Whether the clinical supervision occurred on a group or individual basis;
  - 5. Maintaining the documentation of clinical supervision required under subsection (C)(4) for at least seven years;
  - 6. Verifying that no conflict of interest exists between the clinical supervisor and the supervisee's clients;
  - 7. Verifying that clinical supervision was not acquired:
    - a. From a family member or other individual whose objective assessment of the supervisee's performance may be limited by a relationship with the supervisee; or
    - b. In a professional setting in which the supervisee has an ownership interest or operates or manages.
  - 8. Conducting on-going compliance review of the supervisee's clinical documentation to ensure the supervisee maintains adequate written documentation;
  - 9. Providing instruction regarding:
    - a. Assessment,
    - b. Diagnosis,
    - c. Treatment plan development, and
    - d. Treatment;
  - 10. Rating the supervisee's overall performance as at least satisfactory, using a form approved by the Board; and
  - 11. Complying with the discipline-specific requirements in Articles 4 through 7 regarding clinical supervision.
- D. The Board shall accept hours of clinical supervision submitted by an applicant for licensure if:
  - 1. At least two hours of the clinical supervision were provided in a face-to-face setting during each six-month period;
  - 2. No more than 90 hours of the clinical supervision were provided by videoconference and telephone.
  - 3. No more than 15 of the 90 hours of clinical supervision provided by videoconference and telephone were provided by telephone; and
  - 4. Each clinical supervision session was at least 30 minutes long.
- E. Effective July 1, 2006, the Board shall accept hours of clinical supervision submitted by an applicant if at least 10 of the hours involve the clinical supervisor observing the supervisee providing treatment and evaluation services to a client. The clinical supervisor may conduct the observation:
  - 1. In a face-to-face setting,
  - 2. By videoconference,
  - 3. By teleconference, or
  - 4. By review of audio or video recordings.
- F. The Board shall accept hours of clinical supervision submitted by an applicant from a maximum of six clinical supervisors.
- G. The Board shall accept hours of clinical supervision obtained by an applicant in both individual and group sessions, subject to the following restrictions:
  - 1. At least 25 of the clinical supervision hours involve individual supervision, and
  - 2. Of the minimum 100 hours of clinical supervision required for licensure, the Board may accept:
    - a. Up to 75 of the clinical supervision hours involving a group of two supervisees, and
    - b. Up to 50 of the clinical supervision hours involving a group of three to six supervisees.
- H. If an applicant provides evidence that a catastrophic event prohibits the applicant from obtaining documentation of clinical supervision that meets the standard specified in subsection (C), the Board may consider alternate documentation.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-212.01. Exemptions to the Clinical Supervision Requirements**

The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-212 and R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, unless an exemption is granted as follows:

- 1. An individual using supervised work experience acquired in Arizona may apply to the Board for an exemption from the following requirements:
  - a. Qualifications of the clinical supervisor. The Board may grant an exemption to the supervisor qualifica-

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tion requirements in R4-6-212(A) and R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, if the Board determines the behavioral health professional who provided or will provide the clinical supervision has education, training, and experience necessary to provide clinical supervision and has complied with the educational requirements specified in R4-6-214 and:

- i. A qualified supervisor is not available because of the size and geographic location of the professional setting in which the clinical supervision will occur; or
- ii. The behavioral health professional who provided or will provide the clinical supervision holds an active and unrestricted license issued under A.R.S. Title 32 as a physician under Chapter 13 or 17 with certification in psychiatry or addiction medicine or as a nurse practitioner under Chapter 15 with certification in mental health;
- b. Employment of clinical supervisor. The Board may grant an exemption to the requirement in R4-6-212(B) regarding employment of the supervisor by the behavioral health entity at which the supervisee obtains hours of clinical supervision if the supervisee provides verification that:
  - i. The supervisor and behavioral health entity have a written contract providing the supervisor the same access to the supervisee's clinical records provided to employees of the behavioral health entity, and
  - ii. Supervisee's clients authorized the release of their clinical records to the supervisor; and
- c. Discipline-specific changes. The Board may grant an exemption to a requirement in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, that changed on November 1, 2015, and had the effect of making the clinical supervision previously completed or completed no later than October 31, 2017, non-compliant with the clinical supervision requirements. If the Board grants an exemption under this subsection, the Board shall evaluate the applicant's clinical supervision using the requirements in existence before November 1, 2015.
2. An individual using supervised work experience acquired outside of Arizona may apply to the Board for an exemption from the supervision requirements in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made. The Board may grant an exemption for supervised work experience acquired outside of Arizona if the Board determines that:
  - a. Clinical supervision was provided by a behavioral health professional qualified by education, training, and experience to provide supervision; and
  - b. The behavioral health professional providing the supervision met one of the following:
    - i. Complied with the educational requirements specified in R4-6-214,
    - ii. Complied with the clinical supervisor requirements of the state in which the supervision occurred, or
    - iii. Was approved to provide supervision to the applicant by the state in which the supervision occurred.

**Historical Note**

New Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-213. Registry of Clinical Supervisors**

- A. The Board shall maintain a registry of individuals who have met the educational requirements to provide supervision that are specified in R4-6-214.
- B. To be included on the registry of clinical supervisors, an individual shall submit the following to the Board:
  1. A registration form approved by the Board;
  2. Evidence of being qualified under R4-6-212(A); and
  3. Documentation of having completed the education required under R4-6-214.
- C. The Board shall include an individual who complies with subsection (B) on the registry of clinical supervisors. To remain on the registry of clinical supervisors, an individual shall submit the following to the Board:
  1. A registration form approved by the Board;
  2. Evidence of being qualified under R4-6-212(A); and
  3. Documentation of having completed the continuing education required under R4-6-214.
- D. If the Board notified an individual before November 1, 2015, that the Board determined the individual was qualified to provide clinical supervision, the Board shall include the individual on the registry maintained under subsection (A). To remain on the registry of clinical supervisors, the individual shall comply with subsection (C).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 3895, effective September 16, 2008 (Supp. 08-3). Section R4-6-213 renumbered to Section R4-6-215; new Section made final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-214. Clinical Supervisor Educational Requirements**

- A. The Board shall consider hours of clinical supervision submitted by an applicant only if the individual who provides the clinical supervision is qualified under R4-6-212(A) and complies with the following:
  1. Completes one of the following:
    - a. At least 12 hours of training that meets the standard specified in R4-6-802(D), addresses clinical supervision, and includes the following:
      - i. Role and responsibilities of a clinical supervisor;
      - ii. Skills in providing effective oversight of and guidance to supervisees who diagnose, create treatment plans, and treat clients;
      - iii. Supervisory methods and techniques; and
      - iv. Fair and accurate evaluation of a supervisee's ability to plan and implement clinical assessment and treatment;
    - b. An approved clinical supervisor certification from the National Board for Certified Counselors/Center for Credentialing and Education;
    - c. A clinical supervisor certification from the International Certification and Reciprocity Consortium; or

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- d. A clinical member with an approved supervisor designation from the American Association of Marriage and Family Therapy; and
2. Beginning January 1, 2018, completes a three clock hour Board-approved tutorial on Board statutes and rules.
- B.** Through December 31, 2017, the Board shall consider hours of clinical supervision submitted by an applicant if the individual who provided the clinical supervision was licensed at an independent level, qualified under R4-6-212(A), and the supervision was provided during the first two years the individual was licensed at the independent level.
  1. For the Board to continue to accept hours of clinical supervision provided by the individual described under subsection (B), the individual shall have obtained at least 12 hours of training described in subsection (A)(1)(a):
    - a. Before the individual's license expired for the first time; or
    - b. Before providing supervision if the 12 hours of training described in subsection (A)(1)(a) were obtained after the individual's license expired;
  2. For the Board to continue to accept hours of clinical supervision provided by the individual described under subsection (B)(1), the individual shall have obtained at least six hours of training described in subsection (A)(1)(a) before the individual's license expires again and during each subsequent license period expiring before January 1, 2018;
  3. For the Board to continue to accept hours of clinical supervision provided by the individual described under subsection (B)(2), the individual shall comply fully with subsection (C) before the individual's license expires for the first time on or after January 1, 2018.
- C.** To continue providing clinical supervision, an individual qualified under subsection (A)(1)(a) shall, at least every three years, complete a minimum of nine hours of continuing training that:
  1. Meets the standard specified in R4-6-802(D);
  2. Concerns clinical supervision;
  3. Addresses the topics listed in subsection (A)(1)(a); and
  4. Beginning January 1, 2018, includes three clock hours of a Board-approved tutorial on Board statutes and rules.
- D.** To continue providing clinical supervision, an individual qualified under subsections (A)(1)(b) through (d) shall:
  1. Provide documentation that the national certification or designation was renewed before it expired; and
  2. Beginning January 1, 2018, complete a three clock hour Board-approved tutorial on Board statutes and rules.
4. Issuance of license for independent level of practice (LCSW, LPC, LISAC, and LMFT): \$250;
5. Application for a temporary license: \$50;
6. Application for approval of educational program: \$500;
7. Application for approval of an educational program change: \$250
8. Biennial renewal of first area of licensure: \$350;
9. Biennial renewal of each additional area of licensure if all licenses are renewed at the same time: \$175;
10. Late renewal penalty: \$100 in addition to the biennial renewal fee;
11. Inactive status request: \$100; and
12. Late inactive status request: \$100 in addition to the inactive status request fee.
- B.** The Board shall charge the following amounts for the services it provides:
  1. Issuing a duplicate license: \$25;
  2. Criminal history background check: \$40;
  3. Paper copy of records: \$.50 per page after the first four pages;
  4. Electronic copy of records: \$25;
  5. Copy of a Board meeting audio recording: \$20;
  6. Verification of licensure: \$20 per discipline or free if downloaded from the Board's web site;
  7. Board's rules and statutes book: \$10 or free if downloaded from the Board's web site;
  8. Mailing list of licensees: \$150; and
  9. Returned check due to insufficient funds: \$50.
- C.** The application fees in subsections (A)(1) and (2) are non-refundable. Other fees established in subsection (A) are not refundable unless the provisions of A.R.S. § 41-1077 apply.
- D.** The Board shall accept payment of fees and charges as follows:
  1. For an amount of \$40 or less, a personal or business check;
  2. For amounts greater than \$40, a certified check, cashier's check, or money order; and
  3. By proof of online payment by credit card for the following:
    - a. All fees in subsection (A);
    - b. The charge in subsection (B)(2) for a criminal history background check; and
    - c. The charge in subsection (B)(8) for a mailing list of licensees.
- E.** An applicant shall make payment for a criminal history background check separate from payment for other fees and charges.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section R4-6-214 renumbered to Section R4-6-216; new Section made final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-215. Fees and Charges**

- A.** Under the authority provided by A.R.S. § 32-3272, the Board establishes and shall collect the following fees:
  1. Application for license by examination: \$250;
  2. Application for license by endorsement: \$250;
  3. Issuance of license for non-independent level of practice (LBSW, LMSW, LAC, LSAT, LASAC, and LAMFT): \$100;

**Historical Note**

New Section R4-6-215 renumbered from R4-6-213 and amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-216. Foreign Equivalency Determination**

The Board shall accept as qualification for licensure a degree from an institution of higher education in a foreign country if the degree is substantially equivalent to the educational standards required in this Chapter for professional counseling, marriage and family therapy, and substance abuse counseling licensure. To enable the Board to determine whether a foreign degree is substantially equivalent to the educational standards required in this Chapter, the applicant shall, at the applicant's expense, have the foreign degree evaluated by an entity approved by the Board.

**Historical Note**

New Section R4-6-216 renumbered from R4-6-214 and amended by final exempt rulemaking pursuant to Laws

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2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**ARTICLE 3. LICENSURE****R4-6-301. Application for a License by Examination**

An applicant for a license by examination shall submit a completed application packet that contains the following:

1. A notarized statement, signed by the applicant, certifying that all information submitted in support of the application is true and correct;
2. Identification of the license for which application is made;
3. The license application fee required under R4-6-215;
4. The applicant's name, date of birth, social security number, and contact information;
5. Each name or alias previously or currently used by the applicant;
6. The name of each college or university the applicant attended and an official transcript for all education used to meet requirements;
7. Verification of current or previous licensure or certification from the licensing or certifying entity as follows:
  - a. Any license or certification ever held in the practice of behavioral health; and
  - b. Any professional license or certification not identified in subsection (7)(a) held in the last 10 years;
8. Background information to enable the Board to determine whether, as required under A.R.S. § 32-3275(A)(3), the applicant is of good moral character;
9. A list of every entity for which the applicant has worked during the last 10 years;
10. If the relevant licensing examination was previously taken, an official copy of the score the applicant obtained on the examination;
11. A report of the results of a self-query of the National Practitioner Data Bank;
12. Documentation required under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
13. A completed and legible fingerprint card for a state and federal criminal history background check and payment as prescribed under R4-6-215 if the applicant has not previously submitted a full set of fingerprints to the Board, or verification that the applicant holds a current fingerprint card issued by the Arizona Department of Public Safety; and
14. Other documents or information requested by the Board to determine the applicant's eligibility.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-302. Licensing Time Frames**

A. The overall time frames described in A.R.S. § 41-1072 for each type of license granted by the Board are listed in Table 1. The person applying for a license and the ARC may agree in writing to extend the substantive review and overall time frames up to 25 percent of the overall time frame.

- B. The administrative completeness review time frame described in A.R.S. § 41-1072 begins when the Board receives an application packet.
  1. If the application packet is not complete, the Board shall send the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time frames are suspended from the date the notice is served until the date the Board receives the deficient information from the applicant.
  2. An applicant may assume an application packet is complete when the Board sends the applicant a written notice of administrative completeness or when the administrative completeness time frame specified in Table 1 expires.
- C. An applicant shall submit all of the deficient information specified in the notice provided under subsection (B)(1) within 60 days after the deficiency notice is served.
  1. If an applicant cannot submit all deficient information within 60 days after the deficiency notice is served, the applicant may obtain a 60-day extension by submitting a written notice to the Board postmarked or delivered before expiration of the 60 days. The written notice of extension shall document the reasons the applicant is unable to meet the 60-day deadline.
  2. An applicant who requires an additional extension shall submit to the Board a written request that is delivered or postmarked before expiration of the initial extension and documents the reasons the applicant requires an additional extension. The Board shall notify the applicant in writing of its decision to grant or deny the request for an extension.
  3. If an applicant fails to submit all of the deficient information within the required time, the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is administratively closed shall submit a new application and fee.
- D. The substantive review time frame described in A.R.S. § 41-1072 begins on the date the administrative completeness time frame is complete as described under subsection (B)(2).
  1. If an application is referred to the ARC for substantive review and the ARC finds that additional information is needed, the ARC shall provide a comprehensive written request for additional information to the applicant. The substantive review and overall time frames are suspended from the date the comprehensive written request for additional information is served until the applicant provides all information to the Board.
  2. As provided under A.R.S. § 41-1075(A), the ARC and the applicant may agree in writing to allow the ARC to make additional supplemental requests for information. If the ARC issues an additional supplemental request for information, the substantive review and overall time frames are suspended from the date of the additional supplemental request for information until the applicant provides the information to the Board.
  3. An applicant shall submit all of the information requested under subsection (D)(1) within 60 days after the comprehensive request for additional information is served. If the ARC issues an additional comprehensive request for information under subsection (D)(2), the applicant shall submit the additional information within 60 days after the additional comprehensive request for information is served. If the applicant cannot submit all requested information within the time provided, the applicant may

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- obtain an extension under the terms specified in subsection (C)(2).
4. If an applicant fails to submit all of the requested information within the time provided under subsection (D)(3), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is administratively closed shall submit a new application and fee.
- E.** An applicant may withdraw an application for licensure under the terms specified in A.R.S. § 32-3275(D).
- F.** After the substantive review of an application is complete:
1. If the applicant is found ineligible for licensure, a recommendation shall be made to the Board that the applicant be denied licensure;
  2. If the applicant is found eligible for licensure, a recommendation shall be made to the Board that the applicant be granted licensure;
- G.** After reviewing the recommendation made under subsection (F), the Board shall send a written notice to an applicant that either:
1. Grants a license to an applicant who meets the qualifications and requirements in A.R.S. Title 32, Chapter 33 and this Chapter; or
  2. Denies a license to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 32, Chapter 33 and this Chapter. The Board shall ensure that the written notice of denial includes the information required under A.R.S. § 41-1092.03.
- H.** If a time frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time frame's last day.

**Table 1. Time Frames (in Days)**

Type of License	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
License by Examination	A.R.S. § 32-3253 A.R.S. § 32-3275	270	90	180
Temporary License	A.R.S. § 32-3253 A.R.S. § 32-3279	90	30	60
License by Endorsement	A.R.S. § 32-3253 A.R.S. § 32-3274	270	90	180
License Renewal	A.R.S. § 32-3253 A.R.S. § 32-3273	270	90	180

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-303. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-304. Application for a License by Endorsement**

An applicant who meets the requirements specified under A.R.S. § 32-3274 for a license by endorsement shall submit a completed application packet, as prescribed in R4-6-301, and the following:

1. The name of one or more other states where the applicant was certified or licensed as a behavioral health professional by a state regulatory entity for at least three years;
2. A verification of each certificate or license identified in subsection (1) by the state regulatory entity issuing the certificate or license that includes the following:
  - a. The certificate or license number issued to the applicant by the state regulatory entity;
  - b. The issue and expiration date of the certificate or license;
  - c. Whether the applicant has been the subject of disciplinary proceedings by a state regulatory entity including whether there are any unresolved complaints pending against the applicant; and

- d. Whether the certificate or license is active and in good standing;
3. An affidavit verifying the work experience required under A.R.S. § 32-3274(A)(3) from an individual whose objective assessment is not limited by a relationship with the applicant; and
4. If applying at a practice level listed in A.R.S. § 32-3274(B), include:
  - a. An official transcript as prescribed in R4-6-301(6); and
  - b. If applicable, a foreign degree evaluation prescribed in R4-6-216 or R4-6-401.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-305. Inactive Status**

- A.** A licensee seeking inactive status shall submit:

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1. A written request to the Board before expiration of the current license, and
2. The fee specified in R4-6-215 for inactive status request.
- B.** To be placed on inactive status after license expiration, a licensee shall, within three months after the date of license expiration, comply with subsection (A) and submit the fee specified in R4-6-215 for late request for inactive status.
- C.** The Board shall grant a request for inactive status to a licensee upon receiving a written request for inactive status. The Board shall grant inactive status for a maximum of 24 months.
- D.** The Board shall not grant a request for inactive status that is received more than three months after license expiration.
- E.** Inactive status does not change:
  1. The date on which the license of the inactive licensee expires, and
  2. The Board's ability to start or continue an investigation against the inactive licensee.
- F.** To return to active status, a licensee on inactive status shall:
  1. Comply with all renewal requirements prescribed under R4-6-801; and
  2. Establish to the Board's satisfaction that the licensee is competent to practice safely and competently. To assist with determining the licensee's competence, the Board may order a mental or physical evaluation of the licensee at the licensee's expense.
- G.** Upon a showing of good cause, the Board shall grant a written request for modification or reduction of the continuing education requirement received from a licensee on inactive status. The Board shall consider the following to show good cause:
  1. Illness or disability,
  2. Active military service, or
  3. Any other circumstance beyond the control of the licensee.
- H.** The Board may, upon a written request filed before the expiration of the original 24 months of inactive status and for good cause, as described in subsection (G), permit an inactive licensee to remain on inactive status for one additional period not to exceed 24 months. To return to active status after being placed on a 24-month extension of inactive status, a licensee shall, comply with the requirements in subsection (F) and complete an additional 30 hours of continuing education during the 24-month extension.
- I.** A licensee on inactive status shall not engage in the practice of behavioral health.
  - i. Within 12 months after obtaining a degree from the education program on which the applicant is relying to meet licensing requirements,
  - ii. Has completed all licensure requirements except passing the required examination, and
  - iii. Has not previously taken the required examination; or
  - c. Applying for a license by examination and currently licensed or certified by another state behavioral health regulatory entity.
- B.** An individual is not eligible for a temporary license if the individual:
  1. Is the subject of a complaint pending before any state behavioral health regulatory entity,
  2. Has had a license or certificate to practice a health care profession suspended or revoked by any state regulatory entity,
  3. Has a criminal history or history of disciplinary action by a state behavioral health regulatory entity unless the Board determines the history is not of sufficient seriousness to merit disciplinary action, or
  4. Has been previously denied a license by the Board.
- C.** A temporary license issued to an applicant expires one year after issuance by the Board.
- D.** A temporary license issued to an applicant who has not previously passed the required examination for licensure is revoked immediately if the temporary licensee:
  1. Fails to take the required examination by the expiration date of the temporary license; or
  2. Takes but fails the required examination.
- E.** A temporary licensee shall provide written notice and return the temporary license to the Board if the temporary licensee fails the required examination.
- F.** An applicant who is issued a temporary license shall practice as a behavioral health professional only under direct supervision. The temporary license may contain restrictions as to time, place, and supervision that the Board deems appropriate.
- G.** The Board shall issue a temporary license only in the same discipline for which application is made under subsection (A).
- H.** The Board shall not extend the time of a temporary license or grant an additional temporary license based on the application submitted under subsection (A).
- I.** A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3281. A temporary license may be summarily revoked without a hearing under A.R.S. § 32-3279(C)(4).
- J.** If the Board denies a license by examination or endorsement to a temporary licensee, the temporary licensee shall return the temporary license to the Board within five days of receiving the Board's notice of the denial.
- K.** If a temporary licensee withdraws the license application submitted under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement, the temporary license expires.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 4516, effective December 2, 2008 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-306. Application for a Temporary License**

- A.** To be eligible for a temporary license, an applicant shall:
  1. Have applied under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement,
  2. Have submitted an application for a temporary license using a form approved by the Board and paid the fee required under R4-6-215, and
  3. Be one of the following:
    - a. Applying for a license by endorsement;
    - b. Applying for a license by examination, not currently licensed or certified by a state behavioral health regulatory entity, and;

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-307. Approval of an Educational Program**

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- A. To obtain the Board's approval of an educational program, an authorized representative of the regionally accredited college or university shall submit:
  - 1. An application, using a form approved by the Board;
  - 2. The fee prescribed under R4-6-215; and
  - 3. Documentary evidence that the educational program is consistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.
- B. The Board shall review the application materials for administrative completeness and determine whether additional information is necessary.
  - 1. If the application packet is incomplete, the Board shall send a written deficiency notice to the applicant specifying the missing or incomplete information. The applicant shall provide the additional information within 60 days after the deficiency notice is served.
  - 2. The applicant may obtain a 60-day extension of time to provide the deficient information by submitting a written request to the Board before expiration of the time specified in subsection (B)(1).
  - 3. If an applicant fails to provide the deficient information within the time specified in the written notice or as extended under subsection (B)(2), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for approval of an educational program, an applicant whose file is administratively closed shall comply with subsection (A).
- C. When an application for approval of an educational program is administratively complete, the ARC shall substantively review the application packet.
  - 1. If the ARC finds that additional information is needed, the ARC shall provide a written comprehensive request for additional information to the applicant.
  - 2. The applicant shall provide the additional information within 60 days after the comprehensive request of additional information is served.
  - 3. If an applicant fails to provide the additional information within the time specified under subsection (C)(2), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for approval of an educational program, an applicant whose file is administratively closed shall comply with subsection (A).
- D. After the ARC determines the substantive review is complete:
  - 1. If the ARC finds the applicant's educational program is eligible for approval, the ARC shall recommend to the Board that the educational program be approved.
  - 2. If the ARC finds the applicant's educational program is ineligible for approval, the ARC shall send written notice to the applicant of the finding of ineligibility with an explanation of the basis for the finding. An applicant may appeal a finding of ineligibility for educational program approval using the following procedure:
    - a. Submit to the ARC a written request for an informal review meeting within 30 days after the notice of ineligibility is served. If the applicant does not request an informal review meeting within the time provided, the ARC shall recommend to the Board that the educational program be denied approval and the applicant's file be closed with no recourse to appeal.
    - b. If the ARC receives a written request for an informal review meeting within the 30 days provided, the ARC shall schedule the informal review meeting and provide at least 30 days' notice of the informal review meeting to the applicant.
    - c. At the informal review meeting, the ARC shall provide the applicant an opportunity to present additional information regarding the curriculum of the educational program.
    - d. When the informal review is complete, the ARC shall make a second finding whether the educational program is eligible for approval and send written notice of the second finding to the applicant.
    - e. An applicant that receives a second notice of ineligibility under subsection (D)(2)(d), may appeal the finding by submitting to the Board, within 30 days after the second notice is served, a written request for a formal administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
    - f. The Board shall either refer a request for a formal administrative hearing to the Office of Administrative Hearings or schedule the hearing before the Board. If no request for a formal administrative hearing is made under subsection (D)(2)(e), the ARC shall recommend to the Board that the educational program be denied approval and the applicant's file be closed with no recourse to appeal.
    - g. If a formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation of the Administrative Law Judge and issue an order either granting or denying approval of the educational program.
    - h. If a formal administrative hearing is held before the Board, the Board shall issue findings of fact and conclusions of law and issue an order either granting or denying approval of the educational program.
    - i. The Board shall send the applicant a copy of the findings of fact, conclusions of law, and order.
- E. The Board shall add an approved educational program to the list of approved educational programs that the Board maintains.
- F. The Board's approval of an educational program is valid for five years unless the accredited college or university makes a change to the educational program that is inconsistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.
- G. An authorized representative of a regionally accredited college or university with a Board-approved educational program shall certify annually, using a form available from the Board, that there have been no changes to the approved educational program.
- H. If a regionally accredited college or university makes one of the following changes to an approved educational program, the regionally accredited college or university shall notify the Board within 60 days after making the change and request approval of the educational program change under subsection (I):
  - 1. Change to more than 25 percent of course competencies;
  - 2. Change to more than 25 percent of course learning objectives;
  - 3. Addition of a course in one of the core content areas specified in R4-6-501, R4-6-601, or R4-6-701; or
  - 4. Deletion of a course in one of the core content areas specified in R4-6-501, R4-6-601, or R4-6-701.
- I. To apply for approval of an educational program change, an authorized representative of the regionally accredited college or university shall submit:
  - 1. An approved educational program change form available from the Board;
  - 2. The fee prescribed under R4-6-215; and



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3. Documentary evidence that the change to the approved educational program is consistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.
- J. To maintain approved status of an educational program after five years, an authorized representative of the regionally accredited college or university shall make application under subsection (A).
- K. The Board shall process the materials submitted under subsections (I) and (J) using the procedure specified in subsections (B) through (D).
- L. Unless an educational program is currently approved by the Board under this Section, the regionally accredited college or university shall not represent that the educational program is Board approved in any program or marketing materials.

**Historical Note**

New Section made by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Section repealed; new Section by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**ARTICLE 4. SOCIAL WORK****R4-6-401. Curriculum**

- A. An applicant for licensure as a baccalaureate social worker shall have a baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the CSWE or an equivalent foreign degree as determined by the Foreign Equivalency Determination Service of the CSWE.
- B. An applicant for licensure as a master or clinical social worker shall have a master or higher degree in social work from a regionally accredited college or university in a program accredited by the CSWE or an equivalent foreign degree as determined by the Foreign Equivalency Determination Service of the CSWE.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-402. Examination**

- A. To be licensed as a baccalaureate social worker, an applicant shall receive a passing score on the bachelors, masters, advanced generalist, or clinical examination offered by ASWB.
- B. To be licensed as a master social worker, an applicant shall receive a passing score on the masters, advanced generalist, or clinical examination offered by ASWB.
- C. Except as specified in subsection (G)(2), to be licensed as a clinical social worker, an applicant shall receive a passing score on the clinical examination offered by ASWB.
- D. An applicant for baccalaureate, master, or clinical social worker licensure shall receive a passing score on an approved examination for the level of licensure requested within 12 months after receiving written examination authorization from the Board. An applicant shall not take an approved licensure examination more than twice during the 12-month testing period.
- E. If an applicant does not receive a passing score on an approved licensure examination within the 12 months referenced in subsection (D), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.

sure, an applicant whose file is closed shall submit a new application and fee.

- F. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).
- G. To be licensed by endorsement as a clinical social worker, an applicant shall receive a passing score on:
  1. The clinical examination offered by ASWB; or
  2. The advanced generalist examination offered by ASWB if the applicant:
    - a. Was licensed as a clinical social worker before July 1, 2004;
    - b. Met the examination requirement of the state being used to qualify for licensure by endorsement; and
    - c. Has been licensed continuously at the same level since passing the examination.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure**

- A. An applicant for clinical social worker licensure shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of clinical social work in no less than 24 months. Supervised work experience in the practice of clinical social work shall include:
  1. At least 1600 hours of direct client contact involving the use of psychotherapy;
  2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation;
  3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-404; and
  4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.
- B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.
- C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.
- D. During the period of required supervised work experience specified in subsection (A), an applicant for clinical social worker licensure shall practice behavioral health under the limitations specified in R4-6-210.
- E. There is no supervised work experience requirement for licensure as a baccalaureate or master social worker.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-404. Clinical Supervision for Clinical Social Worker Licensure**

- A. An applicant for clinical social worker licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection

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(B) and R4-6-212 during the supervised work experience required under R4-6-403.

- B.** The Board shall accept hours of clinical supervision for clinical social worker licensure if the hours required under subsection (A) meet the following:
1. At least 50 hours are supervised by a clinical social worker licensed by the Board, and
  2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
  3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.
- C.** The Board shall not accept hours of clinical supervision for clinical social worker licensure provided by a substance abuse counselor.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-405. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**ARTICLE 5. COUNSELING****R4-6-501. Curriculum**

- A.** An applicant for licensure as an associate or professional counselor shall have a master's or higher degree with a major emphasis in counseling from:
1. A program accredited by CACREP or CORE that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E);
  2. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E); or
  3. A program from a regionally accredited college or university that consists of at least 60 semester or 90 quarter credit hours, meets the requirements specified in subsections (C) and (D), and includes a supervised counseling practicum as prescribed under subsection (E).
- B.** To assist the Board to evaluate a program under subsection (A)(3), an applicant who obtained a degree from a program under subsection (A)(3) shall attach the following to the application required under R4-6-301:
1. Published college or university course descriptions for the year and semester enrolled for each course submitted to meet curriculum requirements,
  2. Verification, using a form approved by the Board, of completing the supervised counseling practicum required under subsection (E); and
  3. Other documentation requested by the Board.
- C.** The Board shall accept for licensure the curriculum from a program not accredited by CACREP or CORE if the curriculum includes at least 60 semester or 90 quarter credit hours in counseling-related coursework, of which at least three semester or 4 quarter credit hours are in each of the following eight core content areas:

1. Professional orientation and ethical practice: Studies that provide a broad understanding of professional counseling ethics and legal standards, including but not limited to:
    - a. Professional roles, functions, and relationships;
    - b. Professional credentialing;
    - c. Ethical standards of professional organizations; and
    - d. Application of ethical and legal considerations in counseling;
  2. Social and cultural diversity: Studies that provide a broad understanding of the cultural context of relationships, issues, and trends in a multicultural society, including but not limited to:
    - a. Theories of multicultural counseling, and
    - b. Multicultural competencies and strategies;
  3. Human growth and development: Studies that provide a broad understanding of the nature and needs of individuals at all developmental stages, including but not limited to:
    - a. Theories of individual and family development across the life-span, and
    - b. Theories of personality development;
  4. Career development: Studies that provide a broad understanding of career development and related life factors, including but not limited to:
    - a. Career development theories, and
    - b. Career decision processes;
  5. Helping relationship: Studies that provide a broad understanding of counseling processes, including but not limited to:
    - a. Counseling theories and models,
    - b. Essential interviewing and counseling skills, and
    - c. Therapeutic processes;
  6. Group work: Studies that provide a broad understanding of group development, dynamics, counseling theories, counseling methods and skills, and other group work approaches, including but not limited to:
    - a. Principles of group dynamics,
    - b. Group leadership styles and approaches, and
    - c. Theories and methods of group counseling;
  7. Assessment: Studies that provide a broad understanding of individual and group approaches to assessment and evaluation, including but not limited to:
    - a. Diagnostic process including differential diagnosis and use of diagnostic classification systems such as the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases,
    - b. Use of assessment for diagnostic and intervention planning purposes, and
    - c. Basic concepts of standardized and non-standardized testing; and
  8. Research and program evaluation: Studies that provide a broad understanding of recognized research methods and design and basic statistical analysis, including but not limited to:
    - a. Qualitative and quantitative research methods, and
    - b. Statistical methods used in conducting research and program evaluation.
- D.** In evaluating the curriculum required under subsection (C), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The

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Board shall allow subject matter in a course to qualify in only one core content area.

- E. The Board shall accept a supervised counseling practicum that is part of a master's or higher degree program if the supervised counseling practicum meets the following standards:
  1. Consists of at least 700 clock hours in a professional counseling setting,
  2. Includes at least 240 hours of direct client contact,
  3. Provides an opportunity for the supervisee to perform all activities associated with employment as a professional counselor,
  4. Oversight of the counseling practicum is provided by a faculty member, and
  5. Onsite supervision is provided by an individual approved by the college or university.
- F. The Board shall require that an applicant for professional counselor licensure who received a master's or higher degree before July 1, 1989, from a program that did not include a supervised counseling practicum complete three years of post-master's or higher degree work experience in counseling under direct supervision. One year of a doctoral-clinical internship may be substituted for one year of supervised work experience.
- G. The Board shall accept for licensure only courses that the applicant completed with a passing grade.
- H. The Board shall deem that an applicant who holds an active associate counselor license issued by the Board and in good standing meets the curriculum requirements for professional counselor licensure.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-502. Examination**

- A. The Board approves the following examinations for applicants for counselor licensure:
  1. National Counselor Examination for Licensure and Certification offered by the National Board for Certified Counselors,
  2. National Clinical Mental Health Counseling Examination offered by the National Board for Certified Counselors, and
  3. Certified Rehabilitation Counselor Examination offered by the Commission on Rehabilitation Counselor Certification.
- B. An applicant for counselor licensure shall receive a passing score on an approved licensure examination.
- C. An applicant shall pass an approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take an examination more than twice during the 12-month testing period.
- D. If an applicant does not receive a passing score as required under subsection (B) within the 12 months referenced in subsection (C), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- E. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R.

2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-503. Supervised Work Experience for Professional Counselor Licensure**

- A. An applicant for professional counselor licensure shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of professional counseling in no less than 24 months. The applicant shall ensure that the supervised work experience includes:
  1. At least 1600 hours of direct client contact involving the use of psychotherapy;
  2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation;
  3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-504; and
  4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.
- B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.
- C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.
- D. During the period of supervised work experience specified in subsection (A), an applicant for professional counselor licensure shall practice behavioral health under the limitations specified in R4-6-210.
- E. There is no supervised work experience requirement for licensure as an associate counselor.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-504. Clinical Supervision for Professional Counselor Licensure**

- A. An applicant for professional counselor licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-503.
- B. The Board shall accept hours of clinical supervision for professional counselor licensure if:
  1. At least 50 hours are supervised by a professional counselor licensed by the Board, and
  2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
  3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.
- C. The Board shall not accept hours of clinical supervision provided by a substance abuse counselor for professional counselor licensure.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R.

2630, effective November 1, 2015 (Supp. 15-4).

#### **R4-6-505. Post-degree Programs**

An applicant who has a master's or higher degree with a major emphasis in counseling but does not meet all curriculum requirements specified in R4-6-501 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies as follows:

1. An applicant whose degree did not consist of 60 semester or 90 quarter credit hours may take graduate or higher level counseling-related courses to meet the curriculum requirement;
2. An applicant whose degree did not include the eight core content areas specified in R4-6-501(C) may take graduate or higher level courses to meet the core content requirement; and
3. An applicant whose practicum did not meet the requirements specified in R4-6-501(E) may obtain additional graduate level supervised practicum hours.

#### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed; new Section by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

### **ARTICLE 6. MARRIAGE AND FAMILY THERAPY**

#### **R4-6-601. Curriculum**

- A. An applicant for licensure as an associate marriage and family therapist or a marriage and family therapist shall have a master's or higher degree from a regionally accredited college or university in a behavioral health science program that:
  1. Is accredited by COAMFTE;
  2. Was previously approved by the Board under A.R.S. § 32-3253(A)(14); or
  3. Includes at least three semester or four quarter credit hours in each of the number of courses specified in the six core content areas listed in subsection (B).
- B. A program under subsection (A)(3) shall include:
  1. Marriage and family studies: Three courses from a family systems theory orientation that collectively contain at minimum the following elements:
    - a. Introductory family systems theory;
    - b. Family development;
    - c. Family systems, including marital, sibling, and individual subsystems; and
    - d. Gender and cultural issues;
  2. Marriage and family therapy: Three courses that collectively contain at minimum the following elements:
    - a. Advanced family systems theory and interventions;
    - b. Major systemic marriage and family therapy treatment approaches;
    - c. Communications; and
    - d. Sex therapy;
  3. Human development: Three courses that may integrate family systems theory that collectively contain at minimum the following elements:
    - a. Normal and abnormal human development;
    - b. Human sexuality; and
    - c. Psychopathology and abnormal behavior;
  4. Professional studies: One course including at minimum:
    - a. Professional ethics as a therapist, including legal and ethical responsibilities and liabilities; and
    - b. Family law;
  5. Research: One course in research design, methodology, and statistics in behavioral health science; and

6. Supervised practicum: Two courses that supplement the practical experience gained under subsection (D).

- C. In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- D. A program's supervised practicum shall meet the following standards:
  1. Provides an opportunity for the enrolled student to provide marriage and family therapy services to individuals, couples, and families in an educational or professional setting under the direction of a faculty member or supervisor designated by the college or university;
  2. Includes at least 300 client-contact hours provided under direct supervision;
  3. Has supervision provided by a designated licensed marriage and family therapist.
- E. An applicant may submit a written request to the ARC for an exemption from the requirement specified in subsection (D)(3). The request shall include the name of the behavioral health professional proposed by the applicant to act as supervisor of the practicum, a copy of the proposed supervisor's transcript and curriculum vitae, and any additional documentation requested by the ARC. The ARC shall grant the exemption if the ARC determines the proposed supervisor is qualified by education, experience, and training to provide supervision.
- F. The Board shall deem an applicant who holds an active associate marriage and family therapist license issued by the Board and in good standing meets the curriculum requirements for marriage and family therapist licensure.

#### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

#### **R4-6-602. Examination**

- A. The Board approves the marriage and family therapy licensure examination offered by the Association of Marital and Family Therapy Regulatory Boards.
- B. An applicant for associate marriage and family therapist or marriage and family therapist licensure shall receive a passing score on the approved licensure examination.
- C. An applicant shall pass the approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take the examination more than twice during the 12-month testing period.
- D. If an applicant does not receive a passing score as required under subsection (B) within the 12 months referenced in subsection (C), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- E. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

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**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt emergency rulemaking at 21 A.A.R. 521, with Attorney General approval effective March 18, 2015 (Supp. 15-1). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure**

- A. An applicant for licensure as a marriage and family therapist shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of marriage and family therapy in no less than 24 months. The applicant shall ensure that the supervised work experience includes:
- At least 1600 hours of direct client contact involving the use of psychotherapy:
    - At least 1000 of the 1600 hours of direct client contact are with couples or families; and
    - No more than 400 of the 1600 hours of direct client contact are in psychoeducation and at least 60 percent of psychoeducation hours are with couples or families;
  - At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-604; and
  - For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.
- B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.
- C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.
- D. During the period of supervised work experience specified in subsection (A), an applicant for marriage and family therapist licensure shall practice behavioral health under the limitations specified in R4-6-210.
- E. There is no supervised work experience requirement for licensure as an associate marriage and family therapist.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure**

- A. An applicant for marriage and family therapy licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meets the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-603.
- B. The Board shall accept hours of clinical supervision for marriage and family therapist licensure if:
- The hours are supervised by an individual who meets the educational requirements under R4-6-214;
  - At least 75 of the hours are supervised by a marriage and family therapist licensed by the Board, and
  - The remaining hours are supervised by one or more of the following:
    - A professional counselor licensed by the Board;

- A clinical social worker licensed by the Board;
  - A marriage and family therapist licensed by the Board; or
  - A psychologist licensed under A.R.S. Title 32, Chapter 19.1; or
4. The hours are supervised by an individual for whom an exemption is obtained under R4-6-212.01.
- C. The Board shall not accept hours of clinical supervision provided by a substance abuse counselor for marriage and family therapy licensure.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 1386, effective June 4, 2006 (Supp. 06-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-605. Post-degree Programs**

An applicant who has a master's or higher degree in a behavioral health science but does not meet all curriculum requirements specified in R4-6-601 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies if:

- The deficiencies constitute no more than 12 semester or 16 quarter credit hours; and
- Courses taken to remove the deficiencies are at a graduate or higher level.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-606. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**ARTICLE 7. SUBSTANCE ABUSE COUNSELING****R4-6-701. Licensed Substance Abuse Technician Curriculum**

- A. An applicant for licensure as a substance abuse technician shall have:
- An associate's or bachelor's degree from a regionally accredited college or university in a program accredited by NASAC;
  - An associate's or bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14); or
  - An associate's or bachelor's degree from a regionally accredited college or university in a behavioral health science program that includes coursework from the seven core content areas listed in subsection (B).
- B. An associate's or bachelor's degree under subsection (A)(3), shall include at least three semester or four quarter credit hours in each of the following core content areas:
- Psychopharmacology, including but limited to:
    - Nature of psychoactive chemicals;

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- b. Behavioral, psychological, physiological, and social effects of psychoactive substance use;
    - c. Symptoms of intoxication, withdrawal, and toxicity;
    - d. Toxicity screen options, limitations, and legal implications; and
    - e. Use of pharmacotherapy for treatment of addiction;
  - 2. Models of treatment and relapse prevention: Including but not limited to philosophies and practices of generally accepted and scientifically supported models of:
    - a. Treatment,
    - b. Recovery,
    - c. Relapse prevention, and
    - d. Continuing care for addiction and other substance use related problems;
  - 3. Group work: Group dynamics and processes as they relate to addictions and substance use disorders;
  - 4. Institute no more than six semester credit hours. Working with diverse populations: Issues and trends in a multicultural and diverse society as they relate to substance use disorder and addiction;
  - 5. Co-occurring disorders, including but not limited to:
    - a. Symptoms of mental health and other disorders prevalent in individuals with substance use disorders or addictions;
    - b. Screening and assessment tools used to detect and evaluate the presence and severity of co-occurring disorders; and
    - c. Evidence-based strategies for managing risks associated with treating individuals who have co-occurring disorders;
  - 6. Ethics, including but not limited to:
    - a. Legal and ethical responsibilities and liabilities;
    - b. Standards of professional behavior and scope of practice;
    - c. Client rights, responsibilities, and informed consent; and
    - d. Confidentiality and other legal considerations in the practice of behavioral health; and
  - 7. Assessment, diagnosis, and treatment. Use of assessment and diagnosis to develop appropriate treatment interventions for substance use disorders or addictions.
- C.** The Board shall waive the education requirement in subsection (A) for an applicant requesting licensure as a substance abuse technician if the applicant demonstrates all of the following:
- 1. The applicant provides services under a contract or grant with the federal government under the authority of 25 U.S.C. § 450 – 450(n) or § 1601 – 1683;
  - 2. The applicant has obtained at least the equivalent of a high school diploma;
  - 3. Because of cultural considerations, obtaining the degree required under subsection (A) would be an extreme hardship for the applicant; and
  - 4. The applicant has completed at least 6400 hours of supervised work experience in substance abuse counseling, as prescribed in R4-6-705(C), in no less than 48 months within the seven years immediately preceding the date of application.
- D.** In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- E.** An applicant for licensure as a substance abuse technician who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by exempt rulemaking at 14 A.A.R. 4532, effective January 1, 2009 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum**

- A.** An applicant for licensure as an associate substance abuse counselor shall have one of the following:
- 1. A bachelor's degree from a regionally accredited college or university in a program accredited by NASAC and supervised work experience that meets the standards specified in R4-6-705(A);
  - 2. A master's or higher degree from a regionally accredited college or university in a program accredited by NASAC;
  - 3. A bachelor's degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and supervised work experience that meets the standards specified in R4-6-705(A);
  - 4. A master's or higher degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (C); or
  - 5. A bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and supervised work experience that meets the standards specified in R4-6-705(A); or
  - 6. A master's or higher degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and includes at least 300 hours of supervised practicum as prescribed under subsection (C).
- B.** In evaluating the curriculum required under subsection (A)(3) or (4), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- C.** Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.

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- D. The Board shall deem an applicant to meet the curriculum requirements for associate substance abuse counselor licensure if the applicant:
1. Holds an active and in good standing substance abuse technician license issued by the Board; and
  2. Met the curriculum requirements with a bachelor's degree when the substance abuse technician license was issued.
- E. An applicant for licensure as an associate substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum**

- A. An applicant for licensure as an independent substance abuse counselor shall have a master's or higher degree from a regionally accredited college or university in one of the following:
1. A program accredited by NASAC;
  2. A behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (D); or
  3. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that includes at least 300 hours of supervised practicum as prescribed under subsection (D).
- B. In addition to the degree requirement under subsection (A), an applicant for licensure as an independent substance abuse counselor shall complete the supervised work experience requirements prescribed under R4-6-705(B).
- C. In evaluating the curriculum required under subsection (A)(2), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- D. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.
- E. The Board shall deem an applicant to meet the curriculum requirements for independent substance abuse counselor licensure if the applicant:
1. Holds an active and in good standing associate substance abuse counselor license issued by the Board; and

2. Met the curriculum requirements with a master's degree when the associate substance abuse counselor license was issued.

- F. An applicant for licensure as an independent substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-704. Examination**

- A. The Board approves the following licensure examinations for an applicant for substance abuse technician licensure:
1. Alcohol and Drug Counselor and Advanced Alcohol and Drug Counselor Examinations offered by the International Certification and Reciprocity Consortium, and
  2. Level I or higher examinations offered by the NAADAC, the Association of Addiction Professionals.
- B. The Board approves the following licensure examinations for an applicant for associate or independent substance abuse counselor licensure:
1. Advanced Alcohol and Drug Counselor Examination offered by the International Certification and Reciprocity Consortium,
  2. Level II or higher examinations offered by the NAADAC, the Association of Addiction Professionals, and
  3. Examination for Master Addictions Counselors offered by the National Board for Certified Counselors.
- C. For an applicant for associate or independent substance abuse counselor licensure who received written examination authorization from the Board before the effective date of this Section, the Board shall accept an examination listed in subsection (A) through expiration of the written examination authorization provided by the Board.
- D. The Board shall deem an applicant for independent substance abuse counselor licensure as meeting the examination requirements if all of the following apply:
1. The applicant has an active associate substance abuse counselor license;
  2. The applicant passed a written examination listed in subsection (A) before November 1, 2015; and
  3. The applicant submitted an application to the Board on or after November 1, 2015.
- E. An applicant shall pass an approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take an approved examination more than twice during the 12-month testing period.
- F. If an applicant does not receive a passing score on an approved licensure examination within the 12 months referenced in subsection (D), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- G. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure**

- A.** An applicant for associate substance abuse counselor licensure who has a bachelor's degree and is required under R4-6-702(A) to participate in a supervised work experience shall complete at least 3200 hours of supervised work experience in substance abuse counseling in no less than 24 months. The applicant shall ensure that the supervised work experience relates to substance use disorder and addiction and meets the following standards:
1. At least 1600 hours of direct client contact involving the use of psychotherapy related to substance use disorder and addiction issues,
  2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation,
  3. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services,
  4. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706, and
  5. At least one hour of clinical supervision in any month in which the applicant provides direct client contact.
- B.** An applicant for independent substance abuse counselor licensure shall demonstrate completion of at least 3200 hours of supervised work experience in substance abuse counseling in no less than 24 months. The applicant shall ensure that the supervised work experience meets the standards specified in subsection (A).
- C.** An applicant for substance abuse technician qualifying under R4-6-701(C) shall complete at least 6400 hours of supervised work experience in no less than 48 months. The applicant shall ensure that the supervised work experience includes:
1. At least 3200 hours of direct client contact;
  2. Using psychotherapy to assess, diagnose, and treat individuals, couples, families, and groups for issues relating to substance use disorder and addiction; and
  3. At least 200 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706.
- D.** An applicant may submit more than the required number of hours of supervised work experience for consideration by the Board.
- E.** During the period of required supervised work experience, an applicant for substance abuse licensure shall practice behavioral health under the limitations specified in R4-6-210.
- F.** There is no supervised work experience requirement for an applicant for licensure as:
1. A substance abuse technician qualifying under R4-6-701(A), or
  2. An associate substance abuse counselor qualifying under R4-6-702(A) with a master's or higher degree.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws

2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure**

- A.** During the supervised work experience required under R4-6-705, an applicant for substance abuse counselor licensure shall demonstrate that the applicant received, for the level of licensure sought, at least the number of hours of clinical supervision specified in R4-6-705 that meets the requirements in subsection (B) and R4-6-212.
- B.** The Board shall accept hours of clinical supervision for substance abuse licensure if the focus of the supervised hours relates to substance use disorder and addiction and:
1. At least 50 hours are supervised by an independent substance abuse counselor licensed by the Board, and
  2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
  3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-707. Post-degree Programs**

An applicant who has a behavioral health science degree from a regionally accredited college or university but does not meet all curriculum requirements specified in R4-6-701, R4-6-702, or R4-6-703 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies. The Board shall accept a post-graduate course from a regionally accredited college or university to remove a curriculum deficiency if the course meets the following requirement, as applicable:

1. For an applicant who has an associate's or bachelor's degree, an undergraduate or higher level course; or
2. For an applicant who has a master's degree, a graduate or higher level course.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed; new Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION****R4-6-801. Renewal of Licensure**

- A.** Under A.R.S. § 32-3273, a license issued by the Board under A.R.S. Title 32, Chapter 33 and this Chapter is renewable every two years. A licensee who has more than one license may request in writing that the Board synchronize the expiration dates of the licenses. The licensee shall pay any prorated fees required to accomplish the synchronization.
- B.** A licensee holding an active license to practice behavioral health in this state shall complete 30 clock hours of continuing education as prescribed under R4-6-802 between the date the Board received the licensee's last renewal application and the next license expiration date. A licensee may not carry excess continuing education hours from one license period to the next.



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- C. To renew licensure, a licensee shall submit the following to the Board on or before the date of license expiration or as specified in A.R.S. § 32-4301:
1. A renewal application form, approved by the Board. The licensee shall ensure that the renewal form:
    - a. Includes a list of 30 clock hours of continuing education that the licensee completed during the license period;
    - b. If the documentation previously submitted under R4-6-301(12) was a limited form of work authorization issued by the federal government, includes evidence that the work authorization has not expired; and
    - c. Is signed by the licensee attesting that all information submitted is true and correct;
  2. Payment of the renewal fee as prescribed in R4-6-215; and
  3. Other documents requested by the Board to determine that the licensee continues to meet the requirements under A.R.S. Title 32, Chapter 33 and this Chapter.
- D. The Board may audit a licensee to verify compliance with the continuing education requirements under subsection (B). A licensee shall maintain documentation verifying compliance with the continuing education requirements as prescribed under R4-6-803.
- E. A licensee whose license expires may have the license reinstated by complying with subsection (C) and paying a late renewal penalty within 90 days of the license expiration date. A license reinstated under this subsection is effective with no lapse in licensure.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 4516, effective December 2, 2008 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-802. Continuing Education**

- A. A licensee who maintains more than one license may apply the same continuing education hours for renewal of each license if the content of the continuing education relates to the scope of practice of each license.
- B. For each license period, a licensee may report a maximum of:
1. Ten clock hours of continuing education for first-time presentations by the licensee that deal with current developments, skills, procedures, or treatments related to the practice of behavioral health. The licensee may claim one clock hour for each hour spent preparing, writing, and presenting information;
  2. Six clock hours of continuing education for attendance at a Board meeting where the licensee is not:
    - a. A member of the Board,
    - b. The subject of any matter on the agenda, or
    - c. The complainant in any matter that is on the agenda; and
  3. Ten clock hours of continuing education for service as a Board or ARC member.
- C. For each license period, a licensee shall report:
1. A minimum of three clock hours of continuing education sponsored, approved, or offered by an entity listed in subsection (D) in:
    - a. Behavioral health ethics or mental health law, and
    - b. Cultural competency and diversity; and
  2. Beginning January 1, 2018, in addition to the requirement under subsection (C)(1), complete a three clock hour Board-approved tutorial on Board statutes and rules.
- D. A licensee shall participate in continuing education that relates to the scope of practice of the license held and to maintaining or improving the skill and competency of the licensee. The Board has determined that in addition to the continuing education listed in subsections (B) and (C), the following continuing education meets this standard:
1. Activities sponsored or approved by national, regional, or state professional associations or organizations in the specialties of marriage and family therapy, professional counseling, social work, substance abuse counseling, or in the allied professions of psychiatry, psychiatric nursing, psychology, or pastoral counseling;
  2. Programs in behavioral health sponsored or approved by a regionally accredited college or university;
  3. In-service training, courses, or workshops in behavioral health sponsored by federal, state, or local social service agencies, public school systems, or licensed health facilities or hospitals;
  4. Graduate or undergraduate courses in behavioral health offered by a regionally accredited college or university. One semester-credit hour or the hour equivalent of one semester hour equals 15 clock hours of continuing education;
  5. Publishing a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of behavioral health. For the license period in which publication occurs, the licensee may claim one clock hour for each hour spent preparing and writing materials; and
  6. Programs in behavioral health sponsored by a state superior court, adult probation department, or juvenile probation department.
- E. The Board has determined that a substance abuse technician, associate substance abuse counselor, or an independent substance abuse counselor shall ensure that at least 20 of the 30 clock hours of continuing education required under R4-6-801(B) are in the following categories:
1. Pharmacology and psychopharmacology,
  2. Addiction processes,
  3. Models of substance use disorder and addiction treatment,
  4. Relapse prevention,
  5. Interdisciplinary approaches and teams in substance use disorder and addiction treatment,
  6. Substance use disorder and addiction assessment and diagnostic criteria,
  7. Appropriate use of substance use disorder and addiction treatment modalities,
  8. Substance use disorder and addiction as it related to diverse populations,
  9. Substance use disorder and addiction treatment and prevention,
  10. Clinical application of current substance use disorder and addiction research, or
  11. Co-occurring disorders.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws

2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

#### **R4-6-803. Continuing Education Documentation**

- A.** A licensee shall maintain documentation of continuing education for 24 months following the date of the license renewal.
- B.** The licensee shall retain the following documentation as evidence of participation in continuing education:
  1. For conferences, seminars, workshops, and in-service training presentations, a signed certificate of attendance or a statement from the provider verifying the licensee's participation in the activity, including the title of the program, name, address, and telephone number of the sponsoring organization, names of presenters, date of the program, and clock hours involved;
  2. For first-time presentations by a licensee, the title of the program, name, address, and telephone number of the sponsoring organization, date of the program, syllabus, and clock hours required to prepare and make the presentation;
  3. For a graduate or undergraduate course, an official transcript;
  4. For an audited graduate or undergraduate course, an official transcript; and
  5. For attendance at a Board meeting, a signed certificate of attendance prepared by the Board.

#### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

#### **R4-6-804. Repealed**

#### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

### **ARTICLE 9. APPEAL OF LICENSURE OR LICENSURE RENEWAL INELIGIBILITY**

#### **R4-6-901. Appeal Process for Licensure Ineligibility**

- A.** An applicant for licensure may be found ineligible because of unprofessional conduct or failure to meet licensure requirements.
- B.** If the ARC finds an applicant is ineligible because of failure to meet licensure requirements:
  1. The ARC shall send a written notice of the finding of ineligibility to the applicant with an explanation of the basis for the finding.
  2. An applicant who wishes to appeal the finding of ineligibility shall submit a written request for an informal review meeting to the ARC within 30 days after the notice of ineligibility is served. If an informal review meeting is not requested within the time provided, the ARC shall recommend to the Board that licensure be denied and the licensee's file be closed with no recourse to appeal.
  3. If a request for an informal review meeting is received within the 30 days provided under subsection (B)(2), the ARC shall schedule the informal review meeting and provide at least 30-days' notice to the applicant. At the informal review meeting, the ARC shall allow the applicant to

present additional information regarding the applicant's qualifications for licensure.

4. When the review is complete, the ARC shall make a second finding whether the applicant is eligible for licensure. The ARC shall send written notice of this second finding to the applicant with an explanation of the basis for the finding.
5. If the ARC again finds the applicant is ineligible for licensure, an applicant who wishes to appeal the second finding of ineligibility shall submit a written request to the Board for a formal administrative hearing under the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, within 30 days after the second notice of ineligibility is served. The Board shall either refer the request for a formal administrative hearing to the Office of Administrative Hearings or schedule the formal administrative hearing before the Board. If a formal administrative hearing is not requested within 30 days, the ARC shall recommend to the Board that licensure be denied and the applicant's file be closed with no recourse to appeal.
6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation and issue an order either to grant or deny licensure.
7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and shall issue an order either to grant or deny licensure.
8. The Board shall send the applicant a copy of the final findings of fact, conclusions of law, and order. An applicant who is denied licensure following a formal administrative hearing is required to exhaust the applicant's administrative remedies as described in R4-6-1002 before seeking judicial review of the Board's final administrative decision.
- C.** If the Board receives a complaint against an applicant while the applicant is under review for licensure, the Board shall review the complaint in accordance with the procedures in R4-6-1001. The Board shall not take final action on an application while a complaint is pending against the applicant.

#### **Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

#### **R4-6-902. Appeal Process for Licensure Renewal Ineligibility**

- A.** A licensee who applies for licensure renewal may be found ineligible because of failure to meet licensure renewal requirements.
- B.** If the Board finds an applicant for licensure renewal is ineligible because of failure to meet licensure renewal requirements:
  1. The Board shall send a written notice of the finding of ineligibility to the licensee with an explanation of the basis for the finding.
  2. A licensee who wishes to appeal the finding of ineligibility for licensure renewal shall submit a written request for an informal review meeting to the Board within 30 days after the notice of ineligibility is served. If an informal review meeting is not requested within the time provided, the Board shall deny licensure renewal and close the licensee's file with no recourse to appeal.

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3. If a request for an informal review meeting is received within the 30 days provided under subsection (B)(2), the Board shall schedule the informal review meeting and provide at least 30-days' notice to the licensee. At the informal review meeting, the Board shall allow the licensee to present additional information regarding the licensee's qualifications for renewal.
4. When the informal review meeting is complete, the Board shall make a second finding whether the licensee meets renewal requirements. The Board shall send written notice of this second finding to the licensee with an explanation of the basis for the finding.
5. If the Board again finds the licensee is ineligible for licensure renewal, a licensee who wishes to appeal the second finding of ineligibility shall submit a written request to the Board for a formal administrative hearing under the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, within 30 days after the second notice of ineligibility is served. The Board shall either refer the request for a formal administrative hearing to the Office of Administrative Hearings or schedule the formal administrative hearing before the Board. If a formal administrative hearing is not requested within 30 days, the Board shall deny licensure renewal and close the licensee's file with no recourse to appeal.
6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation and issue an order either to grant or deny licensure renewal.
7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and issue an order either to grant or deny licensure renewal.
8. The Board shall send the licensee a copy of the final findings of fact, conclusions of law, and order. A licensee who is denied licensure renewal following a formal administrative hearing is required to exhaust the licensee's administrative remedies as described in R4-6-1002 before seeking judicial review of the Board's final administrative decision.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**ARTICLE 10. DISCIPLINARY PROCESS****R4-6-1001. Disciplinary Process**

- A. If the Board receives a written complaint alleging a licensee is or may be incompetent, guilty of unprofessional practice, or mentally or physically unable to engage in the practice of behavioral health safely, the Board shall send written notice of the complaint to the licensee and require the licensee to submit a written response within 30 days from the date of service of the written notice of the complaint.
- B. The Board shall conduct all disciplinary proceedings according to A.R.S. §§ 32-3281 and 3282 and Title 41, Chapter 6, Article 10.
- C. As provided under A.R.S. § 32-3282(B), a licensee who is the subject of a complaint, or the licensee's designated representative, may review the complaint investigative file at the Board office at least five business days before the meeting at which the Board is scheduled to consider the complaint. The Board may redact confidential information before making the investigative file available to the licensee.
- D. If the Board determines that disciplinary action is appropriate, the Board shall consider factors including, but not limited to, the following when determining the appropriate discipline:
  1. Prior disciplinary offenses;
  2. Dishonest or self-serving motive;
  3. Pattern of misconduct; multiple offenses;
  4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
  5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
  6. Refusal to acknowledge wrongful nature of conduct; and
  7. Vulnerability of the victim.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-1002. Review or Rehearing of a Board Decision**

- A. The Board shall provide for a rehearing or review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies. A party that has exhausted the party's administrative remedies may apply for judicial review of the final order issued by the Board in accordance with A.R.S. § 12-901 et seq.
- C. When a motion for rehearing or review is based on affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- D. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- E. An aggrieved party may seek a review or rehearing of a Board decision by submitting a written request for a review or rehearing to the Board within 30 days after service of the decision. The request shall specify the grounds for a review or rehearing. The Board shall grant a request for a review or rehearing for any of the following reasons materially affecting the rights of an aggrieved party:
  1. Irregularity in the administrative proceedings or any abuse of discretion that deprived the aggrieved party of a fair hearing;
  2. Misconduct of the Board, its staff, an administrative law judge, or any party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the hearing;
  5. Excessive penalties;
  6. Decision, findings of fact, or conclusions not justified by the evidence or contrary to law; or
  7. Errors regarding the admission or rejection of evidence or errors of law that occurred at the hearing or during the progress of the proceedings.
- F. The Board may affirm or modify the decision or grant a rehearing to any party on all or part of the issues for any of the reasons listed in subsection (E). An order modifying a decision or granting a rehearing shall specify with particularity the

grounds for the order. The rehearing, if granted, shall be limited to the matters specified by the Board.

- G. No later than 30 days after a decision is rendered, the Board may order a rehearing or review on its own initiative, for any reason it might have granted relief on motion of a party.
- H. If the Board grants a request for rehearing, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public health, safety, or welfare, and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final order without an opportunity for a rehearing or review.

#### Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

### ARTICLE 11. STANDARDS OF PRACTICE

#### R4-6-1101. Consent for Treatment

A licensee shall:

1. Provide treatment to a client only in the context of a professional relationship based on informed consent for treatment;
2. Document in writing for each client the following elements of informed consent for treatment:
  - a. Purpose of treatment;
  - b. General procedures to be used in treatment, including benefits, limitations, and potential risks;
  - c. The client's right to have the client's records and all information regarding the client kept confidential and an explanation of the limitations on confidentiality;
  - d. Notification of the licensee's supervision or involvement with a treatment team of professionals;
  - e. Methods for the client to obtain information about the client's records;
  - f. The client's right to participate in treatment decisions and in the development and periodic review and revision of the client's treatment plan;
  - g. The client's right to refuse any recommended treatment or to withdraw consent to treatment and to be advised of the consequences of refusal or withdrawal; and
  - h. The client's right to be informed of all fees that the client is required to pay and the licensee's refund and collection policies and procedures; and
3. Obtain a dated and signed informed consent for treatment from a client or the client's legal representative before providing treatment to the client and when a change occurs in an element listed in subsection (2) that might affect the client's consent for treatment; and
4. Obtain a dated and signed informed consent for treatment from a client or the client's legal representative before audio or video taping the client or permitting a third party to observe treatment provided to the client.

#### Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1,

2015 (Supp. 15-4).

#### R4-6-1102. Treatment Plan

A licensee shall:

1. Work jointly with each client or the client's legal representative to prepare an integrated, individualized, written treatment plan, based on the licensee's provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of the client, that includes:
  - a. One or more treatment goals;
  - b. One or more treatment methods;
  - c. The date when the client's treatment plan will be reviewed;
  - d. If a discharge date has been determined, the after-care needed;
  - e. The dated signature of the client or the client's legal representative; and
  - f. The dated signature of the licensee;
2. Review and reassess the treatment plan:
  - a. According to the review date specified in the treatment plan as required under subsection (1)(c); and
  - b. At least annually with the client or the client's legal representative to ensure the continued viability and effectiveness of the treatment plan and, where appropriate, add a description of the services the client may need after terminating treatment with the licensee;
3. Ensure that all treatment plan revisions include the dated signature of the client or the client's legal representative and the licensee;
4. Upon written request, provide a client or the client's legal representative an explanation of all aspects of the client's condition and treatment; and
5. Ensure that a client's treatment is in accordance with the client's treatment plan.

#### Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

#### R4-6-1103. Client Record

A. A licensee shall ensure that a client record is maintained for each client and:

1. Is protected at all times from loss, damage, or alteration;
2. Is confidential;
3. Is legible and recorded in ink or electronically recorded;
4. Contains entries that are dated and include the printed name and signature or electronic signature of the individual making the entry;
5. Is current and accurate;
6. Contains original documents and original signature, initials, or authentication; and
7. Is disposed of in a manner that protects client confidentiality.

B. A licensee shall ensure that a client record contains the following, if applicable:

1. The client's name, address, and telephone number;
2. Information or records provided by or obtained from another person regarding the client;
3. Written authorization to release the client's record or information;
4. Progress notes;
5. Informed consent to treatment;
6. Contemporaneous documentation of:

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- a. Treatment plan and all revisions to the treatment plan;
- b. Requests for client records and resolution of the requests;
- c. Release of any information in the client record;
- d. Contact with the client or another individual that relates to the client's health, safety, welfare, or treatment; and
- e. Behavioral health services provided to the client;
- 7. Other information or documentation required by state or federal law.
- 8. Financial records, including:
  - a. Records of financial arrangements for the cost of providing behavioral health services;
  - b. Measures that will be taken for nonpayment of the cost of behavioral health services provided by the licensee.
- C. A licensee shall make client records in the licensee's possession promptly available to another health professional and the client or the client's legal representative in accordance with A.R.S. § 12-2293.
- D. A licensee shall make client records of a minor client in the licensee's possession promptly available to the minor client's parent in accordance with A.R.S. § 25-403.06.
- E. A licensee shall retain records in accordance with A.R.S. § 12-2297.
- F. A licensee shall ensure the safety and confidentiality of any client records the licensee creates, maintains, transfers, or destroys whether the records are written, taped, computerized, or stored in any other medium.
- G. A licensee shall ensure that a client's privacy and the confidentiality of information provided by the client is maintained by subordinates, including employees, supervisees, clerical assistants, and volunteers.
- H. A licensee shall ensure that each progress note includes the following:
  - 1. The date a behavioral health service was provided;
  - 2. The time spent providing the behavioral health service;
  - 3. If counseling services were provided, whether the counseling was individual, couples, family, or group; and
  - 4. The dated signature of the licensee who provided the behavioral health service.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-1104. Financial and Billing Records**

A licensee shall:

- 1. Make financial arrangements with a client or the client's legal representative, third-party payer, or supervisee that are reasonably understandable and conform to accepted billing practices;
- 2. Before entering a therapeutic relationship, clearly explain to a client or the client's legal representative, all financial arrangements related to professional services, including the use of collection agencies or legal measures for nonpayment;
- 3. Truthfully represent financial and billing facts to a client or the client's legal representative, third-party payer, or supervisee regarding services rendered; and
- 4. Maintain billing records, separate from clinical documentation, which correspond with the client record.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-1105. Confidentiality**

- A. A licensee shall release or disclose client records or any information regarding a client only:
  - 1. In accordance with applicable federal or state law that authorizes release or disclosure; or
  - 2. With written authorization from the client or the client's legal representative.
- B. A licensee shall ensure that written authorization for release of client records or any information regarding a client is obtained before a client record or any information regarding a client is released or disclosed unless otherwise allowed by state or federal law.
- C. Written authorization includes:
  - 1. The name of the person disclosing the client record or information;
  - 2. The purpose of the disclosure;
  - 3. The individual, agency, or entity requesting or receiving the record or information;
  - 4. A description of the client record or information to be released or disclosed;
  - 5. A statement indicating authorization and understanding that authorization may be revoked at any time;
  - 6. The date or circumstance when the authorization expires, not to exceed 12 months;
  - 7. The date the authorization was signed; and
  - 8. The dated signature of the client or the client's legal representative.
- D. A licensee shall ensure that any written authorization to release a client record or any information regarding a client is maintained in the client record.
- E. If a licensee provides behavioral health services to multiple members of a family, each legally competent, participating family member shall independently provide written authorization to release client records regarding the family member. Without authorization from a family member, the licensee shall not disclose the family member's client record or any information obtained from the family member.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-1106. Telepractice**

- A. Except as otherwise provided by statute, an individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice to a client located in Arizona shall be licensed by the Board.
- B. Except as otherwise provided by statute, a licensee who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice to a client located outside Arizona shall comply with not only A.R.S. Title 32, Chapter 33, and this Chapter but also the laws and rules of the jurisdiction in which the client is located.
- C. An individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice shall:

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1. In addition to complying with the requirements in R4-6-1101, document the limitations and risks associated with telepractice, including but not limited to the following:
  - a. Inherent confidentiality risks of electronic communication,
  - b. Potential for technology failure,
  - c. Emergency procedures when the licensee is unavailable, and
  - d. Manner of identifying the client when using electronic communication that does not involve video;
2. In addition to complying with the requirements in R4-6-1103, include the following in the progress note required under R4-6-1103(H):
  - a. Mode of session, whether interactive audio, video, or electronic communication; and
  - b. Physical location of the client during the session.

**Historical Note**

New Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 4. Professions and Occupations**

### **Chapter 10. Board of Cosmetology**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-10-108

REMOVE Supp. 15-4  
Pages: 1 - 18

REPLACE with Supp. 16-4  
Pages: 1 - 18

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 10. BOARD OF COSMETOLOGY**

(Authority: A.R.S. § 32-501 et seq.)

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R4-10-01 thru R4-10-19, repealed; Section R4-10-27 renumbered to R4-10-105; and Sections R4-10-101 thru R2-10-112 adopted effective April 9, 1996 (Supp. 96-2).*

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*Article 2, consisting of Sections R4-10-28 thru R4-10-32, repealed; Section R4-10-33 renumbered to R4-10-112; Section R4-10-34 repealed; and Sections R4-10-201 thru R4-10-R4-10-209 adopted effective April 9, 1996 (Supp. 96-2).*

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**ARTICLE 3. STUDENTS**

*Article 3, consisting of Sections R4-10-301 thru R4-10-306, adopted effective April 9, 1996 (Supp. 96-2).*

## Section

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*Article 4, consisting of Sections R4-10-401 thru R4-10-404, adopted effective April 9, 1996 (Supp. 96-2).*

## Section

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**ARTICLE 1. GENERAL PROVISIONS**

*Editor's Note: The Board of Cosmetology repealed or renumbered Sections with the old Administrative Code numbering scheme and adopted new Sections under the current numbering scheme (Supp. 96-2). The old and new Sections cannot be shown in numerical order because of the two Articles; therefore the old numbers are not shown here. Please refer to this Chapter as published in Revised Format 6-92 for historical note information on the old numbered Sections.*

**R4-10-101. Definitions**

In this Chapter unless otherwise specified:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Association of Colleges and Secondary Schools,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Association of Schools and Colleges,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all information and documents required by Board statute or rule for an application.
3. "Applicant" means an individual or any of the following seeking licensure by the Board:
  - a. If a corporation, any two officers of the corporation;
  - b. If a partnership, any two of the partners; or
  - c. If a limited liability company, the designated corporate contact person, or if no contact person is designated, any two members of the limited liability company.
4. "Application packet" means the forms and documents the Board requires an applicant to submit.
5. "Certification of hours" means a document that states the total number of hours completed at a school, including:
  - a. A written statement of the hours a student received in a licensed school, or credits a student received, signed by the administrator of the agency authorized to record hours in the jurisdiction in which the applicant received certified or accredited vocational or academic training, affixed with the agency's official seal; or
  - b. If a student is transferring from one Arizona school to another under A.R.S. § 32-560, a transfer application that reflects the hours or credits a student received, signed by the administrator of the school where the applicant received certified or accredited training.
6. "Certification of licensure" means the status of the license, signed by the administrator of the agency authorized to issue cosmetology, nail technician, aesthetics, or instructor licenses in the jurisdiction in which the applicant received a license, affixed with the agency's official seal.
7. "Clinic" means the area where a student practices cosmetology, nail technology, or aesthetics on the general public for a fee.
8. "Course" means an organized subject matter in which instruction is offered within a given period of time and for which credit toward graduation or certification is given.
9. "Credit" means one earned academic unit of study based on completing a high school's required number of class sessions per calendar week in a course or an earned academic unit of study based on attending a one-hour class session per calendar week at a community college, an accredited college or university, or a high school.
10. "Days" means calendar days.
11. "Double bracing" means using a stable base of support and two points of contact for the hand while performing a procedure.
12. "Establishment" means a business that functions as a school or a salon at least an average of 20 hours a week for the majority of the year.
13. "Graduation" or "graduated from a school" means the completion of the criteria established by a cosmetology, aesthetics, or nail technology school for the course in which the applicant was enrolled including the completion of the required curriculum hours.
14. "High school equivalency" means:
  - a. A high school diploma from a school recognized by the basic education authority or the Department of Education in the jurisdiction in which the school is located,
  - b. A total score of 45 points on a high school equivalency general educational development test or its equivalent as required by the Department of Education,
  - c. An associate degree or 15 academic credits from a junior college recognized by the basic education authority in the jurisdiction in which the college is located, or
  - d. Any degree from a college or university recognized by the basic education authority in the jurisdiction in which the college or university is located.
15. "Hour" means one clock hour.
16. "Instructor training" means the courses specified in R4-10-302.
17. "Lab" means the area in which instruction is provided regarding demonstration, theory, and practice on models.
18. "Licensed in another state of the United States or foreign country" means:
  - a. A governmental regulatory agency in the state or country is authorized to examine, for competency, candidates who graduate from a licensed cosmetology, nail technology, aesthetics school, or instructors for these disciplines; and
  - b. The agency issues licenses over which the state or country has jurisdiction and monitors.
19. "Manager" means an individual licensed by the Board who is responsible for ensuring an establishment's compliance with A.R.S. §§ 32-501 et seq. and this Chapter.
20. "Model" means a person or a mannequin on whom an applicant performs demonstrations for the practical section of a licensing examination or lab.
21. "Owner" means an individual or entity that has a controlling legal or equitable interest and authority and is responsible for ensuring an establishment's compliance with A.R.S. § 32-501 et seq. and this Chapter.
22. "Patron" means any client of an establishment or student of a school.
23. "Personal knowledge" means actual observation of an individual who practiced aesthetics, cosmetology, or nail technology in any state or country.
24. "Practice" means engaging in the profession of aesthetics, cosmetology, nail technology, or instructor.
25. "Reciprocity" means the procedure for granting an Arizona license to an applicant who received the required hours from a school licensed in another state of the United States or a foreign country or is currently licensed in another state of the United States or a foreign country.

## Board of Cosmetology

26. "Substantive review" means the Board's process for determining whether an applicant for licensure meets the requirements for the license for which application is made including, if applicable, taking and passing an examination given by the Board.
27. "Tenth grade equivalency" means:
- Ten high school credits, including two in English, from any school recognized by the basic education authority or the Department of Education in the jurisdiction in which the credits were obtained;
  - Proof that the prospective student is 23 years old. Satisfactory proof of the prospective student's age is shown by a government-issued driver's license or identification card, a birth certificate, or a passport; or
  - High school equivalency.
28. "Transfer application", as used in A.R.S. § 32-560, means an application that documents the transfer of a student from one Arizona cosmetology, nail technology, or aesthetics school to another and contains the student's name, address, identification number, telephone number, and number of hours of instruction received.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-102. Fees and Charges**

- A.** Under the specific authority provided by A.R.S. § 32-507(A) and subject to R4-10-103(E), the Board establishes and shall collect the following fees:
- Initial personal license: \$70.00
  - Personal licensing renewal fees: \$60.00
  - Delinquent personal license renewal: \$90.00 (\$60 for personal license renewal as specified under subsection (A)(4) plus \$30 for delinquent renewal) for every two years or portion of two years that the license is inactive to a maximum of four years
  - Personal reciprocity license: \$140.00
  - Salon initial license: \$110.00
  - Salon renewal: \$50.00
  - Salon delinquent renewal: \$80.00
  - School license: \$600.00
  - School renewal: \$500.00
  - Delinquent school renewal: \$600.00
- B.** An applicant for licensure by examination shall pay directly to the national professional organization with which the Board contracts the amount charged to administer and grade the written and practical examinations.
- C.** Under the specific authority provided by A.R.S. § 32-507(B) and subject to R4-10-103(E), the Board establishes and shall collect the following charges for the services provided:
- Board administered educational classes: \$25.00
  - Review of examination: \$50.00
  - Re-grading of examination: \$25.00
  - Certification of licensure or hours: \$30.00
  - For use of an alternative method of payment: \$3.00 per transaction
  - For copying public documents: 50¢ per page
  - For audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information: \$15 per tape, disc, or other medium
  - For a list of licensees' names and addresses: 25¢ per name
  - Duplicate license: \$20.00
- D.** As authorized by A.R.S. § 44-6852, the Board shall charge a service fee of \$20.00 for the return of a dishonored check or the failure of any other means of payment to be honored plus the actual charges assessed by the financial institution dishonoring the check or other means of payment.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1050, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4).

**R4-10-103. Payment of Fees**

- A.** A fee is not considered paid until the Board receives the amount required. The Board shall not provide services, administer examinations, or issue certifications or licenses until it receives the required fee.
- B.** The Board shall accept personal checks only for license renewals. If a check for a license renewal is returned because it is dishonored for any reason including insufficient funds, the renewal application is incomplete, and any license renewal that has been issued is void effective the date the Board mails written notice to the licensee that the license is void.
- C.** An applicant or licensee whose fee payment to the Board is dishonored for any reason including an insufficient funds check is not entitled to a further service, examination, certification, or license until the Board receives the following:
- The amount of the fee for which the payment was dishonored;
  - The penalty provided in R4-10-102(21);
  - If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.
- D.** Fees are nonrefundable except if A.R.S. § 41-1077 applies.
- E.** The Board shall not refund fees tendered for \$5.00 or less over the amount specified in R4-10-102, except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1050, effective May 6, 2003 (Supp. 03-1).

**R4-10-104. Application for License by Examination**

- A.** An applicant for an aesthetics, cosmetology, nail technology, or instructor license by examination shall submit to the Board:
- The applicable fees required for the practical and written examination and initial personal license in R4-10-102;
  - An application provided by the Board that contains:
    - A passport quality photo of the applicant;
    - The applicant's name, address, telephone number, Social Security number, gender, and birth date;
    - The name and address of each licensed school attended by the applicant;
    - The name of course completed, the name of the school where completed, and the starting date and date of graduation;
    - If previously licensed by the Board, type of license, license number, license expiration date, and the name used on the license;
    - A statement of whether the applicant has ever had an aesthetics, cosmetology, nail technology, or instructor license suspended or revoked in any state or foreign country;
    - A statement by the applicant verifying the truthfulness of the information provided by the applicant; and

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- h. The applicant's signature.
- B.** In addition to complying with the requirements in subsection (A), an applicant for an aesthetics, nail technology, or cosmetology license by examination shall:
1. Comply with A.R.S. § 32-510, 32-511, or 32-512 by submitting documentation of 10th grade equivalency.
  2. Comply with A.R.S. § 32-510, 32-511, or 32-512 by submitting a copy of one of the following:
    - a. If the applicant graduated from a course presented by a school licensed by the Board, a written statement signed by the administrator of the school that documents proof of graduation and completion of all required hours; or
    - b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended that includes the starting and ending dates, and a written statement signed by the administrator of each school that documents proof of the total number of hours completed at the school, and, if applicable, proof of graduation.
- C.** In addition to complying with the requirements in subsection (A), an applicant for an instructor license by examination shall:
1. Comply with A.R.S. § 32-531 by submitting the following:
    - a. Documentation of required work experience;
    - b. Proof of current licensure in the profession in which experience was gained;
    - c. Proof of licensure during the period experience was gained; and
    - d. Proof of attainment of 23 years of age; or
    - e. Proof of high school equivalency.
  2. If qualifying under A.R.S. § 32-531(3)(a), submit a copy of the following:
    - a. Documentation of graduation from a Board-licensed school by a certification of graduation on a form supplied by the Board including the starting and ending dates, total number of hours completed, and signature of the administrator of the school; and
    - b. If the applicant attended more than one licensed school in Arizona, a copy of a transfer application or certification of hours from each school attended, including the starting and ending dates, total number of hours completed, and signature of the administrator of the school.
  3. Documentation of the work experience required by A.R.S. § 32-531 shall be signed by an owner or manager of a licensed salon, an individual, or a supplier of cosmetology products with personal knowledge of the applicant's licensed experience in the profession for which the applicant seeks an instructor license. The person providing the documentation verifying the applicant's experience shall also indicate the following:
    - a. Profession in which applicant gained the experience;
    - b. Starting and ending dates of applicant's experience in the profession;
    - c. Name of licensed salon and address where applicant gained experience in the profession; and
    - d. License number and name of the licensed individual completing the form; or
    - e. Name, address, and telephone number of the individual completing the information.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-104 renumbered to R4-10-108; new

Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-105. Application for License by Reciprocity**

An applicant for an aesthetics, cosmetology, nail technology, or instructor license by reciprocity shall submit the applicable fee required in R4-10-102 and all of the following to the Board:

1. An application provided by the Board and signed by the applicant that contains:
  - a. The applicant's name, address, telephone number, gender, passport quality photo, Social Security number, and birth date;
  - b. If previously licensed by the Board, the type of license, license number, license expiration date, and the name used on the license; and
  - c. A statement of whether the applicant has ever had an aesthetics, cosmetology, nail technology, or instructor license suspended or revoked in any state or foreign country.
2. A certification of hours and proof of graduation or licensure in another state of the United States or a foreign country that shows the number of hours received in a school or the initial and final dates of licensure.

**Historical Note**

Section R4-10-105 renumbered from former Section R4-10-27 and amended effective April 9, 1996 (Supp. 96-2). Former Section R4-10-105 renumbered to R4-10-109; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-106. Licensing Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.
- B.** The administrative completeness time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
1. The administrative completeness review time-frame begins:
    - a. For approval to take an examination, approval or denial of school or salon license, or approval or denial of a license by reciprocity, when the Board receives an application packet; or
    - b. For approval or denial of a license by examination, when the applicant takes an examination.
  2. If an application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
  3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
  4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

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- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of notice of administrative completeness.
1. As part of the substantive review for a school license, the Board shall conduct an inspection that may require more than one visit to the school.
  2. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
  3. If an applicant meets the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send written notice of approval to the applicant. If an applicant is applying for approval to take an examination, the notice shall include the date, time, and place the applicant is scheduled to take an examination.
  4. If an applicant does not meet the requirements of A.R.S. § 32-501 through § 32-575 and this Chapter, the Board shall send a written notice of denial to the applicant including a basis for the denial and an explanation of the applicant's right to appeal as prescribed in A.R.S. § 41-1076.
- D. The Board shall consider an application withdrawn if within 180 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(2); or
  2. Take an examination.
- E. An applicant who does not wish an application withdrawn may request a denial in writing within 180 days from the application submission date.
- F. An individual shall not practice as an aesthetician, cosmetologist, instructor, or nail technician until the individual receives and posts the license at the individual's place of employment.
- G. If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the Board shall consider the next business day the time-frame's last day.
- B. An establishment licensee shall annually postmark or electronically submit to the Board an application for renewal and the fee required in R4-10-102 on or before the license renewal date.
1. If the license renewal date falls on a Saturday, Sunday, or legal holiday, the licensee may file the application on the next business day following the license renewal date.
  2. A renewal application consists of a form provided by the Board that contains:
    - a. The establishment's name and license number; and
    - b. If the owner is an individual or partnership, the signature and tax identification number of the owner; if the owner is a corporation, the signature of the authorized signer and the tax identification number of the corporation; if filed electronically, the Personal Identification Number (PIN) supplied by the Board may be used in place of the signature.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-107 renumbered to R4-10-110; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4).

**R4-10-108. Pre-screening Review; Licensing Examination**

- A. A student planning to apply to the Board for licensure may, but is not required to, request that the Board complete a pre-screening review of whether the student is qualified to take the licensing examination. The student may request the pre-screening review before the student graduates from a school licensed by the Board but the student shall not be issued an examination date until the student has completed a minimum of:
1. 1450 hours of cosmetology training,
  2. 500 hours of aesthetics or nail technician training,
  3. 550 hours of cosmetology instructor training,
  4. 400 hours for aesthetics instructor training, or
  5. 250 hours of nail technician instructor training.
- B. After the Board completes the pre-screening review and determines the student has completed the number of hours specified in subsection (A), the Board or national professional organization with which the Board contracts to administer the licensing examination shall issue an examination date to the student. However, the Board shall not allow the student to take the examination until the student applies for licensure and provides a certification of graduation to the Board.
- C. If a student who has been issued an examination date fails to apply for licensure and provide a certification of graduation by the examination date or fails to appear at the examination site at the scheduled examination time, the examination fee is forfeited.
- D. A request for a pre-screening review is not an application for licensure and does not guarantee the Board will issue a license.
- E. The Board or national professional organization with which the Board contracts to administer the licensing examination shall provide written notice to an applicant of the date, time, and location for the examination.
- F. An applicant shall provide photographic identification upon entering the examination site. The following U.S.-issued forms of identification are acceptable: passport, driver license, bank identification card, military identification, or other government-issued identification card.
- G. The licensing examination consists of both a written and practical section. An applicant shall perform a live demonstration

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**R4-10-107. License Renewal**

- A. An aesthetician, cosmetologist, nail technician, or instructor licensee shall postmark or electronically submit an application for renewal to the Board on or before the licensee's birthday every two years.
1. If a licensee's birthday falls on a Saturday, Sunday, or legal holiday, the licensee may file the renewal application on the next business day following the licensee's birthday.
  2. A renewal application consists of:
    - a. A form provided by the Board that contains: the licensee's name, address, Social Security number, and signature or Personal Identification Number (PIN) supplied by the Board if filed electronically;
    - b. A statement of whether the licensee has changed the licensee's name since the previous application and, if name has changed, a copy of a legal document, such as a marriage license or divorce decree, showing the name change; and
    - c. The fee required in R4-10-102.

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on a model during the practical section of the licensing examination. During the live demonstration, the applicant shall:

1. Provide the model required for the demonstration. If the applicant provides a live model for the demonstration, the live model shall not be a current or former student of aesthetics, cosmetology, or nail technology or a current or former licensee;
  2. Provide all equipment, supplies, tools, or instruments required for the demonstration; and
  3. Comply with all infection control and safety standards specified in R4-10-112, including those regarding blood spills. If an applicant fails to follow proper blood-spill procedures during the demonstration, the examination administrator shall dismiss the applicant from the examination and cause the examination fee to be forfeited.
- H.** If an applicant fails to appear for a licensing examination as scheduled, the applicant forfeits the examination fee. If an applicant arrives at an examination site after the scheduled examination begins, the examination administrator shall not allow the applicant to take the examination. An applicant may reschedule a missed examination by paying another examination fee.
- I.** An applicant may cancel a scheduled examination date once by providing notice of cancellation at least 48 hours before the examination start time. The Board does not require another examination fee to reschedule a canceled examination.
- J.** Neither the Board nor the examination administrator shall make examination materials available for inspection or copying by any person. A person shall not attempt to obtain or provide examination materials.
- K.** An applicant shall not bring and the examination administrator shall not allow written material or recording media to either the written or practical section of the licensing examination. The examination administrator may exclude from the written or practical section of the licensing examination any items the examination administrator believes may impede the fair administration or security of the examination. The examination administrator shall dismiss from the examination an applicant who seeks to impede the fair administration of the examination, or copies or asks for information from another applicant and cause the examination fee to be forfeited.
- L.** If an applicant passes the examination but fails to complete the licensure process within one year after the date of the examination, the Board shall void the examination scores.
- M.** If application is made for licensure by reciprocity, the Board shall accept a score on a written or practical examination from another jurisdiction if the examination:
1. Is the same national examination administered in Arizona,
  2. The score obtained by the applicant is at least the same as the passing score required by the Board at the time the applicant took the examination in the other jurisdiction, and
  3. The applicant provides the Board with documentation from the other jurisdiction verifying the passing score and that the score was received within one year before the application for licensure by reciprocity.
- N.** The Board or national professional organization with which the Board contracts to administer the licensing examination shall conduct:
1. The practical section of the licensing examination in English and an applicant shall submit answers in English;
  2. The written section of the licensing examination in English and other languages specified by the national professional organization. An applicant may choose to

take the written section of the licensing examination in any of the offered languages.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-108 renumbered to R4-10-111; new Section R4-10-108 renumbered from Section R4-10-104 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 22 A.A.R. 3329, effective November 4, 2016 (Supp. 16-4).

**R4-10-109. Repealed****Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-109 renumbered to R4-10-112; new Section R4-10-109 renumbered from Section R4-10-105 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Section repealed by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-110. Reactivating an Inactive License**

- A.** A cosmetology, nail technology, aesthetics, or instructor license that has been inactive for less than two years may be reactivated by paying the delinquent renewal fee.
- B.** A cosmetology, nail technology, aesthetics, or instructor license that has been inactive for more than two years, but less than five years, may be reactivated by the licensee paying the delinquent renewal fee and paying for and completing the infection protection class and law review class, offered by the Board.
- C.** A cosmetology, nail technology, aesthetics, or instructor license that has been inactive for more than five years, but less than 10 years, may be reactivated by the licensee if the licensee does all of the following:
1. Provides a certification of licensure;
  2. Completes the infection protection class and law review class given by the Board;
  3. Takes and passes the Board examination pertaining to the type of license formerly held; and
  4. Pays for the classes required under subsection (C)(2) and the delinquent renewal fee.
- D.** If a cosmetology, nail technology, aesthetics, or instructor license has been inactive for more than 10 years, the licensee shall comply with all application requirements in R4-10-104 before practicing or teaching cosmetology in Arizona.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-110 renumbered to Section R4-10-113; new Section R4-10-110 renumbered from Section R4-10-107 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3441, effective January 30, 2016 (Supp. 15-4).

**R4-10-111. Display of Licenses and Signs**

- A.** The name on an establishment's exterior sign, advertising, and publications shall be the same as the name on the establishment license issued by the Board. The establishment's exterior sign shall contain lettering at least 2 1/2 inches in height.
- B.** A school shall prominently post a class schedule that lists the names of instructors and classes. The school shall display the school and instructor licenses near the school entrance, visible to the public.

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- C. A salon shall prominently post the salon license and ensure that the personal license of each licensee performing services in the salon is posted at the licensee's station.
- D. A licensee performing mobile services shall prominently display a duplicate personal and establishment license in the area where mobile services are provided. The licensee's original license shall be prominently displayed in the salon from which the licensee was dispatched in accordance with subsection (C).
- E. A copy of R4-10-112 shall be prominently posted in each establishment.
- F. A salon shall prominently post a notice of salon services that are not regulated by the Board and that are provided at the salon.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Former Section R4-10-111 renumbered to Section R4-10-114; new Section R4-10-111 renumbered from R4-10-108 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-112. Infection Control and Safety Standards**

- A. An establishment shall have and maintain the following minimum equipment and supplies:
  1. Non-leaking, waste receptacles, which shall be emptied, cleaned, and disinfected daily;
  2. Ventilated containers for soiled linens including towels and capes;
  3. Closed, clean containers to hold clean linens including towels and capes;
  4. A covered, wet disinfectant container made of stainless steel or a material recommended by the manufacturer of the wet disinfectant that:
    - a. Is large enough to contain sufficient disinfectant solution to allow for the total immersion of tools and instruments,
    - b. Is set up with disinfectant at all times the establishment is open, and
    - c. Is changed as determined by manufacturer's instructions or when visibly cloudy or contaminated;
  5. An Environmental Protection Agency (EPA)-registered bactericidal, virucidal, fungicidal, and pseudomonacidal (formulated for hospitals) disinfectant which shall be mixed and used according to manufacturer's directions on all tools, instruments, and equipment, except those that have come in contact with blood or other body fluids; and
  6. An EPA-registered disinfectant that is effective against HIV-1 and Human Hepatitis B Virus or Tuberculocidal which shall be mixed and used according to the manufacturer's directions on tools, instruments, and equipment that come in contact with blood or other body fluids.
- B. Procedure for disinfecting non-electrical equipment.
  1. Non-electrical equipment shall be disinfected by cleaning with soap or detergent and warm water, rinsing with clean water, and patting dry; and
  2. Totally immersing in the wet disinfectant required under subsection (A)(5) or (A)(6) following manufacturer's recommended directions.
- C. Procedure for storage of tools and instruments.
  1. A tool or implement that has been used on a client or soiled in any manner shall be placed in a properly labeled receptacle; and
  2. A disinfected implement shall be stored in a disinfected, dry, covered container and isolated from contaminants.
- D. Procedure for disinfecting electrical equipment, which shall be in good repair, before each use.
  1. Remove all foreign matter;
  2. Clean and spray or wipe with a disinfectant, compatible with electrical equipment, as required in subsection (A)(5) or (A)(6); and
  3. Disinfect removable parts as described in subsection (B).
- E. Tools, instruments and supplies.
  1. All tools, instruments, or supplies that come into direct contact with a client and cannot be disinfected (for example, cotton pads, sponges, porous emery boards, and neck strips) shall be disposed of in a waste receptacle immediately after use;
  2. Disinfected tools and instruments shall not be stored in a leather storage pouch;
  3. A sharp cosmetology tool or implement that is to be disposed of shall be sealed in a rigid, puncture-proof container and disposed of in a manner that keeps licensees and clients safe;
  4. An instrument or supply shall not be carried in or on a garment while practicing in the establishment;
  5. Clips or other tools and instruments shall not be placed in mouths, pockets, or other unsanitized holders;
  6. Pencil cosmetics shall be sharpened before each use;
  7. All supplies, equipment, tools, and instruments shall be kept clean, disinfected, free from defects, and in good repair;
  8. Cutting equipment shall be kept sharp; and
  9. A client's personal cosmetology tools and instruments that are brought into and used in the establishment shall comply with these rules.
- F. If there is a blood spill or exposure to other body fluids during a service, licensees and students shall stop the service and:
  1. Before returning to service, clean the wound with an antiseptic solution;
  2. Cover the wound with a sterile bandage;
  3. If the wound is on a licensee's or student's hand in an area that can be covered by a glove or finger cover, the licensee or student shall wear a clean, fluid-proof protective glove or finger cover. If the wound is on the client, the licensee or student providing service to the client shall wear gloves on both hands;
  4. Blood-stained tissue or cotton or other blood-contaminated material shall be placed in a sealed plastic bag and that plastic bag shall be placed into another plastic bag (double bagged), labeled with a red or orange biohazard warning, and discarded;
  5. All equipment, tools, and instruments that have come in contact with blood or other body fluids shall be disinfected as discussed in subsections (A)(6) and (B); and
  6. Electrical equipment shall be disinfected as discussed in subsection (D).
- G. All circulating and non-circulating tubs or spas shall be cleaned as follows using the disinfectant in subsection (A)(5) or (6):
  1. After each client or service, complete all of the following:
    - a. Drain the tub;
    - b. Clean the tub according to manufacturer's instructions, taking special care to remove all film, especially at the water line;
    - c. Rinse the tub;
    - d. Fill the tub with water and disinfectant as in subsection (A)(5) or (6); and
    - e. Allow the disinfectant to stand for non-circulating tubs or to circulate for circulating tubs for the time specified in manufacturer's instructions.

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2. At the end of the day, complete all of the following:
  - a. Remove all filters, screens, drains, jets, and other removable parts;
  - b. Scrub with a brush and soap or detergent until free from debris;
  - c. Rinse;
  - d. Completely immerse in the solution described in subsection (A)(5);
  - e. Rinse;
  - f. Air dry; and
  - g. Replace the disinfected parts in the tubs or store in a disinfected, dry, covered container.
- H. Personal cleanliness.**
  1. A licensee or student shall thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom;
  2. A licensee or student shall wear clothing and shoes;
  3. A client's skin upon which services will be performed shall be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a nail technology service, including a pedicure service, is provided; and
  4. A licensee or student shall wear clean, fluid-proof protective gloves while performing any service if any bodily discharge is present from the licensee, student, or client or if any discharge is likely to occur from the client because of services being performed.
- I. Disease and infestation.**
  1. A licensee or student who has a contagious disease shall not perform services on a client until the licensee or student takes medically approved measures to prevent transmission of the disease; and
  2. Services shall not be performed on an individual who has a contagious disease that may be transmitted by the performing of the services on the individual.
- J. Client protection.**
  1. A client's clothing shall be protected from direct contact with shampoo bowls or headrests by the use of clean linens, capes, robes, or protective neck strips;
  2. Infection control shall be maintained and services shall be performed safely to protect the licensee or student and client;
  3. Double bracing shall be used around a client's eyes, ears, lips, fingers, and toes; and
  4. A client shall receive a pre- and post-analysis that includes appropriate instructions for follow-up.
- K. Care and storage of linens including towels, robes, and capes.**
  1. Clean linens shall be provided for each client and laundered after each use;
  2. Soiled linens shall be stored in a ventilated receptacle;
  3. Laundering shall include disinfecting linens by using detergent and bleach; and
  4. Clean linens shall be stored in closed containers or closets.
- L. Care and storage of products including liquids, creams, powders, cosmetics, chemicals, and disinfectants.**
  1. All products shall be stored in a container that is clean and free of corrosion and labeled to identify contents, in compliance with state and local laws and manufacturer's instruction;
  2. All products containing poisonous substances shall be distinctly marked;
3. When only a portion of a cosmetic product is to be used, the portion shall be removed from the container in a way that does not contaminate the remaining product; and
4. Once dispensed, a product shall not be returned to the original container.
- M. Prohibited hazardous substances and use of products.**
  1. An establishment shall not have on the premises cosmetic products containing hazardous substances banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products, including liquid methyl methacrylate monomer and methylene chloride; and
  2. Product shall be used only in a manner approved by the FDA.
- N. Care of headrests, shampoo bowls, and treatment tables.**
  1. Headrests of chairs and treatment tables shall be disinfected at least daily and treatment tables covered with a clean linen or paper sheet for each client;
  2. Shampoo bowls and neck rests shall be cleansed with soap and warm water or other detergent after each use and kept in good repair; and
  3. Shampoo neck rests shall be disinfected with a solution described in subsection (A)(5) or (A)(6) before each use.
- O. Prohibited devices, tools, or chemicals; invasive procedures.**
  1. Except as provided in this subsection and subsection (O)(2), all of the following devices, tools, or chemicals are prohibited from being present in or used in a salon:
    - a. A device, tool, or chemical that is designed or used to pierce the dermis; and
    - b. A low-frequency, or low-power ultrasonic, or sonic device except one intended for skin cleansing, exfoliating, or product application.
  2. A salon or licensee that provides an invasive procedure, using a device, tool, or chemical described in subsection (O)(1), that is otherwise allowed under Arizona law shall ensure that the performance of the procedure complies with statutes and rules governing the procedure, training, or supervision as required by the relevant, regulatory authorities.
- P. Skin peeling.**
  1. Except as provided in subsections (O)(1) and (O)(2), only the non-living, uppermost layer of skin, known as the epidermis, may be removed by any method or means and only for the purpose of beautification;
  2. A skin removal technique or practice that affects the dermal layer of the skin is prohibited;
  3. Skin removal products shall not be mixed or combined except as required by manufacturer instructions and approved by the FDA; and
  4. Only commercially available products for the removal of epidermis for the purpose of beautification shall be used.
- Q. Restricted use tools and instruments.**
  1. Nippers shall be used only to remove loose cuticles; and
  2. Pre-sterilized, disposal lancets shall be used only to dilate follicles and release sebaceous debris from the follicle.
- R. Cleanliness and repair of the establishment shall be maintained according to the following guidelines.**
  1. After each client, hair and nail clippings shall immediately be discarded;
  2. All areas of the establishment, including storerooms and passageways, shall be well lighted, ventilated, and free from infectious agents;
  3. Floors, walls, woodwork, ceilings, furniture, furnishings, and fixtures shall be clean and in good repair;
  4. Shampoo bowls shall be clean and disinfected by using a disinfectant discussed in subsection (A)(5) or (A)(6) and drains shall be free running;



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5. Counters and all work areas shall be disinfected after each client by using a disinfectant discussed in subsection (A)(5) or (A)(6); and
  6. Waste or refuse shall be removed timely so there is no accumulation.
- S. Building standards.**
1. There shall be a direct entrance from the outside, not through living quarters, into the establishment;
  2. If connected to a residence, all passageways between the living quarters and the establishment shall have a door that remains closed during business hours;
  3. The establishment shall not be used for residential or other living purposes;
  4. The establishment shall have a restroom for employees' and clients' use during business hours that has a wash basin, running water, liquid soap, and disposable towels; is kept clean and sanitary at all times; is in close enough proximity to the salon to ensure safety for cosmetology procedures during use; and is open and available for use by employees and clients of the salon;
  5. Any excess material stored in a restroom shall be in a locked cabinet;
  6. The establishment shall have hot and cold running water;
  7. A mobile unit shall have sufficient water at all times; and
  8. The establishment shall have a natural or mechanical ventilation and air filtration system that provides free flow of air to each room, prevents the build-up of emissions and particulates, keeps odors and diffusions from chemicals and solutions at a safe level, and provides sufficient air circulation and oxygen.
- T. General requirements.**
1. The establishment shall have a first-aid kit that contains, at a minimum, small bandages, gauze, antiseptic, and a blood-spill kit that contains disposable bags, gloves, and hazardous waste stickers;
  2. No bird or animal, except fish aquariums and service animals, are allowed in the establishment; and
  3. The establishment shall comply with federal and state requirements.

**Historical Note**

Section R4-10-112 renumbered from former Section R4-10-33 and amended effective April 9, 1996 (Supp. 96-2). Former Section R4-10-112 renumbered to Section R4-10-115; new Section R4-10-112 renumbered from Section R4-10-109 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-113. Establishment Management**

- A.** The manager of each establishment shall ensure that:
  1. Licenses, notices, and the Board's most recent inspection sheet are prominently displayed;
  2. The establishment and all licensees in a salon, school, or a mobile service area have current licenses;
  3. Infection control and safety standards are maintained.
- B.** The salon and school owner and salon and school manager or director shall be responsible for all violations enumerated in subsection (A), occurring within the salon, school, or mobile service areas.
- C.** If a salon owner rents or leases space within the salon to a person who obtains a separate salon license, that second licensee and their salon manager and the owner shall each be responsible for all violations of requirements enumerated in subsection (A) occurring within the second licensee's licensed portion of the salon, and are each responsible for the common areas.

**Historical Note**

New Section R4-10-113 renumbered from Section R4-10-110 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**R4-10-114. Disciplinary Action**

- A.** Licensees shall permit an inspector or Board representative to inspect the premises of any salon or school, or other location identified by a complaint or the Board, alleging the location is operating a salon or school.
- B.** Board action is required to dismiss a complaint.

**Historical Note**

New Section R4-10-114 renumbered from Section R4-10-111 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**R4-10-115. Rehearing or Review of Decisions**

- A.** Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 calendar days after service of the decision, a written motion for rehearing or review of the decision specifying particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.
- B.** A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 calendar days after service of such motion or amended motion by any party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
  1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Board or its hearing officer or prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
  7. A decision which is not justified by the evidence or is contrary to law.
- D.** Not later than 10 calendar days after the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the decision or grant a rehearing or review to any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- E.** Not later than 15 calendar days after a decision is rendered, the Board may on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on

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the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order granting such a rehearing or review shall specify the grounds therefor.

- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 calendar days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. If in a particular decision the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health, or safety and that a rehearing or review of the decision is imprac-

tical, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for rehearing or review. An application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

- H. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

**Historical Note**

New Section R4-10-115 renumbered from Section R4-10-112 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take an Examination	A.R.S. §§ 32-514, 32-515, 32-533	90	60	30
License by Examination	A.R.S. §§ 32-510, 32-511, 32-512, 32-531	60	30	30
License by Reciprocity	A.R.S. §§ 32-513, 32-532	60	30	30
School License	A.R.S. § 32-551	90	30	60
License Renewal	A.R.S. §§ 32-517, 32-535, 544, 32-564	75	45	30
Salon License	A.R.S. §§ 32-541, 32-542	90	30	60
License Reactivation	A.R.S. § 32-518	30	15	15

**Historical Note**

New Table adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).

**ARTICLE 2. SCHOOLS**

*Editor's Note: The Board of Cosmetology repealed or renumbered Sections with the old Administrative Code numbering scheme and adopted new Sections under the current numbering scheme (Supp. 96-2). The old and new Sections cannot be shown in numerical order because of the two Articles; therefore the old numbers are not shown here. Please refer to this Chapter as published in Revised Format 6-92 for historical note information on the old numbered Sections.*

**R4-10-201. Application for a School License; Renewal**

- A. An applicant for a school license shall submit the documents required in A.R.S. § 32-551 and:
1. An application on a form provided by the Board, signed by the applicant, and notarized that contains:
    - a. The applicant's name, address, federal tax identification number, and telephone number;
    - b. If a partnership, each partner's name and address and an identification of whether a limited or general partner;

- c. If a corporation, the state of incorporation and the name, title, and address of at least two officers of the corporation;
  - d. The name under which the school will be operated as registered with the Secretary of State;
  - e. The name and Board-issued license number of the instructor in charge of the school;
  - f. If an existing school, the date the applicant will be assuming ownership; and
  - g. If a new school, the scheduled date for opening the school;
2. If a partnership, a copy of the partnership agreement;
  3. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
  4. A signed statement that the establishment has the equipment required by statute and rule for the school;
  5. An unexpected contract form required by A.R.S. § 32-558;
  6. A schedule that includes the hours of each day and each day of a calendar week during which the school will be open for instruction;

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7. A proposed schedule of classes to be taught at the school;
  8. The name, address, and telephone number of the bonding company and a copy of the bond;
  9. A copy of all school policies and procedures;
  10. A school catalog that contains the information required by A.R.S. § 32-559 and:
    - a. The number of days during course enrollment that are necessary to complete the hours for the course;
    - b. The days and hours of operation, vacation periods, and holidays;
    - c. A listing of policies regarding leaves of absence and vacation approval for students;
  11. Demonstrate evidence of compliance with A.R.S. §§ 32-551 through 32-575 and these rules through a school inspection conducted by the Board; and
  12. The fee required in R4-10-102.
- B.** In addition to the requirements in R4-10-107, a licensee shall submit the following when renewing a license:
1. The most recent school catalog that:
    - a. Indicates where any modifications, additions, or deletions from the previously submitted catalog may be found;
    - b. Contains an index that shows where the information required by A.R.S. § 32-559 is located in the catalog;
    - c. Contains the name of each accrediting or approving organization; and
    - d. Provides a signed statement that the establishment has the equipment required by statute and rule for the school.
  2. A subject description for each new course and its schedule, if applicable;
  3. A new operating schedule if changes will occur beginning with the new license year;
  4. The name and address of any new statutory agent if the change will take effect with the new license year;
  5. The name and license number of the current licensed instructor in charge of the school; and
  6. The name, address, and telephone number of the bonding company, the bond number, the expiration date of the bond, and a copy of the bond.
- C.** The owner of a school shall submit to the Board the terms and conditions of any management contract entered into for the school after the contract is executed;
- D.** Within five days after a change occurs during the year, the owner of a school shall submit to the Board the subject description of any new course; the name of any new statutory agent; or any change to the catalogue, generic student contract, policies, procedures, hours of operation, or bond.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-202. School Closure**

- A.** For purposes of A.R.S. § 32-563, the Board may consider a school to be closed if it fails for five consecutive school days to provide instruction in accordance with its schedule of operations on file with the Board.
1. All enrolled students and employees shall be notified by the school in writing of a pending closure at least five calendar days before closure of the school, unless the time of such closure could not have been anticipated. A copy of the notice shall be sent to the Board at the time it is delivered to the students and employees. The students' and employees' personal belongings, including equipment, tools, and implements shall be released to each student or employee immediately upon request.
- 2.** Student records as specified by A.R.S. § 32-563 shall be sent to the Board within 10 calendar days after the school closure, including:
- a. Copies of hour sheets documenting all student hours and the current time cards or time records received by the student after the last monthly report before the school closure as specified by R4-10-204;
  - b. A copy of the file of each student who was enrolled the last school day prior to closure as specified by R4-10-204. If a teachout was arranged with another school which agreed to complete the training, the student's file shall be transferred to that school; and
  - c. A written statement signed by each enrolled student verifying the school's compliance with subsection (A)(1) as it applies to students.
- B.** Failure to comply with subsection (A) may be grounds for refusal to issue a school license to an owner, manager, director, or instructor of the school at the time of the school closure.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2).

**R4-10-203. General School Requirements**

- A.** Aesthetics, cosmetology, and nail technology schools shall comply with R4-10-112 and have the following minimum facilities, equipment, supplies, and materials:
1. One area of instruction for every 20 students;
  2. A licensed instructor as manager or director;
  3. A desk, table and chair, or other instructional fixtures and facilities for each student during theory instruction;
  4. Filing cabinets to hold all school and student records;
  5. An instruction board in each room used for instruction;
  6. At least two cubic feet of an individual locked area with a different locking device for each enrolled student and each instructor to store personal objects and training kits;
  7. A sink area for each 50 students in attendance for the preparation, mixing, and dispensing of supplies and chemicals, and for the disinfection of small tools or instruments;
  8. At least one restroom that meets the requirements of R4-10-112;
  9. Separate receptacles for garbage and soiled linens; and
  10. One container for wet disinfectant for each student performing aesthetics and nail technology.
- B.** The school shall furnish equipment, tools, instruments, materials, and supplies needed to perform assignments and for instructional purposes, except that the school may require each student to furnish small tools or instruments. All equipment, tools, and materials shall be salon quality and maintained in good repair at all times.
- C.** The school shall have a library for student use which contains at least the following materials relating to the courses offered by the school:
1. Standard dictionary;
  2. Medical dictionary;
  3. Anatomy chart on bones, muscles, nerves, hands, arms, nails, veins, arteries, circulatory system, hair, and skin;
  4. Three current periodicals on the art and science of cosmetology;
  5. Current cosmetology instruction manuals or textbooks;
  6. Current Arizona Cosmetology statutes and rules; and
  7. A cosmetology dictionary.

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- D. Each school shall maintain a complete file on all current curriculum requirements.
- E. A school shall not pay a salary to an enrolled student other than a student instructor.
- F. A licensed school may offer a postgraduate or advanced continuing education cosmetology course, including theory and lab, to students currently enrolled in the school or currently licensed individuals without a licensed instructor present.
  - 1. A school shall not report post-graduate credit hours to the Board or apply the hours toward graduation.
  - 2. Currently enrolled students shall not perform services upon a person without an instructor present.
  - 3. A student file is not required for licensed individuals.
  - 4. Each licensee shall have the licensee's current Board-issued license number onsite.
- G. An individual licensed by the Board may re-enroll in a licensed school for a refresher course as a current student. Credit hours for training received shall be submitted by the school to the Board.
- H. A school shall establish a periodic grading schedule and keep student transcripts current.
- I. A school shall schedule a minimum of four hours of theory classes each week for each full-time student and a minimum of two hours of theory classes each week for each part-time student.
- J. A school shall teach safety and infection control measures relating to each subject in conjunction with that subject.
- K. A school shall not solicit students for enrollment at other school sites.
- L. While teaching, instructors shall wear a tag indicating the instructor's name and courses taught.
- M. A school shall ensure compliance with the following:
  - 1. A student shall not attend school more than 56 hours in any one week.
  - 2. A student shall only operate safe equipment in good repair.
  - 3. A student of aesthetics, cosmetology, and nail technology shall perform services within the enrolled course, upon the public or fellow students, only in the presence of a licensed instructor and, except for shampooing, only after completing the basic training specified in R4-10-303, R4-10-304, and R4-10-305.
  - 4. A school shall not prevent or discourage a student from making a complaint to the Board.
  - 5. A school shall not dismiss a student from a scheduled theory instruction or written or practical examination to perform clinical services for the public;
  - 6. While in school, each student shall wear a tag indicating the student's name and the course in which the student is enrolled; and
  - 7. If the school has a distant classroom, the school shall ensure that equipment for each classroom is the same as that required for each course of instruction in the school; and:
    - a. Private postsecondary facilities shall not extend the school facilities beyond .5 miles apart as verified by Global Positioning System map readings;
    - b. Public educational facilities shall not extend the school beyond the school designated campus;
    - c. A duplicate Board-issued school license shall be posted in each distant facility;
    - d. Duplicate instructor licensees are not required; and
    - e. Clinic, retail, all public services, and appointments by the public are prohibited.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-204. School Records**

- A. A school shall maintain a student's records at the school where the student is enrolled. The Board may inspect the records at any time the school is open.
- B. When a student transfers from one school to another, the school from which the student is transferring shall:
  - 1. Keep a copy of the student's transcript,
  - 2. Forward one copy to the student and another copy to the Board within three days of the date of transfer, and
  - 3. Withdraw the student on the school records and the monthly report submitted to the Board.
- C. Each school shall keep:
  - 1. A complete and accurate record of the time devoted by each student to the enrolled course of study;
  - 2. A complete and accurate record that shows the school's basis for certification of the student hours. A school shall certify only those hours of training the student receives in that school or hours the school accepts as received in another state or country;
  - 3. A complete and accurate individual student file for each student enrolled containing:
    - a. Contract and enrollment agreement;
    - b. Financial aid transcript;
    - c. Proof of 10th grade equivalency for a student enrolled in an aesthetics, cosmetology, or nail technology course or proof of high school equivalency or 23 years of age for a student enrolled in an instructor course;
    - d. Identification number;
    - e. Proof of one year of licensed work experience for a student instructor;
    - f. A statement signed by a school administrator and the student that provides a list of the supplies contained in the kit provided to the student. The contract shall set forth the contents of the kit including:
      - i. The price of items contained in the kit;
      - ii. When the items shall be distributed;
      - iii. The manufacturer of the products;
      - iv. The retail value of the kit; and
      - v. A statement that if substitutions occur after the contract is signed, the substitutions shall be of comparable value; and
    - g. A record of completed hours, including proof of cosmetology, nail technology, aesthetics, or instructor hours earned in another state or country and accepted by the school; and
  - 4. Complete and accurate academic transcripts and attendance and hour records or time cards.
- D. The school shall electronically deliver to the Board a complete and accurate monthly report no later than the 10th day of each month. The monthly report shall include:
  - 1. For each student enrolled since the prior monthly report only:
    - a. Name;
    - b. Student identification number;
    - c. Enrollment date;
    - d. Address;
    - e. Telephone number;
    - f. Type of educational documentation that meets the requirements of R4-10-104;

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- g. Proof of hours received from another Board-licensed school, or a school in another state, or country, and certified by the school, if applicable;
  - h. Proof of crossover hours necessary to qualify for R4-10-306, if applicable; and
  - i. Birth date.
  - 2. The enrollment category of each student;
  - 3. The name, license number, and work schedule of the instructor in charge of the school, and name of the custodian of records;
  - 4. The name, license number, and work schedule of each instructor employed by the school;
  - 5. The signature of the instructor who prepares and certifies that the report is correct;
  - 6. The name of student instructors, the scheduled attendance, and the Board-issued license number for each student instructor;
  - 7. For each demonstration given, the name of the demonstrator, the name of the observing instructor, the name of the process or product demonstrated, the number of students in attendance, and the name of the course in which the demonstration was given;
  - 8. Hours received by each student for the prior month, the current month, and total cumulative hours. The school shall not amend total hours without satisfactory proof of error;
  - 9. Signature of each student verifying approval of the certified hours;
  - 10. The school's certification of the students who meet the graduation requirements of the school, including the day, month, and year of graduation; and
  - 11. The notation "transferred," "withdrawn," or "leave of absence" for students who discontinue training, and the day, month, and year training was discontinued. The school shall provide certification to the student within one week of the hours earned by the student before the student withdraws or takes a leave of absence.
- E.** A school shall credit a student with additional hours earned after graduation if the student completes the required hours for graduation, registers for the Board examination, and stays in school until the date of the examination.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-205. Aesthetic School Requirements**

- A.** Schools that provide aesthetics 600-hour training for students, 500-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that required by R4-10-203 and R4-10-204:
- 1. A work station for each student in attendance to perform aesthetics services to the public, each having:
    - a. A facial chair or table;
    - b. A table top that is 12" x 18" or larger;
    - c. A dry, disinfected, covered container to store disinfected tools and instruments, and
    - d. A labeled receptacle for contaminated tools or instruments.
  - 2. One steamer machine for each group of four students in attendance during lab and two students in attendance during clinic;
  - 3. One microdermabrasion machine to be used at a non-invasive level;
  - 4. One magnifying lamp of at least 5 diopters for each group of two students in attendance during lab and each group of four students in attendance during clinic;
  - 5. Cleansers;
  - 6. Massage medium;
  - 7. Toner;
  - 8. Exfoliants and masks; and
  - 9. Depilatories.
- B.** Each school shall provide a student training kit for each enrolled aesthetics student. The kit shall contain at a minimum, the following:
- 1. One standard textbook for professional aestheticians;
  - 2. One copy of Arizona cosmetology statutes and rules;
  - 3. One disinfected, covered container to store disinfected tools and instruments as specified by R4-10-112; and
  - 4. A container for contaminated tools or instruments.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-206. Cosmetology School Requirements**

- A.** Schools that provide cosmetology 1600-hour training for students, 650-hour training for instructors, or both, shall provide the following minimum facilities, equipment, supplies, and materials in addition to that specified by R4-10-203 and R4-10-204:
- 1. A work station for each student in attendance performing cosmetology services to the public for a fee, each having:
    - a. A mirror that is at least 18" by 30" when performing services on a client;
    - b. A table top or counter;
    - c. A client chair;
    - d. A dry, disinfected, covered receptacle to store disinfected tools and instruments; and
    - e. A container for contaminated tools or instruments;
  - 2. One shampoo basin for each group of 10 students in attendance during lab or clinic instruction;
  - 3. One hand-held hair dryer for each student in attendance during lab or clinic instruction;
  - 4. One hooded dryer for each group of 20 students in attendance during lab or clinic instruction;
  - 5. One high-frequency Tesla or violet-ray unit, including a facial and scalp electrode, for each group of 20 students in attendance during practical instruction;
  - 6. Two electric clippers in the school;
  - 7. Depilatories;
  - 8. Chemical hair straighteners;
  - 9. One nail technology table with a 12" x 18" or larger top for each group of 10 students in attendance during practical instruction;
  - 10. A facial work station for each group of 10 students in attendance and receiving lab or clinic aesthetics instruction;
  - 11. A receptacle, large enough to completely immerse two feet for each group of 10 students in attendance during lab or clinic nail technology instruction;
  - 12. Two nail drills for filing and buffing in the school; and
  - 13. Nail products for acrylics, gels, tips, wraps, and polishing.
- B.** Each school shall provide a student training kit for each enrolled student a nonreturnable student training kit. The kit shall contain at a minimum, the following:
- 1. One standard textbook for professional cosmetologists;
  - 2. One copy of Arizona cosmetology statutes and rules;

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3. One disinfected, covered container to store disinfected tools and instruments; and
4. A container for contaminated tools or instruments.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-207. Nail Technology School Requirements**

- A. A school that provides nail technology 600-hour training for students, 350-hour training for instructors, or both, shall provide the following minimum facilities, tools, instruments, equipment, supplies, and materials, in addition to those required by R4-10-203 and R4-10-204:
  1. A work station to perform nail technology services for the public for each student in attendance containing:
    - a. A nail technology table with a top 32" x 16" or larger;
    - b. A client chair;
    - c. A nail technology chair or stool;
    - d. A disinfected, covered container to store disinfected tools and instruments as specified in R4-10-112;
    - e. A container with wet disinfectant as specified in R4-10-112;
    - f. A container for soiled tools or instruments as specified in R4-10-112;
    - g. A waste receptacle as specified in R4-10-112; and
    - h. A disinfectant for blood or body-fluid exposure as specified in R4-10-112.
  2. One container large enough to completely immerse two feet, for every five students in attendance during practical training;
  3. Nail products for acrylics, gels, tips, wraps, and polishing; and
  4. One ultraviolet light.
- B. Each enrolled nail technology student shall have a training kit containing:
  1. One simulated hand;
  2. Disinfected tools and instruments including pusher, nipper, file or porous emery boards, tweezer, nail brush, and finger bowl;
  3. One covered container to store disinfected tools and implements as specified by R4-10-112;
  4. A container for soiled tools and instruments as specified in R4-10-112;
  5. A current instruction manual or textbook of nail technology and Arizona cosmetology laws and rules;
  6. Artificial nail enhancement kit with remover, wrap kit, two dappen dishes, polish kit, nail forms, finishing tools and instruments, and one brush product applicator; and
  7. One electric nail file.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-208. Combined School Requirements**

- A. A licensed school shall ensure that the following hours are taught to a student enrolled in the specific curriculum before allowing the student to graduate:
  1. Aesthetics course - 600 hours,
  2. Aesthetics instructor course - 500 hours,
  3. Cosmetology course - 1600 hours,
  4. Cosmetology instructor course - 650 hours,
  5. Nail technology course - 600 hours, and
  6. Nail technology instructor course - 350 hours.

- B. A school that provides training in all of the above courses shall have the minimum records, facilities, equipment, supplies, and materials required by:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance,
  4. R4-10-206, and
  5. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.
- C. A school that provides the curriculum specified in subsections (A)(3), (A)(4), (A)(5), and (A)(6) only shall have the minimum records, facilities, equipment, supplies, and materials required by:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-206, and
  4. R4-10-207 except subsection (A)(1) is one work station for each two nail technology students in attendance.
- D. A school that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(3), and (A)(4) only shall have the minimum records, facilities, equipment, supplies, and materials required by:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205 except subsection (A)(1) is one work station for each two aesthetics students in attendance, and
  4. R4-10-206.
- E. A school that provides the curriculum specified in subsections (A)(1), (A)(2), (A)(5) and (A)(6) only shall have the minimum records, facilities, equipment, supplies, and material required by:
  1. R4-10-203,
  2. R4-10-204,
  3. R4-10-205, and
  4. R4-10-207.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-209. Demonstrators; Exclusions**

- A. A person who does not hold an instructor license shall not teach in a school but may demonstrate to enrolled students any process, product, or appliance when an instructor is present and observing the demonstration.
- B. When demonstrating on a model, the demonstrations shall be confined to an explanation of the products, procedures, and appliances being promoted.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2).

**ARTICLE 3. STUDENTS****R4-10-301. Instruction; Licensed Individuals**

Licensed schools that provide instruction for licensed individuals pursuant to this Article shall:

1. Keep a record of the date, time, title, and name of the provider of the course along with the attendee's name and license number;
2. Ensure that the instruction consists of professional development related to scope of practice as specified by A.R.S. § 32-501; and
3. Ensure that hours are not granted toward licensing unless it is part of the approved course and provided by or in the presence of a licensed instructor.

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**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-302. Instructor Curriculum Required Hours**

- A. Each student in an aesthetics, cosmetology, or nail technology instructor course shall complete the number of hours listed in Table 1:

**Table 1: Instructor Curriculum (in hours)**

Subject	Aesthetics	Cosmetology	Nail Technology
1. Orientation and Arizona laws and rules	8	8	8
2. Theory, Preparation, and Practice	405	405	270
Curriculum Development			
Developing and Using Educational Aids			
Presentation Principles (Practical and Written)			
Classroom Management			
Evaluation, Assessment, and Remediation Methods (Practical and Written)			
Diversity in learning (including cultural)			
Methods of Teaching			
Professional Development (including ethics)			
Alternative Learning [see subsection (B)]			
3. Lab (clinic) oversight	87	237	72
4. Total Hours	500	650	350

- B. Curriculum hours may be satisfied in part by completing a course at an accredited college or university described in R4-10-101(15)(c) and (d), for no more than nine credit hours for cosmetology or aesthetics and no more than six credit hours for nail technology and encompassing the subjects listed under Theory, Preparation, and Practice in subsection (A) with each college credit hour equaling no more than 30 clock hours.
- C. All instruction given by a student instructor shall be under the direct supervision and observation of a licensed instructor.
- D. A student instructor shall be counted as a student for the purpose of determining the maximum allowed ratio of 40 students during a theory class and 20 students during a lab or clinic for each licensed instructor in the school.
- E. A student instructor shall not instruct students or check student services performed on the public until the student instructor has received at least 80 hours of basic instructor training.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-303. Aesthetics Curriculum Required 600 Hours**

- A. Each student in an aesthetics course shall complete the following curriculum:
1. Theory of aesthetics, infection control, anatomy, physiology and histology of the body, diseases and disorders, and Arizona cosmetology laws and rules; and
  2. Clinical and laboratory aesthetics including theory that involves all skin types:

- a. Principles and practices of infection control and safety;
- b. Recognition of diseases and the treatment of disorders of the skin;
- c. Interpersonal skills and professional ethics;
- d. Clinical and laboratory practice that includes face and body;
- e. Morphology and treatment of skin, including face and body, by hand and machine;
- f. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
- g. Aesthetics machines, tools, and instruments and their related uses;
- h. Alternative skin technology;
- i. Pre- and post-client consultation, documentation, and analysis;
- j. Spa body modalities;
- k. Exfoliation modalities;
- l. Body and face massage and manipulations;
- m. Body and facial hair removal except by electrolysis;
- n. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
- o. Cosmetic enhancement applications; and
- p. Required industry standards and ecology, including monitor duties.

- B. An aesthetics school shall not receive remuneration for a student performing clinical services to the public until the student has received at least 120 hours of aesthetics training; and
- C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-304. Cosmetology Curriculum Required 1600 Hours**

- A. Each student in a cosmetology course shall complete the following curriculum:
1. Theory of cosmetology, infection control, anatomy, physiology and histology of the body, electricity, diseases and disorders, and Arizona cosmetology laws and rules; and
  2. Clinical and laboratory cosmetology including theory that involves nails, hair, and skin:
    - a. Principles and practices of infection control and safety;
    - b. Recognition of diseases and the treatment of disorders of the hair, skin, and nails;
    - c. Morphology and treatment of hair, skin, and nails;
    - d. Interpersonal skills and professional ethics;
    - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
    - f. Cosmetology machines, tools, and instruments and their related uses;
    - g. Chemical texturizing;
    - h. Changing existing hair color;
    - i. Hair and scalp care;
    - j. Fundamentals of hairstyling including braiding and extensions;
    - k. Body, scalp, and facial massage and manipulations;
    - l. Hair cutting fundamentals;
    - m. Fundamental aesthetics of the body and face;
    - n. Fundamentals of nail technology;

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- o. Clinical and laboratory practice that includes hair, skin, and nails;
- p. Alternative hair, skin, and nail technology;
- q. Pre- and post-client consultation, documentation, and analysis;
- r. Body and facial hair removal except by electrolysis;
- s. Introduction to electricity and light therapy for cosmetic purposes including laser/Intense Pulsed Light (IPL) procedures and devices;
- t. Cosmetology technology; and
- u. Required industry standards and ecology, including monitor duties.

- B. A cosmetology school shall not receive remuneration for a student performing any clinical services, except shampooing, to the public until the student has received at least 300 hours of cosmetology training; and
- C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**R4-10-305. Nail Technology Curriculum Required 600 Hours**

- A. Each student in a nail technology course shall complete the following curriculum:
  - 1. Theory of nail technology; infection control; diseases and disorders of the nails and skin; anatomy; physiology and histology of the limbs, nails, and skin structures; and Arizona state cosmetology laws and rules; and
  - 2. Clinical and laboratory nail technology including theory that involves nails, skin, and limbs:
    - a. Principles and practices of infection control and safety;
    - b. Recognition of diseases and the treatment of disorders of the nail and skin;
    - c. Massage and manipulation of the limbs;
    - d. Interpersonal skills and professional ethics;
    - e. Product pharmacology and chemistry interaction, formulation, composition, and hazards;
    - f. Nail technology machines, tools, and instruments and their related uses;
    - g. Clinical and laboratory practice that includes nails, skin, and limbs;
    - h. Pre- and post-client consultation, documentation, and analysis;
    - i. Manicuring, including use of nippers;
    - j. Pedicuring, including use of nippers;
    - k. Artificial nail enhancements (application and removal);
    - l. Alternative nail technology;
    - m. Electric file use;
    - n. Pedicure spa modalities;
    - o. Exfoliation modalities on limbs or the body; and
    - p. Required industry standards and ecology, including monitor duties.
- B. A nail technology school shall not receive remuneration for students performing clinical services to the public until the student has received at least 80 hours of nail technology; and
- C. Each student shall be evaluated for progress and provided suggested remediation of deficiencies.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4).

**R4-10-306. Curricula Hours**

- A. Hours of training received in an aesthetics, cosmetology, or nail technology course do not apply toward receiving an instructor's license.
- B. Hours of training received in an instructor course do not apply toward receiving an aesthetician, cosmetologist, or nail technician license but may apply toward reactivation of an aesthetics, cosmetology, or nail technology license if the instructor hours are received after inactive status occurs.
- C. The following hours may apply toward licensing:
  - 1. 100% of the hours of training received in a nail technology course toward a cosmetologist license;
  - 2. 100% of the hours of training received in an aesthetics course toward a cosmetologist license;
  - 3. 100% of the hours of combined training received in an aesthetics course and a nail technology course toward a cosmetology license but the combined total shall not exceed 600 hours;
  - 4. 15% of the hours of training received in a cosmetology course toward a nail technician license;
  - 5. 15% of the hours of training received in a cosmetology course toward an aesthetician license;
  - 6. 33% of the hours of training received in a nail technology course toward an aesthetics license;
  - 7. 66% of the hours of training received in an aesthetics course toward a nail technology license;
  - 8. 50% of the hours of training received in a barber course toward a cosmetologist license;
  - 9. 200 hours of training received for a registered nurse (RN) or clinical nurse specialist (CNS) license toward an aesthetician license;
  - 10. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward an aesthetics instructor course; however, the remaining required hours shall be received in an aesthetics or cosmetology school;
  - 11. 100% of the hours of training received by a licensed cosmetologist in a nail technology instructor course toward a cosmetology instructor course; however, the remaining required hours shall be received in a cosmetology school;
  - 12. 100% of the hours of training received by a licensed cosmetologist in an aesthetics instructor course toward a cosmetology instructor course; however, the remaining required hours shall be received in a cosmetology school;
  - 13. 100% of the hours of training received in a barber instructor course toward a cosmetology instructor course; however, the remaining required hours shall be received in a cosmetology school. One year of licensed barber experience is the same as one year of licensed cosmetology experience for the purpose of qualifying for the cosmetology instructor examination specified by A.R.S. § 32-531; and
  - 14. Hours transferred to another course shall be used only once.
- D. At the completion of a course of instruction, the cumulative hours for students shall, at a minimum, conform with R4-10-301, R4-10-302, R4-10-303, R4-10-304, R4-10-305, and R4-10-306 as applicable.
- E. Infection control, disinfection procedures, and safety issues shall be taught with every subject and every procedure.
- F. Alternative learning hours are hours that a school may authorize to enable a student to pursue knowledge of cosmetology in



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an alternative format or location other than a salon. A school shall not credit a student with more than 20% of the total hours required for graduation, earned during enrollment at the school, as alternative learning hours.

- G. A school that provides alternative format or location in subsection (F) shall include details of the format and location in the school policy and procedures in the school catalog.
- H. Up to 16 hours of field trips may be granted toward licensing if the field trips for which those hours were granted are part of the approved course of instruction and are provided by or in the presence of a licensed instructor.
- I. If a school physically closes while providing curricula in an alternative format or location or while conducting a field trip, the school shall:
  1. Post a notice that is visible to the public and students; and
  2. Send a notice to the Board indicating the times and location where the curricula is being conducted.
- J. A student instructor may obtain lab (clinic) hours in a licensed school other than the licensed school in which the student instructor is enrolled if the student:
  1. Has available proof of enrollment in a licensed school to show to a Board inspector, and
  2. Earns no more than the lab (clinic) hours required by R4-10-302.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Amended by final rulemaking at 11 A.A.R. 4239, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 2083, effective July 5, 2008 (Supp. 08-2).

**ARTICLE 4. SALONS****R4-10-401. Application for a Salon License**

An applicant for a salon license shall submit:

1. An application on a form provided by the Board that contains:
  - a. The applicant's name, address, telephone number, federal tax identification number, and signature;
  - b. If the applicant is a partnership, each partner's name, address, and an identification of whether each is a limited or general partner;
  - c. If a corporation, the state of incorporation and the name, title, and address of each officer of the corporation and the statutory agent;
  - d. The name of the salon as registered with the Secretary of State;
  - e. If a location change, the previous address;
  - f. A history of the salon including:
    - i. If the location was previously licensed by the Board, the name of the previous establishment;
    - ii. The name of each business operating at the salon address; and
    - iii. A statement of whether a cosmetology license of the applicant, any partner of the applicant, or any corporate officer has ever been suspended or revoked by any state or foreign country.
2. If a corporation, the articles of incorporation and a Certificate of Good Standing from the Corporation Commission;
3. If a partnership, a copy of the partnership agreement;
4. A signed statement that the establishment is in compliance with all Board statutes and rules and has all of the following in the salon:
  - a. Wet disinfectant;
  - b. A dry, closed, disinfected container to store disinfected tools and instruments;

- c. A sink or shampoo bowl with hot and cold running water that is not also used as a dispensary or restroom sink as required by R4-10-403;
  - d. A station;
  - e. A restroom; and
  - f. Notice posted for activities performed in the salon but not regulated by the Board; and
5. The fee required in R4-10-102.

**Historical Note**

Adopted effective April 9, 1996 (Supp. 96-2). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-402. Changes Affecting a Salon License**

- A. An owner shall apply for a new salon license when:
  1. The salon address changes;
  2. The name of a salon changes;
  3. The controlling ownership in the corporation is transferred or the corporation is reorganized; or
  4. The corporation, limited liability company, or partnership has a change of any corporate officer, partner, or statutory agent.
- B. The salon owner and manager shall ensure that a Board-issued license, indicating proper ownership, is posted in the salon before opening for business.

**Historical Note**

Former Section R4-10-402 renumbered to R4-10-403; new Section adopted by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-403. Salon Requirements and Minimum Equipment**

- A. A salon shall perform services for the public according to the type of license issued.
- B. Salons shall have enough equipment, materials, supplies, tools, and instruments to ensure infection control and safety for the public and employees.
- C. Each salon shall have:
  1. A work station for each employee or person using space within the salon; and
  2. If the salon is a cosmetology salon, a minimum of one shampoo bowl and one hair dryer that may be a blow dryer, and if the salon is an aesthetics or nail technology salon, a minimum of one sink in addition to the restroom or dispensary sink.
- D. Aestheticians, cosmetologists, and nail technicians shall have enough equipment, materials, supplies, tools, and instruments to ensure infection control at all times and disinfection between clients.

**Historical Note**

Adopted April 9, 1996 (Supp. 96-2). Former Section R4-10-403 renumbered to R4-10-404; new Section R4-10-403 renumbered from Section R4-10-402 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-404. Mobile Services**

- A. If mobile services are provided as an extension of a licensed salon the mobile service shall advertise using the licensed name of the salon. The licensed salon owner and manager shall ensure that the mobile services comply with the Board's statutes and rules.

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1. A salon providing mobile cosmetology, nail technology, or aesthetics services shall post licenses as required by R4-10-111.
  2. A salon shall make client appointments through the licensed salon using an appointment book that lists the appointments and locations where services are performed.
  3. Mobile services are subject to inspection by the Board at any time.
  4. If a retrofitted mobile vehicle is used to provide mobile services, the salon owner and manager shall ensure that the vehicle has the same equipment as specified by R4-10-403 and complies with safety and infection control requirements specified by R4-10-112.
  5. If mobile services are provided in a location other than a retrofitted mobile vehicle, the salon owner and manager shall ensure that equipment is disinfected before use and stored as specified in R4-10-112.
- B.** If a retrofitted motor vehicle is used exclusively as a mobile facility that is dispatched from a business address, the owner and manager of the mobile facility shall:
1. Comply with all salon requirements;
  2. Comply with all infection control and equipment requirements;
  3. Maintain a complete and current list of appointment locations at the business address and display the list in a loca-

tion listed on the salon application that is available to an inspector at all times when the retrofitted motor vehicle is open for business; and

4. Comply with other statutes and rules of the Board.

**Historical Note**

Adopted April 9, 1996 (Supp. 96-2). Former Section R4-10-404 renumbered to R4-10-405; new Section R4-10-404 renumbered from Section R4-10-403 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 12 A.A.R. 807, effective April 8, 2006 (Supp. 06-1).

**R4-10-405. Shampoo Assistants**

- A.** People who are not licensed by the Board may be hired as shampoo assistants to shampoo and apply cream rinse to an individual's hair, comb the hair to remove tangles, and remove rollers and clippies.
- B.** Shampoo assistants shall not apply conditioners, reconstructors, hair color, permanent wave solution or neutralizer, or remove rods, tint, relaxers, or other solutions from the hair.

**Historical Note**

New Section R4-10-405 renumbered from Section R4-10-404 by final rulemaking at 5 A.A.R. 1791, effective May 18, 1999 (Supp. 99-2).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 4. Professions and Occupations**

### **Chapter 11. State Board of Dental Examiners**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-11-401, R4-11-402, R4-11-403, R4-11-405, R4-11-406

REMOVE Supp. 16-1  
Pages: 1 - 34

REPLACE with Supp. 16-4  
Pages: 1 - 35

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS**

(Authority: A.R.S. § 32-1203 et seq.)

*All former rules renumbered, new Article 11 added (Supp. 81-4).***ARTICLE 1. DEFINITIONS***Article 1, consisting of Section R4-11-101, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).**Article 1, consisting of Sections R4-11-101 through R4-11-103, renumbered to Article 2, Sections R4-11-201 through R4-11-203; Sections R4-11-104 and R4-11-105 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

Section	
R4-11-101.	Definitions ..... 4
R4-11-102.	Renumbered ..... 6
R4-11-103.	Renumbered ..... 6
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*Article 6, consisting of Sections R4-11-602 and R4-11-603, renumbered to Article 10, Sections R4-11-1001 and R4-11-1002, and Section R4-11-601 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

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*Article 7, consisting of Section R4-11-701, renumbered to Article 5, Section R4-11-502, and Sections R4-11-702 through R4-11-710 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

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*Article 8, consisting of Sections R4-11-802 through R4-11-806, renumbered to Article 13, Sections R4-11-1301 through R4-11-1305, and Section R4-11-801 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

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*Article 9, consisting of Sections R4-11-901 through R4-11-906 and R4-11-909, renumbered to Article 4, Sections R4-11-401 through R4-11-407, and Sections R4-11-907 and R4-11-908 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

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*Article 10, consisting of Sections R4-11-1001 through R4-11-1005, renumbered to Article 9, Sections R4-11-901 through R4-11-905, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

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*Article 11, consisting of Section R4-11-1101, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

*Article 11, consisting of Section R4-11-1102, renumbered to Article 5, Section R4-11-501, and Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).*

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*Article 12, consisting of Sections R4-11-1201 through R4-11-1207, renumbered from Article 14, Sections R4-11-1402 through R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580,*

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effective February 4, 1999 (Supp. 99-1).

Article 12, consisting of Sections R4-11-1201 and R4-11-1202, renumbered to Article 8, Sections R4-11-801 and R4-11-802, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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Article 14 consisting of Sections R4-11-1401 through R4-11-1406, repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

Article 14, consisting of Sections R4-11-1401 through R4-11-1406, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

Article 14, consisting of Sections R4-11-1402 through R4-11-1408, renumbered to Article 12, Sections R4-11-1201 through R4-11-1207 and Sections R4-11-1401 and R4-11-1409 repealed, by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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**ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION**

Article 15, consisting of Sections R4-11-1501 through R4-11-1504, adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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**ARTICLE 16. EXPIRED**

Article 16, consisting of Section R4-11-1601 expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008 (Supp. 08-3).

Article 16, consisting of Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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**ARTICLE 17. REHEARING OR REVIEW**

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**ARTICLE 18. BUSINESS ENTITIES**

Article 18, consisting of Sections R4-11-1801 and R4-11-1802, made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

## Section

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**ARTICLE 1. DEFINITIONS****R4-11-101. Definitions**

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

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N<sub>2</sub>O) and oxygen (O<sub>2</sub>) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;  
Course title;  
Number of credit hours;  
Name of speaker; and  
Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;  
Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;  
Articles other than food intended to affect the structure of any function of the human body; or  
Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.



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“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N<sub>2</sub>O/O<sub>2</sub>) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoid secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic

stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

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“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

**Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**R4-11-102. Renumbered****Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-103. Renumbered****Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). For-

mer Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-104. Repealed****Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-105. Repealed****Historical Note**

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**ARTICLE 2. LICENSURE BY CREDENTIAL**

*New Article 2, consisting of Sections R4-11-201 through R4-11-205, made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).*

**R4-11-201. Clinical Examination; Requirements**

- A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:
  1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
  2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.
- B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

**Historical Note**

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371,

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effective April 3, 2016 (Supp. 16-1).

**R4-11-202. Dental Licensure by Credential; Application**

- A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
- B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:
  1. Have a current dental license in another state, territory or district of the United States;
  2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
  3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and
  4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).
- C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.
- D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).
- E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
  1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
  2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.
- F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:
  1. Commit to a three-year, exclusive service period,
  2. File a copy of a contract or employment verification statement with the Board, and
  3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.
- G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

**Historical Note**

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

**R4-11-203. Dental Hygienist Licensure by Credential; Appli-****cation**

- A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
- B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
  1. Have a current dental hygienist license in another state, territory, or district of the United States;
  2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
  3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
  4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11-201(A)(1).
- C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.
- D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under the applicable subsection in R4-11-201(A).
- E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:
  1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
  2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.
- F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:
  1. Commit to a three-year exclusive service period,
  2. File a copy of a contract or employment verification statement with the Board, and
  3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.
- G. A licensee's failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

**Historical Note**

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8,

2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-204. Dental Assistant Radiography Certification by Credential**

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

##### **Historical Note**

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

#### **R4-11-205. Application for Dental Assistant Radiography Certification by Credential**

- A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:
  1. A sworn statement of the applicant's eligibility, and
  2. A letter of endorsement that verifies compliance with R4-11-204.
- B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

##### **Historical Note**

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3).

#### **R4-11-206. Repealed**

##### **Historical Note**

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-207. Repealed**

##### **Historical Note**

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5

A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-208. Repealed**

##### **Historical Note**

Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-209. Repealed**

##### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-210. Repealed**

##### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-211. Repealed**

##### **Historical Note**

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-212. Repealed**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-213. Repealed**

##### **Historical Note**

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-214. Repealed**

##### **Historical Note**

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February

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4, 1999 (Supp. 99-1).

**R4-11-215. Repealed****Historical Note**

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-216. Repealed****Historical Note**

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

**R4-11-301. Application**

- A.** An applicant for licensure or certification shall provide the following information and documentation:
1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
  2. A photograph of the applicant that is no more than 6 months old;
  3. An official, sealed transcript sent directly to the Board from either:
    - a. The applicant's dental, dental hygiene, or denturist school, or
    - b. A verified third-party transcript provider.
  4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
    - a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
    - b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
    - c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;
  5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
  6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques

for CPR training and certification as the American Red Cross or American Heart Association;

7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
  8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 days old;
  9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
  10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
  11. The jurisprudence examination fee.
- B.** The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma,
  2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
  3. Written verification of the applicant's work history, and
  4. A copy of a high school diploma or equivalent certificate.
- C.** An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

**Historical Note**

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

**R4-11-302. Repealed****Historical Note**

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

**R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits**

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- A. The Board office shall complete an administrative completeness review within 24 days of the date of receipt of an application for a license, certificate, permit, or registration.
1. Within 14 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, drug dispensing registration, business entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
  2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
  3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
  2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
  3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
  4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
  5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
  2. Substantive review time-frame: 90 calendar days.
  3. Overall time-frame: 114 calendar days.
- G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

**Historical Note**

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

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

- A. Within 14 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.
- C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.
- D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.
- E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.
- F. The notice of denial shall inform the applicant of the following:
1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
  2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
  3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

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- G. The following time-frames apply for certificate applications governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
  2. Substantive review time-frame: 90 calendar days.
  3. Overall time-frame: 114 calendar days.
- H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

**Historical Note**

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

**R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA**

- A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
1. Within 14 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
  2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
  3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.

2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
    - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
  3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
  4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
  5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
  2. Substantive review time-frame: 120 calendar days.
  3. Overall time-frame: 144 calendar days.

**Historical Note**

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

**ARTICLE 4. FEES**

**R4-11-401. Retired or Disabled Licensure Renewal Fee**

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is \$15.

**Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-402. Business Entity Fees**

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services:

1. Initial triennial registration, \$300 per location;
2. Renewal of triennial registration, \$300 per location; and

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3. Late triennial registration renewal, \$100 per location in addition to the fee under subsection (2).

**Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-403. Licensing Fees**

- A. As expressly authorized under A.R.S. §§ 32-1236, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:
  1. Dentist triennial renewal fee: \$510;
  2. Dentist prorated initial license fee: \$110;
  3. Dental hygienist triennial renewal fee: \$255;
  4. Dental hygienist prorated initial license fee: \$55;
  5. Denturist triennial renewal fee: \$233; and
  6. Denturist prorated initial license fee: \$46.
- B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:
  1. Jurisprudence examination fee:
    - a. Dentists: \$300;
    - b. Dental Hygienists: \$100; and
    - c. Denturists: \$250.
  2. Licensure by credential fee:
    - a. Dentists: \$2,000; and
    - b. Dental Hygienists: \$1,000.
  3. Penalty to reinstate an expired license or certificate: \$100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
  4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
    - a. Failure after 10 days: \$50; and
    - b. Failure after 30 days: \$100.

**Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-404. Repealed****Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4).

Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

**R4-11-405. Charges for Board Services**

The Board shall charge the following for the services provided:

1. Duplicate license: \$25;
2. Duplicate certificate: \$25;
3. License verification:
  - a. For licensee: \$25; and
  - b. For non-licensee: \$5;
4. Copy of audio recording: \$10;
5. Photocopies (per page): \$.25;
6. Mailing lists:
  - a. Dentists:
    - i. In-state licensees - paper or labels: \$150;
    - ii. All licensees - paper or labels: \$175; and
    - iii. Mailing list in digital format: \$100;
  - b. Dental hygienists:
    - i. In-state licensees - paper or labels: \$150;
    - ii. All licensees - paper or labels: \$175; and
    - iii. Mailing list in digital format: \$100; and
  - c. Denturists: All certificate holders - paper, labels, or digital format: \$5; and
7. Board meeting agendas and minutes (mailed directly to consumer):
  - a. Agendas and minutes: \$75 for 12 months;
  - b. Agendas only: \$25 for 12 months; and
  - c. Minutes only: \$50 for 12 months.

**Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-406. Anesthesia and Sedation Permit Fees**

- A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:
  1. Section 1301 permit fee: \$300 plus \$25 for each additional location;
  2. Section 1302 permit fee: \$300 plus \$25 for each additional location;
  3. Section 1303 permit fee: \$300 plus \$25 for each additional location; and
  4. Section 1304 permit fee: \$300 plus \$25 for each additional location.
- B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.
- C. Permit renewal fees:
  1. Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;



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2. Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit renewal fee: \$300 plus \$25 for each additional location.

**Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

**R4-11-407. Renumbered****Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

**R4-11-408. Repealed****Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

**R4-11-409. Repealed****Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

**ARTICLE 5. DENTISTS****R4-11-501. Dentist of Record**

- A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.
- B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
- C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
- D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
- E. A dentist of record shall:

1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

- F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

**Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-502. Affiliated Practice**

- A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.
- B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
- C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
- D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

**Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

**R4-11-503. Repealed****Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-504. Renumbered****Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5

A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-505. Repealed**

##### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

#### **R4-11-506. Repealed**

##### **Historical Note**

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

### **ARTICLE 6. DENTAL HYGIENISTS**

#### **R4-11-601. Duties and Qualifications**

- A. A dental hygienist may apply preventative and therapeutic agents under the general supervision of a licensed dentist.
- B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:
  1. The procedure is recommended or prescribed by the supervising dentist;
  2. The hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
  3. The procedure is performed under the general supervision of a licensed dentist.
- C. The Board shall ensure that a dental hygienist is qualified to administer local anesthesia and nitrous oxide analgesia as authorized by A.R.S. § 32-1281(F)(1) and (2), by requiring evidence that the hygienist has completed courses in techniques taught at a recognized dental hygiene school or recognized dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 36 clock hours of instruction, and has passed examinations in theoretical knowledge and clinical competency in the following subject areas:
  1. Review of head and neck anatomy;
  2. Pharmacology of anesthetic and analgesic agents;
  3. Medical - dental history considerations;
  4. Emergency procedures;
  5. Selection of appropriate armamentarium and agents;
  6. Nitrous oxide administration;
  7. Clinical practice, under direct supervision, as defined in A.R.S. § 32-1281(H)(1), including at least three experiences administering each of the following:
    - a. Posterior superior alveolar injection,
    - b. Middle superior alveolar injection,
    - c. Anterior superior alveolar injection,
    - d. Nasopalatine injection,
    - e. Greater - palatine injection,
    - f. Inferior alveolar nerve injection,
    - g. Lingual injection,
    - h. Mental injection,
    - i. Long buccal injections, and
    - j. Nitrous oxide analgesia.
- D. In addition to the recognized course of study described in subsection (C), the hygienist shall successfully complete the examination in local anesthesia given by the Western Regional Examining Board. The hygienist shall submit proof of the successful completion of the local anesthesia examination to the Board. The Board shall then issue a Local Anesthesia Certificate.
- E. For purposes of qualification of a dental hygienist to place interrupted sutures as authorized by A.R.S. § 32-1281(F)(3), the Board recognizes courses in advanced periodontal therapy offered by a recognized dental hygiene school or a recognized

dental school, as defined in A.R.S. § 32-1201(16) and (17), that consist of a minimum of 200 clock hours of instruction and require a dental hygienist's successful completion of those examinations of a theoretical knowledge and clinical competency in the following subject areas:

1. A review of oral histology,
2. Inflammation and pathogenesis of a periodontal pocket,
3. Patient assessment,
4. Dental hygiene treatment planning,
5. Advanced root planing and debridement,
6. Subgingival curettage,
7. Suturing,
8. Wound repair and new attachment, and
9. Clinical experience in each of the following:
  - a. Root planing,
  - b. Subgingival curettage, and
  - c. Suturing.
- F. The hygienist shall submit proof of the successful completion of a recognized course in advanced periodontal therapy, as described in subsection (E), to the Board. The Board shall then issue a certification sticker for Suture Placement, which shall be affixed to the hygienist's license.
- G. A dental hygienist shall not perform an irreversible procedure.
- H. To qualify to use emerging scientific technology as authorized by A.R.S. § 32-1281(D)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:
  1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201(17), a recognized dental hygiene school as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental or dental hygiene association or government agency;
  2. Includes didactic instruction with a written examination;
  3. Includes hands-on clinical instruction; and
  4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

##### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

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

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

##### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

A dentist shall not supervise more than three dental hygienists at a time.

##### **Historical Note**

Adopted effective December 6, 1974 (Supp. 75-1). For-

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mer Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new

Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

- A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.
- B. Each selection committee member's term is one year.
- C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

**Historical Note**

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

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

**Historical Note**

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

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

**Historical Note**

New Section R4-11-606 adopted by final rulemaking at 5

A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

- A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
- B. In performing the duty in subsection (A), the committee may:
  - 1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
  - 2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in local anesthesia, nitrous oxide analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
  - 3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
  - 4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
  - 5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
  - 6. Provide ad hoc committees to the Board upon request;
  - 7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
  - 8. Make recommendations to the Board for approval of dental hygiene consultants.
- C. Committee members who are licensed dentists or dental hygienists may serve as Western Regional Examining Board (WREB) examiners or Board consultants.
- D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
- E. The Board may assign additional duties to the committee.

**Historical Note**

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

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

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

**Historical Note**

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-609. Affiliated Practice**

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- A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289, a dental hygienist shall:
  - 1. Provide evidence to the Board of successfully completing a total of 12 hours of recognized continuing dental education that consists of the following subject areas:
    - a. A minimum of four hours in medical emergencies; and
    - b. A minimum of eight hours in at least two of the following areas:
      - i. Pediatric or other special health care needs,
      - ii. Preventative dentistry, or
      - iii. Public health community-based dentistry, and
  - 2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).
- B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).
- C. To comply with A.R.S. § 32-1289(E) and (F) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.
- D. A dental hygienist who practices or applies to practice under an affiliated practice relationship shall ensure that all signatures in an affiliated practice agreement, amendment, notification, and affidavit are notarized.
- E. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
- F. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

**ARTICLE 7. DENTAL ASSISTANTS****R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision**

- A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:
  - 1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
  - 2. Cleanse the supragingival surface of the tooth in preparation for:
    - a. The placement of bands, crowns, and restorations;
    - b. Dental dam application;
    - c. Acid etch procedures; and
    - d. Removal of dressings and packs;
  - 3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
  - 4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
  - 5. Remove sutures;
  - 6. Place and remove dental dams and matrix bands;
  - 7. Fabricate and place interim restorations with temporary cement;
  - 8. Apply sealants;
  - 9. Apply topical fluorides;

- 10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
  - 11. Observe a patient during nitrous oxide and oxygen analgesia as instructed by the dentist.
- B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:
    - 1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
    - 2. Collect and record information pertaining to extraoral conditions; and
    - 3. Collect and record information pertaining to existing intraoral conditions.

**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

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

A dental assistant shall not perform the following procedures or functions:

- 1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
- 2. Intraoral carvings of dental restorations or prostheses;
- 3. Final jaw registrations;
- 4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
- 5. Activating orthodontic appliances; or
- 6. An irreversible procedure.

**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-703. Repealed****Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-704. Repealed****Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-705. Repealed****Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former

Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-706. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-707. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-708. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-709. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-710. Repealed**

##### **Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

### **ARTICLE 8. DENTURISTS**

#### **R4-11-801. Denturist Consultants**

- A. The Board shall not appoint a denturist to assist and advise the Board regarding complaints and disciplinary actions concerning denturists unless the denturist meets the requirements of R4-11-1502.
- B. The Board shall appoint denturist consultants as designees of the Board to participate in each denturist certification examination as specified in A.R.S. § 32-1297.02.

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793,

effective April 2, 2005 (Supp. 05-1).

#### **R4-11-802. Curriculum**

In addition to the requirements in A.R.S. § 32-1297(A), the 60 hours of a program in denture technology may include the following subjects: partial denture techniques, cardiopulmonary resuscitation, x-ray interpretation, jurisprudence, and practice management.

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### **R4-11-803. Renumbered**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-804. Renumbered**

##### **Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-805. Renumbered**

##### **Historical Note**

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### **R4-11-806. Renumbered**

##### **Historical Note**

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

### **ARTICLE 9. RESTRICTED PERMITS**

#### **R4-11-901. Application for Restricted Permit**

- A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:
  1. A sworn statement of the applicant's qualifications for a restricted permit;
  2. A photograph of the applicant that is no more than six months old;

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3. A letter of endorsement from any other jurisdiction in which an applicant is licensed, sent directly from that jurisdiction to the Board;
4. A letter of endorsement from the applicant's commanding officer or superior if the applicant is in the military or employed by the United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a charitable dental clinic or organization offering dental or dental hygiene services.

- B.** The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

**Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-902. Issuance of a Restricted Permit**

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

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

**Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11-902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and

amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-903. Recognition of a Charitable Dental Clinic Organization**

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

**Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11-903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-904. Determination of Minimum Rate**

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

**Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11-904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904 renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-905. Restricted Permit Denial**

If an applicant for a restricted permit or the dental clinic or organization with whom the applicant has a pending contract refuses or fails to furnish information requested by the Board with the result that the Board is unable to perform its duties under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall not issue a restricted permit to the applicant.

**Historical Note**

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11-905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

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

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

**Historical Note**

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11-406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-907. Repealed****Historical Note**

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-908. Repealed****Historical Note**

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-909. Renumbered****Historical Note**

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**ARTICLE 10. DENTAL TECHNICIANS****R4-11-1001. Duties of Dental Laboratory Technician**

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

**Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11-1001 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1001 renumbered to R4-11-901, new Section R4-11-1001 renumbered from R4-11-602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-1002. Dental Technician Laboratory Work Orders**

- A. A dentist shall retain a copy of a dental technician laboratory work order for at least two years from date of issuance.
- B. A dental laboratory technician shall retain an original laboratory work order for at least one year from date of issuance.
- C. A dentist and a dental laboratory technician shall permit the Board to inspect upon demand, the original and the duplicate of all work orders.

**Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11-1002 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1002 renumbered to R4-11-902, new Section R4-11-1002 renumbered from R4-11-603 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-1003. Renumbered****Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11-

1003 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-1004. Renumbered****Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11-1004 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-1005. Renumbered****Historical Note**

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11-1005 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-1006. Repealed****Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

**ARTICLE 11. ADVERTISING****R4-11-1101. Advertising**

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase "Services provided by an Arizona licensed general dentist." A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase "Services provided by an Arizona licensed dental hygienist." A denturist may advertise specific denture services only if the advertisement includes the phrase "Services provided by an Arizona certified denturist."

**Historical Note**

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on "Management of Craniomandibular Disorders" and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1102. Advertising as a Recognized Specialist**

- A. A dentist may advertise as a specialist or use the terms "specialty" or "specialist" to describe professional services only if the dentist limits the dentist's practice exclusively to one or more specialty area that are:
  1. Recognized by a board that certifies specialists for the area of specialty; and
  2. Accredited by the Commission on Dental Accreditation of the American Dental Association.
- B. The following specialty areas meet the requirements of subsection (A):
  1. Endodontics,
  2. Oral and maxillofacial surgery,
  3. Orthodontics and dentofacial orthopedics,
  4. Pediatric dentistry,
  5. Periodontics,

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6. Prosthodontics,
  7. Dental Public Health,
  8. Oral and Maxillofacial Pathology, and
  9. Oral and Maxillofacial Radiology.
- C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:
1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
  2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
  3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
    - a. Has established examination requirements and standards,
    - b. Appraised an applicant's qualifications,
    - c. Administered comprehensive examinations, and
    - d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
  4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.
- D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

**Historical Note**

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1103. Reserved****R4-11-1104. Repealed****Historical Note**

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

**R4-11-1105. Repealed****Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5).  
Repealed effective July 21, 1995 (Supp. 95-3).

**ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS****R4-11-1201. Continuing Dental Education**

- A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
  2. Complete the recognized continuing dental education required by this Article each renewal period.
- B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

**Historical Note**

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements**

- A. When applying for a renewal license, certificate, or restricted permit, a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.
- B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:
1. A current cardiopulmonary resuscitation (CPR) health-care provider certificate from the American Red Cross, the American Heart Association, or another certifying agency;
  2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
  3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.
- C. A licensee or certificate holder shall include an affidavit affirming the licensee's or certificate holder's completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee's or certificate holder's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).
- D. A licensee or certificate holder shall submit a written request for an extension before the June 30 deadline. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.
- E. The Board shall:
1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
  2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount



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required in this Article to be carried forward to the next renewal period.

- F. A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the most recently completed renewal period.
- G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder selected for audit shall provide the Board with documentation of attendance that shows compliance with the continuing dental education requirements within 60 days from the date the licensee or certificate holder received notice of the audit by certified mail.
- H. If a licensee or certificate holder is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

**Historical Note**

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2).

**R4-11-1203. Dentists and Dental Consultants**

Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:

1. At least 42 credit hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, deep sedation, par-enteral sedation, or oral sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;
2. No more than 18 credit hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours in chemical dependency, which may include tobacco cessation;
4. At least three credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

**Historical Note**

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Sec-

tion R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**R4-11-1204. Dental Hygienists**

- A. A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:
  1. At least 31 credit hours in any of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
  2. No more than 14 credit hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
  3. At least three credit hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
  4. At least three credit hours in infectious diseases or infectious disease control; and
  5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.
- B. A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

**Historical Note**

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**R4-11-1205. Denturists**

Denturists shall complete 36 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least 21 credit hours in any of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour in chemical dependency, which may include tobacco cessation;
4. At least two credit hours in infectious diseases or infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

**Historical Note**

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**R4-11-1206. Restricted Permit Holders - Dental**

In addition to the requirements in R4-11-1202, a dental restricted permit holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the restricted permit holder submits the renewal application.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
  - a. At least 12 credit hours in one or more of the subjects enumerated in R4-11-1203(1);
  - b. No more than six credit hours in one or more of the subjects enumerated in R4-11-1203(2);
  - c. At least one credit hour in the subjects enumerated in R4-11-1203(3);
  - d. At least one credit hour in the subjects enumerated in R4-11-1203(4);
  - e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
  - f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

**Historical Note**

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**R4-11-1207. Restricted Permit Holders - Dental Hygiene**

In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the restricted permit holder submits the renewal application.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
  - a. At least 9 credit hours in one or more of the subjects enumerated in R4-11-1204(1);
  - b. No more than three credit hours in one or more of the subjects enumerated in R4-11-1204(2);
  - c. At least one credit hour in the subjects enumerated in R4-11-1204(3);

- d. At least two credit hours in the subjects enumerated in R4-11-1204(4) and
- e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

**Historical Note**

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**R4-11-1208. Retired Licensees or Certificate Holders**

A retired licensee or certificate holder shall:

1. Except for the number of credit hours required, comply with the requirements in R4-11-1202; and
2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the retired licensee or certificate holder has completed the following credit hours of recognized continuing dental education per renewal period:
  - a. Dentist - 27 credit hours of which no less than three credit hours shall be for CPR;
  - b. Dental hygienist - 21 credit hours of which no less than three credit hours shall be for CPR; and
  - c. Denturist - 9 credit hours of which no less than three credit hours shall be for CPR.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1209. Types of Courses**

A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
  - a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
  - b. Participation on the Board, in Board complaint investigations including clinical evaluations or anesthesia and sedation permit evaluations;
  - c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or

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- participation in quality of care or utilization review in a hospital, institution, or governmental agency;
- d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental hygiene, or denturist association;
  - e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
    - i. Only once for materials presented;
    - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
    - iii. One credit hour for each hour of preparation, writing, and presentation; or
  - f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinical or organization.

- B.** The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
1. Dentists and Dental Hygienists, no more than 24 hours;
  2. Denturists, no more than 12 hours;
  3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
  4. Retired Denturists, no more than three hours.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

**ARTICLE 13. GENERAL ANESTHESIA AND SEDATION****R4-11-1301. General Anesthesia and Deep Sedation**

- A.** Before administering general anesthesia, or deep sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 permit issued by the Board. The dentist may renew a Section 1301 permit every five years by complying with R4-11-1307.
- B.** To obtain or renew a Section 1301 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
    - a. General information about the applicant such as:
      - i. Name;
      - ii. Home and office addresses and telephone numbers;
      - iii. Limitations of practice;
      - iv. Hospital affiliations;
      - v. Denial, curtailment, revocation, or suspension of hospital privileges;
      - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist

- has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer general anesthesia or deep sedation:
    - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and deep sedation:
      - i. Emergency drugs;
      - ii. Electrocardiograph monitor;
      - iii. Pulse oximeter;
      - iv. Cardiac defibrillator or automated external defibrillator (AED);
      - v. Positive pressure oxygen and supplemental oxygen;
      - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
      - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
      - viii. Endotracheal tubes and appropriate connectors;
      - ix. Magill forceps;
      - x. Oropharyngeal and nasopharyngeal airways;
      - xi. Auxiliary lighting;
      - xii. Stethoscope; and
      - xiii. Blood pressure monitoring device; and
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or deep sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
  3. Hold a valid license to practice dentistry in this state;
  4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration; and
  5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
    - c. A recognized continuing education course in advanced airway management.
  - C.** Initial applicants shall meet one or more of the following conditions:
    1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
    2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial sur-

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- geons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
    - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
    - b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and
    - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).
  - D.** After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer general anesthesia or deep sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 permit shall be issued to the applicant.
    1. The onsite evaluation team shall consist of:
      - a. Two dentists who are Board members, or Board designees for initial applications; or
      - b. One dentist who is a Board member or Board designee for renewal applications.
    2. The onsite team shall evaluate the following:
      - a. The availability of equipment and personnel as specified in subsection (B)(2);
      - b. Proper administration of general anesthesia or deep sedation to a patient by the applicant in the presence of the evaluation team;
      - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      - d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
      - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
      - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
    3. The evaluation team shall recommend one of the following:
      - a. Pass. Successful completion of the onsite evaluation;
      - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
      - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
      - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
      - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
  4. The onsite evaluation of an additional dental office or dental clinic in which general anesthesia or deep sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
  5. A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. The applicant must submit a completed affidavit verifying:
    - a. That the equipment and supplies for the provision of anesthesia or deep sedation as required in subsection (B)(2)(a) either travel with the Section 1301 permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or deep sedation is provided, and
    - b. Compliance with subsection (B)(2)(b).
  - E.** A Section 1301 permit holder shall keep an anesthesia or deep sedation record for each general anesthesia and deep sedation procedure that includes the following entries:
    1. Pre-operative and post-operative electrocardiograph documentation;
    2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
    3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
    4. A list of all medications given, with dosage and time intervals, and route and site of administration;
    5. Type of catheter or portal with gauge;
    6. Indicate nothing by mouth or time of last intake of food or water;
    7. Consent form; and
    8. Time of discharge and status, including name of escort.
  - F.** The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
  - G.** The Section 1301 permit holder shall utilize supplemental oxygen for patients receiving general anesthesia or deep sedation for the duration of the procedure.
  - H.** The Section 1301 permit holder shall continuously supervise the patient from the initiation of anesthesia or deep sedation until termination of the anesthesia or deep sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

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- I. A Section 1301 permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
  2. A Certified Registered Nurse Anesthetist (CRNA) currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
- J. A Section 1301 permit holder may also administer parenteral sedation without obtaining a Section 1302 permit.

**Historical Note**

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

**R4-11-1302. Parenteral Sedation**

- A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.
1. A Section 1301 permit holder may also administer parenteral sedation.
  2. A Section 1302 permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, or similarly acting drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of moderate sedation.
- B. To obtain or renew a Section 1302 permit, the dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
    - a. General information about the applicant such as:
      - i. Name;
      - ii. Home and office addresses and telephone numbers;
      - iii. Limitations of practice;
      - iv. Hospital affiliations;
      - v. Denial, curtailment, revocation, or suspension of hospital privileges;
      - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
  2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
    - a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or general anesthesia or deep sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist (CRNA):
      - i. Emergency drugs;
      - ii. Positive pressure oxygen and supplemental oxygen;
      - iii. Stethoscope;
      - iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      - v. Oropharyngeal and nasopharyngeal airways;
      - vi. Pulse oximeter;
      - vii. Auxiliary lighting;
      - viii. Blood pressure monitoring device; and
      - ix. Cardiac defibrillator or automated external defibrillator (AED); and
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      - i. Holds a current course completion confirmation in cardiopulmonary resuscitation (CPR) health care provider level;
      - ii. Is present during the parenteral sedation procedure; and
      - iii. After the procedure, monitors the patient until discharge;
  3. Hold a valid license to practice dentistry in this state;
  4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
  5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
    - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following conditions:
1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
    - a. Sixty (60) didactic hours of basic parenteral sedation to include:
      - i. Physical evaluation;
      - ii. Management of medical emergencies;
      - iii. The importance of and techniques for maintaining proper documentation; and
      - iv. Monitoring and the use of monitoring equipment; and
    - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or

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2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
  - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
  - b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
  - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
- D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 permit to the applicant.
  1. The onsite evaluation team shall consist of:
    - a. Two dentists who are Board members, or Board designees for initial applications, or
    - b. One dentist who is a Board member or Board designee for renewal applications.
  2. The onsite team shall evaluate the following:
    - a. The availability of equipment and personnel as specified in subsection (B)(2);
    - b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
    - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    - d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all controlled substances;
    - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
    - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
  3. The evaluation team shall recommend one of the following:
    - a. Pass. Successful completion of the onsite evaluation;
    - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
    - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
    - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
    - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
  4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
  5. A Section 1302 mobile permit may be issued if a Section 1302 permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:
    - a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
    - b. Compliance with R4-11-1302(B)(2)(b).
- E. A Section 1302 permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
  1. Includes the following entries:
    - a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
    - b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
    - c. A list of all medications given, with dosage and time intervals and route and site of administration;
    - d. Type of catheter or portal with gauge;
    - e. Indicate nothing by mouth or time of last intake of food or water;
    - f. Consent form; and
    - g. Time of discharge and status, including name of escort; and
  2. May include pre-operative and post-operative electrocardiograph report.
- F. The Section 1302 permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.
- G. The Section 1302 permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.
- H. The Section 1302 permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1302 permit holder may employ a health care professional as specified in R4-11-1301(I).

**Historical Note**

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final

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rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

**R4-11-1303. Oral Sedation**

- A.** Before administering oral sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 permit issued by the Board. The dentist may renew a Section 1303 permit every five years by complying with R4-11-1307.
1. A Section 1301 permit holder or Section 1302 permit holder may also administer oral sedation without obtaining a Section 1303 permit.
  2. The administration of a single drug for minimal sedation does not require a Section 1303 permit if:
    - a. The administered dose is within the Food and Drug Administration's (FDA) maximum recommended dose as printed in FDA approved labeling for unmonitored home use;
      - i. Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
      - ii. During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the FDA maximum recommended dose on the date of treatment; and
    - b. Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.
- B.** To obtain or renew a Section 1303 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
    - a. General information about the applicant such as:
      - i. Name;
      - ii. Home and office addresses and telephone numbers;
      - iii. Limitations of practice;
      - iv. Hospital affiliations;
      - v. Denial, curtailment, revocation, or suspension of hospital privileges;
      - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
  2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer oral sedation:
    - a. Contains the following properly operating equipment and supplies during the provision of sedation:
      - i. Emergency drugs;
      - ii. Cardiac defibrillator or automated external defibrillator (AED);
      - iii. Positive pressure oxygen and supplemental oxygen;
      - iv. Stethoscope;
    - v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
    - vi. Pulse oximeter;
    - vii. Blood pressure monitoring device; and
    - viii. Auxiliary lighting; and
  - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
    - i. Holds a current certificate in cardiopulmonary resuscitation (CPR) Health Care Provider Level;
    - ii. Is present during the oral sedation procedure; and
    - iii. After the procedure, monitors the patient until discharge;
  3. Hold a valid license to practice dentistry in this state;
  4. Maintain a current permit to prescribe and administer controlled substances in this state issued by the United States Drug Enforcement Administration;
  5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    - a. Cardiopulmonary resuscitation (CPR) Health Care Provider Level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
    - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
    - c. A recognized continuing education course in advanced airway management.
- C.** Initial applicants shall meet one of the following:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in oral sedation within the last three years before submitting the permit application; or
  2. Complete a Board recognized post-doctoral residency program that includes documented training in oral sedation more than three years before submitting the permit application shall provide the following documentation:
    - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered oral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
    - b. A copy of the oral sedation permit in effect in another state or certification of military training in oral sedation from the applicant's commanding officer; and
    - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
  3. Provide proof of participation in 30 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
    - a. Training in basic oral sedation,
    - b. Pharmacology,
    - c. Physical evaluation,
    - d. Management of medical emergencies,
    - e. The importance of and techniques for maintaining proper documentation, and
    - f. Monitoring and the use of monitoring equipment.

- D.** After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 permit to the applicant.
1. The onsite evaluation team shall consist of:
    - a. For initial applications, two dentists who are Board members, or Board designees.
    - b. For renewal applications, one dentist who is a Board member, or Board designee.
  2. The onsite team shall evaluate the following:
    - a. The availability of equipment and personnel as specified in subsection (B)(2);
    - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    - c. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances;
    - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the oral sedation record; and
    - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
  3. The evaluation team shall recommend one of the following:
    - a. Pass. Successful completion of the onsite evaluation;
    - b. Conditional Approval for failing to have appropriate equipment, proper documentation of controlled substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
    - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
    - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
  4. The onsite evaluation of an additional dental office or dental clinic in which oral sedation is administered by a Section 1303 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
  5. A Section 1303 mobile permit may be issued if the Section 1303 permit holder travels to dental offices or dental clinics to provide oral sedation. The applicant must submit a completed affidavit verifying:
    - a. That the equipment and supplies for the provision of oral sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 permit holder or are in place and in appropriate condition at the dental office or dental clinic where oral sedation is provided, and
      - b. Compliance with R4-11-1303(B)(2)(b).
- E.** A Section 1303 permit holder shall keep an oral sedation record for each oral sedation procedure that:
1. Includes the following entries:
    - a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
    - b. Pre-operative and post-operative blood pressure;
    - c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
    - d. List of all medications given, including dosage and time intervals;
    - e. Patient's weight;
    - f. Consent form;
    - g. Special notes, such as, nothing by mouth or last intake of food or water; and
    - h. Time of discharge and status, including name of escort; and
  2. May include the following entries:
    - a. Pre-operative and post-operative electrocardiograph report; and
    - b. Intra-operative blood pressures.
- F.** The Section 1303 permit holder shall utilize supplemental oxygen for patients receiving oral sedation for the duration of the procedure.
- G.** The Section 1303 permit holder shall ensure the continuous supervision of the patient from the administration of oral sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.
- H.** A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I);
  2. The Section 1303 permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
    - a. ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    - b. PALS in a practice treating pediatric patients;
    - c. A recognized continuing education course in advanced airway management;
  3. The Section 1303 permit holder ensures that:
    - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or CRNA;
    - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
    - c. For intravenous access, the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
    - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.



**Historical Note**

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1303 renumbered to R4-11-1304; new Section R4-11-1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

**R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)**

- A.** This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
  2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
  3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.
- B.** To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
    - a. General information about the applicant such as:
      - i. Name;
      - ii. Home and office addresses and telephone numbers;
      - iii. Limitations of practice;
      - iv. Hospital affiliations;
      - v. Denial, curtailment, revocation, or suspension of hospital privileges;
      - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
      - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
  2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
    - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
      - i. Emergency drugs;
      - ii. Electrocardiograph monitor;
      - iii. Pulse oximeter;
      - iv. Cardiac defibrillator or automated external defibrillator (AED);
      - v. Positive pressure oxygen and supplemental continuous flow oxygen;
      - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
      - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
      - viii. Endotracheal tubes and appropriate connectors;
      - ix. Magill forceps;
      - x. Oropharyngeal and nasopharyngeal airways;
      - xi. Auxiliary lighting;
      - xii. Stethoscope; and
      - xiii. Blood pressure monitoring device; and
    - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
- C.** After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
  2. The onsite team shall evaluate the following:
    - a. The availability of equipment and personnel as specified in subsection (B)(2);
    - b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
    - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
  3. The evaluation team shall recommend one of the following:
    - a. Pass. Successful completion of the onsite evaluation; or
    - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
  4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board

office of an affidavit verifying compliance with subsection (B)(2).

- D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
  1. Pre-operative and post-operative electrocardiograph documentation;
  2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
  3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
  4. A list of all medications given, with dosage and time intervals and route and site of administration;
  5. Type of catheter or portal with gauge;
  6. Indicate nothing by mouth or time of last intake of food or water;
  7. Consent form; and
  8. Time of discharge and status, including name of escort.
- E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

#### Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1304 renumbered to R4-11-1305; new Section R4-11-1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

#### R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

#### Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4-11-1305 renumbered to R4-11-1306; new Section R4-11-1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

#### R4-11-1306. Education; Continued Competency

- A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully

complete an advanced graduate or post-graduate education program in pain control.

1. The program shall include instruction in the following subject areas:
    - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
    - b. Physiological and psychological risks for the use of various modalities of pain control;
    - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
    - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
    - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
  2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
    - a. Be the same for all dentists, whether general practitioners or specialists; and
    - b. Include each subject area listed in subsection (A)(1).
  3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
- B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
      - a. General anesthesia,
      - b. Parenteral sedation,
      - c. Physical evaluation,
      - d. Medical emergencies,
      - e. Monitoring and use of monitoring equipment, or
      - f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
      - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
      - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
      - c. A recognized continuing education course in advanced airway management;
    3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
    4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).
  - C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
      - a. Oral sedation,
      - b. Physical evaluation,
      - c. Medical emergencies,
      - d. Monitoring and use of monitoring equipment, or

- e. Pharmacology of oral sedation drugs and non-drug substances; and
- 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
  - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
  - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
  - c. Pediatric advanced life support (PALS);
  - d. A recognized continuing education course in advanced airway management; and
- 3. Complete at least 10 oral sedation cases a calendar year.

**Historical Note**

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

**R4-11-1307. Renewal of Permit**

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
  - 1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
  - 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
  - 3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
  - 4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
  - 1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
  - 2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

**Historical Note**

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

**ARTICLE 14. DISPENSING DRUGS AND DEVICES****R4-11-1401. Prescribing**

- A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
  - 1. Date of issuance;
  - 2. Name and address of the patient to whom the prescription is issued;
  - 3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;

- 4. Name and address of the dentist prescribing the drug; and
- 5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

- B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

**Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1402. Labeling and Dispensing**

- A. A dentist shall include the following information on the label of all drugs and devices dispensed:
  - 1. The dentist's name, address, and telephone number;
  - 2. The serial number;
  - 3. The date the drug or device is dispensed;
  - 4. The patient's name;
  - 5. Name, strength, and quantity of drug or name and quantity of device dispensed;
  - 6. The name of the drug or device manufacturer or distributor;
  - 7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
  - 8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
- B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
- C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.
- D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
  - 1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
    - a. A patient's allergies,
    - b. Incompatibilities with a patient's currently-taken medications,
    - c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
    - d. The frequency of refills;
  - 2. Verify that the dosage is within proper limits;
  - 3. Interpret the prescription order;
  - 4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
  - 5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
  - 6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and

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7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

**Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1403. Storage and Packaging**

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
  - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
  - b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

**Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1404. Recordkeeping**

A. A dentist shall:

1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
2. Sequentially file orders separately from patient records, as follows:
  - a. File Schedule II drug orders separately from all other prescription orders;
  - b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
  - c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);

3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
  4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
  5. Record the date the drug or device is dispensed on each prescription order and label.
- B.** A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C.** A dentist shall maintain:
1. Purchase records of all drugs and devices for three years from the date purchased; and
  2. Dispensing records of all drugs and devices for three years from the date dispensed.
- D.** A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
  2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
  3. Shall maintain the inventory for three years from the inventory date;
  4. May use one inventory book for all controlled substances;
  5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
  6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.
- E.** A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
  2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
  3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).
- F.** A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

**Historical Note**

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

**R4-11-1405. Compliance**

- A.** A dentist who determines that there has been a theft or loss of drugs or controlled substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-controlled substance drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
  2. For controlled substance theft or loss, complete a DEA 106 form; and

3. Provide copies of the DEA 106 form to the Drug Enforcement Administration and the Board within seven days of the discovery.

- B. A dentist who dispenses drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

#### Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### R4-11-1406. Dispensing for Profit Registration and Renewal

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

#### Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4-11-1406 renumbered to R4-11-1205, new Section R4-11-1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

#### R4-11-1407. Renumbered

#### Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### R4-11-1408. Renumbered

#### Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

#### R4-11-1409. Repealed

#### Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

### ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

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

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

#### Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

#### R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

#### Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

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

- A. The Board's procedures for complaint notification are:
  1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
    - a. A formal interview is scheduled,
    - b. The complaint is tabled,
    - c. A postponement or continuance is granted, and
    - d. A subpoena, notice, or order is issued.
  2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
  3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.
- B. The Board's procedures for complaints referred to clinical evaluation are:
  1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
    - a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
    - b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.

## State Board of Dental Examiners

2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

**Historical Note**

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

**R4-11-1504. Postponement of Interview**

- A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
  1. Is made in writing,
  2. States the reason for the postponement, and
  3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.
- B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
  1. Review and either deny or approve the request for postponement; and
  2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

**Historical Note**

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

**ARTICLE 16. EXPIRED****R4-11-1601. Expired****Historical Note**

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

**ARTICLE 17. REHEARING OR REVIEW****R4-11-1701. Procedure**

- A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
- B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

- C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
  1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
  2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Excessive or insufficient penalties;
  5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
  6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
  7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
  8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
- D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.
- E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.
- F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.
- G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

**Historical Note**

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 18. BUSINESS ENTITIES****R4-11-1801. Application**

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793,  
effective April 2, 2005 (Supp. 05-1).

**R4-11-1802. Display of Registration**

- A.** A business entity shall ensure that the receipt for the current registration period is:
1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and

2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

- B.** A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 793,  
effective April 2, 2005 (Supp. 05-1).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 4. Professions and Occupations**

### **Chapter 17. Arizona Regulatory Board of Physician Assistants**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

Table 1, R4-17-202 through R4-17-206, R4-17-301 through R4-17-306

REMOVE Supp. 12-3  
Pages: 1 - 6

REPLACE with Supp. 16-4  
Pages: 1 - 7

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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Web site: [www.azpa.gov](http://www.azpa.gov)

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**

(Authority: A.R.S. § 32-2504)

**Editor's Note:** The name of the Joint Board on the Regulation of Physician's [sic] Assistants was changed to the Arizona Regulatory Board of Physician Assistants by Laws 2002, Ch. 277, § 7, effective August 22, 2002 (Supp. 03-2).

Laws 1984, Ch. 102, changed the name of the Joint Board of Medical Examiners and Osteopathic Examiners in Medicine and Surgery to Joint Board on the Regulation of Physician's Assistants.

Chapter 17 consisting of Article 1, Section R4-17-101; Article 2, Sections R4-17-201 through R4-17-204; Article 3, Sections R4-17-301 through R4-17-304; Article 4, Sections R4-17-401 and R4-17-402 adopted effective July 8, 1986.

Former Chapter 17 consisting of Article 1, Section R4-17-01; Article 2, Sections R4-17-02 through R4-17-06; Article 3, Sections R4-17-07 through R4-17-12; Article 4, Sections R4-17-13 through R4-17-17; Article 5, Sections R4-17-18 through R4-17-22; and Article 6, Section R4-17-23 repealed effective July 8, 1985.

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New Article 3, consisting of Sections R4-17-301 through R4-17-306, made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

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**ARTICLE 1. GENERAL PROVISIONS****R4-17-101. Definitions**

For the purposes of A.R.S. Title 32, Chapter 25 and this Chapter:

1. "Ability to perform health care tasks authorized by A.R.S. § 32-2531" means:
  - a. The cognitive capacity to make clinical diagnoses and exercise medical judgments and to learn and keep abreast of medical developments through the completion of continuing medical education,
  - b. The ability to communicate medical judgments and medical information to patients and other professionals, and
  - c. The physical capability to perform the health care tasks authorized by A.R.S. § 32-2531.
2. "Applicant" means an individual seeking a regular license or renewal license.
3. "Category I" means a designation given to a continuing medical education activity provided by an institution or organization that has been accredited for continuing medical education by the:
  - a. Accreditation Council for Continuing Medical Education,
  - b. American Medical Association,
  - c. American Academy of Physician Assistants,
  - d. American Osteopathic Association,
  - e. Accreditation Council for Continuing Medical Education,
  - f. Accreditation Review Commission on Education for Physician Assistants, or
  - g. Commission on the Accreditation of Allied Health Education Programs.
4. "Controlled Substance" means the same as in A.R.S. § 32-1901.
5. "Dispense" means the same as in A.R.S. § 32-1901.
6. "Drug" means the same as in A.R.S. § 32-1901.
7. "Health care institution" means the same as in A.R.S. § 36-401.
8. "Health professional" means the same as in A.R.S. § 32-3201 or its equivalent in another state.
9. "Health profession regulatory authority" means a state or federal entity that issues and regulates health professional licenses.
10. "NCCPA" means the National Commission on the Certification of Physician Assistants.
11. "PANCE" means the Physician Assistant National Certifying Examination.
12. "PANRE" means the Physicians Assistants National Recertification Examination.
13. "Prescribe" means to issue:
  - a. A signed, written order to a pharmacist for drugs or medical devices; or
  - b. An order transmitted to a pharmacist by word of mouth, telephone, or other means of communication.
14. "Privileges" means the authority granted by a health care institution to a physician or physician assistant to practice medicine at the health care institution.
15. "Service" means personal delivery or mailing by certified mail to a physician assistant, supervising physician, or applicant affected by a decision of the Board at the physician assistant's, supervising physician's, or applicant's last known residence or place of business.
16. "State fiscal year" means from July 1 of one calendar year to June 30 of the next calendar year.
17. "Substance use disorder" means the maladaptive pattern of the use of a drug, alcohol, or chemical leading to

effects that are detrimental to an individual's physical or mental health.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**R4-17-102. Time-frames for Licenses and Approvals**

- A. The overall time-frame described in A.R.S. § 41-1072(2) for a regular license or renewal license is set forth in Table 1.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a regular license or renewal license is set forth in Table 1 and begins on the date the Board receives an application.
  1. If the application is not administratively complete, the Board shall send a deficiency notice to the applicant.
    - a. The deficiency notice shall state each deficiency and the information needed to complete the application.
    - b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Board the missing information specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
    - c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Board shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn.
  2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) for a regular license or renewal license is set forth in Table 1 and begins on the date the Board sends written notice of administrative completeness to the applicant.
  1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the request until the Board receives the information.
  2. The Board shall issue a written notice informing the applicant that the application is deemed withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1.
  3. The Board shall issue a written notice of denial of a license or license renewal if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter for licensure or license renewal.
  4. If the applicant meets all of the substantive criteria required by statute and this Chapter for a license or license renewal, the Board shall issue the license or license renewal to the applicant.
- D. In computing any period of time prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state hol-

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iday. The computation shall include intermediate Saturdays, Sundays, and holidays. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the date of mailing.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**Table 1. Time Frames (in days)**

Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Regular License including schedule II or schedule III controlled substances approval R4-17-203	120	30	365	90	90
License Renewal R4-17-206	75	30	60	45	60

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**ARTICLE 2. PHYSICIAN ASSISTANT LICENSURE****R4-17-201. Repealed****Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-201 renumbered to R4-17-202; new Section adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**R4-17-202. Examination**

An applicant for a regular license as a physician assistant shall pass the PANCE or PANRE and be certified by the NCCPA at the time of application for licensure.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section R4-17-202 renumbered from R4-17-201 and amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-203. Regular License Application**

A. An applicant for a regular license shall submit a completed application to the Board that includes:

1. The applicant's:
  - a. First, last, and middle name;
  - b. Every other name used by the applicant;
  - c. Social Security number;
  - d. Office, mailing, e-mail, and home addresses;
  - e. Office, mobile, and home telephone numbers; and
  - f. Birth date and state or country of birth;
2. The name and address of the approved program completed by the applicant and the date of completion;
3. The name of each state or province in which the applicant has ever been certified, registered, or licensed as a physician assistant, including the certificate, registration, or license number, and current status;
4. Whether the applicant has practiced as a physician assistant since graduation from a physician assistant program

or for 10 continuous years before the date the application was submitted to the Board and if not, an explanation;

5. A questionnaire that includes answers to the following:

- a. Whether the applicant has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;
- b. Whether the applicant has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
- c. Whether the applicant has ever resigned or been requested to resign, been suspended or expelled from, been placed on probation, or been fined while enrolled in an approved program in a medical school or a postsecondary educational program, and if so, an explanation;
- d. Whether, while attending an approved program, the applicant has ever had any action taken against the applicant by the approved program, resigned, or been asked to leave the approved program for any amount of time, and if so, an explanation;
- e. Whether the applicant has ever surrendered a health professional license, and if so, an explanation;
- f. Whether the applicant has ever had a health professional license suspended or revoked, or whether any other disciplinary action has ever been taken against a health professional license held by the licensee, and if so, an explanation;
- g. Whether the applicant is currently under investigation by any health profession regulatory authority, health care association, licensed health care institution, or there are any pending complaints or disciplinary actions against the applicant, and if so, an explanation;
- h. Whether the applicant has ever had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
- i. Whether the applicant has ever had a federal or state regulatory authority take any action against the applicant's authority to prescribe, dispense, or

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administer controlled substances including revocation, suspension, or denial, or whether the applicant ever surrendered the authority in lieu of any of these actions, and if so, an explanation;

- j. Whether the applicant has ever been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or has been pardoned or had a record expunged or vacated, and if so, an explanation;
  - k. Whether the applicant has ever been charged with or convicted of a violation of any federal or state drug statute, rule, or regulation, regardless of whether a sentence was or was not imposed, and if so, an explanation;
  - l. Whether the applicant has been named as a defendant in a malpractice matter currently pending or that resulted in a judgment or settlement entered against the applicant, and if so, an explanation;
  - m. Whether the applicant has ever been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
  - n. Whether the applicant has ever been involuntarily terminated from a health professional position, resigned, or been asked to leave the health care position, and if so, an explanation;
  - o. Whether the applicant has ever been convicted of insurance fraud or received a sanction, including limitation, suspension, or removal from practice, imposed by any state or the federal government, and if so, an explanation; and
  - p. Whether the applicant, within the three years before the date of the application, has completed 45 hours in pharmacology or clinical management of drug therapy or is certified by a national commission on the certification of physician assistants or its successor;
6. A confidential questionnaire that includes answers to the following:
    - a. Whether the applicant has received treatment within the last five years for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;
    - b. If the answer to subsection (A)(6)(a) is yes:
      - i. A detailed description of the use, disorder, or condition; and
      - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current treatment providers and for all monitoring or support programs in which the applicant is currently participating; and
    - c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution within the last five years, if applicable;
  7. Consistent with the Board's statutory authority, other information the Board may deem necessary to evaluate the applicant fully; and
  8. A sworn statement that complies with A.R.S. § 32-2522(C).
- B.** In addition to the requirements in subsection (A), an applicant shall submit the following to the Board:
1. Documentation of citizenship or alien status that conforms to A.R.S. § 41-1080;

2. Documentation of a legal name change if the applicant's legal name is different from that shown on the document submitted in accordance with subsection (B)(1);
  3. A form provided by the Board and completed by the applicant that lists all current or past employment with health professionals or health care institutions within five years before the date of application or since graduation from a physician assistant program, if less than five years, including each health professional's or health care institution's name, address, and dates of employment;
  4. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment and a narrative statement specifying the nature of the occurrence resulting in the medical malpractice action. An applicant who is unable to obtain a document required under this subsection may submit a written request for a waiver of the requirement. The applicant shall include the following information in a request for waiver:
    - a. The document for which waiver is requested;
    - b. Detailed description of efforts made by the applicant to provide the required document; and
    - c. Reason the applicant's inability to provide the required document is due to no fault of the applicant; and
  5. The fee required in R4-17-204.
- C.** In addition to the requirements in subsections (A) and (B), an applicant shall have the following directly submitted to the Board:
1. A copy of the applicant's certificate of successful completion of the PANCE or PANRE and the applicant's examination score provided by the NCCPA;
  2. An approved program form provided by the Board, completed and signed by the director or administrator of the approved program that granted the applicant a physician assistant degree, that includes the:
    - a. Applicant's full name,
    - b. Type of degree earned by the applicant,
    - c. Name of the physician assistant program completed by the applicant,
    - d. Starting and ending dates, and
    - e. Date the applicant's degree was granted.
- D.** The Board's issuance of a regular license to an applicant also approves the applicant to issue prescriptions and dispense or issue schedule II or schedule III controlled substances subject to the limits and requirements specified in A.R.S. § 32-2532.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-204. Fees and Charges**

- A.** As expressly authorized under A.R.S. § 32-2526(A), the Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:
1. License application - \$125.00;
  2. Regular license - \$ 370.00, prorated for each month remaining in the biennial period;
  3. Regular license renewal - \$ 370.00 if the renewal application is postmarked no later than the applicant's birthdate; and
  4. Penalty for late renewal - \$100.00.

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- B.** As expressly authorized under A.R.S. § 32-2526(B), the Board establishes the following charges for providing the services listed:

1. Duplicate license - \$25.00;
2. Copies of Board documents - \$1.00 for first three pages, \$.25 for each additional page;
3. Medical Directory (CD-ROM) - \$30.00;
4. Data Disk - \$100.00; and
5. License verification - \$10.00.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section adopted effective April 22, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-205. Continuing Medical Education; Request for Extension of Time**

- A.** Under A.R.S. § 32-2523(A), renewal of a license is conditioned on the licensee completing 40 hours of category I continuing medical education during each biennial license period.
- B.** During a licensee's first biennial license period, the licensee may complete a pro-rated number of continuing medical education hours established by the Board.
- C.** A licensee who is unable to complete the required hours of continuing medical education for any of the reasons in A.R.S. § 32-2523(E) may submit a written request to the Board for an extension no later than 30 days before expiration of the license that contains:
1. The name, address, and telephone number of the licensee;
  2. The reason for the request;
  3. The number of continuing medical education hours completed during the biennial license period;
  4. The dates on which the remaining hours of continuing medical education are scheduled to be completed; and
  5. The signature of the licensee.
- D.** The Board shall send a written notice of approval of the extension within seven days from the date of receipt of the request if the Board determines:
1. The extension is needed for a reason specified in A.R.S. § 32-2523(E),
  2. The remaining hours of continuing medical education are scheduled to be completed within 30 days, and
  3. The extension is in the best interest of the state.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-206. License Renewal**

- A.** To renew a license, a licensee shall submit a completed application to the Board that includes:
1. An application form that contains the licensee's:
    - a. First, last, and middle names;
    - b. Arizona license number;
    - c. Office, mailing, e-mail, and home addresses;
    - d. Office, mobile, and home telephone numbers;
  2. A questionnaire that includes answers to the following since the last renewal date:
    - a. Whether the licensee has had an application for a certificate, registration, or license refused or denied by any licensing authority, and if so, an explanation;

- b. Whether the licensee has had the privilege of taking an examination for a professional license refused or denied by any entity, and if so, an explanation;
  - c. Whether the licensee has voluntarily surrendered a health care professional license, and if so, an explanation;
  - d. Whether the licensee has had a health professional license suspended or revoked, or whether any other disciplinary action has been taken against a health professional license held by the licensee, and if so, an explanation;
  - e. Whether the licensee has had any action taken against the applicant's privileges, including termination, resignation, or withdrawal by a health care institution or health profession regulatory authority, and if so, an explanation;
  - f. Whether the licensee has had a federal or state regulatory authority take any action against the licensee's authority to prescribe, dispense, or administer controlled substances including revocation, suspension, or denial, or whether the applicant surrendered the authority in lieu of any of these actions, and if so, an explanation;
  - g. Whether the licensee has been charged with, convicted of, pleaded guilty to, or entered into a plea of no contest to a felony or misdemeanor involving moral turpitude or an alcohol- or drug-related offense in any state, or has been pardoned or had a record expunged or vacated, and if so, an explanation;
  - h. Whether the licensee has been court-martialed or discharged other than honorably from any branch of military service, and if so, an explanation;
  - i. Whether the licensee has been involuntarily terminated from a health professional position with any city, county, state, or federal government, and if so, an explanation;
  - j. Whether the licensee has been convicted of insurance fraud or a state or the federal government has sanctioned or taken any action against the licensee, such as suspension or removal from practice, and if so, an explanation;
3. Consistent with the Board's statutory authority, other information the Board may deem necessary to evaluate the licensee fully;
  4. A dated and sworn statement by the licensee verifying that during the past biennial license period, the licensee completed at least 40 hours of Category I continuing medical education as required by A.R.S. § 32-2523;
  5. The fee required in R4-17-204;
  6. A confidential questionnaire that includes answers to the following:
    - a. Whether the applicant has received treatment since the last renewal for use of alcohol or a controlled substance, prescription-only drug, or dangerous drug or narcotic or a physical, mental, emotional, or nervous disorder or condition that currently impairs the applicant's ability to exercise the judgment and skills of a medical professional;
    - b. If the answer to subsection (A)(6)(a) is yes:
      - i. A detailed description of the use, disorder, or condition; and
      - ii. An explanation of whether the use, disorder, or condition is reduced or ameliorated because the applicant receives ongoing treatment and if so, the name and contact information for all current

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treatment providers and for all monitoring or support programs in which the applicant is currently participating; and

- c. A copy of any public or confidential agreement or order relating to the use, disorder, or condition, issued by a licensing agency or health care institution since the last renewal, if applicable; and
7. If the document submitted under R4-17-203(B)(1) was a limited form of work authorization issued by the federal government, evidence that the licensee's presence in the U.S. continues to be authorized under federal law.

- B. Under A.R.S. §32-2523(A), the Board shall randomly select at least 10 percent of renewal applications submitted by licensees who are not currently certified by a national certification organization to verify compliance with the continuing medical education requirement specified in R4-17-205(A). If selected, a licensee shall submit to the Board documents that verify compliance with the continuing medical education requirement.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). Amended by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-207. Denial of License or Extension to Complete Continuing Education**

An applicant for a license who is denied the license or a physician assistant who is denied an extension to complete continuing medical education may request a hearing to contest the matter by filing a written notice with the Board within 30 days of receipt of notice of the Board's action. A hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and Article 10.

**Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**R4-17-208. Expired****Historical Note**

Adopted effective April 22, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 1569, effective March 31, 2005 (Supp. 05-2).

**ARTICLE 3. DUTIES OF THE EXECUTIVE DIRECTOR****R4-17-301. Dismissal of Complaint**

- A. The executive director, with concurrence of the investigative staff, shall dismiss a complaint if review shows the complaint is without merit and dismissal is appropriate.
- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of physician assistants about whom complaints were dismissed since the preceding Board meeting.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-301 renumbered to R4-17-302; new Section R4-17-301 adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-302. Referral to Formal Hearing**

- A. The executive director may refer a case directly to a formal hearing if the investigative staff, medical consultant, and lead

Board member concur after review of the case that a formal hearing is appropriate.

- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the physician assistants whose cases were referred to formal hearing since the preceding Board meeting and indicate whether each case was referred because it involves revocation, suspension, out-of-state disciplinary action, or complexity.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section repealed; new Section renumbered from R4-17-301 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-303. Non-disciplinary Consent Agreement**

The executive director may enter into a consent agreement under A.R.S. § 32-2505(C)(23) with a physician assistant to limit the physician assistant's practice or rehabilitate the physician assistant if there is evidence the physician assistant is mentally or physically unable to engage in the practice of medicine safely and the investigative staff, medical consultant, and lead Board member concur after review of the case that a consent agreement is appropriate.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section renumbered to R4-17-304; new Section R4-17-303 adopted effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-304. Request for Inactive Status and License Cancellation**

- A. If a physician assistant requests inactive status or license cancellation, meets the requirements of A.R.S. §§ 32-2525 or 32-2528, and is not participating in the program defined under A.R.S. § 32-2552(E), the executive director shall grant the request.
- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

**Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-304 renumbered to R4-17-305; new Section R4-17-304 renumbered from R4-17-303 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-305. Referral to Formal Interview**

The executive director shall refer a case to a formal interview on a future Board meeting agenda if the investigative staff, lead Board member, and in cases involving quality of care, the medical consultant, concur after review of the case that a formal interview is appropriate.

**Historical Note**

New Section R4-17-305 renumbered from R4-17-304 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3). New Section



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made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**R4-17-306. Denial of License**

- A. The executive director shall deny a license to an applicant if the executive director, in consultation with the investigative staff and medical consultant concur after review of the application, that the applicant does not meet the statutory requirements for licensure.
- B. The executive director shall provide to the Board, at each regularly scheduled Board meeting, a list of the physician assistants whose applications were denied since the preceding Board meeting.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3700, effective February 6, 2017 (Supp. 16-4).

**ARTICLE 4. REGULATION****R4-17-401. Expired****Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-401 renumbered to R4-17-402; new Section R4-17-401 adopted effective April 22, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 1569, effective March 31, 2005 (Supp. 05-2).

**R4-17-402. Repealed****Historical Note**

Adopted effective July 8, 1986 (Supp. 86-4). Section R4-17-402 renumbered to R4-17-403; new Section R4-17-402 renumbered from R4-17-401 and amended effective April 22, 1998 (Supp. 98-2). Section repealed by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

**R4-17-403. Rehearing or Review**

- A. Except as provided in subsection (B), a party who is aggrieved by a decision issued by the Board may file with the Board, no later than 30 days after service of the decision, a written request for rehearing or review of the decision, specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known home or business address or five days after the decision is mailed by certified mail to the party or the party's attorney.
- B. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for rehearing or review. If the Board issues the decision as a final decision, without an

opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.

- C. A party filing a request for rehearing or review may amend the request at any time before it is ruled upon by the Board. Another party may file a response within 15 days after the date the request or amended request for rehearing is filed. The Board may require a party to file supplemental memoranda explaining the issues raised in the request or response and may permit oral argument.
- D. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the requesting party's rights:
  1. Irregularity in the Board's or administrative law judge's administrative proceedings or any order or abuse of discretion that deprived the party of a fair hearing;
  2. Misconduct of the Board, administrative law judge, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence, or other errors of law that occurred at the hearing;
  7. The decision is the result of passion or prejudice; or
  8. The decision or findings of fact are not justified by the evidence or are contrary to law.
- E. The Board may affirm or modify a decision or grant rehearing or review on all or part of the issues for any of the reasons set forth in subsection (D). An order granting a rehearing or review shall specify each ground for the rehearing or review.
- F. No later than 30 days after a decision is issued by the Board, the Board on its own initiative may order a rehearing or review for any reason in subsection (D).
- G. When a request for rehearing or review is based on affidavits, a party shall serve the affidavits with the request. The opposing party may, within 10 days after service, serve opposing affidavits. The Board may extend the time for serving opposing affidavits for no more than 20 days for good cause shown or by written stipulation by the parties. The Board may permit reply affidavits.

**Historical Note**

New Section R4-17-403 renumbered from R4-17-402 and amended effective April 22, 1998 (Supp. 98-2). Amended by final rulemaking at 18 A.A.R. 2123, effective October 7, 2012 (Supp. 12-3).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 4. Professions and Occupations**

### **Chapter 23. Board of Pharmacy**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-23-407.01

REMOVE Supp. 16-3  
Pages: 1 - 82

REPLACE with Supp. 16-4  
Pages: 1 - 83

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

Agency: Board of Pharmacy  
Name: Kamlesh Gandhi  
Address: 1616 W. Adams St., Suite 120, Phoenix, AZ 85007  
Telephone: (602) 771-2740  
Fax: (602) 771-2749  
E-mail: [kgandhi@azpharmacy.gov](mailto:kgandhi@azpharmacy.gov)  
Web site: [www.azpharmacy.gov](http://www.azpharmacy.gov)

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 23. BOARD OF PHARMACY**

Authority: A.R.S. § 32-1904 et seq.

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*Article 5, consisting of Sections R4-23-501 through R4-23-505, expired effective August 30, 2013 (Supp. 14-1).*

*Article 5, consisting of Sections R4-23-501 and R4-23-502, recodified to Article 8 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).*

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*Article 8, consisting of Sections R4-23-801 through R4-23-804, repealed effective November 4, 1998 (Supp. 98-4).*

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**ARTICLE 1. ADMINISTRATION****R4-23-101. General**

- A. 4 A.A.C. 23 applies to all actions and proceedings of the Board and shall be deemed a part of the record in any Board action or proceeding without formal introduction of, or reference to the rules. A party to a Board action is deemed to have knowledge of the rules. The Board office shall provide a copy of the rules:
1. To each license applicant who submits a completed application packet; and
  2. To each permit applicant during the final compliance inspection after the Board approves the permit application.
- B. The Board, within its jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with the rules.
- C. The Board, within its jurisdiction, may grant an extension of time within which to comply with any rule when it deems the extension to be in the interest of justice.

**Historical Note**

Former Rules 1.1000, 1.1200, and 1.1300; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-102. Meetings**

- A. The Board shall hold not less than four meetings per fiscal year to conduct general business and interview permit and license applicants.
- B. A special meeting of the Board may be held at any time subject to the call of the President or a majority of the Board members and in compliance with the notification requirements of A.R.S. § 38-431.02.

**Historical Note**

Former Rules 1.2100, 1.2200, 1.2300, and 1.2400. Amended by final rulemaking at 7 A.A.R. 2143, effective May 1, 2001 (Supp. 01-2).

**R4-23-103. Repealed****Historical Note**

Former Rules 1.3100, 1.3200, 1.3300, and 1.3400; Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-104. Repealed****Historical Note**

Former Rules 1.4011, 1.4110, 1.4120, 1.4200, 1.4210, 1.4220, 1.4300, 1.4400, 1.5500, 1.5600, 1.5700, and 1.4500; Amended effective August 23, 1978 (Supp. 78-5); Amended by deleting subsection (B) and renumbering subsections (C) through (J) as subsections (B) through (I) effective August 9, 1983 (Supp. 83-4). Amended effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-105. Repealed****Historical Note**

Former Rules 1.5100, 1.5200, 1.5300, and 1.5400; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

ical Note updated (Supp. 06-2).

**R4-23-106. Repealed****Historical Note**

Former Rules 1.5800 and 1.5900. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-107. Repealed****Historical Note**

Former Rules 1.5910, 1.5920, 1.5921, and 1.5922. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-108. Repealed****Historical Note**

Former Rule 1.5930. Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-109. Repealed****Historical Note**

Former Rules 1.7100, 1.7200, and 1.7300. Amended effective July 14, 1977 (Supp. 77-4). Amended effective February 8, 1991 (Supp. 91-1). Section repealed by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1); Historical Note updated (Supp. 06-2).

**R4-23-110. Definitions**

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to this Chapter:

“Active ingredient” means any component that furnishes pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or that affects the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug, that are present in the finished drug product in a modified form, and that furnish the specified activity or effect.

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.

“Approved course in pharmacy law” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations.

“Approved Provider” means an individual, institution, organization, association, corporation, or agency that is approved by the Accreditation Council for Pharmacy Education (ACPE) in accordance with ACPE’s policy and procedures or by the Board as meeting criteria indicative of the ability to provide quality continuing education.

“Assisted living facility” means a residential care institution as defined in A.R.S. § 36-401.

“Authentication of product history” means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

“Automated dispensing system” means a mechanical system in a long-term care facility that performs operations or activities, other than compounding or administration, relative to the



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storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

“Automated storage and distribution system” means a mechanical system that performs operations or activities other than counting, compounding, or administration, relative to the storage, packaging, or distributing of drugs or devices and that collects, controls, and maintains all transaction information.

“Batch” means a specific quantity of drug that has uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

“Beyond-use date” means:

A date determined by a pharmacist and placed on a prescription label at the time of dispensing to indicate a time beyond which the contents of the prescription are not recommended to be used; or

A date determined by a pharmacist and placed on a compounded pharmaceutical product’s label at the time of preparation as specified in R4-23-410(B)(3)(d), R4-23-410(I)(6)(e), or R4-23-410(J)(1)(d) to indicate a time beyond which the compounded pharmaceutical product is not recommended to be used.

“Biological safety cabinet” means a containment unit suitable for the preparation of low to moderate risk agents when there is a need for protection of the product, personnel, and environment, consistent with National Sanitation Foundation (NSF) standards, published in the National Sanitation Foundation Standard 49, Class II (Laminar Flow) Biohazard Cabinetry, NSF International P. O. Box 130140, Ann Arbor, MI, revised June 1987 edition, (and no future amendments or editions), incorporated by reference and on file with the Board.

“Care-giver” means a person who cares for someone who is sick or disabled or an adult who cares for an infant or child and includes a patient’s husband, wife, son, daughter, mother, father, sister, brother, legal guardian, nurse, or medical practitioner.

“Community pharmacy” means any place under the direct supervision of a pharmacist where the practice of pharmacy occurs or where prescription orders are compounded and dispensed other than a hospital pharmacy or a limited service pharmacy.

“Component” means any ingredient used in compounding or manufacturing drugs in dosage form, including an ingredient that may not appear in the finished product.

“Compounding and dispensing counter” means a pharmacy counter working area defined in this Section where a pharmacist or a graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist compounds, mixes, combines, counts, pours, or prepares and packages a prescription medication to dispense an individual prescription order or prepackages a drug for future dispensing.

“Computer system” means an automated data-processing system that uses a programmable electronic device to store, retrieve, and process data.

“Computer system audit” means an accounting method, involving multiple single-drug usage reports and audits, used to determine a computer system’s ability to store, retrieve, and process original and refill prescription dispensing information.

“Contact hour” means 50 minutes of participation in a continuing education activity sponsored by an Approved Provider.

“Container” means:

A receptacle, as described in the official compendium or the federal act, that is used in manufacturing or compounding a drug or in distributing, supplying, or dispensing the finished dosage form of a drug; or

A metal receptacle designed to contain liquefied or vaporized compressed medical gas and used in manufacturing, transfilling, distributing, supplying, or dispensing a compressed medical gas.

“Continuing education” means a structured learning process required of a licensee to maintain licensure that includes study in the general areas of socio-economic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology, characteristics and therapeutics of disease status; or pharmacy practice.

“Continuing education activity” means continuing education obtained through an institute, seminar, lecture, conference, workshop, mediated instruction, programmed learning course, or postgraduate study in an accredited college or school of pharmacy.

“Continuing education unit” or “CEU” means 10 contact hours of participation in a continuing education activity sponsored by an Approved Provider.

“Continuous quality assurance program” or “CQA program” means a planned process designed by a pharmacy permittee to identify, evaluate, and prevent medication errors.

“Correctional facility” has the same meaning as in A.R.S. §§ 13-2501 and 31-341.

“CRT” means a cathode ray tube or other mechanism used to view information produced or stored by a computer system.

“CSPMP” means the Controlled Substances Prescription Monitoring Program established under A.R.S. Title 36, Chapter 28.

“Current good compounding practices” means the minimum standards for methods used in, and facilities or controls used for, compounding a drug to ensure that the drug has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Current good manufacturing practice” means the minimum standard for methods used in, and facilities or controls used for manufacturing, processing, packing, or holding a drug to ensure that the drug meets the requirements of the federal act as to safety, and has the identity and strength and meets the quality and purity characteristics it is represented to possess.

“Cytotoxic” means a pharmaceutical that is capable of killing living cells.

“Day” means a calendar day unless otherwise specified.

“DEA” means the Drug Enforcement Administration as defined in A.R.S. § 32-1901.

“Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.

“Delinquent license” means a pharmacist, pharmacy intern, graduate intern, or pharmacy technician license the Board sus-

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pendes for failure to renew or pay all required fees on or before the date the renewal is due.

“Dietary supplement or food supplement” means a product (other than tobacco) that:

Is intended to supplement the diet that contains one or more of the following dietary ingredients: a vitamin, a mineral, an herb or other botanical, an amino acid, a dietary substance for use by humans to supplement the diet by increasing the total daily intake, or a concentrate, metabolite, constituent, extract, or combinations of these ingredients;

Is intended for ingestion in pill, capsule, tablet, or liquid form;

Is not represented for use as a conventional food or as the sole item of a meal or diet; and

Is labeled as a “dietary supplement” or “food supplement.”

“Digital signature” has the same meaning as in A.R.S. § 41-132(E).

“Dispensing pharmacist” means a pharmacist who, in the process of dispensing a prescription medication after the complete preparation of the prescription medication and before delivery of the prescription medication to a patient or patient’s agent, verifies, checks, and initials the prescription medication label, as required in R4-23-402(A).

“Drug sample” means a unit of a prescription drug that a manufacturer provides free of charge to promote the sale of the drug.

“Durable medical equipment” or “DME” means technologically sophisticated medical equipment that may be used by a patient or consumer in a home or residence. DME may be prescription-only devices as defined in A.R.S. § 32-1901(75). DME includes:

Air-fluidized beds,  
Apnea monitors,  
Blood glucose monitors and diabetic testing strips,  
Continuous Positive Airway Pressure (CPAP) machines,  
Electronic and computerized wheelchairs and seating systems,  
Feeding pumps,  
Home phototherapy devices,  
Hospital beds,  
Infusion pumps,  
Medical oxygen and oxygen delivery systems excluding compressed medical gases,  
Nebulizers,  
Respiratory disease management devices,  
Sequential compression devices,  
Transcutaneous electrical nerve stimulation (TENS) unit, and  
Ventilators.

“Earned income” means monetary payments received by an individual as a result of work performed or rental property owned or leased by the individual, including:

Wages,

Commissions and fees,

Salaries and tips,

Profit from self-employment,

Profit from rent received from a tenant or boarder, and

Any other monetary payments received by an individual for work performed or rental of property.

“Electronic signature” has the same meaning as in A.R.S. § 44-7002.

“Eligible patient” means a patient who a pharmacist determines is eligible to receive an immunization using professional judgment after consulting with the patient regarding the patient’s current health condition, recent health condition, and allergies.

“Emergency drug supply unit” means those drugs that may be required to meet the immediate and emergency therapeutic needs of long-term care facility residents and hospice inpatient facility patients, and which are not available from any other authorized source in sufficient time to prevent risk of harm to residents or patients.

“Extreme emergency” means the occurrence of a fire, water leak, electrical failure, public disaster, or other catastrophe constituting an imminent threat of physical harm to pharmacy personnel or patrons.

“Family unit” means:

A group of individuals residing together who are related by birth, marriage, or adoption; or

An individual who:

Does not reside with another individual; or

Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.

“FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for foods, drugs, cosmetics, and other consumer products.

“Health care decision maker” has the same meaning as in A.R.S. § 12-2291.

“Health care institution” has the same meaning as in A.R.S. § 36-401.

“Hospice inpatient facility” means a health care institution licensed under A.R.S. § 36-401 and Article 8 that provides hospice services to a patient requiring inpatient services.

“Immediate notice” means a required notice sent by mail, facsimile, or electronic mail to the Board Office within 24 hours.

“Immunizations training program” means an immunization training program for pharmacists, pharmacy interns, and graduate interns that meets the requirements of R4-23-411(E).

“Inactive ingredient” means any component other than an “active ingredient” present in a drug.

“Internal test assessment” means performing quality assurance or other procedures necessary to ensure the integrity of a test.

“ISO Class 5 environment” means an atmospheric environment that complies with the ISO/TC209 International Clean-

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room Standards, specifically ANSI/EST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“ISO Class 7 environment” means an atmospheric environment that complies with the ISO/TC209 International Cleanroom Standards, specifically ANSI/EST/ISO-14644-1:1999: Cleanrooms and associated controlled environments--Part 1: Classification of air cleanliness, first edition dated May 1, 1999, (and no future amendments or editions), incorporated by reference and on file in the Board office.

“Licensed health care professional” means an individual who is licensed and regulated under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 25, 29, or 35.

“Limited-service correctional pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that:

Holds a current Board permit under A.R.S. § 32-1931;

Is located in a correctional facility; and

Uses pharmacists, interns, and support personnel to compound, produce, dispense, and distribute drugs.

“Limited-service long-term care pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board-issued permit and dispenses prescription medication or prescription-only devices to patients in long-term care facilities.

“Limited-service mail-order pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices by mailing or delivering the prescription medication or prescription-only device to an individual by the United States mail, a common or contract carrier, or a delivery service.

“Limited-service nuclear pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and provides radiopharmaceutical services.

“Limited-service pharmacy permittee” means a person who holds a current limited-service pharmacy permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and A.A.C. R4-23-606.

“Limited-service sterile pharmaceutical products pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board permit under A.R.S. § 32-1931 and dispenses a majority of its prescription medication or prescription-only devices as sterile pharmaceutical products.

“Long-term care consultant pharmacist” means a pharmacist providing consulting services to a long-term care facility.

“Long-term care facility” or “LTCF” means a nursing care institution as defined in A.R.S. § 36-401.

“Lot” means a batch or any portion of a batch of a drug, or if a drug produced by a continuous process, an amount of drug produced in a unit of time or quantity in a manner that assures its uniformity. In either case, a lot is identified by a distinctive lot number and has uniform character and quality with specified limits.

“Lot number” or “control number” means any distinctive combination of letters or numbers, or both, from which the complete history of the compounding or manufacturing, control,

packaging, and distribution of a batch or lot of a drug can be determined.

“Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual’s spouse.

“Materials approval unit” means any organizational element having the authority and responsibility to approve or reject components, in-process materials, packaging components, and final products.

“Mechanical counting device for a drug in solid, oral dosage form” means a mechanical device that counts drugs in solid, oral dosage forms for dispensing and includes an electronic balance when used to count drugs.

“Mechanical storage and counting device for a drug in solid, oral dosage form” means a mechanical device that stores and counts and may package or label drugs in solid, oral dosage forms for dispensing.

“Mediated instruction” means information transmitted via intermediate mechanisms such as audio or video tape or telephone transmission.

“Medical practitioner-patient relationship” means that before prescribing, dispensing, or administering a prescription-only drug, prescription-only device, or controlled substance to a person, a medical practitioner, as defined in A.R.S. § 32-1901, shall first conduct a physical examination of that person or have previously conducted a physical examination. This subdivision does not apply to:

A medical practitioner who provides temporary patient supervision on behalf of the patient’s regular treating medical practitioner;

Emergency medical situations as defined in A.R.S. § 41-1831;

Prescriptions written to prepare a patient for a medical examination; or

Prescriptions written, prescription-only drugs, prescription-only devices, or controlled substances issued for use by a county or tribal public health department for immunization programs, emergency treatment, in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For purposes of this subsection, “bioterrorism” has the same meaning as in A.R.S. § 36-781.

“Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.

“Medication error” means any unintended variation from a prescription or medication order. Medication error does not include any variation that is corrected before the medication is dispensed to the patient or patient’s care-giver, or any variation allowed by law.

“Mobile pharmacy” means a pharmacy that is self-propelled or movable by another vehicle that is self-propelled.

“MPJE” means Multistate Pharmacy Jurisprudence Examination, a Board-approved national pharmacy law examination written and administered in cooperation with NABP.

“NABP” means National Association of Boards of Pharmacy.

“NABPLEX” means National Association of Boards of Pharmacy Licensure Examination.

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“NAPLEX” means North American Pharmacist Licensure Examination.

“Order” means either of the following:

A prescription order as defined in A.R.S. § 32-1901; or

A medication order as defined in A.A.C. R4-23-651.

“Other designated personnel” means a non-pharmacist individual who is permitted in the pharmacy area, for a limited time, under the direct supervision of a pharmacist, to perform non-pharmacy related duties, such as trash removal, floor maintenance, and telephone or computer repair.

“Outpatient” means an individual who is not a residential patient in a health care institution.

“Outpatient setting” means a location that provides medical treatment to an outpatient.

“Patient profile” means a readily retrievable, centrally located information record that contains patient demographics, allergies, and medication profile.

“Pharmaceutical patient care services” means the provision of drug selection, drug utilization review, drug administration, drug therapy monitoring, and other drug-related patient care services intended to achieve outcomes related to curing or preventing a disease, eliminating or reducing a patient’s symptoms, or arresting or slowing a disease process, by identifying and resolving or preventing potential and actual drug-related problems.

“Pharmaceutical product” means a medicinal drug.

“Pharmacy counter working area” means a clear and continuous working area that contains no major obstacles such as a desktop computer, computer monitor, computer keyboard, external computer drive device, printer, facsimile machine, pharmacy balance, typewriter, or pill-counting machine, but may contain individual documents or prescription labels, pens, prescription blanks, refill log, pill-counting tray, spatula, stapler, or other similar items necessary for the prescription-fill process.

“Pharmacy law continuing education” means a continuing education activity that addresses practice issues related to state or federal pharmacy statutes, rules, or regulations, offered by an Approved Provider.

“Pharmacy permittee” means a person who holds a current pharmacy permit that complies with A.R.S. §§ 32-1929, 32-1930, 32-1931, 32-1934, and R4-23-606 and R4-23-652.

“Physician” means a medical practitioner licensed under A.R.S. Title 32, Chapter 13 or 17.

“Physician-in-charge” means a physician who is responsible to the Board for all aspects of a prescription medication donation program required in A.R.S. § 32-1909 and operated in the physician’s office or in a health care institution.

“Poverty level” means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services.

“Precursor chemical” means a precursor chemical I as defined in A.R.S. § 13-3401(26) and a precursor chemical II as defined in A.R.S. § 13-3401(27).

“Prepackaged drug” means a drug that is packaged in a frequently prescribed quantity, labeled in compliance with A.R.S. §§ 32-1967 and 32-1968, stored, and subsequently dispensed

by a pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist, who verifies at the time of dispensing that the drug container is properly labeled, in compliance with A.R.S. § 32-1968, for the patient.

“Prep area” means a specified area either within an ISO class 7 environment or adjacent to but outside an ISO class 7 environment that:

Allows the assembling of necessary drugs, supplies, and equipment for compounding sterile pharmaceutical products, but does not allow the use of paper products such as boxes or bulk drug storage;

Allows personnel to don personnel protective clothing, such as gown, gloves, head cover, and booties before entering the clean compounding area; and

Is a room or a specified area within a room, such as an area specified by a line on the floor.

“Primary care provider” means the medical practitioner who is treating an individual for a disease or medical condition.

“Proprietor” means the owner of a business permitted by the Board under A.R.S. §§ 32-1929, 32-1930, 32-1931, and 32-1934.

“Provider pharmacy” means a pharmacy that contracts with a long-term care facility to supply prescription medication or other services for residents of a long-term care facility.

“Radiopharmaceutical” means any drug that emits ionizing radiation and includes:

Any nonradioactive reagent kit, nuclide generator, or ancillary drug intended to be used in the preparation of a radiopharmaceutical, but does not include drugs such as carbon-containing compounds or potassium-containing salts, that contain trace quantities of naturally occurring radionuclides; and

Any biological product that is labeled with a radionuclide or intended to be labeled with a radionuclide.

“Radiopharmaceutical quality assurance” means performing and interpreting appropriate chemical, biological, and physical tests on radiopharmaceuticals to determine the suitability of the radiopharmaceutical for use in humans and animals. Radiopharmaceutical quality assurance includes internal test assessment, authentication of product history, and appropriate record retention.

“Radiopharmaceutical services” means procuring, storing, handling, compounding, preparing, labeling, quality assurance testing, dispensing, distributing, transferring, recordkeeping, and disposing of radiochemicals, radiopharmaceuticals, and ancillary drugs. Radiopharmaceutical services include quality assurance procedures, radiological health and safety procedures, consulting activities associated with the use of radiopharmaceuticals, and any other activities required for the provision of pharmaceutical care.

“Red C stamp” means a device used with red ink to imprint an invoice with a red letter C at least one inch high, to make an invoice of a Schedule III through IV controlled substance, as defined in A.R.S. § 36-2501, readily retrievable, as required by state and federal rules.

“Refill” means other than the original dispensing of the prescription order, dispensing a prescription order in the same quantity originally ordered or in multiples of the originally ordered quantity when specifically authorized by the prescriber, if the refill is authorized by the prescriber:

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In the original prescription order;

By an electronically transmitted refill order that the pharmacist promptly documents and files; or

By an oral refill order that the pharmacist promptly documents and files.

“Regulated chemical” means the same as in A.R.S. § 13-3401(30).

“Remodel” means to alter structurally the pharmacy area or location.

“Remote drug storage area” means an area that is outside the premises of the pharmacy, used for the storage of drugs, locked to deny access by unauthorized persons, and secured against the use of force.

“Resident” means:

An individual admitted to and living in a long-term care facility or an assisted living facility,

An individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist, or

A person who owns or operates a place of business in Arizona.

“Responsible person” means the owner, manager, or other employee who is responsible to the Board for a permitted establishment’s compliance with the laws and administrative rules of this state and of the federal government pertaining to distribution of drugs, devices, precursor chemicals, and regulated chemicals. Nothing in this definition relieves other individuals from the responsibility to comply with state and federal laws and administrative rules.

“Score transfer” means the process that enables an applicant to take the NAPLEX in a jurisdiction and be eligible for licensure by examination in other jurisdictions.

“Security features” means attributes incorporated into the paper of a prescription order, referenced in A.R.S. § 32-1968(A)(4), that are approved by the Board or its staff and include one or more of the following designed to prevent duplication or aid the authentication of a paper document: laid lines, enhanced laid lines, thermochromic ink, artificial watermark, fluorescent ink, chemical void, persistent void, penetrating numbers, high-resolution border, high-resolution latent images, micro-printing, prismatic printing, embossed images, abrasion ink, holograms, and foil stamping.

“Shared order filling” means the following:

Preparing, packaging, compounding, or labeling an order, or any combination of these functions, that are performed by:

A person with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A person, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

Returning the filled order to the requesting pharmacy for delivery to the patient or patient’s care-giver or, at the request of this pharmacy, directly delivering the filled order to the patient.

“Shared order processing” means the following:

Interpreting the order, performing order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, and when neces-

sary, therapeutic intervention, or any combination of these order processing functions, that are performed by:

A pharmacist or intern, under pharmacist supervision, with a current Arizona Board license, located at an Arizona pharmacy, on behalf of and at the request of another resident or nonresident pharmacy; or

A pharmacist or intern, under pharmacist supervision, located at a nonresident pharmacy, on behalf of and at the request of an Arizona pharmacy; and

After order processing is completed, returning the processed order to the requesting pharmacy for order filling and delivery to the patient or patient’s care-giver or, at the request of this pharmacy, returning the processed order to another pharmacy for order filling and delivery to the patient or patient’s care-giver.

“Shared services” means shared order filling or shared order processing, or both.

“Sight-readable” means that an authorized individual is able to examine a record and read its information from a CRT, microfiche, microfilm, printout, or other method acceptable to the Board or its designee.

“Single-drug audit” means an accounting method that determines the numerical and percentage difference between a drug’s beginning inventory plus purchases and ending inventory plus sales.

“Single-drug usage report” means a computer system printout of original and refill prescription order usage information for a single drug.

“Standard-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded from sterile commercial drugs using sterile commercial devices or a sterile pharmaceutical optic or ophthalmic product compounded from non-sterile ingredients.

“State of emergency” means a governmental declaration issued under A.R.S. § 32-1910 as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.

“Sterile pharmaceutical product” means a medicinal drug free from living biological organisms.

“Strength” means:

The concentration of the drug substance (for example, weight/weight, weight/volume, or unit dose/volume basis); or

The potency, that is, the therapeutic activity of a drug substance as indicated by bioavailability tests or by controlled clinical data (expressed, for example, in terms of unity by reference to a standard).

“Substantial-risk sterile pharmaceutical product” means a sterile pharmaceutical product compounded as a parenteral or injectable dosage form from non-sterile ingredients.

“Supervision” means a pharmacist is present, assumes legal responsibility, and has direct oversight of activities relating to acquiring, preparing, distributing, administering, and selling prescription medications by pharmacy interns, graduate interns, pharmacy technicians, or pharmacy technician trainees and when used in connection with the intern training requirements means that, in a pharmacy where intern training occurs, a pharmacy intern preceptor assumes the primary responsibility,

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ity of teaching the intern during the entire period of the training.

“Supplying” means selling, transferring, or delivering to a patient or a patient’s agent one or more doses of:

A nonprescription drug in the manufacturer’s original container for subsequent use by the patient, or

A compressed medical gas in the manufacturer’s or compressed medical gas distributor’s original container for subsequent use by the patient.

“Support personnel” means an individual, working under the supervision of a pharmacist, trained to perform clerical duties associated with the practice of pharmacy, including cashiering, bookkeeping, pricing, stocking, delivering, answering non-professional telephone inquiries, and documenting third-party reimbursement. Support personnel shall not perform the tasks of a pharmacist, pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee.

“Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.

“Tourist” means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.

“Transfill” means a manufacturing process by which one or more compressed medical gases are transferred from a bulk container to a properly labeled container for subsequent distribution or supply.

“Unearned income” means monetary payment received by an individual that is not compensation for work performed or rental of property owned or leased by the individual, including:

Unemployment insurance,

Workers’ compensation,

Disability payments,

Payments from the Social Security Administration,

Payments from public assistance,

Periodic insurance or annuity payments,

Retirement or pension payments,

Strike benefits from union funds,

Training stipends,

Child support payments,

Alimony payments,

Military family allotments,

Regular support payments from a relative or other individual not residing in the household,

Investment income,

Royalty payments,

Periodic payments from estates or trusts, and

Any other monetary payments received by an individual that are not:

As a result of work performed or rental of property owned by the individual,

Gifts,

Lump-sum capital gains payments,

Lump-sum inheritance payments,

Lump-sum insurance payments, or

Payments made to compensate for personal injury.

“Verified signature” or “signature verifying” means in relation to a Board license or permit application or report, form, or agreement, the hand-written or electronic signature of an individual who, by placing a hand-written or electronic signature on a hard-copy or electronic license or permit application or report, form, or agreement agrees with and verifies that the statements and information within or attached to the license or permit application or report, form, or agreement are true in every respect and that inaccurate reporting can result in denial or loss of a license or permit or report, form, or agreement.

“Veteran” means an individual who has served in the United States Armed Forces.

“Wholesale distribution” means distribution of a drug to a person other than a consumer or patient, but does not include:

Selling, purchasing, or trading a drug or offering to sell, purchase, or trade a drug for emergency medical reasons. For purposes of this Section, “emergency medical reasons” includes transferring a prescription drug by a community or hospital pharmacy to another community or hospital pharmacy to alleviate a temporary shortage;

Selling, purchasing, or trading a drug, offering to sell, purchase, or trade a drug, or dispensing a drug as specified in a prescription;

Distributing a drug sample by a manufacturers’ or distributors’ representative; or

Selling, purchasing, or trading blood or blood components intended for transfusion.

“Wholesale distributor” means any person engaged in wholesale distribution of drugs, including: manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies that conduct wholesale distributions in the amount of at least 5% of gross sales.

#### Historical Note

Adopted effective August 24, 1992 (Supp. 92-2).

Amended effective December 18, 1992 (Supp. 92-4).

Amended effective November 1, 1993 (Supp. 93-4).

Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended effective April 5, 1996 (Supp. 96-2). Amended effective July 8, 1997; amended effective August 5, 1997 (Supp. 97-3).

Amended effective January 12, 1998 (Supp. 98-1).

Amended effective July 7, 1998 (Supp. 98-3). Amended by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4589, effective

November 14, 2000 (Supp. 00-4). Amended by final

rulemaking at 7 A.A.R. 646, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by

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final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 4898 and 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 3967, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 2258, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 3405, effective October 4, 2008; amended by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009; amended by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 18 A.A.R. 2603, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 2609, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by exempt rulemaking under Laws 2016, Ch. 284, § 3 at 22 A.A.R. 2606, effective August 31, 2016 (Supp. 16-3).

**R4-23-111. Notice of Hearing**

- A. Except as provided in A.R.S. § 32-1928(B), the Board shall revoke, suspend, place on probation, or fine a licensee or permittee only after:
1. Notice is served under this Section, and
  2. A hearing is conducted under R4-23-122.
- B. The Board shall give notice of hearing to a party at least 30 days before the date set for the hearing in the manner described in R4-23-115(E) and (F). The notice shall include:
1. A statement of the date, time, place, and nature of the hearing;
  2. A statement of the legal authority and jurisdiction for the hearing;
  3. A reference to the particular section or sections of statute and rule involved; and
  4. A statement of the violation or issue asserted by the Board.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-112. Ex Parte Communications**

A party shall not communicate, either directly or indirectly, with a Board member about any substantive issue in a pending matter unless:

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-113. Motions**

- A. Purpose. A party requesting a ruling from the Board shall file a motion. Motions may be made for rulings such as:
1. Continuing or expediting a hearing under R4-23-116;
  2. Vacating a hearing under R4-23-117;
  3. Scheduling a prehearing conference under R4-23-118;
  4. Quashing a subpoena under R4-23-119;
  5. Requesting telephonic testimony under R4-23-120; and
  6. Reconsidering a previous order under R4-23-121.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R4-23-115. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Board office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
1. A ruling on the motion will further administrative convenience, expedition or economy; or
  2. A ruling on the motion will avoid undue prejudice to any party.
- D. Response to motion. A party shall file a written response stating any objection to the motion within five days of service, or as directed by the Board.
- E. Oral argument. A party may request oral argument when filing a motion or response. If necessary to develop a complete record, the Board shall grant oral argument.
- F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-114. Computing Time**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-115. Filing Documents**

- A. Docket. The Board shall open a docket for each hearing. All documents filed in a matter with the Board shall be date stamped on the day received by the Board office and entered in the docket.
- B. Definition. "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C. Form. A party shall state on the document the name and address of each party served and how service was made under subsection (E). A document shall contain the Board caption and the Board's docket number.

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- D. Signature. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E. Filing and service. A copy of a document filed with the Board shall be served on all parties. Filing with the Board office and service shall be completed by personal delivery; first-class, certified, or express mail; or facsimile.
- F. Date of filing and service. A document is filed with the Board on the date it is received by the Board office, as established by the Board office's date stamp on the face of the document. A copy of a document is served on a party as follows:
  1. On the date it is personally served,
  2. Five days after it is mailed by first-class or express mail,
  3. On the date of the return receipt if it is mailed by certified mail, or
  4. On the date indicated on the facsimile transmission.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-116. Continuing or Expediting a Hearing; Reconvening a Hearing**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-117. Vacating a Hearing**

The Board shall vacate a calendared hearing and return the matter to the Board office for further action, if:

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-118. Prehearing Conference**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-119. Subpoenas**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-120. Telephonic Testimony**

The Board may grant a motion for telephonic testimony if:

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-121. Rights and Responsibilities of Parties**

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



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**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-122. Conduct of Hearing**

- A.** Public access. Unless otherwise provided by law, all hearings are open to the public and may be conducted in an informal manner as prescribed in A.R.S. § 41-1092 et seq.
- B.** Opening. The Board shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C.** Stipulations. The Board shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D.** Opening statements. The party with the burden of proof may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the Board.
- E.** Order of presentation. After opening statements, the party with the burden of proof shall begin the presentation of evidence, unless the parties agree otherwise or the Board determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party. Copies of documentary evidence may be received in the discretion of the Board. Upon request, parties shall be given an opportunity to compare the copy with the original.
- F.** Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the Board to expedite and ensure a fair hearing. The Board shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information. The Board may take notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the Board's or its staff's specialized knowledge. A party shall be notified either before or during the hearing or by reference in preliminary reports of the material the Board notices. The Board may use the Board's or its staff's experience, technical competence, and specialized knowledge in the evaluation of the evidence.
- G.** Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the Board. The Board may permit or require closing oral argument to be supplemented by written memoranda. The Board may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Board may prescribe.
- H.** Conclusion of hearing. Unless otherwise provided by the Board, the hearing is concluded upon the submission of all evidence, the making of final argument, and the issuing of a final decision or order of the Board.
- I.** Decisions and orders. Unless otherwise provided by law, any final decisions or order adverse to a party in a hearing shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, each party shall be notified either personally or by mail to the party's last known address of record of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed to each party and to each party's attorney of record.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-123. Failure of Party to Appear for Hearing**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-124. Witnesses; Exclusion from Hearing**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-125. Proof**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-126. Disruptions**

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-127. Hearing Record**

- A.** Maintenance. The Board shall maintain the official administrative record of a matter.
- B.** Transfer of record. Any party requesting a copy of the administrative record or any portion of the administrative record shall make a request to the Board office and shall pay the reasonable costs of duplication.
- C.** Release of exhibits. Exhibits shall be released:
  1. Upon the order of a court of competent jurisdiction; or
  2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-128. Rehearing or Review and Appeal of Decision**

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10, and this Section. For purposes of these rules, the terms "contested case" and "party" are defined in A.R.S. § 41-1001.
- B.** A party to a contested case shall exhaust the party's administrative remedies by filing a motion for rehearing or review within 30 days after the service of the Board decision that is subject to rehearing or review in order to be eligible for judicial review under A.R.S. Title 12, Chapter 7, Article 6. The

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Board shall notify a party in its decision, that is subject to rehearing or review, that the party may file a motion for rehearing or review, and that failure to file a motion for rehearing or review within 30 days after service of the decision has the effect of prohibiting the party from seeking judicial review of the Board's decision.

- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
  1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
  2. Misconduct of the Board, its staff, its hearing officer, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive or insufficient penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
  7. That the Board's decision is a result of passion or prejudice; or
  8. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).
- G. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on the motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the order granting the rehearing is issued.
- I. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
  1. Further administrative convenience, expedition, or economy; or
  2. Avoid undue prejudice to any party.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**R4-23-129. Notice of Judicial Appeal; Transmitting the Transcript**

- A. Notification to the Board office. Within 10 days of filing a complaint for judicial review of a final administrative decision of the Board, the party shall file a copy of the complaint with the Board office. The Board office shall then transmit the administrative record to the Superior Court.

- B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Board office shall make a copy of the audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Board office, together with one unbound copy.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1132, effective May 1, 2004 (Supp. 04-1).

**ARTICLE 2. PHARMACIST LICENSURE****R4-23-201. General**

- A. License required. Before practicing as a pharmacist in Arizona, a person shall possess a valid pharmacist license issued by the Board. There is no temporary licensure.
- B. Methods of licensure. Licensure as a pharmacist shall be either:
  1. By practical examination, using paper and pencil written testing, computer adaptive testing, or other Board-approved testing method; or
  2. By reciprocity.
- C. Practicing pharmacist holding a delinquent license. Before the Board reinstates an Arizona pharmacist license, a pharmacist, whose Arizona pharmacist license is delinquent for five or more years and who is practicing pharmacy outside the Board's jurisdiction with a pharmacist license issued by another jurisdiction, shall:
  1. Pass the MPJE or other Board-approved jurisprudence examination,
  2. Pay all delinquent annual renewal fees, and
  3. Pay penalty fees.
- D. Non-practicing pharmacist holding a delinquent license. Before the Board reinstates an Arizona pharmacist license, a pharmacist, whose Arizona pharmacist license is delinquent for five or more years and who did not practice pharmacy within the last 12 months before seeking reinstatement, shall:
  1. Complete the requirements in subsection (C), and
  2. Appear before the Board to furnish satisfactory proof of fitness to be licensed as a pharmacist.
- E. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacist until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacist.

**Historical Note**

Former Rules 2.1100, 2.1310, 2.1320, and 2.1400.  
 Amended effective August 23, 1978 (Supp. 78-4).  
 Amended by deleting subsection (E) effective April 20, 1982 (Supp. 82-2). Amended subsections (C) and (D) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-202. Licensure by Examination**

- A. Eligibility. To be eligible for licensure as a pharmacist by examination, a person shall:
  1. Have a degree in pharmacy from a school or college of pharmacy approved by the Board as specified in A.R.S. § 32-1935, and whose professional degree program, at the time the person graduates, is accredited by the Accreditation Council for Pharmacy Education; or

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2. Qualify under the requirements of A.R.S. § 32-1922(D); and
  3. Complete not less than 1500 hours of intern training as specified in R4-23-303.
- B. Application.**
1. An applicant for licensure by examination shall:
    - a. Submit a completed application for licensure by examination electronically or manually on a form furnished by the Board, and
    - b. Submit with the application form:
      - i. The documents specified in the application form, and
      - ii. The application fee specified in R4-23-205(C).
  2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
  3. An applicant for licensure by examination shall register for NAPLEX and MPJE through NABP's registration process.
  4. The Board shall deem an application for licensure by examination invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified in R4-23-205(C).
- C. Passing grade; notification; re-examination.**
1. To pass the required examinations, an applicant shall obtain a score of at least 75 on both the NAPLEX and MPJE.
  2. The Board office shall:
    - a. Retrieve an applicant's NAPLEX and MPJE score from the NABP database no later than two weeks after the applicant's examination date, and
    - b. Provide written notice by mail to an applicant who fails the NAPLEX or MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.
  3. An applicant who fails the NAPLEX or MPJE may register with the NABP to retake the examination within the 12-month period defined in subsection (B)(4). An applicant who fails the NAPLEX or MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.
  4. For the purpose of licensure by examination, the Board office shall deem a passing score on the NAPLEX or MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination(s).
- D. NAPLEX score transfer.**
1. The Board office shall deem a score transfer received on the date the NABP transmits the applicant's official score transfer report to the Board office.
  2. An applicant who receives a passing score on the NAPLEX taken in another jurisdiction shall, within 12 months from the date the Board office receives the applicant's official NABP score transfer report from the NABP, make application for licensure according to subsection (B). After 12 months, an applicant may reapply for licensure in this state under the provisions of subsection (B) or R4-23-203(B).
  3. An applicant who takes the NAPLEX in another jurisdiction and fails the examination may apply for licensure in this state under the provisions of subsection (B).
- E. Licensure.**
1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:
    - a. The initial licensure fee specified in R4-23-205(A)(1)(a), and
    - b. The wall license fee specified in R4-23-205(E)(1)(a).
  2. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- F. Time-frames for licensure by examination.**
1. The Board office shall complete an administrative completeness review within 60 days from the date the application form is received.
    - a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
    - b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
    - c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
  2. An applicant with an incomplete application form shall submit all of the missing information within 90 days of service of the notice of incompleteness.
    - a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness.
    - b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline.
    - c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
  3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to subsection (B).
  4. The Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days from the date on which the administrative completeness review of an application form is complete.
    - a. If an applicant is found to be ineligible for licensure by examination, the Board office shall issue a written notice of denial to the applicant.
    - b. If an applicant is found to be eligible to take the NAPLEX, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.

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- c. If an applicant is found to be eligible to take the MPJE, the Board office shall notify the NABP that the applicant is eligible to test. The NABP shall issue the applicant an authorization to test letter.
  - d. The Board office shall deem an applicant's eligibility to test invalid after 12 months from the date the application for licensure by examination is received.
  - e. If the Board office finds deficiencies during the substantive review of an application form, the Board office shall issue a written request to the applicant for additional documentation.
  - f. The 120-day time-frame for a substantive review of eligibility to take the NAPLEX or MPJE is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation according to subsection (F)(2).
  - g. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 45 days.
5. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for licensure by examination.
- a. Administrative completeness review time-frame: 60 days.
  - b. Substantive review time-frame: 120 days.
  - c. Overall time-frame: 180 days.

**G. License renewal.**

- 1. To renew a license, a pharmacist shall submit a completed license renewal application electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(A)(1)(b).
- 2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacist license is suspended and the licensee shall not practice as a pharmacist. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
- 3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- 4. Time-frames for license renewals. The Board office shall follow the time-frames established in subsection (F).

**Historical Note**

Former Rules 2.2100, 2.2200, 2.2300, 2.2400, 2.2500, 2.2600, 2.2700, 2.2800, 2.2910, 2.2920, 2.2930, 2.3000, 2.3010, 2.3100; Amended effective August 23, 1978 (Supp. 78-5). Amended effective June 10, 1981 (Supp. 81-3). Former Section R4-23-202 repealed, new Section R4-23-202 adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 4689, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-203. Licensure by Reciprocity****A. Eligibility.** A person is eligible for licensure by reciprocity who:

- 1. Is licensed as a pharmacist in a jurisdiction that provides reciprocity to Arizona licensees,
- 2. Has passed the NABPLEX or NAPLEX with a score of 75 or better or was licensed by examination in another jurisdiction having essentially the same standards for licensure as this state at the time the pharmacist was licensed,
- 3. Provides evidence to the Board of having completed the required secondary and professional education and training specified in R4-23-202(A),
- 4. Has engaged in the practice of pharmacy for at least one year or has met the internship requirements of Article 3 within the year immediately before the date of application, and
- 5. Has actively practiced as a pharmacist for 400 or more hours within the last calendar year or has an Arizona graduate intern license and has completed 400 hours of internship training in a Board-approved internship training site.

**B. Application.**

- 1. An applicant for licensure by reciprocity shall:
  - a. Submit a completed application for licensure by reciprocity electronically or manually on a form furnished by the Board, and
  - b. Submit with the application form:
    - i. The documents specified in the application form, and
    - ii. The reciprocity fee specified in R4-23-205(B).
- 2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- 3. An applicant for licensure by reciprocity shall register for MPJE through NABP's registration process.
- 4. The Board office shall deem an application for licensure by reciprocity invalid after 12 months from the date the application is received. An applicant whose application form is invalid and who wishes to continue licensure procedures, shall submit a new application form and fee as specified in R4-23-205(B).

**C. Passing grade; notification; re-examination.**

- 1. To pass the required examination, an applicant shall obtain a score of at least 75 on the MPJE.
- 2. The Board office shall:
  - a. Retrieve an applicant's MPJE score from the NABP database no later than two weeks after the applicant's examination date, and
  - b. Provide written notice by mail to an applicant who fails the MPJE no later than seven days after the Board office retrieves the applicant's score from NABP.
- 3. An applicant who fails the MPJE may register with the NABP to retake the examination within the 12-month period specified in subsection (B)(4). An applicant who fails the MPJE three times shall petition the Board as specified in R4-23-401 for Board approval before retaking the examination.
- 4. For the purpose of licensure by reciprocity, the Board office shall deem a passing score on the MPJE invalid after 24 months from the applicant's examination date. An applicant who fails to complete the licensure process within the 24-month period, and who wishes to continue licensure procedures, shall retake the examination.

**D. Licensure.**

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1. The Board office shall issue a certificate of licensure and a wall license to a successful applicant upon receipt of:
    - a. The initial licensure fee specified in R4-23-205(A)(1)(a), and
    - b. The wall license fee specified in R4-23-205(E)(1)(a).
  2. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- E.** Time-frames for licensure by reciprocity. The Board office shall follow the time-frames established for licensure by examination in R4-23-202(F).
- F.** License renewal. License renewal shall be the same as specified in R4-23-202(G).

**Historical Note**

Former Rules 2.4100, 2.4200, 2.4310, 2.4320, 2.4330, 2.4340, 2.4350, 2.4360, 2.4400, 2.4510, 2.4520, 2.4522, 2.4523, 2.4530, 2.4540, 2.4550, 2.4560, 2.4610, 2.4620, and 2.4700; Amended effective August 23, 1978 (Supp. 78-4). Amended subsections (H), (L), (O) through (Q) effective June 10, 1981 (Supp. 81-3). Former Section R4-23-203 repealed, new Section R4-23-203 adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1991 (Supp. 91-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-204. Continuing Education Requirements**

- A.** General. In accordance with A.R.S. § 32-1925(G), the Board shall not renew a license unless the applicant has, during the two years preceding the application for renewal, participated in 30 contact hours (3.0 CEU's) of continuing education activity sponsored by an Approved Provider as defined in R4-23-110, of which at least three contact hours (0.3 CEU's) are approved courses in pharmacy law. Subject to A.R.S. § 32-1937, a pharmacist licensed for less than 24 months shall obtain continuing education units in an amount determined by multiplying 1.25 hours times the number of months between the date of initial licensure and the next license renewal date.
- B.** Acceptance of continuing education units (CEU's). The Board shall:
1. Only accept CEU's for continuing education activities sponsored by an Approved Provider;
  2. Only accept CEU's accrued during the two-year period immediately before licensure renewal;
  3. Not allow CEU's accrued in a biennial renewal period in excess of the 3.0 CEU's required to be carried forward to the succeeding biennial renewal period;
  4. Allow a pharmacist who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEU's for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
  5. Not accept as CEU's the performance of normal teaching duties within a learning institution by a pharmacist whose primary responsibility is the education of health professionals.
- C.** Continuing education records and reporting CEU's. A pharmacist shall:
1. Maintain continuing education records that:
    - a. Verify the continuing education activities the pharmacist participated in during the preceding five years; and
    - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
  2. At the time of licensure renewal, attest to the number of CEU's the pharmacist participated in during the renewal period on the biennial renewal form; and
  3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D.** The Board may revoke, suspend, or place on probation the license of a pharmacist who fails to comply with continuing education participation, recording, or reporting requirements of this Section.
- E.** A pharmacist who is aggrieved by any decision of the Board or its administrative staff concerning continuing education units may request a hearing before the Board.

**Historical Note**

Adopted effective September 1, 1981 (Supp. 81-5).  
 Amended effective March 13, 1991 (Supp. 91-1).  
 Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1).

**R4-23-205. Fees**

- A.** Licensure fees:
1. Pharmacist:
    - a. Initial licensure [Prorated according to A.R.S. § 32-1925(B)]: \$180.
    - b. Licensure renewal: \$180.
  2. Pharmacy or graduate intern. Initial licensure: \$50.
  3. Pharmacy technician:
    - a. Initial licensure [Prorated according to A.R.S. § 32-1925(B)]: \$72.
    - b. Licensure renewal: \$72.
  4. Pharmacy technician trainee: \$36.
- B.** Reciprocity fee: \$300.
- C.** Application fee: \$50.
- D.** Vendor permit fees (Resident and nonresident) [New permits prorated according to A.R.S. § 32-1931(B)]:
1. Pharmacy: \$480 biennially (Including hospital, and limited service).
  2. Drug wholesaler or manufacturer:
    - a. Manufacturer: \$1000 biennially.
    - b. Full-service drug wholesaler: \$1000 biennially.
    - c. Nonprescription drug wholesaler: \$500 biennially.
  3. Drug packager or repackager: \$1000 biennially.
  4. Nonprescription drug, retail:
    - a. Category I (30 or fewer items): \$120 biennially.
    - b. Category II (more than 30 items): \$200 biennially.
  5. Compressed medical gas distributor: \$200 biennially.
  6. Durable medical equipment and compressed medical gas supplier: \$100 biennially.
- E.** Certificate fees:
1. Certificate of free sale: \$200 per certificate.
  2. Certificate of good manufacturing practice: \$200 per certificate.
  3. Annual inspection fee calculated at the average hourly rate of a pharmacy inspector multiplied by the duration of the inspection measured in 10-minute increments or portion of a 10-minute increment.
- F.** Other fees:

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1. Wall license.
    - a. Pharmacist: \$20.
    - b. Pharmacy or graduate intern: \$10.
    - c. Pharmacy technician: \$10.
    - d. Pharmacy technician trainee: \$10.
  2. Duplicate of any Board-issued license, registration, certificate, or permit: \$10.
  3. Duplicate current renewal license: \$10.
  4. Permit or certificate verification: \$15.
- G.** Fees are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit time frames under R4-23-202 or R4-23-602.
- H.** Penalty. Renewal applications submitted after the expiration date are subject to a penalty as provided in A.R.S. §§ 32-1925 and 32-1931.
1. Licensees: A penalty equal to half the licensee's biennial licensure renewal fee under subsection (A) and not to exceed \$350.
  2. Permittees: A penalty equal to half the permittee's biennial permit fee under subsection (D) and not to exceed \$350.

**Historical Note**

Adopted effective July 24, 1985 (Supp. 84-5). Amended subsection (A) paragraph (1) effective May 20, 1988 (Supp. 88-2). Amended effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 409 and 8 A.A.R. 646, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 15 A.A.R. 173, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2). Amended by exempt rulemaking under Laws 2016, Ch. 284, § 3 at 22 A.A.R. 2606, effective August 31, 2016 (Supp. 16-3).

**ARTICLE 3. INTERN TRAINING AND PHARMACY INTERN PRECEPTORS****R4-23-301. Intern Licensure**

- A.** Licensure as a pharmacy intern or graduate intern is for the purpose of complementing the individual's academic or experiential education in preparation for licensure as a pharmacist. An applicant may request a waiver of intern licensure requirements by submitting a written request as specified in R4-23-401 and appearing in person at a Board meeting.
- B.** The prerequisites for licensure as a pharmacy intern are:
1. Current enrollment, in good standing, in a Board-approved college or school of pharmacy; or
  2. Graduation from a college or school of pharmacy that is not approved by the Board; and
  3. Proof that the applicant is certified by the Foreign Pharmacy Graduate Examination Committee (FPGEC); or
  4. By order of the Board if the Board determines the applicant needs intern training.
- C.** If a pharmacy intern licensee stops attending pharmacy school classes before completing the pharmacy school's requirements for graduation, the licensee shall immediately stop practicing as a pharmacy intern and surrender the pharmacy intern license to the Board or the Board's designee no later than 30 days after the date of the last attended class, unless the licensee petitions the Board as specified in R4-23-401 and receives Board approval to continue working as a pharmacy intern. A student re-entering a pharmacy program who wishes to continue internship training shall reapply for pharmacy intern licensure.
- D.** The prerequisites for licensure as a graduate intern are:
1. Graduation from a Board-approved college or school of pharmacy, and
  2. Application for licensure as a pharmacist by examination or reciprocity, or
  3. By order of the Board if the Board determines that the applicant needs intern training.
- E.** Experiential training. Intern training shall include the activities and services encompassed by the term "practice of pharmacy" as defined in A.R.S. § 32-1901.
- F.** Out-of-state experiential training. An intern shall receive credit for intern training received outside this state if the Board determines that the intern training requirements of the jurisdiction in which the training was received are equal to the minimum requirements for intern training in this state. An applicant seeking credit for intern training received outside this state shall furnish a certified copy of the records of intern training from:
1. The Board of Pharmacy or the intern licensing agency of the other jurisdiction where the training was received; or
  2. In a jurisdiction without an intern licensing agency, the director of the applicant's Board-approved college or school of pharmacy's experiential training program.
- G.** Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy or graduate intern until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy or graduate intern.
- H.** Intern application.
1. An applicant for licensure as a pharmacy intern or graduate intern shall:
    - a. Submit a completed application electronically or manually on a form furnished by the Board, and
    - b. Submit with the application form:
      - i. The documents specified in the application form,
      - ii. The initial licensure fee specified in R4-23-205(A)(2), and
      - iii. The wall license fee specified in R4-23-205(E)(1)(b).
  2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- I.** Licensure.
1. If an applicant is found to be ineligible for intern licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
  2. If an applicant is found to be eligible for intern licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy intern or graduate intern prior to receiving the certificate of licensure.
  3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy intern or graduate intern until the Board office issues a certificate of licensure as specified in subsection (2).

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4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- J.** Time-frames for intern licensure. The Board office shall follow the time-frames established in R4-23-202(F).
- K.** License renewal.
  1. A pharmacy intern whose license expires before the intern completes the education or training required for licensure as a pharmacist but less than six years after the issuance of the initial pharmacy intern license may renew the intern license for a period equal to the difference between the expiration date of the initial intern license and six years from the issue date of the initial intern license by payment of a prorated renewal fee based on the initial license fee specified in R4-23-205(A)(2).
  2. If a pharmacy intern fails to graduate from a Board-approved college or school of pharmacy within six years from the date the Board issues the initial intern license, the intern is not eligible for relicensure as an intern unless the intern obtains Board approval as specified in A.R.S. § 32-1923(E) and R4-23-401. To remain in good standing, an intern who receives Board approval for relicensure shall pay a prorated renewal fee for the number of months of licensure approved by the Board based on the initial license fee specified in R4-23-205(A)(2) before the license expiration date.
  3. If an intern receives Board approval for relicensure and does not pay the renewal fee specified in subsection (2) before the license expiration date, the intern license is suspended and the licensee shall not practice as an intern. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.
- L.** Notification of training.
  1. A pharmacy intern who is employed as an intern outside the experiential training program of a Board-approved college or school of pharmacy or a graduate intern shall notify the Board within ten days of starting or terminating training, or changing training site.
  2. The director of a Board-approved college or school of pharmacy's experiential training program shall provide the Board an intern training report as specified in R4-23-304(B)(3).
2. Is an alternative training site. For purposes of this Section, the term alternative training site is a non-pharmacy training site established and monitored by a Board-approved college or school of pharmacy or other non-pharmacy site where pharmacy related activities are performed and where an intern gains experience as specified in R4-23-301(E).
- B.** The Board shall inform a pharmacy or alternative training site that an intern will not get credit for training received at the site if the Board determines that a pharmacy or alternative training site fails to provide experiential training as specified in R4-23-301(E) or violates A.R.S. Chapter 18 Title 32 or Chapter 27 Title 36 or the federal act.
- C.** Pharmacy intern preceptor. To be a pharmacy intern preceptor, a pharmacist shall:
  1. Hold a current unrestricted pharmacist license;
  2. Have a minimum of one year of experience as an actively practicing pharmacist before acting as a pharmacy intern preceptor;
  3. If a pharmacist has been found guilty of violating any federal or state law relating to the practice of pharmacy, drug or device distribution or recordkeeping, or unprofessional conduct, enter into an agreement satisfactory to the Board that places restrictions on the pharmacist's license; and
  4. Hold a faculty position in the experiential training program of a Board-approved college or school of pharmacy; or
  5. Be approved by the Board as being otherwise qualified as a pharmacy intern preceptor.
- D.** Revocation of preceptorship privileges. The Board shall revoke a pharmacy intern preceptor's privilege to train pharmacy or graduate interns if the Board determines that a pharmacy intern preceptor fails to provide experiential training as specified in R4-23-301(E) or violates A.R.S. Title 32, Chapter 18 or Title 36, Chapter 27 or the federal act. R4-23-111 applies to revocation of preceptor privileges.
- E.** Pharmacist-to-intern ratio. A pharmacy intern preceptor may supervise the training of more than one pharmacy or graduate intern during a calendar quarter. The ratio of pharmacist to intern shall not exceed one pharmacist to two interns in a community pharmacy or limited-service pharmacy setting unless approved by the Board. In considering a request to exceed the ratio, the Board will consider pharmacy space limitations and whether exceeding the ratio poses a safety risk to the public health. Subject to R4-23-609 and the safety of public health, there is no pharmacist-to-intern ratio in a practice setting directed by a Board-approved college or school of pharmacy experiential training program.
- F.** Preceptor responsibilities. A pharmacy intern preceptor assumes the responsibilities of a teacher and mentor in addition to those of a pharmacist. A preceptor shall thoroughly review pharmacy policy and procedure with each intern. A preceptor is responsible for the pharmacy-related actions of an intern during the specific training period. A preceptor shall give an intern the opportunity for skill development and provide an intern with timely and realistic feedback regarding their progress.

**Historical Note**

Former Rules 3.1000, 3.1100, 3.1200, 3.2000, 3.2100, and 3.2200; Amended effective August 23, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2). Amended subsections (A), (F) and (G) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3565, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-302. Training Site and Pharmacy Intern Preceptors**

- A.** To receive credit for intern training hours, a pharmacy or graduate intern shall train in a site that:
  1. Holds a valid Arizona pharmacy permit and employs a pharmacy intern preceptor who supervises the intern; or

**Historical Note**

Former Rules 3.3000, 3.3100, 3.3200, 3.3300, 3.3310, 3.3320, 3.3330, 3.3340, 3.3400, 3.4000, 3.4100, 3.4200, 3.4300, and 3.4400; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3).

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ber 8, 2008 (Supp. 08-3).

**R4-23-303. Training Time**

- A.** Training. The minimum hours of internship training required for licensure by examination shall be 1,500.
1. After enrolling in a Board-approved college or school of pharmacy as prescribed in R4-23-301(B) and receiving a Board-issued pharmacy intern license, a pharmacy intern shall complete all required internship training as part of the pharmacy intern's Board-approved college or school of pharmacy experiential training program.
  2. After receiving a Board-issued pharmacy intern license, an individual who is a graduate of a college or school of pharmacy that is not approved by the Board shall complete a minimum of 1,500 hours of internship training in a training site or sites as defined in R4-23-302(A).
  3. After receiving a Board-issued graduate intern license, a graduate intern shall complete the number of internship training hours required by the Board in a training site or sites as defined in R4-23-302(A).
- B.** Start of training and limitation of credit. To receive credit as internship training, the practical experience shall take place in a pharmacy or an alternative training site as specified in R4-23-302(A) and under the supervision of a pharmacy intern preceptor, except for a non-pharmacy site either as part of a Board-approved college or school of pharmacy experiential training program or as approved by the Board or its designee. The Board shall credit no more than 500 hours internship training as a pharmacy or graduate intern in an alternative training site specified in R4-23-302(A)(2).

**Historical Note**

Former Rules 3.5000 and 3.5200; Amended effective August 23, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2619, effective December 2, 2012 (Supp. 12-4).

**R4-23-304. Reports**

- A.** Change of employment or mailing address. A pharmacy intern or graduate intern shall notify the Board within ten days of change of employment or mailing address.
- B.** Annual reports.
1. A pharmacy intern who is a graduate of a college or school of pharmacy that is not approved by the Board or is a graduate intern shall provide the Board annual intern training reports for the duration of training. The pharmacy intern shall file an annual intern training report on a report form provided by the Board by calendar year (January 1st through December 31st). An annual intern training report shall be received at the Board's office no later than 30 days after the end of the calendar year. Any intern training hours reported to the Board office more than 30 days after the end of the calendar year in which the training hours were performed shall not be credited toward the total intern training hours required for licensure.
  2. After graduation and before sitting for the NAPLEX or MPJE, a pharmacy intern who is a graduate of a Board-approved college or school of pharmacy shall ensure that the director of the Board-approved college or school of pharmacy's experiential training program provides the Board an intern training report that includes:
    - a. The dates and number of training hours experienced, by training site and total; and
    - b. The date signed and experiential training program director's signature verifying that the pharmacy

intern successfully completed the experiential training program.

**Historical Note**

Former Rules 3.6100, 3.6200, 3.6300, and 3.6400; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 4356, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 18 A.A.R. 2619, effective December 2, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-305. Miscellaneous Intern Training Provisions**

To prevent a loss of intern hour credit and before beginning training, an intern may ask the Board if a training site meets the requirements specified in R4-23-301(E) and R4-23-302(A).

**Historical Note**

Former Rule 3.7000; Amended effective August 23, 1978 (Supp. 78-4). Amended by final rulemaking at 8 A.A.R. 416, effective January 10, 2002 (Supp. 02-1).

**ARTICLE 4. PROFESSIONAL PRACTICES****R4-23-401. Time-frames for Board Approvals and Special Requests**

- A.** To request a Board approval required by this Chapter or a special request to deviate from or waive compliance with a requirement of this Chapter, a person shall send a letter by regular mail, e-mail, or facsimile to the Board office, detailing the nature of the approval or special request, including the applicable Arizona Revised Statute or administrative code citation. This Section does not apply to a request from a person regarding the probation, suspension, or revocation of a license or permit.
- B.** The Board office shall complete an administrative completeness review within 15 days from the date of receipt of a written request and immediately open a request file for the applicant.
1. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the request.
  2. If the request is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 15-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
  3. If the Board office does not provide the applicant with notice regarding administrative completeness, the request is deemed complete 15 days after receipt by the Board office.
- C.** An applicant with an incomplete request shall submit all of the missing information within 30 days of service of the notice of incompleteness.
1. If an applicant cannot submit all missing information within 30 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office post-marked or delivered no later than 30 days from service of the notice of incompleteness.
  2. The written request for an extension shall document the reasons the applicant cannot meet the 30-day deadline.
  3. The Board office shall review the request for an extension of the 30-day deadline and grant the request if the Board office determines that an extension of the deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30



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days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension. An applicant who requires an additional extension shall submit an additional written request according to subsections (C)(1) and (C)(2).

- D. If an applicant fails to submit a complete request within the time allowed, the Board office shall close the applicant's request file. An applicant whose request file is closed and who later wishes to obtain an approval or special request shall apply again according to subsection (A).
- E. From the date on which the administrative completeness review of a request is finished, the Board shall complete a substantive review of the applicant's request in no more than 120 days.
  - 1. The Board shall:
    - a. Approve the request,
    - b. Deny the request, or
    - c. If the Board determines deficiencies exist, request that the applicant produce additional documentation.
  - 2. If the Board approves or denies, the Board office shall issue a written approval or denial.
  - 3. If the Board finds deficiencies during the substantive review of a request, the Board office shall issue a written request to the applicant for additional documentation.
  - 4. The 120-day time-frame for a substantive review of a request for approval or special request is suspended from the date of a written request for additional documentation until the date of the next Board meeting after all documentation is received. The applicant shall submit the additional documentation according to subsection (C).
  - 5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 30 days.
- F. If the applicant fails to submit the additional information requested within the time allowed, the Board office shall close the applicant's request file. An applicant whose request file is closed and who later wishes to obtain an approval or special request shall apply again according to subsection (A).
- G. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for a Board approval required by this Chapter or a special request to deviate from or waive compliance with a requirement of this Chapter:
  - 1. Administrative completeness review time-frame: 15 days;
  - 2. Substantive review time-frame: 120 days; and
  - 3. Overall time-frame: 135 days.

**Historical Note**

Former Rule 4.1000; Former Section R4-23-401 repealed, new Section R4-23-401 adopted effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Repealed effective August 24, 1992 (Supp. 92-3). New Section made by final rulemaking at 9 A.A.R. 3184, effective August 30, 2003 (Supp. 03-3).

**R4-23-402. Pharmacist, Graduate Intern, and Pharmacy Intern**

- A. A pharmacist or a graduate intern or pharmacy intern under the supervision of a pharmacist shall perform the following professional practices in dispensing a prescription medication from a prescription order:
  - 1. Receive, reduce to written form, and manually initial oral prescription orders;
  - 2. Obtain and record the name of an individual who communicates an oral prescription order;
  - 3. Obtain, or assume responsibility to obtain, from the patient, patient's agent, or medical practitioner and

record, or assume responsibility to record, in the patient's profile, the following information:

- a. Name, address, telephone number, date of birth (or age), and gender;
  - b. Individual history including known diseases and medical conditions, known drug allergies or drug reactions, and if available a comprehensive list of medications currently taken and medical devices currently used;
- 4. Record, or assume responsibility to record, in the patient's profile, a pharmacist's, graduate intern's, or pharmacy intern's comments relevant to the patient's drug therapy, including other information specific to the patient or drug;
  - 5. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
    - a. A patient's allergies,
    - b. Incompatibilities with a patient's currently-taken medications,
    - c. A patient's use of unusual quantities of dangerous drugs or narcotics,
    - d. A medical practitioner's signature, and
    - e. The frequency of refills;
  - 6. Verify that a dosage is within proper limits;
  - 7. Interpret the prescription order, which includes exercising professional judgment in determining whether to dispense a particular prescription;
  - 8. Compound, mix, combine, or otherwise prepare and package the prescription medication needed to dispense individual prescription orders;
  - 9. Prepackage or supervise the prepackaging of drugs by a pharmacy technician or pharmacy technician trainee under R4-23-1104. For drugs prepackaged by a pharmacy technician or pharmacy technician trainee, a pharmacist shall:
    - a. Verify the drug to be prepackaged;
    - b. Verify that the label meets the official compendium's standards;
    - c. Check the completed prepackaging procedure and product; and
    - d. Manually initial the completed label; or
    - e. For automated packaging systems, manually initial the completed label or a written log or initial a computer-stored log;
  - 10. Check prescription order data entry to ensure that the data input:
    - a. Is for the correct patient by verifying the patient's name, address, telephone number, gender, and date of birth or age;
    - b. Is for the correct drug by verifying the drug name, strength, and dosage form;
    - c. Communicates the prescriber's directions precisely by verifying dose, dosage form, route of administration, dosing frequency, and quantity; and
    - d. Is for the correct medical practitioner by verifying the medical practitioner's name, address, and telephone number;
  - 11. Make a final accuracy check on the completed prescription medication and manually initial the finished label. Manual initialing of a finished label is not required if the pharmacy's computer system complies with the computer documentation requirements of R4-23-408(B)(4);
  - 12. Record, or assume responsibility to record, a prescription serial number and date dispensed on the original prescription order;

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13. Obtain, or assume responsibility to obtain, permission to refill a prescription order and record, or assume responsibility to record on the original prescription order:
    - a. Date dispensed,
    - b. Quantity dispensed, and
    - c. Name of medical practitioner or medical practitioner's agent who communicates permission to refill the prescription order;
  14. Reduce to written or printed form, or assume responsibility to reduce to written or printed form, a new prescription order received by:
    - a. Facsimile,
    - b. Computer modem, or
    - c. Other means of communication;
  15. Verify, or assume responsibility to verify, that a completed prescription medication is sold only to the correct patient, patient's care-giver, or authorized agent;
  16. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who originally dispenses the prescription order; and
  17. Record on the original prescription order the name or initials of the pharmacist, graduate intern, or pharmacy intern who dispenses each refill.
- B.** Only a pharmacist, graduate intern, or pharmacy intern shall provide oral consultation about a prescription medication to a patient or patient's care-giver in an outpatient setting, including a patient discharged from a hospital. The oral consultation is required whenever the following occurs:
1. The prescription medication has not been previously dispensed to the patient in the same strength or dosage form or with the same directions;
  2. The pharmacist, through the exercise of professional judgment, determines that oral consultation is warranted; or
  3. The patient or patient's care-giver requests oral consultation.
- C.** Oral consultation shall include:
1. Reviewing the name and strength of a prescription medication or name of a prescription-only device and the labeled indication of use for the prescription medication or prescription-only device;
  2. Reviewing the prescription's directions for use;
  3. Reviewing the route of administration; and
  4. Providing oral information regarding special instructions and written information regarding side effects, procedure for missed doses, or storage requirements.
- D.** When, in the professional judgement of the pharmacist or graduate intern or pharmacy intern under the supervision of a pharmacist, or when circumstance precludes it, oral consultation may be omitted if the pharmacist, graduate intern, or pharmacy intern:
1. Personally provides written information to the patient or patient's care-giver that summarizes the information that would normally be orally communicated;
  2. Documents, or assumes responsibility to document, both the circumstance and reason for not providing oral consultation by a method approved by the Board or its designee; and
  3. Offers the patient or patient's care-giver the opportunity to communicate with a pharmacist, graduate intern, or pharmacy intern at a later time and provides a method for the patient or patient's care-giver to contact a pharmacist, graduate intern, or pharmacy intern at the pharmacy.
- E.** The pharmacist or graduate intern or pharmacy intern under the supervision of a pharmacist, through the exercise of professional judgment, may provide oral consultation that includes:
1. Common severe adverse effects, interactions, or therapeutic contraindications, and the action required if they occur;
  2. Techniques of self-monitoring drug therapy;
  3. The duration of the drug therapy; and
  4. Prescription refill information.
- F.** Nothing in subsection (B) requires a pharmacist, graduate intern, or pharmacy intern to provide oral consultation if a patient or patient's care-giver refuses the consultation.
- G.** Using a method approved by the Board or its designee, a pharmacist, graduate intern, or pharmacy intern shall document, or assume responsibility to document, that oral consultation is or is not provided.
- H.** Oral consultation documentation. When oral consultation is required as specified in subsection (B), a pharmacist, graduate intern, or pharmacy intern shall:
1. Document, or assume responsibility to document, that oral consultation is provided; or
  2. When a patient refuses oral consultation or a person other than the patient or patient's care-giver picks up a prescription and oral consultation is not provided, document, or assume responsibility to document, that oral consultation is not provided; or
  3. When a pharmacist, graduate intern, or pharmacy intern determines to omit oral consultation under subsection (D) and oral consultation is not provided, document, or assume responsibility to document, both the circumstance and reason that oral consultation is not provided; and
  4. Document, or assume responsibility to document, the name, initials, or identification code of the pharmacist, graduate intern, or pharmacy intern who did or did not provide oral consultation.
- I.** When a prescription is delivered to the patient or patient's care-giver outside the immediate area of a pharmacy and a pharmacist is not present, the prescription shall be accompanied by written or printed patient medication information that, in addition to the requirements in subsection (C), includes:
1. Approved use for the prescription medication;
  2. Possible adverse reactions;
  3. Drug-drug, food-drug, or disease-drug interactions;
  4. Missed dose information; and
  5. Telephone number of the dispensing pharmacy or another method approved by the Board or its designee that allows a patient or patient's care-giver to consult with a pharmacist.
- J.** A prescription medication or prescription-only device, delivered to a patient at a location where a licensed health care professional is responsible for administering the prescription medication to the patient, is exempt from the requirement of subsection (C).
- K.** A pharmacist, graduate intern, or pharmacy intern shall wear a badge indicating name and title while on duty.
- L.** Nothing in this Section prevents a hospital pharmacist from accepting a prescription order according to rules pertaining specifically to hospital pharmacies.

**Historical Note**

Former Rule 4.1100; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective July 7, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 10 A.A.R. 1192, effective

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tive May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 2258, effective August 6, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 274, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 4691, effective February 3, 2007 (Supp. 06-4).

**R4-23-403. Repealed****Historical Note**

Former Rule 4.1200; Amended effective August 10, 1978 (Supp. 78-4). Amended effective March 28, 1980 (Supp. 80-2). Amended effective August 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Section repealed by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).

**R4-23-404. Unethical Practices**

**A.** Rebates prohibited. A pharmacist or pharmacy permittee shall not offer, deliver, receive, or accept any unearned rebate, refund, commission, preference, patronage dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement to refer a patient, client, or customer to any person, except for a rebate or premium paid completely and directly to a patient. A pharmacist or pharmacy permittee shall not:

1. Make payment to a medical practitioner in money or other consideration for a prescription order prescribed by the medical practitioner; or
2. Make payment to a long-term care or assisted living facility or other health care institution in money, discount, rental, or other consideration in an amount above the prevailing rate for:
  - a. Prescription medication or devices dispensed or sold for a patient or resident of the facility or institution; or
  - b. Drug selection or drug utilization review services, drug therapy management services, or other pharmacy consultation services provided for a patient or resident of the facility or institution.

**B.** Prescription order-blank advertising prohibited. A pharmacist or pharmacy permittee shall not:

1. Directly or indirectly furnish to a medical practitioner a prescription order-blank that refers to a specific pharmacist or pharmacy in any manner; or
2. Actively or passively participate in any arrangement or agreement where a prescription order-blank is prepared, written, or issued in a manner that refers to a specific pharmacist or pharmacy.

**C.** Fraudulent claim for service. A pharmacist or pharmacy permittee shall not claim the performance of a service that the pharmacist or pharmacy permittee knows or should know was not performed, such as, claiming to dispense a prescription medication that is not dispensed.

**D.** Fraudulent claim for a fee. A pharmacist or pharmacy permittee:

1. Shall not claim a fee for a service that is not performed or earned;
2. May divide a prescription order into two or more portions of prescription medication at the request of a patient, or for some other ethical reason, and charge a dispensing fee for the additional service; and
3. Shall not divide a prescription order merely to obtain an additional fee.

**E.** Prohibiting a prescription-only drug or device from being dispensed over the counter. A pharmacist shall ensure that:

1. A prescription-only drug or device is dispensed only after receipt of a valid prescription order from a licensed medical practitioner;
2. The dispensed prescription-only drug or device is properly prepared, packaged, and labeled according to this Chapter; and
3. The prescription order is filed according to this Chapter.

**F.** Drugs dispensed in the course of the conduct of a business of dispensing drugs through diagnosis by mail or the internet.

1. A pharmacist shall not dispense a drug from a prescription order if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order was issued on the basis of an internet-based questionnaire or an internet-based consultation without a medical practitioner-patient relationship as defined in R4-23-110.
2. A pharmacist who dispenses a prescription-only drug, prescription-only device, or controlled substance in violation of this Section is engaging in unethical conduct in violation of A.R.S. § 32-1901.01.

**Historical Note**

Former Rules 4.2110, 4.2120, 4.2130, 4.2210, 4.2230, 4.2400, 4.2500, 4.2600, 4.4100, 4.4200, 4.4310, 4.4320, 4.4400, and 4.4500; Amended effective August 10, 1978 (Supp. 78-4); Amended subsection (I) effective August 9, 1983 (Supp. 83-4). Amended by deleting subsections (H) through (M) effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 3405, effective October 4, 2008 (Supp. 08-3).

**R4-23-405. Change of Responsibility**

A pharmacist designated as the pharmacist-in-charge for a pharmacy, manufacturer, or other establishment shall give immediate notice, as defined in R4-23-110, when:

1. The pharmacist's responsibility as a pharmacist-in-charge is terminated; or
2. The pharmacist knows of a pending termination of the pharmacist's responsibility as the pharmacist-in-charge.

**Historical Note**

Former Rules 4.5100 and 4.5200; Amended effective August 9, 1983 (Supp. 83-4). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1).

**R4-23-406. Repealed****Historical Note**

Adopted as an emergency effective January 10, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Amended as an emergency effective April 2, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days. Adopted effective April 10, 1979 (Supp. 79-1). Former Section R4-23-406 repealed, new Section R4-23-406 adopted effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 230, effective March 6, 2004 (Supp. 04-1).

**R4-23-407. Prescription Requirements**

**A.** Prescription orders. A pharmacist shall ensure that:

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1. A prescription order dispensed by the pharmacist includes the following information:
    - a. Date of issuance;
    - b. Name and address of the patient for whom or the owner of the animal for which the drug or device is dispensed;
    - c. Drug name, strength, and dosage form or device name;
    - d. Name of the drug's or device's manufacturer or distributor if the prescription order is written generically or a substitution is made;
    - e. Prescribing medical practitioner's directions for use;
    - f. Date of dispensing;
    - g. Quantity prescribed and if different, quantity dispensed;
    - h. For a prescription order for a controlled substance, the medical practitioner's address and DEA number;
    - i. For a written prescription order, the medical practitioner's signature;
    - j. For an electronically transmitted prescription order, the medical practitioner's digital or electronic signature;
    - k. For an oral prescription order, the medical practitioner's name and telephone number; and
    - l. Name or initials of the dispensing pharmacist;
  2. A prescription order is kept by the pharmacist or pharmacy permittee as a record of the dispensing of a drug or device for seven years from the date the drug or device is dispensed, except for a drug or device personally administered by a medical practitioner to the medical practitioner's patient; and
  3. The dispensing of a drug or device complies with the packaging requirements of the official compendium and state and federal law.
- B.** Prescription refills. A pharmacist shall ensure that the following information is recorded on the back of a prescription order when it is refilled:
1. Date refilled,
  2. Quantity dispensed,
  3. Name or approved abbreviation of the manufacturer or distributor if the prescription order is written generically or a substitution is made, and
  4. The name or initials of the dispensing pharmacist.
- C.** A pharmacist may furnish a copy of a prescription order to the patient for whom it is prescribed or to the authorized representative of the patient if the copy is clearly marked "COPY FOR REFERENCE PURPOSES ONLY" or other similar statement. A copy of a prescription order is not a valid prescription order and a pharmacist shall not dispense a drug or device from the information on a copy.
- D.** Transfer of prescription order information. For a transfer of prescription order information to be valid, a pharmacy permittee or pharmacist-in-charge shall ensure that:
1. Both the original and the transferred prescription order are maintained for seven years after the last dispensing date;
  2. The original prescription order information for a Schedule III, IV, or V controlled substance is transferred only as specified in 21 CFR 1306.25, published April 1, 2008, and no future amendments or editions, incorporated by reference, and on file with the Board, and available from the U.S. Government Printing Office, U.S. Superintendent of Documents, Washington, DC 20402-0001;
  3. The original prescription order information for a non-controlled substance drug is transferred without limitation only up to the number of originally authorized refills;
4. For a transfer within Arizona:
    - a. The transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
      - i. The transfer of information is communicated directly between:
        - (1) Two licensed pharmacists,
        - (2) A licensed pharmacist and a licensed pharmacy or graduate intern, or
        - (3) Two licensed pharmacy or graduate interns;
      - ii. The following information is recorded by the transferring pharmacist or pharmacy or graduate intern:
        - (1) The word "void" is written on the face of the invalidated original prescription unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
        - (2) The name and identification code, number, or address and telephone number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist or pharmacy or graduate intern, the date of transfer, and the name of the transferring pharmacist or pharmacy or graduate intern is written on the back of the prescription or entered into the transferring pharmacy's computer system; and
      - iii. The following information is recorded by the receiving pharmacist or pharmacy or graduate intern on the transferred prescription order:
        - (1) The word "transfer;"
        - (2) Date of issuance of the original prescription order;
        - (3) Original number of refills authorized on the original prescription order;
        - (4) Date of original dispensing;
        - (5) Number of valid refills remaining and the date of the last refill;
        - (6) Name and identification code, number, or address, telephone number, and original prescription number of the pharmacy from which the prescription is transferred;
        - (7) Name of the transferring pharmacist or pharmacy or graduate intern; and
        - (8) Name of the receiving pharmacist or pharmacy or graduate intern;
    - b. The transfer of original prescription order information for a Schedule III, IV, or controlled substance meets the following conditions:
      - i. The transfer of information is communicated directly between two licensed pharmacists;
      - ii. The following information is recorded by the transferring pharmacist:
        - (1) The word "void" is written on the face of the invalidated original prescription order unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy's computer system; and
        - (2) The name, address, and DEA number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist, the date of transfer, and the

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- name of the transferring pharmacist is written on the back of the prescription order or entered into the transferring pharmacy's computer system; and
- iii. The following information is recorded by the receiving pharmacist on the transferred prescription order:
    - (1) The word "transfer;"
    - (2) Date of issuance of original prescription order;
    - (3) Original number of refills authorized on the original prescription order;
    - (4) Date of original dispensing;
    - (5) Number of valid refills remaining and the date of the last refill;
    - (6) Name, address, DEA number, and original prescription number of the pharmacy from which the prescription is transferred;
    - (7) Name of the transferring pharmacist; and
    - (8) Name of the receiving pharmacist;
5. For a transfer from out-of-state:
    - a. The transfer of original prescription order information for a non-controlled substance drug meets the conditions in subsections (D)(4)(a)(i) and (D)(4)(a)(iii); and
    - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the conditions in subsections (D)(4)(b)(i) and (D)(4)(b)(iii); and
  6. For an electronic transfer, the electronic transfer of original prescription order information meets the following conditions:
    - a. The electronic transfer is between pharmacies owned by the same company using a common or shared database;
    - b. The electronic transfer of original prescription order information for a non-controlled substance drug is performed by a pharmacist or a pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician under the supervision of a pharmacist;
    - c. The electronic transfer of original prescription order information for a controlled substance is performed between two licensed pharmacists;
    - d. The electronic transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
      - i. The transferring pharmacy's computer system:
        - (1) Invalidates the transferred original prescription order information;
        - (2) Records the identification code, number, or address of the pharmacy to which the prescription order information is transferred;
        - (3) Records the name or identification code of the receiving pharmacist, pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician; and
        - (4) Records the date of transfer; and
      - ii. The receiving pharmacy's computer system:
        - (1) Records that a prescription transfer occurred;
        - (2) Records the date of issuance of the original prescription order;
        - (3) Records the original number of refills authorized on the original prescription order;
        - (4) Records the date of original dispensing;
        - (5) Records the number of valid refills remaining and the date of the last refill;
        - (6) Records the identification code, number, or address and original prescription number of the pharmacy from which the prescription is transferred;
        - (7) Records the name or identification code of the receiving pharmacist or pharmacy or graduate intern, pharmacy technician trainee, or pharmacy technician; and
        - (8) Records the date of transfer;
    - e. The electronic transfer of original prescription order information for a controlled substance meets the following conditions:
      - i. The transferring pharmacy's computer system:
        - (1) Invalidates the transferred original prescription order information;
        - (2) Records the identification code, number, or address, and DEA number of the pharmacy to which the prescription order information is transferred;
        - (3) Records the name or identification code of the receiving pharmacist;
        - (4) Records the date of transfer; and
        - (5) Records the name or identification code of the transferring pharmacist; and
      - ii. The electronic prescription order information received by the computer system of the receiving pharmacy includes the information required in subsection (D)(4)(b)(iii); and
    - f. In addition to electronic documentation of a transferred prescription order in the computer system, an original prescription order containing the requirements of this Section is filed in compliance with A.R.S. § 32-1964.
- E. Transmission of a prescription order from a medical practitioner to a pharmacy by facsimile machine.**
1. A medical practitioner or medical practitioner's agent may transmit a prescription order for a Schedule III, IV, or V controlled substance, prescription-only drug, or non-prescription drug to a pharmacy by facsimile under the following conditions:
    - a. The prescription order is faxed only to the pharmacy of the patient's choice;
    - b. The faxed prescription order:
      - i. Contains all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and
      - ii. Is only faxed from the medical practitioner's practice location, except that a nurse in a hospital, long-term care facility, or inpatient hospice may send a facsimile of a prescription order for a patient of the facility; and
    - c. The faxed prescription order shall contain the following additional information:
      - i. The date the prescription order is faxed;
      - ii. The facsimile number of the prescribing medical practitioner or the facility from which the prescription order is faxed, and the telephone number of the facility; and
      - iii. The name of the person who transmits the facsimile, if other than the medical practitioner.
  2. A medical practitioner or medical practitioner's agent may fax a prescription order for a Schedule II controlled substance for information purposes only, unless the faxed

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prescription order meets the requirements of A.R.S. § 36-2525(F) and (G).

3. A pharmacy may receive a faxed prescription order for a Schedule II controlled substance for information purposes only, except a faxed prescription order for a Schedule II controlled substance that meets the requirements of A.R.S. § 36-2525(F) and (G) may serve as the original written prescription order.
  4. To meet the seven-year record retention requirement of A.R.S. § 32-1964, a pharmacy shall receive a faxed prescription order on a plain paper facsimile machine, except a pharmacy that does not have a plain paper facsimile machine may make a Xerox copy of a faxed prescription order received on a non-plain paper facsimile machine.
  5. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy if the faxed authorization includes the medical practitioner's telephone number and facsimile number, the medical practitioner's signature or medical practitioner's agent's name, and date of authorization.
- F.** Electronic transmission of a prescription order from a medical practitioner to a pharmacy.
1. Unless otherwise prohibited by law, a medical practitioner or medical practitioner's agent may transmit a prescription order by electronic means, directly or through an intermediary, including an E-prescribing network, to the dispensing pharmacy as specified in A.R.S. § 32-1968.
  2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure that the transmission complies with any security or other requirements of federal law.
  3. The medical practitioner and pharmacy shall ensure that all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
  4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:
    - a. The date of transmission; and
    - b. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
  5. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964.
  6. A medical practitioner or medical practitioner's agent shall transmit an electronic prescription order only to the pharmacy of the patient's choice.

**Historical Note**

Adopted effective November 18, 1983 (Supp. 83-6). Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 440, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3605, effective November 8, 2008 (Supp. 08-3).

**EMERGENCY RULEMAKING****R4-23-407.1. Dispensing an Opioid Antagonist**

**A.** As used in this Section:

1. "Community member" means a person in position to assist an individual at risk of experiencing an opioid-related overdose. This includes emergency first responders, peace officers or other law enforcement personnel, fire department personnel, school district employees, and personnel of a facility or center that provides services to individuals at risk of experiencing an opioid-related overdose.
  2. "Opioid antagonist" means any drug approved by the U.S. Food and Drug Administration that binds to opioid receptors, effectively blocking or inhibiting the receptor and preventing the body from responding to the opioid. Naloxone hydrochloride is an opioid antagonist.
  3. "Opioid-related overdose" means an acute condition in which the opioid overdose triad of symptoms, decreased level of consciousness, pinpoint pupils, and respiratory depression, is present. Other symptoms may include seizures, muscle spasms, and coma or death. An opioid-related overdose requires medical assistance.
- B.** Before allowing an opioid antagonist to be dispensed under A.R.S. § 32-1979, a pharmacy permit holder shall have written policies and procedures regarding:
1. Documentation of opioid antagonists dispensed under A.R.S. § 32-1979. The documentation shall:
    - a. Include the information required under R4-23-407(A)(1)(a), (c), (d), (f), and (l) and (A)(2); and
    - b. Include the following:
      - i. Quantity dispensed;
      - ii. Directions for use; and
      - iii. If available, the patient's name, address, telephone number, and birth date; or
      - iv. Name, address, telephone number, and birth date of a family member in position to assist the individual at risk of an opioid-related overdose; or
      - v. Name, address, telephone number, and entity at which employed of a community member in position to assist an individual at risk of an opioid-related overdose; and
      - vi. Name of the individual providing the education required under subsection (B)(2);
  2. Education to be provided to the individual to whom the opioid antagonist is dispensed. The education shall include:
    - a. How to prevent an opioid-related overdose;
    - b. How to recognize an opioid-related overdose;
    - c. How to administer an opioid antagonist safely to an individual experiencing an opioid-related overdose;
    - d. Precautions regarding:
      - i. Potential side effects, and
      - ii. Possible adverse events associated with administration of the opioid antagonist; and
    - e. Importance of seeking emergency medical assistance for the individual experiencing an opioid-related overdose before or after administering the opioid antagonist; and
  3. Confidentiality, security, and privileged nature of documentation of opioid antagonists dispensed under A.R.S. § 32-1979.
- C.** Before dispensing an opioid antagonist under A.R.S. § 32-1979(A), a licensed pharmacist shall:
1. Complete an opioid prevention and treatment training program that includes the following information:
    - a. How to recognize the symptoms of an opioid-related overdose,

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- b. How to respond to a suspected opioid-related overdose,
  - c. How to administer all preparations of an opioid antagonist, and
  - d. The information needed by an individual to whom an opioid antagonist is dispensed, and
- 2. Comply fully with the policies and procedures developed under subsection (B).
- D. A pharmacist who has completed an opioid prevention and treatment training program described in subsection (C):
  - 1. May administer an opioid antagonist to an individual the pharmacist believes is experiencing an opioid-related overdose, and
  - 2. Is exempt from civil liability under the terms of A.R.S. § 36-2267(B).
- E. Dispensing an opioid antagonist under A.R.S. § 32-1979 by invoice to a community member is not wholesale distribution as defined at A.R.S. § 32-1981.

**Historical Note**

New Section made by emergency rulemaking at 23 A.A.R. 31, effective December 15, 2016 for 180 days (Supp. 16-4).

**R4-23-408. Computer Records**

- A. Systems manual. A pharmacy permittee or pharmacist-in-charge shall:
  - 1. Develop, implement, and comply with policies and procedures for the following operational aspects of a computer system:
    - a. Examples of all output documentation provided by the computer system that contains original or refill prescription order or patient profile information;
    - b. Steps a pharmacy employee follows when the computer system is not operational due to scheduled or unscheduled system interruption;
    - c. Regular and routine backup file procedure and file maintenance, including secure storage of backup files;
    - d. Audit procedures, personnel code assignments, and personnel responsibilities; and
    - e. Quality assurance mechanism for data entry validation;
  - 2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
  - 3. Document the review required under subsection (A)(2);
  - 4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
  - 5. Make the policies and procedures available within the pharmacy for reference by pharmacy personnel and inspection by the Board or its designee.
- B. Computer system data storage and retrieval. A pharmacy permittee or pharmacist-in-charge shall ensure that the computer system is capable of:
  - 1. Producing sight-readable information on all original and refill prescription orders and patient profiles;
  - 2. Providing online retrieval (via CRT display or hard-copy printout) of original prescription order information required in A.R.S. § 32-1968(C), R4-23-402(A), and R4-23-407(A);
  - 3. Providing online retrieval (via CRT display or hard-copy printout) of patient profile information required in R4-23-402(A);
  - 4. Providing documentation identifying the pharmacist responsible for dispensing each original or refill prescription order, except a pharmacy permittee with a computer system that is in use before the effective date of this Section that cannot provide documentation identifying the dispensing pharmacist may continue to use the computer system by providing manual documentation identifying the dispensing pharmacist;
- 5. Producing a printout of all prescription order information, including a single-drug usage report that contains:
  - a. The name of the prescribing medical practitioner;
  - b. The name and address of the patient;
  - c. The quantity dispensed on each original or refill prescription order;
  - d. The date of dispensing for each original or refill prescription order;
  - e. The name or identification code of the dispensing pharmacist; and
  - f. The serial number of each prescription order; and
- 6. Providing a printout of requested prescription order information to an individual pharmacy within 72 hours of the request if prescription order information is maintained in a centralized computer record system.
- C. A pharmacy permittee or pharmacist-in-charge of a pharmacy that uses a pharmacy computer system:
  - 1. Shall notify the D.E.A. and the Board in writing that original and refill prescription information and patient profiles are stored in a pharmacy computer system;
  - 2. Shall comply with this Section if the pharmacy computer system's refill records are used as an alternative to the manual refill records required in R4-23-407(B);
  - 3. Is exempt from the manual refill recordkeeping requirements of R4-23-407(B), if the pharmacy computer system complies with the requirements of this Section; and
  - 4. Shall ensure that documentation of the accuracy of original and refill information entered into a computer system is provided by each pharmacist using the computer system and kept on file in the pharmacy for seven years from the date of the last refill. Documentation includes one of the following:
    - a. A hard-copy printout of each day's original and refill data that:
      - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
      - ii. Includes the printed name of each dispensing pharmacist; and
      - iii. Is signed and initialed by each dispensing pharmacist; or
    - b. A log book or separate file of daily statements that:
      - i. States original and refill data for prescriptions dispensed by each pharmacist is reviewed for accuracy;
      - ii. Includes the printed name of each dispensing pharmacist; and
      - iii. Is signed and initialed by each dispensing pharmacist.
- D. If a pharmacy computer system does not comply with the requirements of subsections (A), (B), and (F), the pharmacy permittee or pharmacist-in-charge shall bring the computer system into compliance within three months of a notice of noncompliance or violation letter. If the computer system is still noncompliant with subsection (A), (B), or (F) after three months, the pharmacy permittee or pharmacist-in-charge shall immediately comply with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- E. If a pharmacy's personnel perform manual recordkeeping under subsection (D), the pharmacy's personnel shall continue manual recordkeeping until the pharmacist-in-charge sends

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proof, verified by a Board compliance officer, that the computer system complies with subsections (A), (B), and (F).

- F.** Security. To maintain the confidentiality of patient records, a pharmacy permittee or pharmacist-in-charge shall ensure that:
  1. The computer system has security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription order information and patient profiles; and
  2. After a prescription order is dispensed, any alteration of prescription order information is documented, including the identification of the pharmacist responsible for the alteration.
- G.** A computer system that does not comply with all the requirements of subsections (A), (B), and (F) may be used in a pharmacy if:
  1. The computer system was in use in the pharmacy before July 11, 2001, and
  2. The pharmacy complies with the manual recordkeeping requirements of R4-23-402 and R4-23-407.
- H.** Prescription records and retention.
  1. Instead of filing the original hard-copy prescription as required in A.R.S. § 32-1964, a pharmacy permittee or pharmacist-in-charge may use an electronic imaging recordkeeping system, if:
    - a. The system is capable of capturing, storing, and reproducing the exact image of a prescription, including the reverse side of the prescription if necessary;
    - b. Any notes of clarification of and alterations to a prescription are directly associated with the electronic image of the prescription;
    - c. The prescription image and any associated notes of clarification to or alterations to a prescription are retained for a period not less than seven years from the date the prescription is last dispensed;
    - d. The original hard-copy prescription is maintained for no less than 30 days after the date dispensed;
    - e. Policies and procedures for the use of an electronic imaging recordkeeping system are developed, implemented, reviewed, and revised in the same manner described in subsection (A) and complied with; and
    - f. The prescription is not for a schedule II controlled substance.
  2. If a pharmacy's computer system fields are automatically populated by an electronically transmitted prescription order, the automated record constitutes the original prescription and a hard-copy or electronic image is not required if the computer system is capable of maintaining, printing, and providing all the prescription information required in A.R.S. §§ 32-1968 and 36-2525 and R4-23-407(A) within 72 hours of a request by the Board, the Board's compliance officers, other authorized regulatory board agents, or authorized officers of the law.

**Historical Note**

Adopted effective November 18, 1983 (Supp. 83-6).  
 Amended by final rulemaking at 7 A.A.R. 646, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4).  
 Amended by final rulemaking at 12 A.A.R. 274, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 440,

effective April 7, 2007 (Supp. 07-1).

**R4-23-409. Returning Drugs and Devices**

- A.** After a person for whom a drug is prescribed or the person's agent takes the drug from the premises where sold, distributed, or dispensed, a pharmacist or pharmacy permittee shall not accept the drug for return or exchange for the purpose of resale unless the pharmacist determines that:
  1. The drug is in its original, manufacturer's, unopened container; and
  2. The drug or its container has not been subjected to contamination or deterioration.
- B.** The provisions of subsection (A) of this Section do not apply to a drug dispensed to:
  1. A hospital inpatient as defined in R4-23-651; or
  2. A resident of a long-term care facility where a licensed health care professional administers the drug, and the pharmacist ensures and documents that the drug:
    - a. Has been stored in compliance with the requirements of the official compendium; and
    - b. Is not obviously contaminated or deteriorated.
- C.** After a person for whom a device is prescribed or the person's agent takes the device from the premises where sold, distributed, or dispensed, a pharmacist or pharmacy permittee shall not accept the device for return or exchange for the purpose of resale or reuse unless the pharmacist determines that:
  1. The device is inspected and is free of defects;
  2. The device is rendered incapable of transferring disease; and
  3. The device, if resold or reused, is not claimed to be new or unused.

**Historical Note**

Adopted effective November 18, 1983 (Supp. 83-6).  
 Amended by final rulemaking at 8 A.A.R. 1256, effective March 7, 2002 (Supp. 02-1).

**R4-23-410. Current Good Compounding Practices**

- A.** This Section establishes the current good compounding practices to be used by a pharmacist licensed by the Board, in a pharmacy permitted by the Board, and in compliance with applicable federal and state law governing the practice of pharmacy.
- B.** A pharmacy permittee shall ensure compliance with the provisions in this subsection.
  1. All substances for compounding that are received, stored, or used by the pharmacy permittee:
    - a. Meet official compendium requirements;
    - b. Are of high quality, such as Chemically Pure (CP), Analytical Reagent (AR), certified American Chemical Society (ACS), or Food Chemical Codex (FCC) grade; or
    - c. Are obtained from a source that, in the professional judgment of the pharmacist, is acceptable and reliable.
  2. Before compounding a pharmaceutical product in excess of the quantity dispensed in anticipation of receiving valid prescriptions for the pharmaceutical product, a pharmacist, employed by the pharmacy permittee, shall establish a history of compounding valid prescriptions for the pharmaceutical product.
  3. Neither the pharmacy permittee nor a pharmacist employed by the pharmacy permittee provides a compounded pharmaceutical product to a pharmacy, medical practitioner, or other person for dispensing or distributing except that a compounded pharmaceutical product may be provided to a medical practitioner to administer to a patient of the medical practitioner if each container is



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- accompanied by the written list required in subsection (I)(5) and has a label that includes the following:
- The pharmacy's name, address, and telephone number;
  - The pharmaceutical product's name and the information required in subsection (I)(4);
  - A lot or control number;
  - A beyond-use-date based upon the pharmacist's professional judgment, but not more than the maximum guidelines recommended in the Pharmacy Compounding Practices chapter of the official compendium unless there is published or unpublished stability test data that shows a longer period is appropriate;
  - The statement "Not For Dispensing;" and
  - The statement "For Office or Hospital Administration Only."
4. A pharmacy or pharmacist may advertise or otherwise promote the fact that the pharmacy or pharmacist provides prescription compounding services.
- C.** A pharmacy permittee shall ensure compliance with the organization, training, and personnel issues in this subsection.
- Before dispensing a compounded pharmaceutical product, a pharmacist:
    - Inspects and approves or rejects, or assumes responsibility for inspecting and approving or rejecting, components, pharmaceutical product containers and closures, in-process materials, and labeling;
    - Prepares or assumes responsibility for preparing all compounding records;
    - Reviews all compounding records to ensure that no errors occur in the compounding process;
    - Ensures the proper use, cleanliness, and maintenance of all compounding equipment; and
    - Documents by hand-written initials or signature in the compounding record the completion of the requirements of subsections (C)(1)(a), (b), (c), and (d).
  - A pharmacist engaged in compounding:
    - Complies with the current good compounding practices and applicable state pharmacy laws;
    - Maintains compounding proficiency through current awareness, training, and continuing education; and
    - Ensures that personnel engaged in compounding wear:
      - Clean clothing appropriate to the work performed; and
      - Protective apparel, such as coats, aprons, gowns, gloves or masks to protect the personnel from chemical exposure and prevent pharmaceutical product contamination.
- D.** A pharmacy permittee shall ensure the security, safety, and quality of a compounded pharmaceutical product by conforming with the following standards:
- Implement procedures to exclude from direct contact with components, pharmaceutical product containers and closures, in-process materials, labeling, and pharmaceutical products, any person with an apparent illness or open lesion that may adversely affect the safety or quality of a compounded pharmaceutical product, until the illness or lesion, as determined by competent medical personnel, does not jeopardize the safety or quality of a compounded pharmaceutical product; and
  - Require all personnel to inform a pharmacist of any health condition that may adversely affect a compounded pharmaceutical product.
- E.** A pharmacy permittee shall provide compounding facilities that conform with the standards in this subsection.
- In addition to the minimum area requirements of R4-23-609, R4-23-655, or R4-23-673, the compounding area:
    - Complies with the requirements in R4-23-611; and
    - Has sufficient space to permit efficient pharmacy practice, free movement of personnel, and visual surveillance by a pharmacist.
  - If sterile pharmaceutical product or radiopharmaceutical product compounding is performed, the compounding area complies with the requirements of R4-23-670, R4-23-681, and R4-23-682.
  - A clean, dry, and temperature-controlled area and, if required, a refrigerated area, in which to store properly labeled containers of bulk drugs, chemicals, and materials used in compounding, that complies with state statutes and rules.
- F.** To protect pharmaceutical product safety, identity, strength, quality, and purity, a pharmacy permittee shall ensure that equipment and utensils used in pharmaceutical product compounding are:
- Of appropriate design, adequate size, and suitably located for proper operation, cleaning, and maintenance;
  - Made of material that is not reactive, additive, or absorptive when exposed to components, in-process materials, or pharmaceutical products;
  - Cleaned and protected from contamination before use;
  - Inspected and determined suitable for use before initiation of compounding operations; and
  - Routinely inspected, calibrated, or checked to make proper performance certain.
- G.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with procedures to prevent cross-contamination when pharmaceutical products that require special precautions to prevent cross-contamination, such as penicillin, are used in a compounding procedure. The procedures shall include either the dedication of equipment or the meticulous cleaning of contaminated equipment before its use in compounding other pharmaceutical products.
- H.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with control procedures for components and pharmaceutical product containers and closures, either written or electronically stored with printable documentation, that conform with the standards in this subsection.
- Components and pharmaceutical product containers and closures are:
    - Stored off the floor,
    - Handled and stored to prevent contamination, and
    - Rotated so the oldest approved stock is used first.
  - Container closure systems comply with official compendium standards.
  - Pharmaceutical product containers and closures are clean and made of material that is not reactive, additive, or absorptive.
- I.** A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with pharmaceutical product compounding controls that conform with the standards in this subsection.
- Pharmaceutical product compounding procedures are available in either written form or electronically stored with printable documentation:
    - To ensure that a finished pharmaceutical product has the identity, strength, quality, and purity it is purported or represented to possess, the procedures

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include, for each pharmaceutical product compounded, a description of:

- i. The components, their manufacturer, lot number, expiration date, and amounts, the order of component addition, if applicable, and the compounding process;
- ii. The equipment and utensils used; and
- iii. The pharmaceutical product container and closure system proper for the sterility and stability of the pharmaceutical product as it is intended to be used.

- b. To test the pharmaceutical product being compounded, the procedures monitor the output and validate the performance of compounding processes that may cause variability in the final pharmaceutical product, including assessing:

- i. Dosage form weight variation;
- ii. Adequacy of mixing to ensure uniformity and homogeneity; and
- iii. Clarity, completeness, and pH of solutions, if applicable.

2. Components for pharmaceutical product compounding are accurately weighed, measured, or subdivided. To ensure that each weight, measure, or subdivision is correct as stated in the compounding procedures, a pharmacist:

- a. Checks and rechecks, or assumes responsibility for checking and re-checking, the operations at each stage of the compounding process; and
- b. Documents by hand-written initials or signature the completion and accuracy of the compounding process.

3. Compounding equipment and utensils are properly cleaned and maintained.

4. In addition to the labeling requirements of A.R.S. § 32-1968(D), the label contains:

- a. A statement, symbol, designation, or abbreviation that the pharmaceutical product is a compounded pharmaceutical product, and
- b. A beyond-use-date as specified in subsection (B)(3)(d).

5. A written list of the compounded pharmaceutical product's active ingredients is given to the patient at the time of dispensing.

6. When a component is removed from its original container and transferred to another container, the new container label contains, in full text or an abbreviated code system, the following:

- a. The component name,
- b. The manufacturer's or supplier's name,
- c. The lot or control number,
- d. The weight or measure,
- e. The beyond-use-date as specified in subsection (B)(3)(d), and
- f. The transfer date.

- J. A pharmacy permittee shall ensure that the pharmacist-in-charge stores any quantity of compounded pharmaceutical product produced in excess of the quantity dispensed in accordance with subsection (B):

1. In an appropriate container with a label that contains:
  - a. A complete list of components or the pharmaceutical product's name;
  - b. The preparation date;
  - c. The assigned lot or control number; and
  - d. A beyond-use-date as specified in subsection (B)(3)(d); and

2. Under conditions, dictated by the pharmaceutical product's composition and stability characteristics, that ensure its strength, quality, and purity.

- K. A pharmacy permittee shall ensure that the pharmacist-in-charge establishes, implements, and complies with record-keeping procedures that comply with this subsection:

1. Pharmaceutical product compounding procedures and other records required by this Section are maintained by the pharmacy for not less than seven years, and
2. Pharmaceutical product compounding procedures and other records required by this Section are readily available for inspection by the Board or its designee.

#### Historical Note

Adopted effective August 5, 1997 (Supp. 97-3).

Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4).

#### R4-23-411. Pharmacist-administered or Pharmacy or Graduate Intern-administered Immunizations

- A. Certification to administer immunizations, vaccines, and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient. As used in this Section, "eligible adult patient" means an eligible patient 18 years of age or older and "eligible minor patient" means an eligible patient at least 6 years of age but under 18 years of age. A pharmacist or a pharmacy or graduate intern, in the presence of and under the immediate personal supervision of a certified pharmacist, may administer, without a prescription, immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient, if:

1. The pharmacist or pharmacy or graduate intern meets the qualifications and standards specified by A.R.S. § 32-1974 and this Section.
2. The Board certifies the pharmacist or pharmacy or graduate intern as specified in subsection (D).
3. For an eligible adult patient, the immunization or vaccine is listed in the United States Centers for Disease Control and Prevention's Recommended Adult Immunization Schedule; or the immunization or vaccine is recommended in the United States Centers for Disease Control and Prevention's Health Information for International Travel.
4. For an eligible adult patient, the immunization or vaccine is not on the Arizona Department of Health Services list specified in A.A.C. R9-6-1301 as required under A.R.S. § 32-1974 and subsection (I).
5. For an eligible minor patient, the immunization or vaccine is for influenza.
6. For an eligible minor patient, any immunizations or vaccines other than influenza are administered in response to a public health emergency declared by the Governor under A.R.S. § 36-787.

- B. A pharmacist or a pharmacy or graduate intern, in the presence of and under the immediate personal supervision of a certified pharmacist, may administer, with a prescription, any immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient, if:

1. The pharmacist or pharmacy or graduate intern meets the qualifications and standards specified by A.R.S. § 32-1974 and this Section.
2. The Board certifies the pharmacist or pharmacy or graduate intern as specified in subsection (D).

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- C. A pharmacist or pharmacy or graduate intern who is certified to administer immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient shall:
1. Not delegate the authority to any other pharmacist, pharmacy or graduate intern, or employee; and
  2. Maintain their current certificate for inspection by the Board or its designee or review by the public.
- D. Qualifications for certification to administer immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient. After receipt of a completed application form, the Board shall issue a certificate authorizing the administration of immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient to a pharmacist or pharmacy or graduate intern who meets the following qualifications:
1. Has a current license to practice pharmacy in this state,
  2. Successfully completes a training program specified in subsection (E), and
  3. Has a current certificate in basic cardiopulmonary resuscitation.
- E. Immunizations training program requirements. A training program for pharmacists or pharmacy or graduate interns to administer immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient shall include the following courses of study:
1. Basic immunology and the human immune response;
  2. Mechanics of immunity, adverse effects, dose, and administration schedule of available vaccines;
  3. Response to an emergency situation as a result of the administration of an immunization, including administering epinephrine and diphenhydramine to counteract the adverse effects of an immunization given based on a patient-specific prescription order received before administering the immunization;
  4. Administration of intramuscular injections;
  5. Other immunization administration methods; and
  6. Recordkeeping and reporting requirements specified in subsection (F).
- F. Recordkeeping and reporting requirements.
1. A pharmacist or pharmacy or graduate intern granted certification under this Section to administer immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible patient shall provide to the pharmacy the following information and documentation regarding each immunization or vaccine administered:
    - a. The name, address, and date of birth of the patient;
    - b. The date of administration and site of injection;
    - c. The name, dose, manufacturer's lot number, and expiration date of the vaccine, epinephrine, or diphenhydramine;
    - d. The name and address of the patient's primary care provider or physician, as identified by the patient;
    - e. The name of the pharmacist or pharmacy or graduate intern administering the immunization;
    - f. A record of the pharmacist's or pharmacy or graduate intern's consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
    - g. The date and time that the written report specified in subsection (F)(2) was sent to the patient's primary care provider or physician;
    - h. Consultation or other professional information provided to the patient by the pharmacist or pharmacy or graduate intern;
    - i. The name and date of the vaccine information sheet provided to the patient; and
    - j. For immunizations or vaccines given to an eligible minor patient, a consent form signed by the minor's parent or guardian.
  2. The pharmacist or pharmacy or graduate intern shall provide a written report to the patient's primary care provider or physician containing the documentation required in subsection (F)(1) within 48 hours after the immunization. The pharmacy shall make the required records specified in subsection (F)(1) and a record of compliance with this subsection available in the pharmacy for inspection by the Board or its designee.
  3. A pharmacy's pharmacist-in-charge shall maintain the records required in subsection (F)(1) in the pharmacy for a minimum of seven years from the immunization's administration date.
- G. Confidentiality of records. A pharmacist, pharmacy or graduate intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.
- H. Renewal of a certificate for pharmacist-administered immunizations. A certificate authorizing a pharmacist to administer immunizations or vaccines and, in an emergency, epinephrine and diphenhydramine to an eligible adult patient or eligible minor patient shall be renewed every five years by submitting a renewal request within the 30 days before the certificate's expiration date. A pharmacist desiring to renew the certificate shall provide to the Board proof of the following:
1. Current certification in basic cardiopulmonary resuscitation, and
  2. Completion of a minimum of five contact hours (0.5 CEU) of continuing education related to immunizations during the five-year renewal period. A pharmacist may use the continuing education hours required in this subsection as part of the total continuing education hours required for pharmacist license renewal.
- I. Pharmacist-administered or pharmacy or graduate intern-administered adult immunizations that require a prescription order. A pharmacist or pharmacy or graduate intern certified by the Board to administer adult immunizations or vaccines shall not administer any immunization or vaccine listed in A.A.C. R9-6-1301 without a prescription order. In addition to filing a prescription order as required in A.R.S. § 32-1964, a pharmacist or pharmacy or graduate intern who administers an immunization or vaccine listed in A.A.C. R9-6-1301 shall comply with the recordkeeping requirements of subsection (F)(1).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3967, effective November 13, 2004 (Supp. 04-3).  
 Amended by final rulemaking at 12 A.A.R. 279, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3674, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 15 A.A.R. 1930, effective November 3, 2009 (Supp. 09-4).  
 Amended by final rulemaking at 17 A.A.R. 2596, effective February 4, 2012 (Supp. 11-4).

**R4-23-412. Emergency Refill Prescription Dispensing**

- A. When a state of emergency is declared under A.R.S. § 32-1910(A) or (B) and the state of emergency results in individuals being unable to refill existing prescriptions, a pharmacist

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may work in the affected county, city, or town and may dispense a one-time emergency refill prescription of up to a 30-day supply of a prescribed medication to an affected individual if both of the following apply:

1. In the pharmacist's professional opinion the medication is essential to the maintenance of life or to the continuation of therapy, and
  2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked "emergency prescription" and files and maintains the prescription as required by law.
- B.** If the state of emergency declared under A.R.S. § 32-1910(A) or (B) continues for at least 21-days after the pharmacist dispenses an emergency prescription under subsection (A), the pharmacist may dispense one additional emergency refill prescription of up to a 30-day supply of the prescribed medication if the pharmacist complies with subsection (A)(2).
- C.** A pharmacist's authority to dispense emergency prescriptions under this Section ends when the declared state of emergency is terminated.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

**R4-23-413. Temporary Recognition of Nonresident Licensure**

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B):
1. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
    - a. The pharmacist provides proof of current licensure in another state, and
    - b. The pharmacist is engaged in a relief effort during a state of emergency.
  2. Acting under the direct supervision of a pharmacist, a pharmacy technician or pharmacy intern not licensed in this state, but currently licensed or registered in another state, may assist a pharmacist in dispensing prescription medications in affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
    - a. The pharmacy technician or pharmacy intern provides proof of current licensure or registration in another state, and
    - b. The pharmacy technician or pharmacy intern is engaged in a relief effort during a state of emergency.
- B.** The recognition of nonresident licensure or registration shall end with the termination of the declared state of emergency.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

**R4-23-414. Reserved****R4-23-415. Impaired Licensees – Treatment and Rehabilitation**

- A.** The Board may contract with qualified organizations to operate a program for the treatment and rehabilitation of licensees impaired as the result of alcohol or other drug abuse, pursuant to A.R.S. § 32-1932.01.
- B.** Participants in the program are either "confidential" or "known." Confidential participants are self-referred and may

remain unidentified to the Board, subject to maintaining compliance with their program contract. Known participants are under Board order to complete a minimum tenure in the program. After a known participant completes the minimum tenure, the Board may terminate the Board order and reinstate the participant's license to practice pharmacy.

- C.** The program contract with a qualified organization shall include as a minimum the following:
1. Duties and responsibilities of each party.
  2. Duration, not to exceed two years, of contract and terms of compensation.
  3. Quarterly reports from the program administrator to the Board indicating:
    - a. Identity of participants;
      - i. By name, if a known participant; or
      - ii. By case number, if a confidential participant;
    - b. Status of each participant, including;
      - i. Clinical findings;
      - ii. Diagnosis and treatment recommendations;
      - iii. Program activities; and
      - iv. General recovery and rehabilitation program information.
  4. The program administrator shall report immediately to the Board the name of any impaired licensee who poses a danger to self or others.
  5. The program administrator shall report to the Board, as soon as possible, the name of any impaired licensee:
    - a. Who refuses to submit to treatment,
    - b. Whose impairment is not substantially alleviated through treatment, or
    - c. Who violates the terms of their contract.
  6. The program administrator shall periodically provide informational programs to the profession, including approved continuing education programs on the topic of drug and chemical impairment, treatment, and rehabilitation.
- D.** Under A.R.S. § 32-1903(F), the Board may publish the names of participants under current Board orders.
- E.** The Board or its executive director may request the treatment records for any participant. The program administrator shall provide treatment records within 10 working days of receiving a written request from the Board or its executive director for such records. Upon request of the program administrator or the Board or its executive director, a program participant shall authorize a drug and alcohol treatment facility or program or a private practitioner or treatment program to release the participant's records to the program administrator or the Board or its executive director.
- F.** On the recommendation of the program administrator or a Board member and by mutual consent, the program administrator, Board member, Board staff, and program participant may meet informally to discuss program compliance.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 467, effective January 4, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 3611, effective November 8, 2008 (Supp. 08-3).

**R4-23-416. Reserved through****R4-23-420. Reserved****R4-23-421. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052,

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effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-422. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-423. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-424. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-425. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-426. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-427. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-428. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

**R4-23-429. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 4052, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 17 A.A.R. 2600, effective February 4, 2012 (Supp. 11-4).

## **ARTICLE 5. CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM**

*New Article 5, consisting of Sections R4-23-501 through R4-23-505, made effective August 2, 2014 (Supp. 14-2).*

*Article 5, consisting of Sections R4-23-501 through R4-23-*

*505, expired effective August 30, 2013 (Supp. 14-1).*

*Article 5, consisting of Sections R4-23-501 and R4-23-502, recodified to Article 8 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).*

*New Article 5, consisting of Sections R4-23-501 through R4-23-505, made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3).*

### **R4-23-501. Controlled Substances Prescription Monitoring (CSPMP) Program Registration and Database Access**

- A.** Under A.R.S. § 36-2606, a medical practitioner who is issued a license under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 21, 25, or 29 and possesses a current DEA registration under the Federal Controlled Substances Act shall have a current CSPMP registration issued by the Board.
- B.** Application.
  1. An applicant for CSPMP registration shall:
    - a. Submit a completed application for CSPMP registration electronically or manually on a form furnished by the Board, and
    - b. Submit with the application form the documents specified in the application form.
  2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C.** Registration. Within seven business days of receipt of a completed application specified in subsection (B), the Board office shall determine whether an application is complete. If the application is complete, the Board office shall issue a registration number and provide a current registration certificate to the applicant by mail or electronic transmission. If the application is incomplete, the Board office shall issue a written notice of incompleteness. An applicant with an incomplete application shall comply with the requirements of R4-23-202(F).
- D.** Registration renewal. As specified in A.R.S. § 36-2606(C), the Board shall automatically suspend the registration of any registrant that fails to renew the registration on or before May 1 of the year in which the renewal is due. The Board shall vacate a suspension if the registrant submits a renewal application. A suspended registrant with CSPMP database access credentials is prohibited from accessing information in the prescription monitoring program database.
- E.** CSPMP database access.
  1. A medical practitioner that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the medical practitioner is in compliance with the registration requirements of this Section.
  2. A pharmacist that chooses to use the CSPMP database shall request access from the CSPMP Director by completing an access user registration form electronically. Upon receipt of the access user registration form, the CSPMP Director or designee shall issue access credentials provided the pharmacist has a current active pharmacist license.
  3. A medical practitioner or pharmacist who is not licensed in Arizona may request access from the CSPMP Director by:
    - a. Completing an access user registration form electronically;
    - b. Printing the access user registration form;
    - c. Having the access user registration form signed and notarized; and

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- d. Mailing the notarized access user form along with a current copy of the applicant's nonresident state license and driver's license. Upon receipt of the notarized access user registration form and other required documents, the CSPMP Director or designee shall issue access credentials provided the nonresident licensed medical practitioner or pharmacist credentials show an current active license in another state.

**Historical Note**

Former Rule 5.2110; Amended effective August 9, 1983 (Supp. 83-4). Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-801 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 94, effective March 10, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-502. Requirements for Data Format and Transmission**

- A. Each dispenser shall submit to the Board or its designee by electronic means information regarding each prescription dispensed for a controlled substance listed in Schedules II, III, and IV of A.R.S. Title 36, Chapter 27, the Arizona Uniform Controlled Substances Act. The information reported shall conform to the August 31, 2005 Version 003, Release 000 ASAP Rules-based Standard Implementation Guide for Prescription Monitoring Programs published by the American Society for Automation in Pharmacy as specified in A.R.S. § 36-2608(B). The information submitted for each prescription shall include:
  1. The name, address, telephone number, prescription number, and DEA registration number of the dispenser;
  2. The name, address, gender, date of birth, and telephone number of the person or, if for an animal, the owner of the animal for whom the prescription is written;
  3. The name, address, telephone number, and DEA registration number of the prescribing medical practitioner;
  4. The quantity and National Drug Code (NDC) number of the Schedule II, III, or IV controlled substance dispensed;
  5. The date the prescription was dispensed;
  6. The number of refills, if any, authorized by the medical practitioner;
  7. The date the prescription was issued;
  8. The method of payment identified as cash or third party; and
  9. Whether the prescription is new or a refill.
- B. A dispenser shall submit the required information electronically unless the Board or its designee approves a waiver as specified in subsection (D).
- C. A dispenser's electronic data transfer equipment including hardware, software, and internet connections shall meet the privacy and security standards of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, and A.R.S. § 12-2292, in addition to common internet industry standards for privacy and security. A dispenser shall ensure that each electronic transmission meets the following data protection requirements:
  1. Data shall be at least 128-bit encryption in transmission and at rest; and
  2. Data shall be transmitted via secure e-mail, telephone modem, diskette, CD-ROM, tape, secure File Transfer

Protocol (FTP), Virtual Private Network (VPN), or other Board-approved media.

- D. A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the Board established format may request a waiver from electronic reporting by submitting a written request to the Board or its designee. The Board or its designee shall grant the request if the dispenser agrees in writing to report the data by submitting a completed universal claim form supplied by the Board or its designee.
- E. Unless otherwise approved by the Board, a dispenser shall report by the close of business on each Friday the required information for the previous week, Sunday through Saturday. If a Friday falls on a state holiday, the dispenser shall report the information on the following business day. The Board or its designee may approve a less frequent reporting period if a dispenser makes a showing that a less frequent reporting period will not reduce the effectiveness of the system or jeopardize the public health.

**Historical Note**

Former Rule 5.2510. Amended by final rulemaking at 8 A.A.R. 4898, effective January 5, 2003 (Supp. 02-4). Recodified to R4-23-802 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-503. Access to Controlled Substances Prescription Monitoring Program Data**

- A. Except as provided in A.R.S. § 36-2604(B) and (C) and this Section, prescription information submitted to the Board or its designee is confidential and is not subject to public inspection.
- B. The Board or its designee shall review the prescription information collected under A.R.S. Title 36, Chapter 28 and R4-23-502. If the Board or its designee has reason to believe an act of unprofessional or illegal conduct has occurred, the Board or its designee shall notify the appropriate professional licensing board or law enforcement or criminal justice agency and provide the prescription information required for an investigation.
- C. The Board or its designee is authorized to release data collected by the program to the following:
  1. A person who is authorized to prescribe or dispense a controlled substance to assist that person to provide medical or pharmaceutical care to a patient or to evaluate a patient;
  2. An individual who requests the individual's own controlled substance prescription information under A.R.S. § 12-2293;
  3. A professional licensing board established under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 21, 25, or 29. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting board states in writing that the information is necessary for an open investigation or complaint;
  4. A local, state, or federal law enforcement or criminal justice agency. Except as required under subsection (B), the Board or its designee shall provide this information only if the requesting agency states in writing that the information is necessary for an open investigation or complaint;
  5. The Arizona Health Care Cost Containment System Administration regarding individuals who are receiving services under A.R.S. Title 36, Chapter 29. Except as required under subsection (B), the Board or its designee

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shall provide this information only if the Administration states in writing that the information is necessary for an open investigation or complaint;

6. A person serving a lawful order of a court of competent jurisdiction;
  7. A person who is authorized to prescribe or dispense a controlled substance and who performs an evaluation on an individual under A.R.S. § 23-1026; and
  8. The Board staff for purposes of administration and enforcement of A.R.S. Title 36, Chapter 28 and this Article.
- D.** The Board or its designee may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients or persons who received prescriptions from dispensers.

**Historical Note**

Former Rules 5.3500, 5.3520, 5.3540, 5.3550, 5.3560, 5.3570, 5.3580, 5.3590, 5.4110, and 5.6110; Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-504. Computerized Central Database Tracking System Task Force**

- A.** The Board shall appoint a task force to help it administer the computerized central database tracking system as specified in A.R.S. § 36-2603.
- B.** The Task Force shall meet at least once each year and at the call of the chairperson to establish the procedures and conditions relating to the release of prescription information specified in A.R.S. § 36-2604 and R4-23-503.
- C.** The Task Force shall determine:
  1. The information to be screened;
  2. The frequency and thresholds for screening; and
  3. The parameters for using the information to notify medical practitioners, patients, and pharmacies to educate and provide for patient management and treatment options.
- D.** The Board shall review and approve the procedures and conditions established by the Task Force as needed but at least once every calendar year.

**Historical Note**

Former Rule 5.7010; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-505. Reports**

- A.** Before releasing prescription monitoring program data, the Board or its designee shall receive a written or electronic request for controlled substance prescription information.
- B.** A person authorized to access CSPMP data under R4-23-503(C)(1) through (7) shall submit a written or electronic request that:
  1. Specifies the information requested for the report;
  2. For a medical practitioner, provides a statement that the report's purpose is to provide medical or pharmaceutical care to a patient or to evaluate a patient;

3. For an individual obtaining the individual's own controlled substance prescription information, provides a form of non-expired government-issued photo identification;
  4. For a professional licensing board, states that the information is necessary for an open investigation or complaint;
  5. For a local, state, or federal law enforcement or criminal justice agency, states that the information is necessary for an open investigation or complaint;
  6. For the AHCCCS Administration, states that the information is necessary for an open investigation or complaint; and
  7. For a person serving a lawful order of a court of competent jurisdiction, provides a copy of the court order.
- C.** The Board or its designee may provide reports through U.S. mail, other common carrier, facsimile, or secured electronic media or may allow reports to be picked up in-person at the Board office.

**Historical Note**

Former Rules 5.7100, 5.8100, 5.8500, 5.9100, and 5.9500; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective August 2, 1982 (Supp. 82-4). New Section made by final rulemaking at 14 A.A.R. 3410, effective October 4, 2008 (Supp. 08-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 133, effective August 30, 2013 (Supp. 14-1). New Section made by final rulemaking at 20 A.A.R. 1359, effective August 2, 2014 (Supp. 14-2).

**R4-23-506. Repealed****Historical Note**

Adopted effective December 3, 1974 (Supp. 75-1).  
Repealed effective August 24, 1992 (Supp. 92-3).

**ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS****R4-23-601. General Provisions**

- A.** Permit required to sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. A person shall have a current Board permit to:
  1. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical in Arizona; or
  2. Sell a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical from outside Arizona and ship the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona.
- B.** A medical practitioner is exempt from subsection (A) to administer a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for the emergency needs of a patient.
- C.** Permit fee. Permits are issued biennially on an odd- and even-year expiration based on the assigned permit number. The fee, specified in R4-23-205, is not refundable under any circumstances except the Board's failure to comply with the permit time-frames established in R4-23-602.
- D.** Record of receipt and disposal of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
  1. Every person manufacturing a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated

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- chemical, including repackaging or relabeling, shall prepare and retain for not less than three years the manufacturing, repackaging, or relabeling date for each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
2. Every person receiving, selling, delivering, or disposing of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall record and retain for not less than three years the following information:
    - a. The name, strength, dosage form, and quantity of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical received, sold, delivered, or disposed;
    - b. The name, address, and license or permit number, if applicable, of the person from whom each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is received;
    - c. The name, address, and license or permit number, if applicable, of the person to whom each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is sold or delivered, or of the person who disposes of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    - d. The receipt, sale, deliver, or disposal date of each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
  3. The record required in this subsection shall be available for inspection by the Board or its compliance officer during regular business hours.
  4. If the record required in this subsection is stored in a centralized recordkeeping system and not immediately available for inspection, a permittee, manager, or pharmacist-in-charge shall provide the record within four working days of the Board's or its compliance officer's request.
- E.** Narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals damaged by water, fire, or from human or animal consumption or use.
- Historical Note**
- Former Rules 6.1100, 6.1200, 6.1300, 6.1400, and 6.1500. Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (C) effective August 9, 1983 (Supp. 83-4). Amended subsection (C) effective August 12, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 4656, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).
- R4-23-602. Permit Application Process and Time-frames**
- A.** A person applying for a permit shall:
1. Submit a completed application for the desired permit electronically or manually on a form furnished by the Board, and
  2. Submit with the application form:
    - a. The documents specified in the application form, and
    - b. The permit fee specified in R4-23-205(D).
- B.** The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C.** Time-frames for permits.
1. The Board office shall finish an administrative completeness review within 60 days from the date the application form is received.
    - a. The Board office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application form.
    - b. If the application form is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 60-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
    - c. If the Board office does not provide the applicant with written notice regarding administrative completeness, the application form shall be deemed complete 60 days after receipt by the Board office.
  2. An applicant with an incomplete application form shall submit to the Board office all of the missing information within 90 days of service of the notice of incompleteness.
    - a. If an applicant cannot submit all missing information within 90 days of service of the notice of incompleteness, the applicant may send a written request for an extension to the Board office postmarked or delivered no later than 90 days from service of the notice of incompleteness;
    - b. The written request for an extension shall document the reasons the applicant is unable to meet the 90-day deadline; and
    - c. The Board office shall review the request for an extension of the 90-day deadline and grant the request if the Board office determines that an extension of the 90-day deadline will enable the applicant to assemble and submit the missing information. An extension shall be for no more than 30 days. The Board office shall notify the applicant in writing of its decision to grant or deny the request for an extension.
  3. If an applicant fails to submit a complete application form within the time allowed, the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall submit a new application and fee as specified in subsection (A).
  4. For a nonprescription drug permit applicant, a compressed medical gas distributor permit applicant, and a durable medical equipment and compressed medical gas supplier permit applicant, the Board office shall issue a permit on the day that the Board office determines an administratively complete application form is received.
  5. Except as described in subsection (C)(4), from the date on which the administrative completeness review of an application form is finished, the Board office shall complete a substantive review of the applicant's qualifications in no more than 120 days.



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- a. If an applicant is found to be ineligible, the Board office shall issue a written notice of denial to the applicant.
  - b. If an applicant is found to be eligible, the Board office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board office.
  - c. If the Board office finds deficiencies during the substantive review of the application form, the Board office shall issue a written request to the applicant for additional documentation.
  - d. The 120-day time-frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation according to subsection (C)(2).
  - e. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 45 days.
6. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time-frames for permits:
- a. Administrative completeness review time-frame: 60 days.
  - b. Substantive review time-frame:
    - i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: none.
    - ii. Except as described in subsection (C)(6)(b)(i): 120 days.
  - c. Overall time-frame:
    - i. Nonprescription drug permit, compressed medical gas distributor permit, and durable medical equipment and compressed medical gas supplier permit: 60 days.
    - ii. Except as described in subsection (C)(6)(c)(i): 180 days.
- D. Permit renewal.**
1. To renew a permit, a permittee shall submit a completed application for permit renewal electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(D).
  2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1931, the permit is suspended. The permittee shall pay a penalty fee as provided in A.R.S. § 32-1931 and R4-23-205(G)(2) to vacate the suspension.
  3. Time-frames for permit renewals. The Board office shall follow the time-frames established in subsection (C).
- E. Display of permit.** A permittee shall conspicuously display the permit in the location to which it applies.

**Historical Note**

Former Rules 6.2100, 6.2200, 6.2300, 6.2400, 6.2500, 6.2600, 6.2610, 6.2620, 6.2630, 6.2640, and 6.2650.  
 Amended effective August 10, 1978 (Supp. 78-4).  
 Amended effective August 9, 1983 (Supp. 83-4).  
 Repealed effective August 12, 1988 (Supp. 88-3). New Section adopted effective August 5, 1997 (Supp. 97-3).  
 Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014

(Supp. 14-2).

**R4-23-603. Resident-Nonprescription Drugs, Retail**

- A. Permit.** A person, including the following, shall not sell or distribute a nonprescription drug without a current Board-issued permit:
1. A grocer;
  2. Other non-pharmacy retail outlet; or
  3. Mobile or non-fixed location retailer, such as a swap-meet vendor.
- B.** A medical practitioner licensed under A.R.S. Title 32 is exempt from the requirements of subsection (A).
- C. Application.** To obtain a permit to sell a nonprescription drug, a person shall submit:
1. A completed application form and fee as specified in R4-23-602; and
  2. Documentation of compliance with local zoning laws, if required by the Board.
- D. Drug sales.** A nonprescription drug permittee:
1. Shall sell a drug only in the original container packaged and labeled by the manufacturer; and
  2. Shall not package, repackage, label, or relabel any drug.
- E. Inspection.** A nonprescription drug permittee shall consent to inspection during business hours by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- F. Quality control.** A nonprescription drug permittee shall:
1. Ensure that all drugs stocked, sold, or offered for sale are:
    - a. Kept clean;
    - b. Protected from contamination, excessive heat, cold, sunlight, and other deteriorating factors;
    - c. In compliance with federal law; and
    - d. Received from a supplier with a current Board-issued permit as specified in R4-23-601(A).
  2. Develop and implement a program to ensure that:
    - a. Any expiration-dated drug is reviewed regularly;
    - b. Any drug, that exceeds its expiration date, is deteriorated or damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
    - c. Any quarantined drug is destroyed or returned to its source of supply.
- G. Notification.** A nonprescription drug permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.
- H. Change of ownership.** No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (C).
- I. Relocation.** No less than 30 days before an existing nonprescription drug permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (C).
- J. Records.** A nonprescription drug permittee shall:
1. Retain records of the receipt and disposal of nonprescription drugs as required in R4-23-601(D), and
  2. Comply with the requirements of A.R.S. § 32-1977 and federal law for the retail sale of methamphetamine precursors.
- K. Permit renewal.** Permit renewal shall be as specified in R4-23-602(D).

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- L.** Nonprescription drug vending machine outlet. In addition to the requirements of R4-23-601, R4-23-602, and subsections (A) through (K), a person selling or distributing a nonprescription drug in a vending machine shall comply with the following requirements:
1. Each individual vending machine is considered an outlet and shall have a Board-issued nonprescription drug permit;
  2. Each nonprescription-drug-permitted vending machine shall display in public view an identification seal, furnished by the Board, containing the permit number, vending machine's serial number, owner's name, and telephone contact number;
  3. Each nonprescription-drug-permitted vending machine is assigned a specific location that is within a weather-tight structure, protected from direct sunlight, and maintained at a temperature not less than 59° F and not greater than 86° F;
  4. Each nonprescription drug sold in a vending machine is packaged and labeled in the manufacturer's original FDA-approved container;
  5. A nonprescription-drug-permitted vending machine is subject to inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) as follows:
    - a. The owner, manager, or other staff of the nonprescription drug permittee shall provide access to the contents of the vending machine within 24 hours of a request from a Board compliance officer or other authorized officer of the law; or
    - b. The Board compliance staff shall have independent access to the vending machine;
  6. Before relocating or retiring a nonprescription-drug-permitted vending machine, the owner or manager shall notify the Board in writing. The notice shall include:
    - a. Permit number;
    - b. Vending machine's serial number;
    - c. Action planned (relocate or retire); and
    - d. If retiring a vending machine, the disposition of the nonprescription drug contents of the vending machine;
  7. The sale or distribution of a precursor chemical or regulated chemical in a vending machine is prohibited; and
  8. Under no circumstance may expired drugs be sold or distributed.
- Historical Note**
- Adopted effective August 10, 1978 (Supp. 78-4).  
 Amended subsection (D) paragraph (1) and added subsection (G) effective April 20, 1982 (Supp. 82-2).  
 Amended effective August 12, 1988 (Supp. 88-3).  
 Amended effective February 8, 1991 (Supp. 91-1).  
 Amended effective August 5, 1997 (Supp. 97-3).  
 Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).
- R4-23-604. Resident Drug Manufacturer**
- A.** Permit. A person shall not manufacture, package, repack, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical without a current Board-issued drug manufacturer permit.
- B.** Application. To obtain a permit to operate a drug manufacturing firm in Arizona, a person shall submit a completed application, on a form furnished by the Board, that includes:
1. Business name, address, mailing address, if different, telephone number, and facsimile number;
  2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
  3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
  4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
  5. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
  6. A copy of the drug list required by the FDA;
  7. Plans or construction drawings showing facility size and security for the proposed business;
  8. Applicant's and manager's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug manufacturer operation;
  9. The applicant's current FDA drug manufacturer or repackager registration number and expiration date;
  10. Documentation of compliance with local zoning laws;
  11. For an application submitted because of ownership change, the former owner's name and business name, if different;
  12. Date signed, and applicant's, corporate officer's, partner's, or manager's verified signature and title; and
  13. Fee specified in R4-23-205.
- C.** Before issuing a drug manufacturer permit, the Board shall:
1. Receive and approve a completed permit application;
  2. Interview the applicant and manager, if different from the applicant, at a Board meeting; and
  3. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
- D.** Notification. A resident drug manufacturer permittee shall notify the Board of changes involving the drug list, ownership, address, telephone number, name of business, or manager, including manager's telephone number. The resident drug manufacturer permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 24 hours of the change, except any change of ownership requires that the resident drug manufacturer permittee comply with subsection (E).
- E.** Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection R4-23-604(B).
- F.** Before an existing resident drug manufacturer permittee relocates, the drug manufacturer permittee shall submit the application packet described in subsection R4-23-604(B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.
- G.** A resident drug manufacturer permittee shall submit the application packet described under subsection R4-23-604(B) for any change of officers in a corporation, excluding the fee and final inspection.
- H.** Manufacturing and distribution.

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1. A drug manufacturer permittee shall manufacture and distribute a drug only:
    - a. To a pharmacy, drug manufacturer, or full-service or nonprescription drug wholesaler currently permitted by the Board;
    - b. To a medical practitioner currently licensed as a medical practitioner as defined in A.R.S. § 32-1901; or
    - c. To a properly permitted, registered, licensed, or certified person or firm of another jurisdiction.
  2. Before manufacturing and distributing a drug that is not listed on a drug manufacturer's permit application, the drug manufacturer permittee shall send to the Board office a written request to amend the permit application, including documentation of FDA approval to manufacture the drug not listed on the original permit application. If a request to amend a permit application includes the documentation required in this subsection, the Board or its designee shall approve the request to amend within 30 days of receipt.
- I.** A drug manufacturer permit is subject to denial, suspension, probation, or revocation under A.R.S. § 32-1927.02.
- J.** Current Good Manufacturing Practice. A drug manufacturer permittee shall comply with the current good manufacturing practice requirements of 21 CFR 210 through 211, (Revised April 1, 2011, incorporated by reference and on file with the Board and available at [www.gpo.gov](http://www.gpo.gov). This incorporated material includes no future editions or amendments.)
- K.** Records. A drug manufacturer permittee shall:
1. Establish and implement written procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law;
  2. Retain the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (J) for at least two years after distribution of a drug or one year after the expiration date of a drug, whichever is longer; and
  3. Make the records required by this Article and 21 CFR 210 through 211 as incorporated in subsection (J) available within 48 hours for review by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- L.** Inspections. A drug manufacturer permittee shall make the drug manufacturer's facility available for inspection by the Board or its compliance officer under A.R.S. § 32-1904.
- M.** Nonresident drug manufacturer. A nonresident drug manufacturer shall comply with the requirements of R4-23-607.
- N.** Manufacturing radiopharmaceuticals. Before manufacturing a radiopharmaceutical, a drug manufacturer permittee shall:
1. Comply with the regulatory requirements of the Arizona Radiation Regulatory Agency, the U.S. Nuclear Regulatory Commission, the FDA, and this Section; and
  2. Hold a current Arizona Radiation Regulatory Agency Radioactive Materials License. If a drug manufacturer permittee who manufactures radiopharmaceuticals fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License, the permittee's drug manufacturer permit shall be immediately suspended pending a hearing by the Board.
- Historical Note**
- Former Rules 6.4001, 6.4002, 6.4003, 6.4004, 6.4005, 6.4006, 6.4007, 6.4008, 6.4009, 6.4100, 6.4110, 6.4111, 6.4115, 6.4116, 6.4120, 6.4122, 6.4190, 6.4191, 6.4200, 6.4250, 6.4300, 6.4350, 6.4355, 6.4360, 6.4400, 6.4401, 6.4403, 6.4410, 6.4430, 6.4450, 6.4500, 6.4510, 6.4530, 6.4533, 6.4600, 6.4610, 6.4640, 6.4660, 6.4700, 6.4710, and 6.4750. Adopted effective December 3, 1974 (Supp. 75-1). Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) paragraph (2) effective April 20, 1982 (Supp. 82-2). Amended subsections (B), (G), (K) and (L) effective August 12, 1988 (Supp. 88-3). Amended effective August 24, 1992 (Supp. 92-3). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 3815, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2).
- R4-23-605. Resident Drug Wholesaler Permit**
- A.** Permit. A person shall not operate a business or firm for the wholesale distribution of any drug, device, precursor chemical, or regulated chemical without a current Board-issued full-service or nonprescription drug wholesale permit.
- B.** Application.
1. To obtain a permit to operate a full-service or nonprescription drug wholesale firm in Arizona, a person shall submit a completed application on a form furnished by the Board that includes:
    - a. Whether the application is for a full-service or nonprescription drug wholesale permit;
    - b. Business name, address, mailing address, if different, telephone number, and facsimile number;
    - c. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
    - d. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
    - e. Whether the owner, any officer or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
    - f. Whether the owner or any officer or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
    - g. For a full-service drug wholesale firm:
      - i. The designated representative's name, address, and emergency telephone number;
      - ii. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
        - (1) A full set of fingerprints from the designated representative; and
        - (2) The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
      - iii. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board;
    - h. The type of drugs, whether nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;

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- i. Plans or construction drawings showing facility size and security for the proposed business;
  - j. Documentation of compliance with local zoning laws;
  - k. For a nonprescription drug wholesale firm, the manager's or designated representative's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug wholesale operation;
  - l. For an application submitted because of ownership change, the former owner's name and business name, if different;
  - m. Date signed, and applicant's, corporate officer's, partner's, manager's, or designated representative's verified signature and title; and
  - n. Fee specified in R4-23-205.
2. Before issuing a full-service or nonprescription drug wholesale permit, the Board shall:
- a. Receive and approve a completed permit application;
  - b. Interview the applicant and the designated representative, if different from the applicant, at a Board meeting;
  - c. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer; and
  - d. For a full-service drug wholesale permit, issue a fingerprint clearance to a qualified designated representative, as specified in subsection (L). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).
- C. Notification.** A resident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the type of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number.
- 1. The resident full-service or nonprescription drug wholesale permittee shall submit a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the resident full-service or nonprescription drug wholesale permittee comply with subsection (D).
  - 2. For a change of designated representative, a resident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii). If the fingerprint clearance of a designated representative for a full-service drug wholesale permit applicant is denied, the full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (B)(1)(g)(ii).
- D. Change of ownership.** Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the application packet described under subsection (B).
- E. Before an existing resident full-service or nonprescription drug wholesaler permittee relocates, the resident full-service or nonprescription drug wholesaler permittee shall submit the application packet described under subsection (B), excluding the fee. The facility at the new location shall pass a final inspection by a Board compliance officer before operations begin.**
- F. A resident full-service or nonprescription drug wholesale permittee shall submit the application packet described under subsection (B) for any change of officers in a corporation, excluding the fee and final inspection.**
- G. Distribution restrictions.** In addition to the requirements of this subsection, a resident full-service wholesale permittee shall comply with the distribution restrictions specified in A.R.S. § 32-1983.
- 1. Records.
    - a. A full-service drug wholesale permittee shall:
      - i. Maintain records to ensure full accountability of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
      - ii. File the records required in subsection (G)(1)(a)(i) in a readily retrievable manner for a minimum of three years;
      - iii. Make the records required in subsection (G)(1)(a)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days; and
      - iv. In addition to the records requirements of subsection (G)(1)(a)(i), provide a pedigree as specified in A.R.S. § 32-1984(E) for all prescription-only drugs that leave the normal distribution channel as defined in A.R.S. § 32-1981.
    - b. A nonprescription drug wholesale permittee shall:
      - i. Maintain records to ensure full accountability of any nonprescription drug, precursor chemical, or regulated chemical including dates of receipt and sales, names, addresses, and DEA registration numbers, if required, of suppliers or sources of merchandise, and customer names, addresses, and DEA registration numbers, if required;
      - ii. File the records required in subsection (G)(1)(b)(i) in a readily retrievable manner for a minimum of three years; and
      - iii. Make the records required in subsection (G)(1)(b)(i) available upon request during regular business hours for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5). Records kept at a central location apart from the business location and not electronically retrievable shall be made available within two business days.
  - 2. Drug sales.
    - a. A full-service drug wholesale permittee shall:
      - i. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical

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- cal, except in the original container packaged and labeled by the manufacturer or repackager;
  - ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
  - iii. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, or prescription-only drug or device, to anyone except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
  - iv. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
  - v. Provide pedigree records upon request, if immediately available, or within two business days from the date of a request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
  - vi. Maintain a copy of the current permit or license of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
  - vii. Provide permit and license records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
  - ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
  - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
  - iv. Maintain a record of the current permit or license of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
  - v. Provide permit and license records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
- c. Nothing in this subsection shall be construed to prevent the return of a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to the original source of supply.
3. Out-of-state drug sales.
- a. A full-service drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
  - ii. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical;
  - iii. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
  - iv. Provide pedigree records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
  - v. Maintain a copy of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
  - vi. Provide permit, registration, license, and certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5); and
- b. A nonprescription drug wholesale permittee shall:
- i. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, except in the original container packaged and labeled by the manufacturer or repackager;
  - ii. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical;
  - iii. Not sell or distribute any nonprescription drug, precursor chemical, or regulated chemical, to anyone except a person or firm that is properly permitted, registered, licensed, or certified in another jurisdiction;
  - iv. Maintain a record of the current permit, registration, license, or certificate of each person or firm who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
  - v. Provide permit, registration, license, or certificate records upon request, if immediately available, or within two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).

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4. Cash-and-carry sales.
  - a. A full-service drug wholesale permittee shall complete a cash-and-carry sale or distribution of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, only after:
    - i. Verifying the validity of the order;
    - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order; and
    - iii. For a prescription-only drug order, verifying that the cash-and-carry sale or distribution is used only to meet the immediate needs of a particular patient of the person or firm who placed the cash-and-carry order; and
  - b. A nonprescription drug wholesale permittee shall complete a cash-and-carry sale or distribution of any nonprescription drug, precursor chemical, or regulated chemical, only after:
    - i. Verifying the validity of the order; and
    - ii. Verifying the identity of the pick-up person for each transaction by confirming that the person or firm represented placed the cash-and-carry order.
- H. Prescription-only drug returns or exchanges. A full-service drug wholesale permittee shall ensure that any prescription-only drug returned or exchanged by a pharmacy or chain pharmacy warehouse under A.R.S. § 32-1983(A) meets the following criteria:
  1. The prescription-only drug is not adulterated or counterfeited, except an adulterated or counterfeited prescription-only drug that is the subject of an FDA or manufacturer recall may be returned for destruction or subsequent return to the manufacturer;
  2. The quantity of prescription-only drug returned or exchanged does not exceed the quantity of prescription-only drug that the full-service drug wholesale permittee or a full-service drug wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse; and
  3. The pharmacy or chain pharmacy warehouse provides documentation that:
    - a. Lists the name, strength, and manufacturer of the prescription-only drug being returned or exchanged; and
    - b. States that the prescription-only drug was maintained in compliance with storage conditions prescribed on the drug label or manufacturer's package insert.
- I. Returned, outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, and contraband drugs.
  1. Except as specified in subsection (H)(1) for a prescription-only drug, a full-service drug wholesale permittee shall ensure that the return of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
    - a. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
    - b. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the full-service drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesale distributor from which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical was acquired.
    - c. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA.
    - d. If the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the narcotic or other controlled substance, prescription-

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- only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals until the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(1)(d)(i).
- i. If examination, testing, or other investigation proves that the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not have to be destroyed or returned to the manufacturer or wholesale distributor.
  - ii. In determining whether the conditions under which a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the narcotic's or other controlled substance's, prescription-only drug's or device's, nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the full-service drug wholesale permittee shall consider, among other things, the conditions under which the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.
  - e. For any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(1)(a) or (b), the full-service drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.
2. A nonprescription drug wholesale permittee shall ensure that the return of any nonprescription drug, precursor chemical, or regulated chemical meets the following criteria.
    - a. Any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, or otherwise deemed unfit for human or animal consumption shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesaler distributor from which it was acquired as authorized by the Board and the FDA.
    - b. Any nonprescription drug, precursor chemical, or regulated chemical whose immediate or sealed outer or secondary containers or product labeling are misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesaler distributor from which it was acquired as authorized by the Board and the FDA. When the immediate or sealed outer or secondary containers or product labeling are determined to be misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, the nonprescription drug wholesale permittee shall provide notice of the misbranding, counterfeiting, or contrabandage or suspected misbranding, counterfeiting, or contrabandage within three business days of the determination to the Board, FDA, and manufacturer or wholesaler distributor from which the nonprescription drug, precursor chemical, or regulated chemical was acquired.
    - c. Any nonprescription drug, precursor chemical, or regulated chemical that has been opened or used, but is not adulterated, misbranded, counterfeited, or contraband or suspected of being misbranded, counterfeited, or contraband, shall be identified as opened or used, or both, and quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesaler distributor from which it was acquired as authorized by the Board and the FDA.
    - d. If the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug, precursor chemical, or regulated chemical shall be quarantined and physically separated from other nonprescription drugs, precursor chemicals, or regulated chemicals until the nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesaler distributor from which it was acquired as authorized by the Board and the FDA, except as provided in subsection (I)(2)(d)(i).
      - i. If examination, testing, or other investigation proves that the nonprescription drug, precursor chemical, or regulated chemical meets appropriate standards of safety, identity, strength, quality, and purity, it does not need to be destroyed or returned to the manufacturer or wholesaler distributor.
      - ii. In determining whether the conditions under which a nonprescription drug, precursor chemical, or regulated chemical has been returned cast doubt on the nonprescription drug's, precursor chemical's, or regulated chemical's safety, identity, strength, quality, or purity, the nonprescription drug wholesale permittee shall

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consider, among other things, the conditions under which the nonprescription drug, precursor chemical, or regulated chemical has been held, stored, or shipped before or during its return and the condition of the nonprescription drug, precursor chemical, or regulated chemical and the condition of its container, carton, or product labeling as a result of storage or shipping.

- e. For any nonprescription drug, precursor chemical, or regulated chemical identified under subsections (I)(2)(a) or (b), the nonprescription drug wholesale permittee shall ensure that the identified item or items and other evidence of criminal activity, and accompanying documentation is retained and not destroyed until its disposition is authorized by the Board and the FDA.
3. A full-service drug wholesale permittee and nonprescription drug wholesale permittee shall comply with the recordkeeping requirements of subsection (G) for all outdated, damaged, deteriorated, adulterated, misbranded, counterfeited and contraband narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
- J. Facility.** A full-service or nonprescription drug wholesale permittee shall:
  1. Ensure that the facility occupied by the full-service or nonprescription drug wholesale permittee is of adequate size and construction, well-lighted inside and outside, adequately ventilated, and kept clean, uncluttered, and sanitary;
  2. Ensure that the permittee's warehouse facility:
    - a. Is secure from unauthorized entry; and
    - b. Has an operational security system designed to provide protection against theft;
  3. In a full-service drug wholesale facility, ensure that only authorized personnel may enter areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is kept;
  4. In a nonprescription drug wholesale facility, ensure that only authorized personnel may enter areas where any nonprescription drug, precursor chemical, or regulated chemical is kept;
  5. In a full-service drug wholesale facility, ensure that any thermolabile narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
  6. In a nonprescription drug wholesale facility, ensure that any thermolabile nonprescription drug, precursor chemical, or regulated chemical is stored in an area where room temperature is maintained in compliance with storage conditions prescribed on the product label;
  7. Make the facility available for inspection by a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5) during regular business hours;
  8. In a full-service drug wholesale facility, provide a quarantine area for storage of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, mis-

branded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container; and

9. In a nonprescription drug wholesale facility, provide a quarantine area for storage of any nonprescription drug, precursor chemical, or regulated chemical that is outdated, damaged, deteriorated, adulterated, misbranded, counterfeited, or contraband or suspected of being adulterated, misbranded, counterfeited, or contraband, otherwise deemed unfit for human or animal consumption, or that is in an open container.

**K. Quality controls.**

1. A full-service drug wholesale permittee shall:
  - a. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(1) is not sold, distributed, or delivered to any person for human or animal consumption;
  - b. Ensure that a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
  - c. Ensure that any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
    - i. Kept clean,
    - ii. Protected from contamination and other deteriorating environmental factors, and
    - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
  - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is stored; and
  - e. Develop and implement a program to ensure that:
    - i. Any expiration-dated narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
    - ii. Any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
    - iii. Any quarantined narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
2. A nonprescription drug wholesale permittee shall:
  - a. Ensure that any nonprescription drug, precursor chemical, or regulated chemical that meets the criteria specified in subsection (I)(2) is not sold, distrib-



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- uted, or delivered to any person for human or animal consumption;
- b. Ensure that a nonprescription drug, precursor chemical, or regulated chemical is not manufactured, packaged, repackaged, labeled, or relabeled by any of its employees;
  - c. Ensure that any nonprescription drug, precursor chemical, or regulated chemical stocked, sold, offered for sale, or delivered is:
    - i. Kept clean,
    - ii. Protected from contamination and other deteriorating environmental factors, and
    - iii. Stored in a manner that complies with applicable federal and state law and official compendium storage requirements;
  - d. Maintain manual or automatic temperature and humidity recording devices or logs to document conditions in areas where any nonprescription drug, precursor chemical, or regulated chemical is stored; and
  - e. Develop and implement a program to ensure that:
    - i. Any expiration-dated nonprescription drug, precursor chemical, or regulated chemical is reviewed regularly;
    - ii. Any nonprescription drug, precursor chemical, or regulated chemical that has less than 120 days remaining on the expiration date, or is deteriorated, damaged, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
    - iii. Any quarantined nonprescription drug, precursor chemical, or regulated chemical is destroyed or returned to the manufacturer or wholesale distributor from which it was acquired.
- L. Fingerprint clearance.
1. After receiving the state and federal criminal history record of a designated representative, the Board shall compare the record with the list of criminal offenses that preclude a designated representative from receiving a fingerprint clearance. If the designated representative's criminal history record does not contain any of the offenses listed in subsection (L)(2), the Board shall issue the designated representative a fingerprint clearance.
  2. The Board shall not issue a fingerprint clearance to a designated representative who is awaiting trial for or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction:
    - a. Unlawfully administering intoxicating liquors, controlled substances, dangerous drugs, or prescription-only drugs;
    - b. Sale of peyote;
    - c. Possession, use, or sale of marijuana, dangerous drugs, prescription-only drugs, or controlled substances;
    - d. Manufacture or distribution of an imitation controlled substance;
    - e. Manufacture or distribution of an imitation prescription-only drug;
    - f. Possession or possession with intent to use an imitation controlled substance;
    - g. Possession or possession with intent to use an imitation prescription-only drug; or
    - h. A felony offense involving sale, distribution, or transportation of, offer to sell, transport, or distribute, or conspiracy to sell, transport, or distribute marijuana, dangerous drugs, prescription-only drugs, or controlled substances.
  3. If after conducting a state and federal criminal history record check the Board determines that it is not authorized to issue a fingerprint clearance, the Board shall notify the full-service drug wholesale applicant or permittee that employs the designated representative that the Board is not authorized to issue a fingerprint clearance. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions under A.R.S. § 41-1750 and federal law.
  4. The issuance of a fingerprint clearance does not entitle a person to employment.
- Historical Note**
- Former Rules 6.5110, 6.5120, 6.5130, 6.5140, 6.5210, 6.5220, 6.5230, 6.5240, 6.5310, 6.5320, 6.5410, and 6.5420. Amended effective August 10, 1978 (Supp. 78-4). Amended effective April 20, 1982 (Supp. 82-2). Amended subsection (A) effective August 12, 1988 (Supp. 88-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective August 24, 1992 (Supp. 92-3). Amended by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 4270, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 702, effective June 1, 2013 (Supp. 13-2).
- R4-23-606. Resident-Pharmacy Permit: Community, Hospital, and Limited Service**
- A. Permit. A person shall not operate a pharmacy in Arizona without a current Board-issued pharmacy permit.
  - B. Application.
    1. To obtain a permit to operate a pharmacy in Arizona, a person shall submit a completed application form and fee as specified in R4-23-602 that includes:
      - a. Documentation of compliance with local zoning laws, if required by the Board;
      - b. A detailed floor plan showing proposed pharmacy area including size and security;
      - c. A copy of the lease agreement, if applicable; and
      - d. A disclosure statement indicating whether a medical practitioner will receive compensation, either directly or indirectly, from the pharmacy.
    2. Before issuing a pharmacy permit, the Board shall:
      - a. Receive and approve a completed permit application; and
      - b. Receive a satisfactory compliance inspection report on the facility from a Board compliance officer.
    3. Before issuing a pharmacy permit, the Board may interview the applicant and the pharmacist-in-charge, if different from the applicant, at a Board meeting based on the need for additional information.
  - C. Notification. A pharmacy permittee shall notify the Board office within ten days of changes involving the type of pharmacy operated, telephone number, facsimile number, e-mail address, mailing address, name of business, or staff pharmacist. A pharmacy permittee shall provide the Board office immediate notice of a change of the pharmacist-in-charge.

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- D. If any nonprescription drugs are sold outside the pharmacy area when the pharmacy area is closed, the pharmacy permittee shall ensure that the business has a current, Board-issued nonprescription drug permit as required in Section R4-23-603.
- E. Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).
- F. Relocation or remodel.
  - 1. No less than 30 days before the relocation or remodel of an existing pharmacy, the pharmacy permittee shall submit a completed application for remodel or relocation electronically or manually on a form furnished by the Board.
    - a. An application for relocation shall include the documents required by subsections (B)(1)(a) through (d).
    - b. An application for remodel shall include the document required by subsection (B)(1)(b).
  - 2. The new or remodeled facility shall pass a final inspection by a Board compliance officer before operations begin.
- G. Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

**Historical Note**

Former Rules 6.6010, 6.6020, 6.6030, 6.6040, 6.6050, 6.6060, 6.6071, 6.6072, 6.6073, 6.6074, 6.6075, and 6.6076. Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (G) and (H) effective April 20, 1982 (Supp. 82-2). Amended subsection (L) effective July 2, 1982 (Supp. 82-4). Amended subsections (G) and (H) effective August 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Section heading amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014 (Supp. 14-2).

**R4-23-607. Nonresident Permits**

- A. Permit. A person who is not a resident of Arizona shall not sell or distribute any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona without:
  - 1. Processing a current Board-issued nonresident pharmacy permit, nonresident manufacturer permit, nonresident full-service or nonprescription drug wholesale permit, or nonresident nonprescription drug permit;
  - 2. Possessing a current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides;
  - 3. For a nonresident pharmacy, employing a pharmacist who is designated as the pharmacist-in-charge and who possesses a current Arizona Board-issued pharmacist license; and
  - 4. For a nonresident pharmacy permit issued before April 7, 2007, complying with subsection (A)(3) and submitting to the Board the pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number by November 1, 2007.
- B. Application. To obtain a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permit, a person shall submit a completed application, on a form furnished by the Board, that includes:
  - 1. Business name, address, mailing address, if different, telephone number, and facsimile number;
  - 2. Owner's name, if corporation or partnership, officers or partners, including address and title, and any other trade or business names used;
  - 3. Whether the owner, corporation, or partnership has conducted a similar business in any other jurisdiction and if so, indicate under what name and location;
  - 4. Whether the owner, any officer, or active partner has ever been convicted of an offense involving moral turpitude, a felony offense, or any drug-related offense or has any currently pending felony or drug-related charges, and if so, indicate charge, conviction date, jurisdiction, and location;
  - 5. A copy of the applicant's current equivalent license or permit, issued by the licensing authority in the jurisdiction where the person or firm resides and required by subsection (A)(2);
  - 6. For an application submitted because of ownership change, the former owner's name and business name, if different;
  - 7. Date signed, and applicant's, corporate officer's, partner's, manager's, administrator's, pharmacist-in-charge's, or designated representative's verified signature and title; and
  - 8. Fee specified in R4-23-205.
- C. In addition to the requirements of subsection (B), the following information is required on the application:
  - 1. Nonresident pharmacy.
    - a. The type of pharmacy;
    - b. Whether the owner, any officer, or active partner has ever been denied a pharmacy permit in this state or any other jurisdiction, and if so, indicate where and when;
    - c. If applying for a hospital pharmacy permit, the number of beds, manager's or administrator's name, and a copy of the hospital's current equivalent license or permit issued by the licensing authority in the jurisdiction where the person or firm resides;
    - d. Pharmacist-in-charge's name, current Arizona Board-issued pharmacist license number, and telephone number; and
    - e. For an application submitted because of ownership change, the former pharmacy's name, address, and permit number; and
  - 2. Nonresident manufacturer.
    - a. Whether the owner, any officer, or active partner has ever been denied a drug manufacturer permit in this state or any other jurisdiction, and if so, indicate where and when;
    - b. A copy of the drug list required by the FDA;
    - c. Manager's or responsible person's name, address, and emergency telephone number; and
    - d. The firm's current FDA drug manufacturer or repackager registration number and expiration date; and
  - 3. Nonresident full-service drug wholesaler.
    - a. The designated representative's name, address, and emergency telephone number;
    - b. Documentation that the designated representative meets the requirements of A.R.S. § 32-1982(B) and the following as specified in A.R.S. § 32-1982(C):
      - i. A full set of fingerprints from the designated representative; and

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- ii. The state and federal criminal history record check fee specified by and made payable to the Arizona State Department of Public Safety by money order, certified check, or bank draft; and
  - c. A \$100,000 bond as specified in A.R.S. § 32-1982(D) submitted on a form supplied by the Board; and
- 4. Nonresident full-service or nonprescription drug wholesaler.
  - a. The type of drug wholesale permit;
  - b. Whether the owner, any officer, or active partner has ever been denied a drug wholesale permit in this state or any other jurisdiction, and if so, indicate where and when;
  - c. The types of drugs, nonprescription, prescription-only, controlled substances, human, or veterinary, the applicant will distribute;
  - d. Manager's or designated representative's name, address, emergency telephone number, and resumé indicating educational or experiential qualifications related to drug wholesale operation; and
- 5. Nonresident nonprescription drug retailer.
  - a. Whether applying for Category I or Category II permit;
  - b. Date business started or planned opening date; and
  - c. Type of business, such as convenience, drug, grocery, or health food store, swap-meet vendor, or vending machine.
- D. Before issuing a nonresident full-service drug wholesale permit, the Board shall:
  - 1. Receive and approve a completed permit application; and
  - 2. Issue a fingerprint clearance to a qualified designated representative, as specified in R4-23-605(L). If a nonresident full-service drug wholesale permit applicant's designated representative's fingerprint clearance is denied, the nonresident full-service drug wholesale permit applicant shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (C)(3)(b).
- E. Notification. A permittee shall submit any notification of change required in this subsection as a written notice via mail, fax, or e-mail to the Executive Director within 10 days of the change, except any change of ownership requires that the nonresident permittee comply with subsection (F).
  - 1. Nonresident pharmacy. A nonresident pharmacy permittee shall notify the Board of changes involving the type of pharmacy operated, ownership, address, telephone number, name of business, or pharmacist-in-charge.
  - 2. Nonresident manufacturer. A nonresident manufacturer permittee shall notify the Board of changes involving listed drugs, ownership, address, telephone number, name of business, or manager, including manager's telephone number.
  - 3. Nonresident drug wholesaler. A nonresident full-service or nonprescription drug wholesale permittee shall notify the Board of changes involving the types of drugs sold or distributed, ownership, address, telephone number, name of business, or manager or designated representative, including the manager's or designated representative's telephone number. For a change of designated representative, a nonresident full-service drug wholesale permittee shall submit the documentation, fingerprints, and fee required in subsection (C)(3)(b). If a nonresident full-service drug wholesale permit applicant's designated representative's fingerprint clearance is denied, the nonresident full-service drug wholesale permittee shall appoint another designated representative and submit the documentation, fingerprints, and fee required in subsection (C)(3)(b).
- 4. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall notify the Board of changes involving permit category, ownership, address, telephone number, name of business, or manager, including manager's telephone number.
- F. Change of ownership. Before a change of ownership occurs that involves changes of stock ownership of more than 30% of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit the appropriate application packet described under subsections (B) and (C).
- G. Drug sales.
  - 1. Nonresident pharmacy. A nonresident pharmacy permittee shall:
    - a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except:
      - i. A pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board;
      - ii. A medical practitioner currently licensed under A.R.S. Title 32; or
      - iii. An Arizona resident upon receipt of a valid prescription order for the resident;
    - b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except:
      - i. A pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board;
      - ii. A medical practitioner currently licensed under A.R.S. Title 32; or
      - iii. An Arizona resident either upon receipt of a valid prescription order for the resident or in the original container packaged and labeled by the manufacturer;
    - c. Except for a drug sale that results from the receipt and dispensing of a valid prescription order for an Arizona resident, maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    - d. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
  - 2. Nonresident manufacturer. A nonresident manufacturer permittee shall:
    - a. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance or prescription-only drug or device, to anyone in Arizona except, a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - b. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a phar-

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- macy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
- c. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
  - d. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
3. Nonresident full-service drug wholesaler. In addition to complying with the distributions restrictions specified in A.R.S. § 32-1983, a nonresident full-service drug wholesale permittee shall:
    - a. Not sell, distribute, give away, or dispose of, any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
    - b. Not package, repackage, label, or relabel any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
    - c. Provide pedigree records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5);
    - d. Not sell, distribute, give away, or dispose of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except a pharmacy, drug manufacturer, or full-service drug wholesaler currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - e. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - f. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
    - g. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
  4. Nonresident nonprescription drug wholesaler. A nonresident nonprescription drug wholesale permittee shall:
    - a. Not sell, distribute, give away, or dispose of any nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona, except in the original container, packaged and labeled by the manufacturer or repackager;
    - b. Not package, repackage, label, or relabel any nonprescription drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona;
    - c. Not sell, distribute, give away, or dispose of, any nonprescription drug, precursor chemical, or regulated chemical, to anyone in Arizona except, a pharmacy, drug manufacturer, full-service or nonprescription drug wholesaler, or nonprescription drug retailer currently permitted by the Board or a medical practitioner currently licensed under A.R.S. Title 32;
    - d. Maintain a copy of the current permit or license of each person or firm in Arizona who buys, receives, or disposes of any nonprescription drug, precursor chemical, or regulated chemical; and
    - e. Provide permit and license records upon request, if immediately available, or in no less than two business days from the date of the request of a Board compliance officer or other authorized officer of the law as defined in A.R.S. § 32-1901(5).
  5. Nonresident nonprescription drug retailer. A nonresident nonprescription drug permittee shall not:
    - a. Sell, distribute, give away, or dispose of a nonprescription drug, precursor chemical, or regulated chemical to anyone in Arizona except in the original container packaged and labeled by the manufacturer;
    - b. Package, repackage, label, or relabel any drug, precursor chemical, or regulated chemical for shipment or delivery to anyone in Arizona; or
    - c. Sell, distribute, give away, or dispose of any drug, precursor chemical, or regulated chemical to anyone in Arizona that exceeds its expiration date, is contaminated or deteriorated from excessive heat, cold, sunlight, moisture, or other factors, or does not comply with federal law.
- H.** When selling or distributing any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona, a nonresident pharmacy, nonresident manufacturer, nonresident full-service or nonprescription drug wholesale, or nonprescription drug permittee shall comply with federal law, the permittee's resident state drug law, and this Section.

**Historical Note**

Former Rules 6.6110, 6.6120, and 6.6130; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective July 24, 1985 (Supp. 85-4). New Section adopted by final rulemaking at 6 A.A.R. 4589, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 232, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3477, effective December 1, 2007 (Supp. 07-4).

**R4-23-608. Change of Personnel and Responsibility**

- A.** A community, hospital, or limited-service pharmacy permittee shall give the Board:
1. Notice by mail, facsimile, or electronic mail within ten days of employing or terminating a pharmacist; and

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2. Immediate notice of designating or terminating a pharmacist-in-charge.
- B.** Responsibility of ownership and management. The owner and management of a pharmacy shall:
  1. Ensure that pharmacists, interns, and other pharmacy employees comply with state and federal laws and administrative rules; and
  2. Not overrule a pharmacist in matters of pharmacy ethics and interpreting laws pertaining to the practice of pharmacy or the distribution of drugs and devices.
- C.** The Board may suspend or revoke a pharmacy permit if the owner or management of a pharmacy violates subsection (B).

**Historical Note**

Former Rules 6.6140 and 6.6150; Amended subsection (A) effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3).

**R4-23-609. Pharmacy Area of Community Pharmacy**

- A.** Minimum area of community pharmacy. The minimum area of a community pharmacy, the actual area primarily devoted to stocking drugs restricted to pharmacists, and to the compounding and dispensing of prescription medication, exclusive of office area or other support function area, shall not be less than 300 square feet. A maximum of three pharmacy personnel may practice or work simultaneously in the minimum area. The pharmacy permittee shall provide an additional 60 square feet of floor area for each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, pharmacy technician trainee, or support personnel who may practice or work simultaneously. All of the allotted square footage area, including adequate shelving, shall lend itself to efficient pharmaceutical practice and permit free movement and visual surveillance of personnel by the pharmacist.
- B.** Compounding and dispensing counter. On or after January 6, 2004, a pharmacy permit applicant or remodel or relocation applicant shall provide a compounding and dispensing counter that provides a minimum of three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length for the practice of one pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee. For each additional pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee practicing simultaneously, there shall be an additional three square feet of pharmacy counter working area of not less than 16 inches in depth and 24 inches in length. The Board shall determine a pharmacy's total required compounding and dispensing counter area by multiplying the maximum number of personnel allowed in the pharmacy area using the requirements specified in subsection (A) by three square feet per person. A pharmacy permittee or pharmacist-in-charge may operate the pharmacy with a total pharmacy counter working area specified in subsection (A) that is equal to the actual maximum number of pharmacists, graduate interns, pharmacy interns, pharmacy technicians, and pharmacy technician trainees, working simultaneously in the pharmacy area times three square feet per person.
- C.** Working area for compounding and dispensing counter. The aisle floor area used by the pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee at the compounding and dispensing counter shall extend the full length of the counter and be clear and continuous for a minimum of 36 inches from any counter, fixture, or structure.

- D.** Area for patient counseling. On or after April 1, 1995, a pharmacy permit applicant or remodel or relocation applicant shall provide a separate and distinct patient counseling area that provides patient privacy. This subsection does not apply to a pharmacy exempt from the requirements of R4-23-402(B).
- E.** Narcotic cabinet or safe. To prevent diversion, narcotics and other controlled substances may be:
  1. Kept in a separate locked cabinet or safe, or
  2. Dispersed throughout the pharmacy's prescription-only drug stock.
- F.** Building security standard of community pharmacy area. The pharmacy area shall be enclosed by a permanent barrier or partition from floor or counter to structural ceiling or roof, with entry doors that can be securely locked. The barrier shall be designed so that only a pharmacist can access the area where prescription-only drugs, narcotics, and other controlled substances are stored, compounded and dispensed. The permanent barrier may be constructed of other than a solid material. If constructed of a material other than a solid, the openings or interstices of the material shall not be large enough to permit removal of items in the pharmacy area through the barrier. Any material used in the construction of the permanent barrier must be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The pharmacy permittee shall submit plans and specifications of the permanent barrier to the Board for approval.
- G.** Drug storage and security.
  1. The pharmacy permittee shall ensure that drugs and devices are stored in a dry, well-lit, ventilated, and clean and orderly area. The pharmacy permittee shall maintain the drug storage area at temperatures that ensure the integrity of the drugs before dispensing as stated in the official compendium defined in A.R.S. § 32-1901(55) or the manufacturer's or distributor's labeling.
  2. If the pharmacy permittee needs additional storage area for drugs that are restricted to sale by a pharmacist, the pharmacy permittee shall ensure that the area is contained by a permanent barrier from floor or counter to structural ceiling or roof. The pharmacy permittee shall lock all doors and gates to the drug storage area. Only a pharmacist with a key is permitted to enter the storage area, except in an extreme emergency.
- H.** A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy working counter area is protected from unauthorized access while the pharmacy is open for business by a barrier not less than 66 inches in height or another method approved by the Board or its designee.

**Historical Note**

Former Rules 6.6210, 6.6220, 6.6230, 6.6240, 6.6250, 6.6310, 6.6320, and 6.6330; Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 5030, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

**R4-23-610. Community Pharmacy Personnel and Security Procedures**

- A.** Every pharmacy shall have a pharmacist designated as the "pharmacist-in-charge."
  1. The pharmacist-in-charge shall ensure the communication and compliance of Board directives to the manage-

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ment, other pharmacists, interns, and technicians of the pharmacy.

2. The pharmacist-in-charge shall:
  - a. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are prepared, implemented, and complied with;
  - b. Review biennially and, if necessary, revise all pharmacy policies and procedures required under 4 A.A.C. 23;
  - c. Document the review required under subsection (A)(2)(b);
  - d. Ensure that all pharmacy policies and procedures required under 4 A.A.C. 23 are assembled as a written or electronic manual; and
  - e. Make all pharmacy policies and procedures required under 4 A.A.C. 23 available in the pharmacy for employee reference and inspection by the Board or its staff.
- B. Personnel permitted in the pharmacy area of a community pharmacy include pharmacists, graduate interns, pharmacy interns, compliance officers, drug inspectors, peace officers acting in their official capacity, other persons authorized by law, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel. Pharmacy interns, graduate interns, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel shall be permitted in the pharmacy area only when a pharmacist is on duty, except in an extreme emergency as defined in R4-23-110.
  1. The pharmacist-in-charge shall comply with the minimum area requirements as described in R4-23-609 for a community pharmacy and for compounding and dispensing counter area.
  2. A pharmacist employed by a pharmacy shall ensure that the pharmacy is physically secure while the pharmacist is on duty.
- C. In a community pharmacy, a pharmacist shall ensure that the pharmacy area, and any additional storage area for drugs that is restricted to access only by a pharmacist is locked when a pharmacist is not present, except in an extreme emergency.
- D. A pharmacist is the only person permitted by the Board to unlock the pharmacy area or any additional storage area for drugs restricted to access only by a pharmacist, except in an extreme emergency.
- E. A pharmacy permittee or pharmacist-in-charge shall ensure that any prescription-only drugs and controlled substances received in an area outside the pharmacy area are immediately transferred unopened to the pharmacy area. The pharmacist-in-charge shall ensure that any prescription-only drug and controlled substance shipments are opened and marked by pharmacy personnel in the pharmacy area under the supervision of a pharmacist, graduate intern, or pharmacy intern.
- F. A pharmacy permittee or pharmacist-in-charge may provide a small opening or slot through which a written prescription order or prescription medication container to be refilled may be left in the prescription area when the pharmacist is not present.
- G. A pharmacist shall ensure that prescription medication is not left outside the prescription area or picked up by the patient when the pharmacist is not present by either:
  1. Delivering the prescription medication to the patient, or
  2. Securing the prescription medication inside the locked pharmacy, except when using an automated storage and distribution system that complies with the requirements of R4-23-614.

**Historical Note**

Former Rules 6.6410, 6.6420, 6.6430, 6.6440, 6.6450, 6.6460, 6.6470, 6.6480, and 6.6490; Amended subsection (F), deleted subsection (I) effective August 9, 1983 (Supp. 83-4). Amended effective May 16, 1990 (Supp. 90-2). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4441, effective November 2, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 2631, effective September 8, 2007 (Supp. 07-3).

**R4-23-611. Pharmacy Facilities**

- A. Facilities. A pharmacy permittee or pharmacist-in-charge shall ensure that:
  1. A pharmacy's facilities are constructed according to state and local laws and ordinances;
  2. A pharmacy facility's:
    - a. Walls, ceilings, windows, floors, shelves, and equipment are clean and in good repair and order; and
    - b. Counters, shelves, aisles, and open spaces are not cluttered;
  3. Adequate trash receptacles are provided and emptied periodically during the day;
  4. A pharmacy facility of any pharmacy permit issued or pharmacy remodeled after February 1, 2014 provides access to toilet facilities either:
    - a. Within the pharmacy area, or
    - b. No further than a walking distance of 100 feet from the pharmacy area or an alternative distance approved by the Board or its designee;
  5. The toilet facilities are maintained in a sanitary condition and in good repair;
  6. All professional personnel and staff of the pharmacy keep themselves and their apparel clean while in the pharmacy area;
  7. No animals, except licensed assistant animals and guard animals, are allowed in the pharmacy;
  8. The pharmacy facility is kept free of insects and rodents; and
  9. There is a sink with hot and cold running water, other than a sink in a toilet facility, within the pharmacy area for use in preparing drug products.
- B. Supply of drugs and chemicals. A pharmacy permittee or pharmacist-in-charge shall ensure that:
  1. A pharmacy maintains a stock of drugs and chemicals that:
    - a. Are sufficient to meet the normal demands of the trading area or patient base the pharmacy serves; and
    - b. Meet all standards of strength and purity as established by the official compendiums;
  2. All stock, materials, drugs, and chemicals held for ultimate sale or supply to the consumer are not contaminated;
  3. Policies and procedures are developed, implemented, and complied with to prevent the sale or use of a drug or chemical:
    - a. That exceeds its expiration date;
    - b. That is deteriorated or damaged by reason of age, heat, light, cold, moisture, crystallization, chemical reaction, rupture of coating, disintegration, solidification, separation, discoloration, change of odor,

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- precipitation, or other change as determined by organoleptic examination or by other means;
- c. That is improperly labeled;
- d. Whose container is defective; or
- e. That does not comply with federal law; and
- 4. The policies and procedures described in subsection (B)(3):
  - a. Are made available in the pharmacy for employee reference and inspection by the Board or its designee; and
  - b. Provide the following:
    - i. Any expiration-dated drug or chemical is reviewed regularly;
    - ii. Any drug or chemical that exceeds its expiration date, is deteriorated or damaged, improperly labeled, has a defective container, or does not comply with federal law, is moved to a quarantine area and not sold or distributed; and
    - iii. Any quarantined drug or chemical is properly destroyed or returned to its source of supply.

**Historical Note**

Former Rules 6.6510, 6.6520, 6.6530, 6.6540, 6.6550, 6.6560, 6.6570, 6.6580, 6.6600, 6.6610, 6.6620, 6.6630, 6.6640, 6.6650, and 6.6660; Amended subsection (B) effective August 9, 1983 (Supp. 83-4). Amended effective April 1, 1995; filed with the Secretary of State January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 4165, effective February 1, 2014 (Supp. 13-4).

**R4-23-612. Equipment**

A pharmacy permittee or pharmacist-in-charge shall ensure that a pharmacy has the necessary equipment to allow a pharmacist to practice the profession of pharmacy, including the following:

1. Adequate refrigeration equipment dedicated to the storage of drugs and biologicals;
2. A C-V controlled substance register, if C-V controlled substances are sold without an order of a medical practitioner;
3. Graduates in assorted sizes;
4. One mortar and pestle, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
5. Spatulas of assorted sizes including one nonmetallic;
6. Prescription balance, Class A with weights or an electronic balance of equal or greater accuracy, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
7. One ointment tile or equivalent, not required if the pharmacy permittee states in the application that compounding will not be performed in the pharmacy;
8. A current hard-copy or access to a current electronic copy of the Arizona Pharmacy Act and administrative rules and Arizona Controlled Substance Act;
9. A professional reference library consisting of a minimum of one current reference or text, in hard-copy or electronic media, addressing the following subject areas:
  - a. Pharmacology or toxicology,
  - b. Therapeutics,
  - c. Drug compatibility, and
  - d. Drug product equivalency;

10. An assortment of labels, including prescription labels, transfer labels for controlled substances, and cautionary and warning labels;
11. A red C stamp as defined in R4-23-110, if C-III, C-IV, and C-V controlled substance invoices are not filed separately from other invoices;
12. Current antidote and drug interaction information; and
13. Regional poison control phone number prominently displayed in the pharmacy area.

**Historical Note**

Former Rule 6.6670; Former Section R4-23-612 repealed, new Section R4-23-612 adopted effective August 10, 1978 (Supp. 78-4). Amended effective August 9, 1983 (Supp. 83-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 7 A.A.R. 4253, effective September 11, 2001 (Supp. 01-3). Amended by final rulemaking at 19 A.A.R. 4165, effective February 1, 2014 (Supp. 13-4).

**R4-23-613. Procedure for Discontinuing a Pharmacy**

**A.** A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least 14 days before discontinuing operation of the pharmacy. The notice shall contain the following information:

1. Name, address, pharmacy permit number, and D.E.A. registration number of the pharmacy discontinuing business;
2. Name, address, pharmacy permit number (if applicable), and D.E.A. registration number (if applicable) of the licensee, permittee, or registrant to whom any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be sold or transferred;
3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be kept and the person responsible for the records. These records shall be kept for a minimum of three years from the date the pharmacy is discontinued;
4. Name and address of the location where the discontinuing pharmacy's prescription files and patient profiles will be kept and the person responsible for the files and profiles. These records shall be kept for a minimum of seven years from the date the last original or refill prescription was dispensed; and
5. The proposed date of discontinuing business operations.

**B.** The pharmacy permittee shall ensure that all pharmacy signs and symbols are removed from both the inside and outside of the premises.

**C.** The pharmacy permittee or pharmacist-in-charge shall ensure that all state permits and certificates of registration are returned to the Board office and that D.E.A. registration certificates and unused D.E.A. Schedule II order forms are returned to the D.E.A. Regional Office in Phoenix.

**D.** The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:

1. Only a pharmacist has access to the prescription-only drugs and controlled substances until they are transferred to the licensee, permittee, or registrant listed in subsection (A)(2);
2. All narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals are removed from the

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- premises on or before the date the pharmacy is discontinued; and
3. All controlled substances are transferred as follows:
    - a. Take an inventory of all controlled substances that are transferred using the procedures in R4-23-1003;
    - b. Include a copy of the inventory with the controlled substances that are transferred;
    - c. Keep the original of the inventory with the discontinued pharmacy's records of narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical purchase and disbursement for a minimum of three years from the date the pharmacy is discontinued;
    - d. Use a D.E.A. form 222 to transfer any Schedule II controlled substances; and
    - e. Transfer controlled substances that need destruction in the same manner as all other controlled substances.
  - E. Upon receipt of outdated or damaged controlled substances from a discontinued pharmacy, the licensee, permittee, or registrant described in subsection (A)(2) shall contact a D.E.A. registered reverse distributor for proper destruction of outdated or damaged controlled substances. If there are controlled substances a reverse distributor will not accept, the licensee, permittee, or registrant shall then contact the Board office and request an inspection for the purpose of drug destruction.
  - F. During the three-year record retention period specified in subsection (A)(3), the person described in subsection (A)(3) shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
  - G. During the seven-year record retention period specified in subsection (A)(4), the person described in subsection (A)(4) shall provide to the Board upon its request a discontinued pharmacy's records of prescription files and patient profiles.
- Historical Note**
- New Section made by final rulemaking at 7 A.A.R. 3825, effective August 9, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).
- R4-23-614. Automated Storage and Distribution System**
- A. Before using an automated storage and distribution system, a pharmacy permittee or pharmacist-in-charge shall:
    1. Ensure that the automated storage and distribution system and the policies and procedures comply with subsection (B); and
    2. Notify the Board in writing of the intent to use an automated storage and distribution system, including the type or name of the system.
  - B. A pharmacy permittee or pharmacist-in-charge shall establish policies and procedures for appropriate performance and use of the automated storage and distribution system that:
    1. Ensure that the automated storage and distribution system is in good working order while maintaining appropriate recordkeeping and security safeguards;
    2. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices by a patient:
      - i. Do not require oral consultation as specified in R4-23-402(B); and
      - ii. Are properly labeled and verified by a pharmacist before placement into the automated storage and distribution system and subsequent release to patients;
    - b. Allows a patient to choose whether or not to use the system;
    - c. Is located either in a wall of a properly permitted pharmacy or within 20 feet of a properly permitted pharmacy if the automated storage and distribution system is secured against the wall or floor in such a manner that prevents the automated storage and distribution system's unauthorized removal;
    - d. Provides a method to identify the patient and only release that patient's prescriptions;
    - e. Is secure from access and removal of drugs or devices by unauthorized individuals;
    - f. Provides a method for a patient to obtain a consultation with a pharmacist if requested by the patient; and
    - g. Does not allow the system to dispense refilled prescriptions if a pharmacist determines that the patient requires oral counseling as specified in R4-23-402(B);
  3. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices only by authorized licensed personnel for the purposes of administration based on a valid prescription order or medication order:
    - a. Provides for adequate security to prevent unauthorized individuals from accessing or obtaining drugs or devices; and
    - b. Provides for the filling, stocking, or restocking of all drugs or devices in the system only by a Board licensee or other authorized licensed personnel; and
  4. Implement an ongoing quality assurance program that monitors compliance with the established policies and procedures of the automated storage and distribution system and federal and state law.
  - C. A pharmacy permittee or pharmacist-in-charge shall:
    1. Ensure that the policies and procedures required under subsection (B) are prepared, implemented, and complied with;
    2. Review biennially and, if necessary, revise the policies and procedures required under subsection (B);
    3. Document the review required under subsection (C)(2);
    4. Assemble the policies and procedures as a written or electronic manual; and
    5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside the pharmacy where the automated storage and distribution system is used.
  - D. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated storage and distribution system if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).
- Historical Note**
- New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).
- R4-23-615. Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form**



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- A. A pharmacy permittee or pharmacist-in-charge shall ensure that a mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist complies with the following method to identify the contents of the device:
1. The drug name and strength are affixed to the front of each cell or cassette of the device;
  2. A paper or electronic log is kept for each cell or cassette that contains:
    - a. An identification of the cell or cassette by the drug name and strength or the number of the cell or cassette;
    - b. The drug's manufacturer or National Drug Code (NDC) number;
    - c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the cell or cassette. If multiple lot numbers of the same drug are added to a cell or cassette, each lot number and expiration date shall be documented, and the earliest expiration date shall become the expiration date of the mixed lot of drug in the cell or cassette;
    - d. The date the cell or cassette is filled;
    - e. Documentation of the identity of the licensee who placed the drug into the cell or cassette; and
    - f. If the licensee who filled the cell or cassette is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee who filled the cell or cassette; and
  3. The paper or electronic log is available in the pharmacy for inspection by the Board or its designee for not less than two years.
- B. A pharmacy permittee or pharmacist-in-charge shall ensure that any drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy is not returned to the drug's cell, cassette, or stock bottle, unless the drug return method is approved by the Board or its designee as specified in subsection (G). This subsection does not prevent a pharmacy permittee or pharmacist-in-charge from using a manual or mechanical counting device to count and dispense a previously counted drug that has not left the pharmacy if the previously counted drug is dispensed before its beyond-use-date.
- C. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
1. Training in the maintenance, calibration, and use of the mechanical storage and counting device for each employee who uses the mechanical storage and counting device;
  2. Maintenance and calibration of the mechanical storage and counting device as recommended by the device's manufacturer; and
  3. Routine quality assurance and accuracy validation testing for each mechanical storage and counting device.
- D. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (C) is available for inspection by the Board or its designee.
- E. A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that policies and procedures for the performance and use of a mechanical storage and counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (E)(1);
  3. Document the review required under subsection (E)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- F. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical storage and counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), (C), (D), or (E).
- G. Returning a drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy to the drug's cell or cassette.
1. Before returning a drug previously counted by a mechanical storage and counting device that has not left the pharmacy to the drug's cell or cassette, a pharmacy permittee or pharmacist-in-charge shall:
    - a. Apply for approval from the Board or its designee for the drug return method to be used in returning the drug;
    - b. Develop a drug return method that uses technology, such as bar coding, to prevent drug return errors;
    - c. Provide documentation depicting the drug return method;
    - d. Demonstrate the drug return method for a Board Compliance Officer; and
    - e. Receive approval from the Board or its designee for the drug return method to be used in returning the drug.
  2. Before approving a request to waive the drug return prohibition in subsection (B), the Board or its designee shall:
    - a. Receive a request in writing from the pharmacy permittee or pharmacist-in-charge;
    - b. Review the documentation of the drug return method; and
    - c. Receive a satisfactory inspection report from a Board Compliance Officer that the drug return method uses technology to prevent drug return errors.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 3677, effective November 8, 2008 (Supp. 08-3).

**R4-23-616. Mechanical Counting Device for a Drug in Solid, Oral Dosage Form**

- A. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:
1. Training in the maintenance, calibration, and use of the mechanical counting device for each employee who uses the mechanical counting device;
  2. Maintenance and calibration of the mechanical counting device as recommended by the device's manufacturer; and

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3. Routine quality assurance and accuracy validation testing for each mechanical counting device.
- B.** A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (A) is available for inspection by the Board or its designee.
- C.** A pharmacy permittee or pharmacist-in-charge shall:
  1. Ensure that policies and procedures for the performance and use of a mechanical counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- D.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 616, effective April 7, 2007 (Supp. 07-1).

**R4-23-617. Temporary Pharmacy Facilities or Mobile Pharmacies**

- A.** Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed or permitted in another state but not licensed or permitted in this state, if necessary to provide pharmacy services during a declared state of emergency, may arrange to temporarily locate to a temporary pharmacy facility or mobile pharmacy or relocate to a temporary pharmacy facility or mobile pharmacy if the pharmacist-in-charge of the temporary pharmacy facility or mobile pharmacy ensures that:
  1. The pharmacy is under the control and management of the pharmacist-in-charge or a supervising pharmacist designated by the pharmacist-in-charge;
  2. The pharmacy is located within or adjacent to the declared disaster area;
  3. The Board is notified of the pharmacy's location;
  4. The pharmacy is properly secured to prevent theft and diversion of drugs;
  5. The pharmacy's records are maintained in accordance with Arizona statutes and rules; and
  6. The pharmacy stops providing pharmacy services when the declared state of emergency ends, unless it possesses a current resident pharmacy permit issued by the Board under A.R.S. §§ 32-1929, 32-1930, and 32-1931.
- B.** The Board shall have the authority to approve or deny temporary pharmacy facilities, mobile pharmacies, and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis.
- C.** A temporary pharmacy facility wishing to permanently operate at its temporary site shall apply for and have received a permit issued under A.R.S. §§ 32-1929, 32-1930, and 32-1931 by following the application process under R4-23-606.
- D.** A mobile pharmacy, placed in operation during a declared state of emergency, shall not operate permanently.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4400, effective January 3, 2009 (Supp. 08-4).

**R4-23-618. Reserved****R4-23-619. Reserved****R4-23-620. Continuous Quality Assurance Program**

- A.** Each pharmacy permittee shall implement or participate in a continuous quality assurance (CQA) program. A pharmacy permittee meets the requirements of this Section if it holds a current general, special or rural general hospital license from the Arizona Department of Health Services and is any of the following:
  1. Certified by the Centers for Medicare and Medicaid Services to participate in the Medicare or Medicaid programs;
  2. Accredited by the Joint Commission on the Accreditation of Healthcare Organizations; or
  3. Accredited by the American Osteopathic Association.
- B.** A pharmacy permittee or the pharmacist-in-charge shall ensure that:
  1. The pharmacy develops, implements, and utilizes a CQ program consistent with the requirements of this Section and A.R.S. § 32-1973;
  2. The medication error data generated by the CQA program is utilized and reviewed on a regular basis, as required by subsection (D); and
  3. Training records, policies and procedures, and other program records or documents, other than medication error data, are maintained for a minimum of two years in the pharmacy or in a readily retrievable manner.
- C.** A pharmacy permittee or pharmacist-in-charge shall:
  1. Ensure that policies and procedures for the operation and management of the pharmacy's CQA program are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.
- D.** The policies and procedures shall address a planned process to:
  1. Train all pharmacy personnel in relevant phases of the CQA program;
  2. Identify and document medication errors;
  3. Record, measure, and analyze data collected to:
    - a. Assess the causes and any contributing factors relating to medication errors, and
    - b. Improve the quality of patient care;
  4. Utilize the findings from subsections (D)(2) and (3) to develop pharmacy systems and workflow processes designed to prevent or reduce medication errors; and
  5. Communicate periodically, and at least annually, with pharmacy personnel to review CQA program findings and inform pharmacy personnel of any changes made to pharmacy policies, procedures, systems, or processes as a result of CQA program findings.
- E.** The Board's regulatory oversight activities regarding a pharmacy's CQA program are limited to inspection of the pharmacy's CQA policies and procedures and enforcing the pharmacy's compliance with those policies and procedures.
- F.** A pharmacy's compliance with this Section shall be considered by the Board as a mitigating factor in the investigation and evaluation of a medication error.

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**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2603, effective December 2, 2012 (Supp. 12-4).

**R4-23-621. Shared Services**

- A.** Before participating in shared services, a pharmacy shall have either a current resident or non-resident pharmacy permit issued by the Board.
- B.** A pharmacy may provide or utilize shared services functions only if the pharmacies involved:
1. Have the same owner, or
  2. Have a written contract or agreement that outlines the services provided and the shared responsibilities of each party in complying with federal and state pharmacy statutes and rules, and
  3. Share a common electronic file or technology that allows access to information necessary or required to perform shared services in conformance with the pharmacy act and the Board's rules.
- C.** Notifications to patients.
1. Before using shared services provided by another pharmacy, a pharmacy permittee shall:
    - a. Notify patients that their orders may be processed or filled by another pharmacy; and
    - b. Provide the name of that pharmacy or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may process or fill the order, notify the patient of this fact. The notification may be provided through a one-time written notice to the patient or through use of a sign in the pharmacy.
  2. If an order is delivered directly to the patient by a filling pharmacy and not returned to the requesting pharmacy, the filling pharmacy permittee shall ensure that the following is placed on the prescription container or on a separate sheet delivered with the prescription container:
    - a. The local, and if applicable, the toll-free telephone number of the pharmacy utilizing shared services that has access to the patient's records; and
    - b. A statement that conveys to the patient or patient's care-giver the following information: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the local and toll-free telephone numbers of the pharmacy utilizing shared services that has access to the patient's records)."
  3. The provisions of subsection (C) do not apply to orders delivered to patients in facilities where a licensed health care professional is responsible for administering the prescription medication to the patient.
- D.** A pharmacy permittee engaged in shared services shall:
1. Maintain manual or electronic records that identify, individually for each order processed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the order interpretation, order entry verification, drug utilization review, drug compatibility and drug allergy review, final order verification, therapeutic intervention, or refill authorization functions performed at that pharmacy;
  2. Maintain manual or electronic records that identify, individually for each order filled or dispensed, the name, initials, or identification code of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, and pharmacy technician trainee who took part in the filling, dispensing, and counseling functions performed at that pharmacy;
  3. Report to the Board as soon as practical the results of any disciplinary action taken by another state's pharmacy regulatory agency involving shared services;
  4. Maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;
  5. Provide for adequate security to protect the confidentiality and integrity of patient information; and
  6. Provide for inspection of any required record or information within 72 hours of any request by the Board or its designee.
- E.** Each pharmacy permittee that provides or utilizes shared services shall develop, implement, review, revise, and comply with joint policies and procedures for shared services in the manner described in R4-23-610(A)(2). Each pharmacy permittee is required to maintain only those portions of the joint policies and procedures that relate to that pharmacy's operations. The policies and procedures shall:
1. Outline the responsibilities of each of the pharmacies;
  2. Include a list of the name, address, telephone numbers, and all license and permit numbers of the pharmacies involved in shared services; and
  3. Include policies and procedures for:
    - a. Notifying patients that their orders may be processed or filled by another pharmacy and providing the name of that pharmacy;
    - b. Protecting the confidentiality and integrity of patient information;
    - c. Dispensing orders when the filled order is not received or the patient comes in before the order is received;
    - d. Maintaining required manual or electronic records to identify the name, initials, or identification code and specific activity or activities of each pharmacist, graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee who performed any shared services;
    - e. Complying with federal and state laws; and
    - f. Operating a continuous quality improvement program for shared services, designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.
- F.** Nothing in this Section shall prohibit an individual pharmacist licensed in Arizona, who is an employee of or under contract with a pharmacy, or an Arizona-licensed graduate intern, pharmacy intern, pharmacy technician, or pharmacy technician trainee, working under the supervision of the pharmacist, from accessing that pharmacy's electronic database from inside or outside the pharmacy and performing the order processing functions permitted by the pharmacy act, if both of the following conditions are met:
1. The pharmacy establishes controls to protect the confidentiality and integrity of patient information; and
  2. None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 520, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1).

**R4-23-622. Reserved**

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**R4-23-650. Reserved****R4-23-651. Definitions**

The following definitions apply to R4-23-651 through R4-23-659:

“Administration” means the giving of a dose of medication to a patient as a result of an order of a medical practitioner.

“Direct copy” means an electronic, facsimile or carbonized copy.

“Dispensing for hospital inpatients” means the interpreting, evaluating, and implementing a medication order including preparing for delivery a drug or device to an inpatient or inpatient’s agent in a suitable container appropriately labeled for subsequent administration to, or use by, an inpatient (hereafter referred to as “dispensing”).

“Drug distribution” means the delivery of drugs other than “administering” or “dispensing.”

“Emergency medical situation” means a condition of emergency in which immediate drug therapy is required for the preservation of health, life, or limb of a person or persons.

“Floor stock” means a supply of essential drugs not labeled for a specific patient and maintained and controlled by the pharmacy at a patient care area for the purpose of timely administration to a patient of the hospital.

“Formulary” means a continually revised compilation of pharmaceuticals (including ancillary information) that reflects the current clinical judgment of the medical staff.

“Hospital pharmacy” means a pharmacy, as defined in A.R.S. § 32-1901, that holds a current permit issued by the Board pursuant to A.R.S. § 32-1931, and is located in a hospital as defined in A.R.S. § 32-1901.

“Inpatient” means any patient who receives non-self-administered drugs from a hospital pharmacy for use while within a facility owned by the hospital.

“Intravenous admixture” means a sterile parenteral solution to which one or more additional drug products have been added.

“Medication order” means a written, electronic, or verbal order from a medical practitioner or a medical practitioner’s authorized agent for administration of a drug or device.

“On-call” means a pharmacist is available to:

Consult or provide drug information regarding drug therapy or related issues; or

Dispense a medication order and review a patient’s medication order for pharmaceutical and therapeutic feasibility under R4-23-653(E)(2) before any drug is administered to a patient, except as specified in R4-23-653(E)(1).

“Patient care area” means any area for the primary purpose of providing a physical environment that is owned by or operated in conjunction with a hospital, for a patient to obtain health care services, except those areas where a physician, dentist, veterinarian, osteopath, or other medical practitioner engages primarily in private practice.

“Repackaged drug” means a drug product that is transferred by pharmacy personnel from an original manufacturer’s container to another container properly labeled for subsequent dispensing.

“Satellite pharmacy” means a work area in a hospital setting under the direction of a pharmacist that is a remote extension of a centrally licensed hospital pharmacy and owned by and dependent upon the centrally licensed hospital pharmacy for administrative control, staffing, and drug procurement.

“Single unit” means a package of medication that contains one discrete pharmaceutical dosage form.

“Supervision” means the process by which a pharmacist directs the activities of hospital pharmacy personnel to a sufficient degree to ensure that all activities are performed accurately, safely, and without risk of harm to patients.

**Historical Note**

Former Rules 6.7110, 6.7120, and 6.7130; Amended effective August 10, 1978 (Supp. 78-4). Amended subsection (B) effective April 20, 1982 (Supp. 82-2). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-652. Hospital Pharmacy Permit**

- A. The following rules are applicable to all hospitals as defined by A.R.S. § 32-1901 and hospital pharmacies as defined by R4-23-651.
- B. Before opening a hospital pharmacy, a person shall obtain a pharmacy permit as specified in R4-23-602 and R4-23-606.
- C. Discontinued hospitals. If a hospital license is discontinued by the state Department of Health Services, the pharmacy permittee or pharmacist-in-charge shall follow the procedures described in R4-23-613 for discontinuing a pharmacy.

**Historical Note**

Former Rules 6.7210, 6.7220, 6.7230, 6.7231, 6.7232, and 6.7233. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-653. Personnel: Professional or Technician**

- A. Each hospital pharmacy shall be directed by a pharmacist who is licensed to engage in the practice of pharmacy in Arizona and is referred to as the Director of Pharmacy. The Director of Pharmacy shall be the pharmacist-in-charge, as defined in A.R.S. § 32-1901 or shall appoint a pharmacist-in-charge. The Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall:
  1. Be responsible for all the activities of the hospital pharmacy and for meeting the requirements of the Arizona Pharmacy Act and these rules;
  2. Ensure that the policies and procedures required by these rules are prepared, implemented, and complied with;
  3. Review biennially and, if necessary, revise the policies and procedures required under these rules;
  4. Document the review required under subsection (A)(3);
  5. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee; and
  6. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its designee.
- B. In all hospitals, a pharmacist shall be in the hospital during the time the pharmacy is open for pharmacy services, except for an extreme emergency as defined in R4-23-110. Pharmacy services shall be provided for a minimum of 40 hours per week, unless an exception for less than the minimum hours is made

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upon written request by the hospital and with express permission of the Board or its designee.

- C. In a hospital where the pharmacy is not open 24 hours per day for pharmacy services, a pharmacist shall be "on-call" as defined in R4-23-651 when the pharmacy is closed.
- D. The Director of Pharmacy may be assisted by other personnel approved by the Director of Pharmacy in order to operate the pharmacy competently, safely, and adequately to meet the needs of the hospital's patients.
- E. Pharmacists. A pharmacist or a pharmacy intern or graduate intern under the supervision of a pharmacist shall perform the following professional practices:
  - 1. Verify a patient's medication order before administration of a drug to the patient, except:
    - a. In an emergency medical situation; or
    - b. In a hospital where the pharmacy is open less than 24 hours a day for pharmacy services, a pharmacist shall verify a patient's medication order within four hours of the time the pharmacy opens for pharmacy services;
  - 2. Verify a medication order's pharmaceutical and therapeutic feasibility based upon:
    - a. The patient's medical condition,
    - b. The patient's allergies,
    - c. The pharmaceutical and therapeutic incompatibilities, and
    - d. The recommended dosage limits;
  - 3. Measure, count, pour, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician or pharmacy technician trainee may measure, count, pour, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
  - 4. Compound, admix, combine, or otherwise prepare and package a drug needed for dispensing, except a pharmacy technician may compound, admix, combine, or otherwise prepare and package a drug needed for dispensing under the supervision of a pharmacist according to written policies and procedures approved by the Board or its designee;
  - 5. Verify the accuracy, correct procedure, compounding, admixing, combining, measuring, counting, pouring, preparing, packaging, and safety of a drug prepared and packaged by a pharmacy technician or pharmacy technician trainee according to subsections (E)(3) and (4) and according to the policies and procedures in subsection (G);
  - 6. Supervise drug repackaging and check the completed repackaged product as specified in R4-23-402(A);
  - 7. Supervise training and education in aseptic technique and drug incompatibilities for all personnel involved in the admixture of parenteral products within the hospital pharmacy;
  - 8. Consult with the medical practitioner regarding the patient's drug therapy or medical condition;
  - 9. When requested by a medical practitioner, patient, patient's agent, or when the pharmacist deems it necessary, provide consultation with a patient regarding the medication order, patient's profile, or overall drug therapy;
  - 10. Monitor a patient's drug therapy for safety and effectiveness;
  - 11. Provide drug information to patients and health care professionals;
  - 12. Manage the activities of pharmacy technicians, pharmacy technician trainees, other personnel, and systems to ensure that all activities are performed accurately, safely, and without risk of harm to patients;
  - 13. Verify the accuracy of all aspects of the original, completed medication order; and
  - 14. Ensure compliance by pharmacy personnel with a quality assurance program developed by the hospital.
- F. Pharmacy technicians and pharmacy technician trainees. Before working as a pharmacy technician or pharmacy technician trainee, an individual shall meet the eligibility and licensure requirements prescribed in 4 A.A.C. 23, Article 11.
- G. Pharmacy technician policies and procedures. Before employing a pharmacy technician or pharmacy technician trainee, a Director of Pharmacy or pharmacist-in-charge shall develop the policies and procedures required under R4-23-1104.
- H. Pharmacy technician training program.
  - 1. A Director of Pharmacy or pharmacist-in-charge shall comply with the training program requirements of R4-23-1105 based on the needs of the hospital pharmacy;
  - 2. A pharmacy technician or pharmacy technician trainee shall:
    - a. Perform only those tasks for which training and competency have been demonstrated; and
    - b. Not perform professional practices reserved for a pharmacist, graduate intern, or pharmacy intern in subsection (E), except as specified in subsections (E)(3) and (4).
- I. Supervision. A hospital pharmacy's Director of Pharmacy and the pharmacist-in-charge, if a different individual, shall supervise all of the activities and operations of a hospital pharmacy. A pharmacist shall supervise all functions and activities of pharmacy technicians, pharmacy technician trainees, and other hospital pharmacy personnel to ensure that all functions and activities are performed competently, safely, and without risk of harm to patients.

#### Historical Note

Former Rules 6.7310 and 6.7320; Amended effective August 10, 1978 (Supp. 78-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

#### R4-23-654. Absence of Pharmacist

- A. If a pharmacist will not be on duty in the hospital, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have access to drugs in the remote drug storage area defined in R4-23-110 or in the hospital pharmacy if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient. A pharmacist shall be on-call during all absences.
- B. If a pharmacist will not be on duty in the hospital pharmacy, the Director of Pharmacy or pharmacist-in-charge shall arrange, before the pharmacist's absence, for the medical staff and other authorized personnel of the hospital to have telephone access to an on-call pharmacist.
- C. The hospital pharmacy permittee shall ensure that the hospital pharmacy is not without a pharmacist on duty in the hospital for more than 72 consecutive hours.

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- D.** Remote drug storage area. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital:
1. Develop and maintain an inventory listing of the drugs to be included in a remote drug storage area; and
  2. Develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures that ensure proper storage, access, and accountability for drugs in a remote drug storage area.
- E.** Access to hospital pharmacy. If a drug is not available from a remote drug storage area and the drug is required to treat the immediate needs of a patient whose health may be compromised, the drug may be obtained from the hospital pharmacy according to the requirements of this subsection.
1. The Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate committee of the hospital, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures to ensure that access to the hospital pharmacy during the pharmacist's absence conforms to the following requirements:
    - a. Access is delegated to only one supervisory nurse in each shift;
    - b. The policy and name of supervisory nurse is communicated in writing to the medical staff of the hospital;
    - c. Access is delegated only to a nurse who has received training from the Director of Pharmacy, pharmacist-in-charge, or Director's designee in the procedures required for proper access, drug removal, and recordkeeping; and
    - d. Access is delegated by the supervisory nurse to another nurse only in an emergency.
  2. If a nurse to whom authority is delegated to access the hospital pharmacy removes a drug from the hospital pharmacy, the nurse shall:
    - a. Record the following information on a form or by another method approved by the Board or its designee:
      - i. Patient's name;
      - ii. Drug name, strength, and dosage form;
      - iii. Quantity of drug removed; and
      - iv. Date and time of removal;
    - b. Sign or initial, if a corresponding signature is on file in the hospital pharmacy, the form recording the drug removal;
    - c. Attach the original or a direct copy of the medication order for the drug to the form recording the drug removal; and
    - d. Place the form recording the drug removal conspicuously in the hospital pharmacy.
  3. Within four hours after a pharmacist returns from an absence, the pharmacist shall verify all records of drug removal that occurred during the pharmacist's absence according to R4-23-653(E).

**Historical Note**

Former Rules 6.7410, 6.7420, 6.7430, 6.7440, 6.7450, and 6.7460; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R.

3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-655. Physical Facility**

- A.** General. A hospital pharmacy permittee shall ensure that the hospital pharmacy has sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations.
- B.** Minimum area of hospital pharmacy. The minimum area of a hospital pharmacy depends on the type of hospital, the number of beds, and the pharmaceutical services provided. Any hospital pharmacy permit issued or hospital pharmacy remodeled after January 31, 2003 shall provide a minimum hospital pharmacy area, the actual area primarily devoted to drug dispensing and preparation functions, exclusive of bulk drug storage, satellite pharmacy, and office areas that is not less than 500 square feet. The minimum area requirement, not including unusable area, may be varied upon approval by the Board for out-of-the-ordinary conditions or for systems that require less space.
- C.** The Board may also require that a hospital pharmacy permittee or applicant provide:
1. More than the minimum area if equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice;
  2. Additional dispensing, preparation, or storage areas because of the increased number of specific drugs prescribed per day, the increased use of intravenous and irrigating solutions, and the increased use of disposable and prepackaged products;
  3. Additional dispensing, preparation, or storage areas to handle investigational drugs, emergency drug kits, chemotherapeutics, alcohol and other flammables, poisons, external preparations, and radioisotopes, and to accommodate quality control procedures; and
  4. Additional office space to provide for an increased number of personnel, a drug information library, a poison information library, research support, teaching and conferences, and a waiting area.
- D.** Hospital pharmacy area. A hospital pharmacy permittee shall ensure that the hospital pharmacy area is enclosed by a permanent barrier or partition from floor to ceiling with entry doors that can be securely locked, constructed according to R4-23-609(F).
- E.** Hospital pharmacy storage areas. The hospital pharmacy permittee, Director of Pharmacy, or pharmacist-in-charge shall ensure that all undispensed or undistributed drugs are stored in designated areas within the hospital pharmacy or other locked areas under the control of a pharmacist that ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

**Historical Note**

Former Rules 6.7471, 6.7472, 6.7473, 6.7474, and 6.7490; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Table 1 ("square feet" changed to "square feet") (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 462, effective March 5, 2005 (Supp. 05-1).

**R4-23-656. Sanitation and Equipment**

- A hospital pharmacy permittee or Director of Pharmacy shall ensure that a hospital pharmacy:
1. Has a professional reference library consisting of hard-copy or electronic media appropriate for the scope of pharmacy services provided by the hospital;
  2. Has a sink, other than a sink in a toilet facility, that:

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- a. Has hot and cold running water;
  - b. Is within the hospital pharmacy area for use in preparing drug products; and
  - c. Is maintained in a sanitary condition and in good repair;
3. Maintains a room temperature within a range compatible with the proper storage of drugs;
  4. Has a refrigerator and freezer with a temperature maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing; and
  5. Has a designated area for a laminar air flow hood and other supplies required for the preparation of sterile products as specified in R4-23-670.

**Historical Note**

Former Rule 6.7480. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-657. Security**

- A.** Personnel security standards. A Director of Pharmacy shall ensure that:
1. No one is permitted in the pharmacy unless a pharmacist is present except as provided in this Section and R4-23-654. If only one pharmacist is on duty in the pharmacy and that pharmacist must leave the pharmacy for an emergency or patient care duties, nonpharmacist personnel may remain in the pharmacy to perform duties as outlined in R4-23-653, provided that all C-II controlled substances are secured to prohibit access by other than a pharmacist, and that the pharmacist remains available in the hospital;
  2. All hospital pharmacy areas are kept locked by key or programmable lock to prevent access by unauthorized personnel; and
  3. Pharmacists, pharmacy or graduate interns, pharmacy technicians, pharmacy technician trainees, and other personnel working in the pharmacy wear identification badges, including name and position, whenever on duty.
- B.** Prescription blank security. The Director of Pharmacy shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for the safe distribution and control of prescription blanks bearing identification of the hospital.

**Historical Note**

Former Rule 6.7500; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-658. Drug Distribution and Control**

- A.** General. The Director of Pharmacy or pharmacist-in-charge shall in consultation with the medical staff, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for the effective operation of a drug distribution system that optimizes patient safety.
- B.** Responsibility. The Director of Pharmacy is responsible for the safe and efficient procurement, dispensing, distribution, administration, and control of drugs, including the following:
1. In consultation with the appropriate department personnel and medical staff committee, develop a medication formulary for the hospital;

2. Proper handling, distribution, and recordkeeping of investigational drugs; and
  3. Regular inspections of drug storage and preparation areas within the hospital.
- C.** Physician orders. A Director of Pharmacy or pharmacist-in-charge shall ensure that:
1. Drugs are dispensed from the hospital pharmacy only upon a written order, direct copy or facsimile of a written order, or verbal order of an authorized medical practitioner; and
  2. A pharmacist reviews the original, direct or facsimile copy, or verbal order before an initial dose of medication is administered, except as specified in R4-23-653(E)(1).
- D.** Labeling. A Director of Pharmacy or pharmacist-in-charge shall ensure that all drugs distributed or dispensed by a hospital pharmacy are packaged in appropriate containers and labeled as follows:
1. For use inside the hospital.
    - a. Labels for all single unit packages contain at a minimum, the following information:
      - i. Drug name, strength, and dosage form;
      - ii. Lot number and beyond-use-date; and
      - iii. Appropriate auxiliary labels;
    - b. Labels for repackaged preparations contain at a minimum the following information:
      - i. Drug name, strength, and dosage form;
      - ii. Lot number and beyond-use-date;
      - iii. Appropriate auxiliary labels; and
      - iv. Mechanism to identify pharmacist accountable for repackaging;
    - c. Labels for all intravenous admixture preparations contain at a minimum the following information:
      - i. Patient's name and location;
      - ii. Name and quantity of the basic parenteral solution;
      - iii. Name and amount of drug added;
      - iv. Date of preparation;
      - v. Beyond-use-date and time;
      - vi. Guidelines for administration;
      - vii. Appropriate auxiliary label or precautionary statement; and
      - viii. Initials of pharmacist responsible for admixture preparation; and
  2. For use outside the hospital. Any drug dispensed to a patient by a hospital pharmacy that is intended for self-administration outside of the hospital is labeled as specified in A.R.S. §§ 32-1963.01(C) and 32-1968(D) and A.A.C. R4-23-402.
- E.** Controlled substance accountability. A Director of Pharmacy or pharmacist-in-charge shall ensure that effective policies and procedures are developed, implemented, reviewed, and revised in the same manner described in R4-23-653(A) and complied with regarding the use, accountability, and record-keeping of controlled substances in the hospital, including the use of locked storage areas when controlled substances are stored in patient care areas.
- F.** Emergency services dispensing. If a hospital permits dispensing of drugs from the emergency services department when the pharmacy is unable to provide this service, the Director of Pharmacy, in consultation with the appropriate department personnel and medical staff committee shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with written policies and procedures for dispensing drugs for outpatient use from the hospital's emergency services department. The policies and procedures shall include the following requirements:

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1. Drugs are dispensed only to patients who have been admitted to the emergency services department;
2. Drugs are dispensed only by an authorized medical practitioner, not a designee or agent;
3. The nature and type of drugs available for dispensing are designed to meet the immediate needs of the patients treated within the hospital;
4. Drugs are dispensed only in quantities sufficient to meet patient needs until outpatient pharmacy services are available;
5. Drugs are prepackaged by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist in suitable containers and appropriately prelabeled with the drug name, strength, dosage form, quantity, manufacturer, lot number, beyond-use-date, and any appropriate auxiliary labels;
6. Upon dispensing, the authorized medical practitioner completes the label on the prescription container that complies with the requirements of R4-23-658(D); and
7. The hospital pharmacy maintains a dispensing log, hard-copy prescription, or electronic record, approved by the Board or its designee and includes the patient name and address, drug name, strength, dosage form, quantity, directions for use, medical practitioner's signature or identification code, and DEA registration number, if applicable.

**Historical Note**

Former Rules 6.7610, 6.7620, and 6.7710; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to subsection (I)(5) ("unnecessary" changed to "necessary") (Supp. 91-1). Amended effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-659. Administration of Drugs**

- A.** Self-administration. A hospital shall not allow self-administration of medications by a patient unless the Director of Pharmacy or pharmacist-in-charge, in consultation with the appropriate department personnel and medical staff committee, develops, implements, reviews, and revises in the same manner described in R4-23-653(A) and complies with policies and procedures for self-administration of medications by a patient. The policies and procedures shall specify that self-administration of medications, if allowed, occurs only when:
1. Specifically ordered by a medical practitioner, and
  2. The patient is educated and trained in the proper manner of self-administration.
- B.** Drugs brought in by a patient. If a hospital allows a patient to bring a drug into the hospital and before a patient brings a drug into the hospital, the Director of Pharmacy or pharmacist-in-charge shall, in consultation with the appropriate department personnel and medical staff committee, develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for a patient-owned drug brought into the hospital. The policies and procedures shall specify the following criteria for a patient-owned drug brought into the hospital:
1. When policy allows the administration of a patient-owned drug, the drug is not administered to the patient unless:

- a. A pharmacist or medical practitioner identifies the drug, and
  - b. A medical practitioner writes a medication order specifying administration of the identified patient-owned drug; and
2. If a patient-owned drug will not be used during the patient's hospitalization, the hospital pharmacy's personnel shall:
- a. Package, seal, and give the drug to the patient's agent for removal from the hospital; or
  - b. Package, seal, and store the drug for return to the patient at the time of discharge from the hospital.
- C.** Drug samples. The Director of Pharmacy or pharmacist-in-charge is responsible for the receipt, storage, distribution, and accountability of drug samples within the hospital, including developing, implementing, reviewing, and revising in the same manner described in R4-23-653(A) and complying with specific policies and procedures regarding drug samples.

**Historical Note**

Former Rules 6.7720, 6.7730, 6.7740, 6.7760, 6.7770, 6.7780, 6.7800, 6.7810, 6.7820, 6.7830, 6.7840, 6.7850, 6.7871, 6.7872, and 6.7873; Amended effective Aug. 9, 1983 (Supp. 83-4). Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Correction to Section heading ("rules" changed to "roles") (Supp. 91-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-660. Investigational Drugs**

The Director of Pharmacy or pharmacist-in-charge shall ensure that:

1. The following information concerning an investigational drug is available for use by hospital personnel:
  - a. Composition,
  - b. Pharmacology,
  - c. Adverse reactions,
  - d. Administration guidelines, and
  - e. All other available information concerning the drug, and
2. An investigational drug is:
  - a. Properly stored in, labeled, and dispensed from the pharmacy, and
  - b. Not dispensed before the drug is approved by the appropriate medical staff committee of the hospital.

**Historical Note**

Former Rules 6.7881, 6.7882, and 6.7883; Amended subsection (A) effective Aug. 9, 1983 (Supp. 83-4). Repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-661. Repealed****Historical Note**

Former Rules 6.7910, 6.7920, 6.7930, 6.7940, and 6.7950. Section repealed, new Section adopted effective February 7, 1990 (Supp. 90-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-662. Repealed**



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**Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-663. Repealed****Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Amended effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-664. Repealed****Historical Note**

Adopted effective February 7, 1990 (Supp. 90-1). Subsection label removed (Supp. 91-1). Section repealed by final rulemaking at 8 A.A.R. 4902, effective January 5, 2003 (Supp. 02-4).

**R4-23-665. Reserved**

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**R4-23-669. Reserved****R4-23-670. Sterile Pharmaceutical Products**

**A.** In addition to the minimum area requirement of R4-23-609(A) and R4-23-655(B) and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall provide a minimum sterile pharmaceutical product compounding area that is not less than 100 square feet of contiguous floor area, except any pharmacy permit issued or pharmacy remodeled before November 1, 2006 may continue to use a sterile pharmaceutical product compounding area that is not less than 60 square feet of contiguous floor area, until a pharmacy ownership change occurs that requires issuance of a new permit or the pharmacy is remodeled. The pharmacy permittee or the pharmacist-in-charge shall ensure that the sterile pharmaceutical product compounding area:

1. Is dedicated to the purpose of preparing and compounding sterile pharmaceutical products;
2. Is isolated from other pharmacy functions;
3. Restricts entry or access;
4. Is free from unnecessary disturbances in air flow;
5. Is made of non-porous and cleanable floor, wall, and ceiling material; and
6. Meets the minimum air cleanliness standards of an ISO Class 7 environment as defined in R4-23-110, except an ISO class 7 environment is not required if all sterile pharmaceutical product compounding occurs within an ISO class 5 environment isolator, such as a glove box, pharmaceutical isolator, barrier isolator, pharmacy isolator, or hospital pharmacy isolator.

**B.** In addition to the equipment requirements in R4-23-611 and R4-23-612 or R4-23-656 and before compounding a sterile pharmaceutical product, a pharmacy permittee, limited-service pharmacy permittee, or applicant shall ensure that a pharmacist who compounds a sterile pharmaceutical product has the following equipment:

1. Environmental control devices capable of maintaining a compounding area environment equivalent to an "ISO class 5 environment" as defined in R4-23-110. Devices capable of meeting these standards include: laminar air-flow hoods, hepa filtered zonal airflow devices, glove boxes, pharmaceutical isolators, barrier isolators, pharmacy isolators, hospital pharmacy isolators, and biological safety cabinets;

2. Disposal containers designed for needles, syringes, and other material used in compounding sterile pharmaceutical products and if applicable, separate containers to dispose of cytotoxic, chemotherapeutic, and infectious waste products;
3. Freezer storage units with thermostatic control and thermometer, if applicable;
4. Packaging or delivery containers capable of maintaining official compendial drug storage conditions;
5. Infusion devices and accessories, if applicable; and
6. In addition to the reference library requirements of R4-23-612, a current reference pertinent to the preparation of sterile pharmaceutical products.

**C.** Before compounding a sterile pharmaceutical product, the pharmacy permittee, limited-service pharmacy permittee, or pharmacist-in-charge shall:

1. Prepare, implement, and comply with policies and procedures for compounding and dispensing sterile pharmaceutical products,
2. Review biennially and if necessary revise the policies and procedures required under subsection (C)(1),
3. Document the review required under subsection (C)(2),
4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

**D.** The assembled policies and procedures shall include, where applicable, the following subjects:

1. Supervisory controls and verification procedures to ensure the quality and safety of sterile pharmaceutical products;
2. Clinical services and drug monitoring procedures for:
  - a. Patient drug utilization reviews;
  - b. Inventory audits;
  - c. Patient outcome monitoring;
  - d. Drug information; and
  - e. Education of pharmacy and other health professionals;
3. Controlled substances;
4. Supervisory controls and verification procedures for:
  - a. Cytotoxics handling, storage, and disposal;
  - b. Disposal of unused supplies and pharmaceutical products; and
  - c. Handling and disposal of infectious wastes;
5. Pharmaceutical product administration, including guidelines for the first dosing of a pharmaceutical product;
6. Drug and component procurement;
7. Pharmaceutical product compounding, dispensing, and storage;
8. Duties and qualifications of professional and support staff;
9. Equipment maintenance;
10. Infusion devices and pharmaceutical product delivery systems;
11. Investigational drugs and their protocols;
12. Patient profiles;
13. Patient education and safety;
14. Quality management procedures for:
  - a. Adverse drug reactions;
  - b. Drug recalls;
  - c. Expired pharmaceutical products;
  - d. Beyond-use-dating for both standard-risk and substantial-risk sterile pharmaceutical products consistent with the requirements of R4-23-410(B)(3)(d);

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- e. Temperature and other environmental controls;
  - f. Documented process and product validation testing; and
  - g. Semi-annual certification of the laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment, including documentation of routine cleaning and maintenance for each laminar air flow hood or other ISO class 5 environment, other equipment, and the ISO class 7 environment; and
15. Sterile pharmaceutical product delivery requirements for:
- a. Shipment to the patient;
  - b. Security; and
  - c. Maintaining official compendial storage conditions.
- E.** Standard-risk sterile pharmaceutical product compounding. Before compounding a standard-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
- 1. Compounding occurs only in an ISO class 5 environment within an ISO class 7 environment, and the ISO class 7 environment may have a specified prep area inside the environment;
  - 2. Compounding sterile pharmaceutical products from sterile commercial drugs or sterile pharmaceutical otic or ophthalmic products from non-sterile ingredients occurs using procedures that involve only a few closed-system, basic, simple aseptic transfers and manipulations;
  - 3. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
  - 4. Each person who compounds completes an annual media-fill test to validate proper aseptic technique.
- F.** Substantial-risk sterile pharmaceutical product compounding. Before compounding a substantial-risk sterile pharmaceutical product, a pharmacy permittee or pharmacist-in-charge shall ensure compliance with the following minimum standards:
- 1. Compounding parenteral or injectable sterile pharmaceutical products from non-sterile ingredients occurs only in an ISO class 5 environment within an ISO class 7 environment and the ISO class 7 environment shall not have a prep area inside the environment;
  - 2. Each person who compounds wears adequate personnel protective clothing for sterile preparation that includes gown, gloves, head cover, and booties. Each person who compounds is not required to wear personnel protective clothing when all sterile pharmaceutical compounding occurs within an ISO class 5 environment isolator, and the ISO Class 5 environment isolator is not inside an ISO Class 7 environment; and
  - 3. Each person who compounds completes a semi-annual media-fill test that simulates the most challenging or stressful conditions for compounding using dry non-sterile media to validate proper aseptic technique.

**Historical Note**

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3981, effective December 4, 2006 (Supp. 06-4).

**R4-23-671. General Requirements for Limited-service Pharmacy****macy**

- A.** Before opening a limited-service pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and R4-23-606.
- B.** The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:
  - 1. Permit no one to be in the limited-service pharmacy unless the pharmacist-in-charge or a pharmacist authorized by the pharmacist-in-charge is present;
  - 2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
  - 3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
  - 4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.
- C.** To obtain permission to deviate from the minimum area requirement set forth in R4-23-609, R4-23-673, or R4-23-682, a limited-service pharmacy permittee shall submit a written request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.
- D.** The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.
- E.** Before dispensing from a limited-service pharmacy, the limited-service pharmacy permittee or pharmacist-in-charge shall:
  - 1. Prepare, implement, and comply with written policies and procedures for pharmacy operations and drug dispensing and distribution,
  - 2. Review biennially and if necessary revise the policies and procedures required under subsection (E)(1),
  - 3. Document the review required under subsection (E)(2),
  - 4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
  - 5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

**Historical Note**

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-672. Limited-service Correctional Pharmacy**

- A.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy complies with the standards for area, personnel, security, sanitation, equipment, drug distribution and control, administration of drugs, drug source, quality assurance, investigational drugs, and inspections as set forth in R4-23-608, R4-23-609(A) through (D) and (F) through (H), R4-23-610(A), R4-23-611, R4-23-612, R4-23-653(E), R4-23-658(B) through (E), R4-23-659, and R4-23-660.

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- B.** The pharmacist-in-charge of a limited-service correctional pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers, and correctional officers acting in their official capacities, other persons authorized by law, support personnel, and other designated personnel to be in the limited-service correctional pharmacy.
- C.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have access to drugs in remote drug storage areas or, if a drug is not available in a remote drug storage area and is required to treat the immediate needs of a patient, in the limited-service correctional pharmacy.
1. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that remote drug storage areas:
    - a. Contain only properly labeled drugs that might reasonably be needed and can be administered safely during the pharmacist's absence,
    - b. Contain drugs packaged only in amounts sufficient for immediate therapeutic requirements,
    - c. Are accessible only with a physician's written order,
    - d. Provide a written record of each drug withdrawn,
    - e. Are inventoried at least once each week, and
    - f. Are audited for compliance with the requirements of this rule at least once each month.
  2. The pharmacist-in-charge shall, in consultation with the appropriate committee of the correctional facility, develop and implement procedures to ensure that access to the limited-service correctional pharmacy when no pharmacist is on duty conforms to the following requirements:
    - a. Is delegated to only one nurse, who is in a supervisory position;
    - b. Is communicated in writing to medical staff of the correctional facility;
    - c. Is delegated only to a nurse who has received training from the pharmacist-in-charge in proper methods of access, removal of drugs, and recordkeeping procedures; and
    - d. Is delegated by the supervisory nurse to another nurse only in an emergency.
  3. When a nurse to whom authority to access the limited-service correctional pharmacy is delegated removes a drug from the limited-service correctional pharmacy, the nurse shall:
    - a. Record the following information on a form:
      - i. Patient's name,
      - ii. Name of the drug and its strength and dosage form,
      - iii. Dose prescribed,
      - iv. Amount of drug removed, and
      - v. Date and time of removal;
    - b. Sign the form recording the drug removal;
    - c. Attach the original or a direct copy of a physician's written order for the drug to the form recording the drug removal; and
    - d. Place the form recording the drug removal conspicuously in the limited-service correctional pharmacy.
  4. Within four hours after a pharmacist in the limited-service correctional pharmacy returns to duty following an absence in which the limited-service correctional pharmacy was accessed by a nurse to whom authority had been delegated, the pharmacist shall verify all records of drug removal according to R4-23-402.
- D.** When no pharmacist will be on duty in the correctional facility, the pharmacist-in-charge shall arrange, before there is no pharmacist on duty, for the medical staff and other authorized personnel of the correctional facility to have telephone access to a pharmacist.
- E.** The limited-service pharmacy permittee shall ensure that the limited-service correctional pharmacy is not without a pharmacist on duty for more than 96 consecutive hours.
- F.** In addition to the requirements of R4-23-671, the limited-service pharmacy permittee shall secure the limited-service correctional pharmacy as follows:
1. Permit no one to be in the limited-service correctional pharmacy unless a pharmacist is on duty except:
    - a. As provided in subsection (C)(3) when a pharmacist is not on duty; or
    - b. A pharmacy technician or pharmacy technician trainee may remain to perform duties in R4-23-1104(A), when a pharmacist is on duty and available in the correctional facility but temporarily absent from the pharmacy, provided:
      - i. All controlled substances are secured in a manner that prohibits access by persons other than a pharmacist;
      - ii. Activities performed by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent are verified by the pharmacist immediately upon returning to the pharmacy;
      - iii. Any drug measured, counted, poured, or otherwise prepared and packaged by a pharmacy technician or pharmacy technician trainee while the pharmacist is temporarily absent is verified by the pharmacist immediately upon returning to the pharmacy; and
      - iv. Any drug that has not been verified by a pharmacist for accuracy is not dispensed, supplied, or distributed while the pharmacist is temporarily absent from the pharmacy; and
  2. Provide keyed or programmable locks to all areas of the limited-service correctional pharmacy.
- G.** The pharmacist-in-charge of a limited-service correctional pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution within the correctional facility include the following:
1. Physicians' orders, prescription orders, or both;
  2. Authorized abbreviations;
  3. Formulary system;
  4. Clinical services and drug utilization management including:
    - a. Participation in drug selection,
    - b. Drug utilization reviews,
    - c. Inventory audits,
    - d. Patient outcome monitoring,
    - e. Committee participation,
    - f. Drug information, and
    - g. Education of pharmacy and other health professionals;
  5. Duties and qualifications of professional and support staff;
  6. Products of abuse and contraband medications;
  7. Controlled substances;
  8. Drug administration;
  9. Drug product procurement;
  10. Drug compounding, dispensing, and storage;

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11. Stop orders;
12. Pass or discharge medications;
13. Investigational drugs and their protocols;
14. Patient profiles;
15. Quality management procedures for:
  - a. Adverse drug reactions;
  - b. Drug recalls;
  - c. Expired and beyond-use-date drugs;
  - d. Medication or dispensing errors;
  - e. Drug storage; and
  - f. Education of professional staff, support staff, and patients;
16. Recordkeeping;
17. Sanitation;
18. Security;
19. Access to remote drug storage areas by non-pharmacists; and
20. Access to limited-service correctional pharmacy by non-pharmacists.

**Historical Note**

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4).

**R4-23-673. Limited-service Mail-order Pharmacy**

- A.** The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
1. A dispensing area devoted to stocking, compounding, and dispensing prescription medications, which is physically separate from a non-dispensing area devoted to non-dispensing pharmacy services;
  2. A dispensing area of at least 300 square feet if three or fewer persons work in the dispensing area simultaneously;
  3. A dispensing area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the dispensing area simultaneously;
  4. Space in the dispensing area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist;
  5. A non-dispensing area of at least 30 square feet for each person working simultaneously in the non-dispensing area; and
  6. Space in the non-dispensing area permits free movement of personnel and visual surveillance by the pharmacist;
- B.** The limited-service pharmacy permittee shall design and construct the limited-service mail-order pharmacy to conform with the following requirements:
1. A contiguous area in which both dispensing and non-dispensing pharmacy services are provided;
  2. A contiguous area of at least 300 square feet if three or fewer persons work in the area simultaneously;
  3. A contiguous area that provides 300 square feet plus 60 square feet for each person in excess of three persons if more than three persons work in the area simultaneously; and
  4. Space in the contiguous area permits efficient pharmaceutical practice, free movement of personnel, and visual surveillance by the pharmacist.
- C.** The limited-service pharmacy permittee shall ensure that the limited-service mail-order pharmacy complies with the standards for area, personnel, security, sanitation, and equipment set forth in R4-23-608, R4-23-609(B) through (H), R4-23-610 (A) and (C) through (F), R4-23-611, and R4-23-612.

- D.** The pharmacist-in-charge of a limited-service mail-order pharmacy shall authorize only pharmacists, interns, pharmacy technicians, pharmacy technician trainees, compliance officers, drug inspectors, peace officers acting in their official capacities, support personnel, other persons authorized by law, and other designated personnel to be in the limited-service mail-order pharmacy.
- E.** The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- F.** In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation but not less than five days and a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service mail-order pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container of drugs dispensed from the limited-service mail-order pharmacy.
- G.** The pharmacist-in-charge of a limited-service mail-order pharmacy shall ensure that the written policies and procedures for pharmacy operations and drug distribution include the following:
1. Prescription orders;
  2. Clinical services and drug utilization management for:
    - a. Drug utilization reviews,
    - b. Inventory audits,
    - c. Patient outcome monitoring,
    - d. Drug information, and
    - e. Education of pharmacy and other health professionals;
  3. Duties and qualifications of professional and support staff;
  4. Controlled substances;
  5. Drug product procurement;
  6. Drug compounding, dispensing, and storage;
  7. Patient profiles;
  8. Quality management procedures for:
    - a. Adverse drug reactions,
    - b. Drug recalls,
    - c. Expired and beyond-use-date drugs,
    - d. Medication or dispensing errors, and
    - e. Education of professional and support staff;
  9. Recordkeeping;
  10. Sanitation;
  11. Security;
  12. Drug delivery requirements for:
    - a. Transportation,
    - b. Security,
    - c. Temperature and other environmental controls,
    - d. Emergency provisions, and
  13. Patient education.

**Historical Note**

Adopted effective April 5, 1996 (Supp. 96-2). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 4453, effective December 4, 2004 (Supp. 04-4).

**R4-23-674. Limited-service Long-term Care Pharmacy**

- A.** A limited-service pharmacy permittee shall ensure that the limited-service long-term care pharmacy complies with:
1. The general requirements of R4-23-671;
  2. The professional practice standards of Article 4 and Article 11; and

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3. The permits and drug distribution standards of R4-23-606 through R4-23-612, R4-23-670, and this Section.
- B. If a limited-service long-term care pharmacy permittee contracts with a long-term care facility as a Provider Pharmacy, as defined in R4-23-110, the limited-service long-term care pharmacy permittee shall ensure that the long-term care consultant pharmacist and the pharmacist-in-charge of the limited-service long-term care pharmacy comply with R4-23-701, R4-23-701.01, R4-23-701.02, R4-23-701.03, R4-23-701.04, and this Section.
- C. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that prescription medication is delivered to the patient's long-term care facility or locked in the dispensing area of the pharmacy when a pharmacist is not present in the pharmacy.
- D. The pharmacist-in-charge of a limited-service long-term care pharmacy shall authorize only those individuals listed in R4-23-610(B) to be in the limited-service long-term care pharmacy.
- E. In consultation with the long-term care facility's medical director and director of nursing, the long-term care consultant pharmacist and pharmacist-in-charge of the long-term care facility's provider pharmacy may develop, if necessary, a medication formulary for the long-term care facility that ensures the safe and efficient procurement, dispensing, distribution, administration, and control of drugs in the long-term care facility.
- F. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that the written policies and procedures required in R4-23-671(E) include the following:
  1. Clinical services and drug utilization management for:
    - a. Drug utilization reviews,
    - b. Inventory audits,
    - c. Patient outcome monitoring,
    - d. Drug information, and
    - e. Education of pharmacy and other health professionals;
  2. Controlled substances;
  3. Drug compounding, dispensing, and storage;
  4. Drug delivery requirements for:
    - a. Transportation,
    - b. Security,
    - c. Temperature and other environmental controls, and
    - d. Emergency provisions;
  5. Drug product procurement;
  6. Duties and qualifications of professional and support staff;
  7. Emergency drug supply unit procedures;
  8. Formulary, including development, review, modification, use, and documentation, if applicable;
  9. Patient profiles;
  10. Patient education;
  11. Prescription orders, including:
    - a. Approved abbreviations,
    - b. Stop-order procedures, and
    - c. Leave-of-absence and discharge prescription order procedures;
  12. Quality management procedures for:
    - a. Adverse drug reactions,
    - b. Drug recalls,
    - c. Expired and beyond-use-date drugs,
    - d. Medication or dispensing errors, and
    - e. Education of professional and support staff;
  13. Recordkeeping;
  14. Sanitation; and
  15. Security.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-675. Limited-service Sterile Pharmaceutical Products Pharmacy**

- A. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure that the limited-service sterile pharmaceutical products pharmacy complies with the standards for area, personnel, security, sanitation, equipment, sterile pharmaceutical products, and limited-service pharmacies established in R4-23-608, R4-23-609, R4-23-610, R4-23-611, R4-23-612, R4-23-670, and R4-23-671.
- B. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall authorize only pharmacists, interns, compliance officers, peace officers acting in their official capacities, pharmacy technicians, pharmacy technician trainees, support personnel, and other designated personnel to be in the limited-service sterile pharmaceutical products pharmacy.
- C. The pharmacist-in-charge of a limited-service sterile pharmaceutical products pharmacy shall ensure that prescription medication is delivered to the patient or locked in the dispensing area when a pharmacist is not present in the pharmacy.
- D. In addition to the delivery requirements of R4-23-402, the limited-service pharmacy permittee shall, during regular hours of operation, but not less than a minimum 40 hours per week, provide toll-free telephone service to facilitate communication between patients and a pharmacist who has access to patient records at the limited-service sterile pharmaceutical products pharmacy. The limited-service pharmacy permittee shall disclose this toll-free number on a label affixed to each container dispensed from the limited-service sterile pharmaceutical products pharmacy.
- E. The limited-service pharmacy permittee or the pharmacist-in-charge shall ensure development, implementation, review and revision in the same manner described in R4-23-671(E) and compliance with policies and procedures for pharmacy operations, including pharmaceutical product compounding, dispensing, and distribution, that comply with the requirements of R4-23-402, R4-23-410, R4-23-670, and R4-23-671.
- F. The non-dispensing roles of the pharmacist may include chart reviews, audits, drug therapy monitoring, committee participation, drug information, and in-service training of pharmacy and other health professionals.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3391, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 119 A.A.R. 2895, effective November 10, 2013 (Supp. 13-3).

**R4-23-676. Reserved**

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**R4-23-680. Reserved****R4-23-681. General Requirements for Limited-service Nuclear Pharmacy**

- A. To be an authorized nuclear pharmacist, a pharmacist shall:
  1. Hold a current pharmacist license issued by the Board; and

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2. Be certified as a nuclear pharmacist by:
  - a. The Board of Pharmaceutical Specialties, or
  - b. A similar group recognized by the Arizona State Board of Pharmacy; or
3. Satisfy each of the following requirements:
  - a. Meet minimal standards of training for status as an authorized user of radioactive material, as specified by the Arizona Radiation Regulatory Agency and the United States Nuclear Regulatory Commission;
  - b. Submit certification of completion of a Board-approved nuclear pharmacy training program or other training program recognized by the Arizona Radiation Regulatory Agency, with 200 hours of didactic training in the following areas:
    - i. Radiation physics and instrumentation,
    - ii. Radiation protection,
    - iii. Mathematics pertaining to the use and measurement of radioactivity,
    - iv. Radiation biology, and
    - v. Radiopharmaceutical chemistry;
  - c. Submit evidence of a minimum of 500 hours of clinical/practical nuclear pharmacy training under the supervision of an authorized nuclear pharmacist in the following areas:
    - i. Procuring radioactive materials;
    - ii. Compounding radiopharmaceuticals;
    - iii. Performing routine quality control procedures;
    - iv. Dispensing radiopharmaceuticals;
    - v. Distributing radiopharmaceuticals;
    - vi. Implementing basic radiation protection procedures; and
    - vii. Consulting and educating the nuclear medicine community, patients, pharmacists, other health professionals, and the general public; and
  - d. Submit written certification, signed by a preceptor who is an authorized nuclear pharmacist, that the above training was satisfactorily completed.
- B.** Radiopharmaceuticals are prescription-only drugs that require specialized techniques in their handling and testing, to obtain optimum results and minimize hazards.
  1. A person shall not sell, barter, or otherwise dispose of, or be in possession of any radiopharmaceutical except under the conditions detailed in A.R.S. § 32-1929.
  2. A person shall not manufacture, compound, sell, or dispense any radiopharmaceutical unless the person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist in accordance with A.R.S. § 32-1961 and these rules, with the exception of the following, if the following are licensed by the Arizona Radiation Regulatory Agency to use radiopharmaceuticals in compliance with A.R.S. § 30-673;
    - a. A medical practitioner who administers a radiopharmaceutical to the medical practitioner's patient as provided in A.R.S. § 32-1921(A),
    - b. A hospital nuclear medicine department, and
    - c. A medical practitioner's office.
  3. The Board shall cooperate with the Arizona Radiation Regulatory Agency and other interested state and federal agencies, in the enforcement of these rules for the protection of the public. This cooperation may include exchange of licensing and other information, joint inspections, and other activities where indicated.
- C.** In addition to compliance with all the applicable federal and state laws and rules governing drugs, whether radioactive or not, a limited-service nuclear pharmacy permittee shall comply with all laws and rules of the Arizona Radiation Regulatory Agency and the U.S. Nuclear Regulatory Commission, including emergency and safety provisions.
- D.** A limited-service nuclear pharmacy permittee shall comply with the education, experience, and licensing requirements of the Arizona Radiation Regulatory Agency.
- E.** A limited-service nuclear pharmacy permittee shall ensure that radiopharmaceuticals are transferred only to a person or firm that holds a current Radioactive Materials License issued by the Arizona Radiation Regulatory Agency.

**Historical Note**

Adopted effective December 3, 1974 (Supp. 75-1).  
 Amended subsections (A), (C) and (D) effective Aug. 12, 1988 (Supp. 88-3). Amended effective July 8, 1997 (Supp. 97-3).

**R4-23-682. Limited-service Nuclear Pharmacy**

- A.** Before operating a limited-service nuclear pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, and 32-1931, and R4-23-606.
- B.** A permit to operate a limited-service nuclear pharmacy shall be issued only to a person who is or employs an authorized nuclear pharmacist and holds a current Arizona Radiation Regulatory Agency Radioactive Materials License. A limited-service nuclear pharmacy permittee that fails to maintain a current Arizona Radiation Regulatory Agency Radioactive Materials License shall be immediately suspended pending revocation by the Board. A limited-service nuclear pharmacy permittee shall have copies of Arizona Radiation Regulatory Agency inspection reports available upon request for Board inspection.
  1. A limited-service nuclear pharmacy permittee shall designate an authorized nuclear pharmacist as the pharmacist-in-charge. The pharmacist-in-charge shall be responsible to the Board:
    - a. For the operations of the pharmacy related to the practice of pharmacy and distribution of drugs and devices;
    - b. For communicating Board directives to the management, pharmacists, interns, and other personnel of the pharmacy; and
    - c. For the pharmacy's compliance with all federal and state pharmacy laws and rules.
  2. An authorized nuclear pharmacist shall directly supervise all personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs.
  3. An authorized nuclear pharmacist shall be present whenever the limited-service nuclear pharmacy is open for business.
- C.** A limited-service nuclear pharmacy permittee shall ensure that the limited-service nuclear pharmacy complies with the standards for personnel, area, security, sanitation, and general requirements in R4-23-608, R4-23-609, R4-23-610, R4-23-611, and R4-23-671.
  1. A limited-service nuclear pharmacy shall contain separate areas for:
    - a. Preparing and dispensing radiopharmaceuticals,
    - b. Receiving and shipping radiopharmaceuticals,
    - c. Storing radiopharmaceuticals, and
    - d. Decaying radioactive waste.
  2. The Board may require more than the minimum area in instances where equipment, inventory, personnel, or other factors cause crowding to a degree that interferes with safe pharmacy practice.
- D.** The pharmacist-in-charge shall designate in writing, by title and specific area, the persons who may have access to particular pharmacy areas.

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- E.** A limited-service nuclear pharmacy permittee shall maintain records of acquisition, inventory, and disposition of radiopharmaceuticals, other radioactive substances, and other drugs in accordance with federal and state statutes and rules.
1. A prescription order, in addition to the requirements in A.R.S. § 32-1968(C) and R4-23-407(A), shall contain:
    - a. The date and time of calibration of the radiopharmaceutical,
    - b. The name of the procedure for which the radiopharmaceutical is prescribed, and
    - c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product.
  2. The lead container used to store and transport a radiopharmaceutical shall have a label that, in addition to the requirements in A.R.S. § 32-1968(D), includes:
    - a. The date and time of calibration of the radiopharmaceutical,
    - b. The name of the radiopharmaceutical,
    - c. The molybdenum 99 content to USP limits,
    - d. The name of the procedure for which the radiopharmaceutical is prescribed,
    - e. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product,
    - f. The words "Caution: Radioactive Material," and
    - g. The standard radiation symbol.
  3. The radiopharmaceutical container shall have a label that includes:
    - a. The date and time of calibration of the radiopharmaceutical;
    - b. The name of the patient, recorded before dispensing, if the radiopharmaceutical is therapeutic or for a blood product;
    - c. The words "Physician's Use Only" instead of the name of the patient if the radiopharmaceutical is nontherapeutic or for a nonblood product;
    - d. The name of the radiopharmaceutical;
    - e. The dose of radiopharmaceutical;
    - f. The serial number;
    - g. The words "Caution: Radioactive Material"; and
    - h. The standard radiation symbol.
- F.** The following minimum requirements are in addition to the requirements of the Arizona Radiation Regulatory Agency, the applicable U.S. Nuclear Regulatory Commission regulations, and the applicable regulations of the federal Food and Drug Administration. A limited-service nuclear pharmacy permittee shall provide:
1. In addition to the minimum pharmacy area requirements in R4-23-609:
    - a. An area for the storing, compounding, and dispensing of radiopharmaceuticals completely separate from pharmacy areas for nonradioactive drugs;
    - b. A minimum of 80 sq. ft. for a hot lab and storage area; and
    - c. A minimum of 300 sq. ft. of compounding and dispensing area;
  2. The following equipment:
    - a. Fume hood, approved by the Arizona Radiation Regulatory Agency;
    - b. Laminar flow hood;
    - c. Dose calibrator;
    - d. Refrigerator;
    - e. Prescription balance, Class A, and weights or an electronic balance of equal or greater accuracy;
    - f. Well scintillation counter;
    - g. Incubator oven;
    - h. Microscope;
    - i. An assortment of labels, including prescription labels and cautionary and warning labels;
    - j. Glassware necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
    - k. Other equipment necessary for radiopharmaceutical quality control for products compounded or dispensed as required by the Arizona Radiation Regulatory Agency;
    - l. Current antidote and drug interaction information; and
    - m. Regional poison control phone number prominently displayed in the pharmacy area;
  3. Supplies necessary for compounding and dispensing radiopharmaceuticals as required by the Arizona Radiation Regulatory Agency;
  4. A professional reference library consisting of a minimum of one current reference or text addressing each of the following subject areas:
    - a. Therapeutics,
    - b. Nuclear pharmacy practice, and
    - c. Imaging;
  5. Current editions and supplements of:
    - a. A.R.S. §§ 30-651 through 30-696 pertaining to the Arizona Radiation Regulatory Agency,
    - b. Rules of the Arizona Radiation Regulatory Agency,
    - c. Regulations of the federal Food and Drug Administration pertaining to radioactive drugs,
    - d. Arizona Pharmacy Act and rules,
    - e. Arizona Uniform Controlled Substances Act, and
    - f. Radiological Health Handbook.
- G.** The pharmacist-in-charge of a limited-service nuclear pharmacy shall prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for pharmacy operations and drug distribution.
- H.** The written policies and procedures of a limited-service nuclear pharmacy shall include the following:
1. Prescription orders;
  2. Clinical services and drug utilization management including:
    - a. Drug utilization reviews,
    - b. Inventory audits,
    - c. Patient outcome monitoring,
    - d. Drug information, and
    - e. Education of pharmacy and other health professionals;
  3. Duties and qualifications of professional and support staff;
  4. Radioactive material handling, storage, and disposal;
  5. Drug product procurement;
  6. Drug compounding, dispensing, and storage;
  7. Investigational drugs and their protocols;
  8. Patient profiles;
  9. Quality management procedures for:
    - a. Adverse drug reaction reports;
    - b. Drug recall;
    - c. Expired and beyond-use-date drugs;
    - d. Medication or dispensing errors;
    - e. Radiopharmaceutical quality assurance;
    - f. Radiological health and safety;
    - g. Drug storage and disposition; and
    - h. Education of professional staff, support staff, and patients;

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10. Recordkeeping;
11. Sanitation;
12. Security;
13. Drug delivery requirements for:
  - a. Transportation,
  - b. Security,
  - c. Radiological health and safety procedures,
  - d. Temperature and other environmental controls, and
  - e. Emergency provisions; and
14. Patient education.

**Historical note**

Adopted effective July 8, 1997 (Supp. 97-3). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3).

**R4-23-683. Reserved**

through

**R4-23-690. Reserved****R4-23-691. Repealed****Historical Note**

Adopted effective Dec. 3, 1974 (Supp. 75-1). Amended effective Aug. 12, 1988 (Supp. 88-3). Amended effective November 1, 1993 (Supp. 93-4). Repealed effective July 8, 1997 (Supp. 97-3).

**R4-23-692. Compressed Medical Gas (CMG) Distributor-Resident or Nonresident****A. Permit.**

1. A person shall not manufacture, process, transfill, package, or label a compressed medical gas in Arizona, or manufacture, process, transfill, package, or label a compressed medical gas outside Arizona and ship into Arizona without a current Board-issued resident or nonresident compressed medical gas distributor permit.
2. Before operating as a compressed medical gas distributor, a person shall register with the FDA as a medical gas manufacturer and comply with the drug listing requirements of the federal act.

**B. Application.** To obtain a resident or nonresident CMG distributor permit, a person shall submit a completed application form and fee as specified in R4-23-602.

1. A resident CMG distributor permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
2. A nonresident CMG distributor permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.

**C. Notification.** A resident or nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, e-mail address, mailing address, or name of business.**D. Change of ownership.** No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).**E. Relocation.**

1. No less than 30 days before an existing resident CMG distributor permittee relocates, the permittee shall submit a completed application for relocation electronically or

manually on a form furnished by the Board, and the documentation required in subsection (B).

2. A nonresident CMG distributor permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.

**F. A resident or nonresident CMG distributor permittee shall sell or distribute a compressed medical gas pursuant to a compressed medical gas order only to durable medical equipment and compressed medical gas suppliers and other entities that are registered, licensed, or permitted to use, administer, or distribute compressed medical gases.****G. Facility.** A resident or nonresident CMG distributor permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access.**H. Current Good Manufacturing Practice:** A resident or nonresident CMG distributor permittee shall comply with the current good manufacturing practice requirements of 21 CFR parts 210 and 211, (Revised April 1, 2013, incorporated by reference and on file with the Board and available at [www.gpo.gov](http://www.gpo.gov). This incorporated material includes no future editions or amendments).**I. Records:** A resident or nonresident CMG distributor permittee shall establish and implement written procedures for maintaining records pertaining to production, transfilling, process control, labeling, packaging, quality control, distribution, returns, recalls, training of personnel, complaints, and any information required by federal or state law.

1. A permittee shall retain the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 for not less than three years or one year after the expiration date of the compressed medical gas, whichever is longer.
2. A permittee shall make the records required by Section R4-23-601, this Section, and 21 CFR parts 210 and 211 available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable, shall provide the records within four working days of a request by the Board or its compliance officer.

**J. Inspection.**

1. A resident CMG distributor permittee shall make the CMG distributor's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
2. Within ten days from the date of a request by the Board or its staff, a nonresident CMG distributor permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority or the FDA, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.

**K. Permit renewal.** Permit renewal shall be as specified in R4-23-602(D).**L. Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.****Historical Note**

Adopted effective January 12, 1998 (Supp. 98-1). Amended by final rulemaking at 19 A.A.R. 97, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 20 A.A.R. 1364, effective August 2, 2014



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(Supp. 14-2).

**R4-23-693. Durable Medical Equipment (DME) and Compressed Medical Gas (CMG) Supplier-Resident or Nonresident**

**A.** Permit. A person shall not sell, lease, or supply durable medical equipment or a compressed medical gas to a patient or consumer in Arizona for use in a home or residence without a current Board-issued resident or nonresident durable medical equipment and compressed medical gas supplier permit.

1. The permit requirements of this Section shall not apply to the following unless there is a separate business entity engaged in the business of providing durable medical equipment or a compressed medical gas to a patient or consumer for use in a home or residence:

- a. A medical practitioner licensed under A.R.S. Title 32;
- b. A hospital, long-term care facility, hospice, or other health care facility using durable medical equipment or a compressed medical gas in the normal course of treating a patient; and
- c. A pharmacy.

2. Nothing in this Section shall be construed to prohibit a person with a current Board-issued nonprescription drug permit from the retail sale of nonprescription drugs or devices.

**B.** Application. To obtain a resident or nonresident DME and CMG supplier permit, a person shall submit a completed application form and fee as specified in R4-23-602.

1. A resident DME and CMG supplier permit applicant shall include documentation of compliance with local zoning laws, if required by the Board.
2. A nonresident DME and CMG supplier permit applicant that resides in a jurisdiction that issues an equivalent license or permit shall include a copy of the equivalent license or permit.

**C.** Notification. A resident or nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office within ten days of changes involving the telephone number, facsimile number, email address, mailing address, or name of business.

**D.** Change of ownership. No less than 14 days before a change of ownership occurs that involves changes of stock ownership of 30% or more of the voting stock of a corporation or an existing and continuing corporation that is not actively traded on any securities market or over-the-counter market, the prospective owner shall submit a completed application form and fee as specified in subsection (B).

**E.** Relocation.

1. No less than 30 days before an existing resident DME and CMG supplier permittee relocates, the permittee shall submit a completed application for relocation electronically or manually on a form furnished by the Board, and the documentation required in subsection (B).
2. A nonresident DME and CMG supplier permittee shall provide written notice by mail, facsimile, or e-mail to the Board office no less than ten days before relocating.

**F.** Orders. A resident or nonresident DME and CMG supplier shall sell, lease, or provide:

1. Durable medical equipment that is a prescription-only device as defined in A.R.S. § 32-1901(75) only pursuant to a prescription order or medication order from a medical practitioner; and
2. A compressed medical gas only pursuant to a compressed medical gas order from a medical practitioner.

**G.** Restriction. A DME and CMG supplier permit shall authorize the permittee to procure, possess, and provide a prescription-only device or compressed medical gas to a patient or con-

sumer as specified in subsection (F). A DME and CMG supplier permit does not authorize the permittee to procure, possess, or provide narcotics or other controlled substances, prescription-only drugs other than compressed medical gases, precursor chemicals, or regulated chemicals.

**H.** Facility. A resident or nonresident DME and CMG supplier permittee shall ensure the facility is clean, uncluttered, sanitary, temperature controlled, and secure from unauthorized access. A permittee shall maintain separate and identified storage areas in the facility and in the delivery vehicles for clean, dirty, contaminated, or damaged durable medical equipment or compressed medical gases.

**I.** A resident or nonresident DME and CMG supplier permittee shall not manufacture, process, transfill, package, or label a compressed medical gas, except as set forth in subsection (J).

**J.** Records. A resident or nonresident DME and CMG supplier permittee shall establish and implement written procedures for maintaining records pertaining to acquisition, distribution, returns, recalls, training of personnel, maintenance, cleaning, and complaints. A permittee shall:

1. Ensure that a prescription order, medication order, or compressed medical gas order is obtained as specified in subsection (F);
2. Ensure that each compressed medical gas container supplied by the permittee contains a label bearing the name and address of the permittee;
3. Ensure that all appropriate warning labels are present on the durable medical equipment or compressed medical gas;
4. Retain the records required by Section R4-23-601 and this Section for not less than three years, or if supplying a compressed medical gas, one year after the expiration date of the compressed medical gas, whichever is longer; and
5. Make the records required by Section R4-23-601 and this Section available on inspection by the Board or its compliance officer, or if stored in a centralized recordkeeping system apart from the inspection location and not electronically retrievable for inspection, shall provide the records within four working days of a request by the Board or its staff.

**K.** Inspection.

1. A resident DME and CMG supplier permittee shall make the DME and CMG supplier's facility available for inspection by the Board or its compliance officers under A.R.S. § 32-1904.
2. Within ten days from the date of a request by the Board or its staff, a nonresident DME and CMG supplier permittee shall provide a copy of the most recent inspection report completed by the permittee's resident licensing authority, or a copy of the most recent inspection report completed by a third-party auditor approved by the permittee's resident licensing authority or the Board or its designee. The Board may inspect, or may employ a third-party auditor to inspect, a nonresident permittee as specified in A.R.S. § 32-1904.

**L.** Permit renewal. Permit renewal shall be as specified in R4-23-602(D).

**M.** Nothing in this Section shall be construed to prohibit the emergency administration of oxygen by licensed health care personnel, emergency medical technicians, first responders, fire fighters, law enforcement officers, and other emergency personnel trained in the proper use of emergency oxygen.

**Historical Note**

Adopted effective January 12, 1998 (Supp. 98-1).

Amended by final rulemaking at 20 A.A.R. 1364, effec-

tive August 2, 2014 (Supp. 14-2).

## ARTICLE 7. NON-PHARMACY LICENSED OUTLETS – GENERAL PROVISIONS

### R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist

- A.** The long-term care consultant pharmacist as defined in R4-23-110 shall:
1. Possess a valid Arizona pharmacist license issued by the Board;
  2. Ensure the provision of pharmaceutical patient care services as defined in R4-23-110;
  3. Review the distribution and storage of drugs and devices and assist the facility in establishing policies and procedures for the distribution and storage of drugs and devices;
  4. Provide resident evaluation programs that relate to monitoring the therapeutic response and utilization of all drugs and devices prescribed or administered to residents, using as guidelines the most current indicators established by the Centers for Medicare and Medicaid Services, United States Department of Health and Human Services as required in 42 CFR 483.60 (revised October 1, 2010, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.);
  5. Serve as a resource for pharmacy-related education services within the facility;
  6. Participate in quality management of resident care in the facility; and
  7. Communicate with the provider pharmacy regarding areas of mutual concern and resolution.
- B.** A long-term care consultant pharmacist shall ensure that:
1. When a provider pharmacy is not open for business, arrangements are made in advance by the long-term care consultant pharmacist, in cooperation with the pharmacist-in-charge of the provider pharmacy and the director of nursing and medical staff of the long-term care facility, for providing emergency drugs for the licensed nursing staff to administer to the residents of the facility using an emergency drug supply unit located at the facility;
  2. The label and packaging of prescription-only and nonprescription drugs intended for use within a long-term care facility complies with state and federal law; and
  3. The long-term care facility:
    - a. Stores controlled substances listed in A.R.S. § 36-2513 in a separately locked and permanently affixed compartment, unless the facility uses a single-unit package medication distribution system; and
    - b. Maintains accurate records of controlled substance administration or ultimate disposition.
- C.** The long-term care consultant pharmacist shall:
1. Ensure availability of records and reports designed to provide the data necessary to evaluate the drug use of each long-term care facility resident that include the following:
    - a. Provider pharmacy patient profiles and long-term care facility medication administration records;
    - b. Reports of suspected adverse drug reactions;
    - c. Inspection reports of drug storage areas with emphasis on detecting outdated drugs; and
    - d. Accountability reports, that include:
      - i. Date and time of administration,
      - ii. Name of the person who administered the drug,
      - iii. Documentation and verification of any wasted or partial doses,

- iv. Exception reports for refused doses, and
  - v. All drug destruction forms; and
2. Identify and report drug irregularities and dispensing errors to the prescriber, the director of nursing of the facility, and the provider pharmacy.
- D.** A long-term care consultant pharmacist or pharmacist-in-charge of a provider pharmacy shall ensure that:
1. Discontinued or outdated drugs, including controlled substances, are destroyed or disposed of in a timely manner using methods consistent with federal, state, and local requirements and subject to review by the Board or its staff; and
  2. Drug containers with illegible or missing labels are:
    - a. Identified; and
    - b. Replaced or relabeled by a pharmacist employed by the pharmacy that dispensed the prescription medication.

#### Historical Note

Former Rules 6.8110, 6.8120, 6.8130, 6.8140, 6.8150, 6.8160, and 6.8170; Amended effective Aug. 10, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

### R4-23-701.01. Long-term Care Facilities Pharmacy Services: Provider Pharmacy

The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:

1. A prescription medication is provided only by a valid prescription order for an individual long-term care facility resident, properly labeled for that resident, as specified in this subsection. Nothing in this Section shall prevent a provider pharmacy from supplying nonprescription drugs in a manufacturer's unopened container or emergency drugs using an emergency drug supply unit as specified in R4-23-701.02;
2. A prescription medication label for a long-term care facility resident complies with A.R.S. §§ 32-1968 and 36-2525 and contains:
  - a. The drug name, strength, dosage form, and quantity; and
  - b. The beyond-use-date;
3. Only a pharmacist employed by the pharmacy that dispensed the prescription medication may, through the exercise of professional judgment, relabel or alter a prescription medication label that is illegible or missing;
4. The provider pharmacy develops and implements drug recall policies and procedures that protect the health and safety of facility residents. The drug recall procedures shall include immediate discontinuation of any patient level recalled drug and notification of the prescriber and director of nursing of the facility; and
5. Drugs previously dispensed to a resident of the long-term care facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, are not repackaged.

#### Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

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**R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency Drugs**

A. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:

1. An emergency drug supply unit is available within the long-term care facility;
2. Drugs contained in an emergency drug supply unit remain the property of the provider pharmacy; and
3. Controlled substance drugs contained in an emergency drug supply unit are included in all inventories required under A.R.S. § 36-2523(B) and R4-23-1003(A).

B. An emergency drug supply unit shall meet the following criteria:

1. The drugs are necessary to meet the immediate and emergency therapeutic needs of long-term care facility residents as determined by the provider pharmacy's pharmacist-in-charge in consultation with the long-term care facility's medical director and nursing director;
2. The purpose of the emergency drug supply unit in a long-term care facility is not to relieve a provider pharmacy of the responsibility for timely provision of the resident's routine drug needs, but to ensure that an emergency drug supply unit is available for facility residents in need of immediate and emergency therapeutic drugs; and
3. The drugs are provided in a manufacturer's unit of use package or are prepackaged and labeled to include the drug name, strength, dosage form, manufacturer, lot number, and expiration date and provider pharmacy's name, address, telephone number, and pharmacist's initials.

C. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that an emergency drug supply unit:

1. Is stored in an area that:
  - a. Is temperature controlled; and
  - b. Prevents unauthorized access;
2. Contains on the exterior of the emergency drug supply unit a label to indicate that the contents are for emergency use only;
3. Contains on the exterior of the emergency drug supply unit a complete list of the contents of the unit by drug name, strength, dosage form, and quantity and the provider pharmacy's name, address, and telephone number;
4. Contains on the exterior of the emergency drug supply unit a label that indicates the date of the earliest drug expiration date;
5. Contains on the exterior of the emergency drug supply unit a label that indicates the date of and pharmacist responsible for the last inspection of the emergency drug supply unit; and
6. Is secured with a tamper-evident seal, or is locked and sealed in a manner that obviously reveals when the unit has been opened or tampered with.

D. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:

1. Prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for the storage and use of an emergency drug supply unit in a long-term care facility;
2. Make the policies and procedures available in the provider pharmacy and long-term care facility for employee reference and inspection by the Board or its staff;
3. Ensure that the written policies and procedures include the following:
  - a. Drug removal procedures that require:

- i. The long-term care facility's personnel receive a valid prescription order for each drug removed from the emergency drug supply unit;
- ii. The long-term care facility's personnel notify the provider pharmacy when a drug is removed from the emergency drug supply unit;

- b. Outdated drug replacement procedures; and
- c. Security and inspection procedures;

4. Exchange or restock the emergency drug supply unit weekly, or more often as necessary, to ensure the availability of an adequate supply of emergency drugs within the long-term care facility. Restocking of the emergency drug supply unit at the facility shall be completed by an Arizona licensed pharmacist employed by the provider pharmacy, or by an Arizona licensed intern, graduate intern, technician or technician trainee under the direct onsite supervision of an Arizona licensed pharmacist; and
5. Educate pharmacy and long-term care facility personnel in the storage and use of an emergency drug supply unit.

E. In addition to the requirements of subsections (A) through (D), an automated emergency drug supply unit may be used provided:

1. The pharmacy permittee or pharmacist-in-charge of the provider pharmacy notifies the Board or its staff in writing of the intent to use an automated emergency drug supply unit, including the name and type of unit;
2. The provider pharmacy is notified electronically when the automated emergency drug supply unit has been accessed;
3. All events involving the access of the automated emergency drug supply unit are recorded electronically and maintained for not less than two years;
4. The provider pharmacy is capable of producing a report of all transactions of the automated emergency drug supply unit including a single drug usage report as required in R4-23-408(B)(5) on inspection by the Board or its staff;
5. The provider pharmacy develops written policies and procedures for:
  - a. Accessing the automated emergency drug supply unit in the event of a system malfunction or downtime;
  - b. Authorizing and modifying user access;
  - c. An ongoing quality assurance program that includes:
    - i. Training in the use of the automated emergency drug supply unit for all authorized users;
    - ii. Maintenance and calibration of the automated emergency drug supply unit as recommended by the device manufacturer; and
6. Documentation of the requirements of subsection (E)(5)(c)(ii) is maintained for inspection by the Board or its staff for not less than two years.

F. The Board may prohibit a pharmacy permittee or pharmacist-in-charge of a provider pharmacy from using an automated emergency drug supply unit if the pharmacy permittee or pharmacy permittee's employees do not comply with the requirements of subsections (A) through (E).

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-701.03. Long-term Care Facilities Pharmacy Ser-**

**vices: Emergency Drug Prescription Order**

The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that every emergency drug prescription order is evaluated according to the requirements of R4-23-402(A) by a pharmacist within 72 hours of the first dose of drug administered by long-term care facility personnel under the emergency drug prescription order.

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 9 A.A.R. 1064, effective  
May 4, 2003 (Supp. 03-1).

**R4-23-701.04. Long-term Care Facilities Pharmacy Services: Automated Dispensing Systems**

- A.** Before using an automated dispensing system as defined in R4-23-110, a pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
  1. Notify the Board or its staff in writing of the intent to use an automated dispensing system, including the name and type of system;
  2. Obtain a separate controlled substances registration at the location of each long-term care facility at which an automated dispensing system containing controlled substances will be located as required by federal law; and
  3. Maintain copies of the registrations required under subsection (A)(2) at the provider pharmacy for inspection by the Board or its staff.
- B.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure:
  1. Drugs contained in an automated dispensing system remain the property of the provider pharmacy,
  2. Controlled substance drugs contained in an automated dispensing system are included in all inventories required under A.R.S. § 36-2523(B) and R4-23-1003(A),
  3. Schedule II drugs are not stocked in an automated dispensing system, and
  4. A separate emergency drug supply unit is available in the long-term care facility to meet the requirements of R4-23-701.02.
- C.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
  1. Ensure that policies and procedures as required in subsection (D) for the use of an automated dispensing system in a long-term care facility are prepared, implemented, and complied with;
  2. Review biennially and, if necessary, revise the policies and procedures required under subsection (D);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside of the pharmacy where the automated dispensing system is used.
- D.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure the written policies and procedures include:
  1. Drug removal procedures that include the following:
    - a. A drug is provided only by a valid prescription order for an individual long-term care facility resident;
    - b. A drug is dispensed from an automated dispensing system only after a pharmacist has:
      - i. Reviewed and verified the resident's prescription order as required by R4-23-402(A), and
      - ii. Electronically authorized the access for that drug for that particular resident, and
  - c. The automated dispensing system labels each individual drug packet with a resident specific label that complies with R4-23-701.01(2) and contains the resident's room number or facility identification number; and
2. Security procedures that include the following:
  - a. The pharmacy permittee or pharmacist-in-charge of the provider pharmacy is responsible for authorizing user access, including adding and removing users and modifying user access;
  - b. Each authorized user is a licensee of the Board or authorized licensed personnel of the long-term care facility; and
  - c. The automated dispensing system is secured at the long-term care facility by electronic or mechanical means or a combination thereof designed to prevent unauthorized access;
3. Drug stocking procedures that include the following:
  - a. Automated dispensing systems that use non-removable containers that do not allow prepackaging of the container as set out in subsection (D)(3)(b):
    - i. Are stocked at the long-term care facility by an Arizona licensed pharmacist employed by the provider pharmacy, or by an Arizona licensed intern, graduate intern, technician or technician trainee under the direct onsite supervision of an Arizona licensed pharmacist; and
    - ii. Utilize bar code or other technologies to ensure the correct drug is placed in the correct canister or container; and
  - b. Automated dispensing systems that use removable containers may be stocked at the long-term care facility by an authorized user provided:
    - i. The prepackaging of the container occurs at the provider pharmacy;
    - ii. A pharmacist verifies the container has been properly filled and labeled, and the container is secured with a tamper-evident seal;
    - iii. The individual containers are transported to the long-term care facility in a secure, tamper-evident shipping container; and
    - iv. The automated dispensing system uses microchip, bar-coding, or other technologies to ensure the containers are accurately loaded in the automated dispensing system; and
4. Recordkeeping and report procedures that include the following:
  - a. All events involving the access of the automated dispensing system are recorded electronically and maintained for not less than two years;
  - b. The provider pharmacy is capable of producing a report of all transactions of the automated dispensing system including:
    - i. A single drug usage report that complies with R4-23-408(B)(5); and
    - ii. An authorized user history including date and time of access and type of transaction; and
  - c. The provider pharmacy has procedures to safeguard the storage, packaging, and distribution of drugs by monitoring:
    - i. Current inventory;
    - ii. Expiration dates;
    - iii. Controlled substance dispensing;
    - iv. Re-dispense requests; and
    - v. Wastage.

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- E. A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Ensure that an electronic log is kept for each container fill that includes:
    - a. An identification of the container by drug name and strength, and container number;
    - b. The drug's manufacturer or National Drug Code (NDC) number;
    - c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the container. If multiple lot numbers of the same drug are added to a container, each lot number and expiration date shall be documented;
    - d. The date the container is filled;
    - e. Documentation of the identity of the licensee who placed the drug into the container; and
    - f. If the licensee who filled the container is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee; and
  2. Maintain the electronic log for inspection by the Board or its staff for not less than two years.
- F. A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Implement an ongoing quality assurance program that monitors performance of the automated dispensing system and compliance with the established policies and procedures that includes:
    - a. Training in the use of the automated dispensing system for all authorized users,
    - b. Maintenance and calibration of the automated dispensing system as recommended by the device manufacturer,
    - c. Routine accuracy validation testing no less than every three months, and
    - d. Downtime and malfunction procedures to ensure the timely provision of medication to the long-term care facility resident, and
  2. Maintain documentation of the requirements of subsections (F)(1)(b) and (F)(1)(c) for inspection by the Board or its staff for not less than two years.
- G. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated dispensing system in a long-term care facility if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A) through (F).

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-702. Hospice Inpatient Facilities**

- A. If a pharmacy permittee contracts to provide pharmacy services to the patients of a hospice inpatient facility as defined in R4-23-110, the pharmacy permittee shall ensure that:
1. A prescription medication is provided only by a valid prescription order for an individual hospice inpatient facility patient, properly labeled for that patient, as specified in this subsection. Nothing in this section shall prevent a provider pharmacy from supplying non-prescription drugs in a manufacturer's unopened container;
  2. A prescription medication label for a hospice inpatient facility patient complies with A.R.S. §§ 32-1968 and 36-2525 and contains:
    - a. The drug name, strength, dosage form, and quantity; and
    - b. The beyond-use date; and
3. If the label on the hospice inpatient facility patient's drug container becomes damaged or soiled, a pharmacist employed by the pharmacy that dispensed the drug container, through the exercise of professional judgment, may relabel the drug container. Only a pharmacist is permitted to label a drug container or alter the label of a drug container.
- B. A pharmacist may help hospice inpatient facility personnel develop written policies and procedures for the procurement, administration, storage, control, recordkeeping, and disposal of drugs in the facility.
- C. The provider pharmacy may contract with the hospice inpatient facility to provide pharmacist services at the facility that include evaluation of the patient's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.
- D. A provider pharmacy that places an emergency drug supply unit at a hospice inpatient facility shall comply with the requirements of R4-23-701.02.
- E. A pharmacy shall not place an automated dispensing system as defined in R4-23-701.04 in a hospice inpatient facility.
- F. Drugs previously dispensed to a patient of the hospice inpatient facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, shall not be repackaged.

**Historical Note**

Former Rules 6.8210, 6.8211, 6.8212, 6.8213, 6.8214, 6.8221, 6.8222, 6.8223, 6.8824, 6.8231, 6.8232, 6.8233, 6.8241, 6.8242, and 6.8243; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-703. Assisted Living Facilities**

- A. Assisted living facilities are licensed by the state Department of Health Services.
- B. A pharmacy shall:
1. Only dispense, sell, or deliver a prescription or nonprescription drug to an assisted living facility resident after receiving a prescription order for the drug from the resident's medical practitioner;
  2. Label, in accordance with A.R.S. §§ 32-1963.01, 32-1968, and 36-2525, all drugs dispensed, sold, or delivered to an assisted living facility resident;
  3. Obtain a copy of the current Arizona Department of Health Services license issued to an assisted living facility before dispensing drugs to that facility's resident; and
  4. Maintain, for inspection by a Board compliance officer, a file containing the license copy required in subsection (B)(3).
- C. In addition to the labeling requirements of A.R.S. §§ 32-1963.01, 32-1968, and 36-2525, the label on a prescription medication for an assisted living facility resident shall include the name, strength, and quantity of the drug and a beyond-use date.
- D. If the label on an assisted living facility resident's drug container becomes damaged or soiled, a pharmacist employed by the pharmacy that dispensed the drug container, through the exercise of professional judgment, may relabel the drug container. Only a pharmacist is permitted to label a drug container or alter the label of a drug container.
- E. A pharmacist may help assisted living facility personnel to develop written policies and procedures for the procurement, administration, storage, control, recordkeeping, and disposal of drugs in the facility and provide other information concern-

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ing drugs that assisted living facilities should have for safe and effective supervision of drug self-administration.

- F. A pharmacy shall not place an emergency drug supply unit as defined in R4-23-701.02 or an automated dispensing system as defined in R4-23-701.04 in an assisted living facility.
- G. Drugs previously dispensed to a resident of the assisted living facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, shall not be repackaged.

**Historical Note**

Former Rules 6.8310, 6.8320, 6.8330, 6.8340, 6.8350, 6.8360, and 6.8370; Amended effective August 10, 1978 (Supp. 78-4). Amended by final rulemaking at 5 A.A.R. 2561, effective July 16, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-704. Customized Patient Medication Packages**

In lieu of dispensing two or more prescribed drugs in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, the prescriber, or the facility caring for the patient, provide a customized patient medication package. The pharmacist preparing a customized patient medication package shall abide by the guidelines set forth in the current edition of the official compendium for labeling, packaging, and recordkeeping, and state and federal law.

**Historical Note**

Former Rules 6.8410, 6.8411, 6.8412, 6.8413, 6.8414, 6.8415, 6.8416, and 6.8417. Section R4-23-704 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-705. Repealed****Historical Note**

Former Rules 6.8420, 6.8421, 6.8422, 6.8423, 6.8424, 6.8425, 6.8426, 6.8427, 6.8428, and 6.8429. Amended effective August 10, 1978 (Supp. 78-4). Amended effective August 24, 1992 (Supp. 92-3). Repealed effective December 18, 1992 (Supp. 92-4).

**R4-23-706. Repealed****Historical Note**

Former Rules 6.8431, 6.8432, 6.8433, 6.8434, 6.8435, 6.8436, and 6.8437; Amended effective August 10, 1978 (Supp. 78-4). Amended subsections (C), (E), (F), and (G) effective April 20, 1982 (Supp. 82-2). Section R4-23-706 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**R4-23-707. Repealed****Historical Note**

Former Rules 6.8441, 6.8442, 6.8450, 6.8451, 6.8452, 6.8453, 6.8454, 6.8455, 6.8456, and 6.8457. Section R4-23-707 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**R4-23-708. Repealed****Historical Note**

Former Rules 6.8461, 6.8462, 6.8463, and 6.8464. Section R4-23-708 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**R4-23-709. Repealed****Historical Note**

Former Rules 6.8471, 6.8472, and 6.8473. Section R4-

23-709 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1).

**ARTICLE 8. DRUG CLASSIFICATION**

*Article 8, consisting of Sections R4-23-801 and R4-23-802, recodified from Article 5 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).*

**R4-23-801. Dietary Supplements**

A person who sells, distributes, or provides a product that is labeled as a dietary supplement and is labeled or marketed as a treatment for any deficiency disease, for the correction of any symptom of disease, or for the prevention, mitigation, or cure of any disease, either by direct statement or by inference, is selling, distributing, or providing a drug and is subject to the requirements of A.R.S. Title 32, Chapter 18 and 4 A.A.C. 23.

**Historical Note**

Former Rules 7.1110, 7.1120, and 7.1130. Repealed effective November 4, 1998 (Supp. 98-4). Recodified from R4-23-501 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

**R4-23-802. Veterinary**

Veterinary preparation: A veterinary drug manufacturer or supplier may distribute:

1. A prescription-only veterinary drug to:
  - a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
  - b. A full-service drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
  - c. A pharmacy permitted under A.R.S. Title 32, Chapter 18, and
2. A nonprescription veterinary drug to:
  - a. A veterinary medical practitioner licensed under A.R.S. Title 32, Chapter 21,
  - b. A nonprescription drug retailer permitted under A.R.S. Title 32, Chapter 18,
  - c. A full-service or nonprescription drug wholesaler permitted under A.R.S. Title 32, Chapter 18, or
  - d. A pharmacy permitted under A.R.S. Title 32, Chapter 18.

**Historical Note**

Former Rules 7.1210, 7.1220, and 7.1230. Repealed effective November 4, 1998 (Supp. 98-4). Recodified from R4-23-502 at 9 A.A.R. 4011, effective August 18, 2003 (Supp. 03-3).

**R4-23-803. Repealed****Historical Note**

Former Rules 7.1300, 7.1400, 7.1500, and 7.1000. Repealed effective November 4, 1998 (Supp. 98-4).

**R4-23-804. Repealed****Historical Note**

Former Rules 7.2100, 7.2200, 7.2300, 7.2410, 7.2420, and 7.2430. Repealed effective November 4, 1998 (Supp. 98-4).

**ARTICLE 9. PENALTIES AND MISCELLANEOUS****R4-23-901. Penalty for Violations**

Any person, firm, or corporation violating any provision of 4 A.A.C. 23 is subject to the penalties in A.R.S. § 32-1996. In addition, a license or permit issued under the provisions of A.R.S. Title 32, Chapter 18 is subject to suspension or revocation for violation of 4 A.A.C. 23.

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**Historical Note**

Former Rule 9.0000. Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

# **ARTICLE 10. UNIFORM CONTROLLED SUBSTANCES AND DRUG OFFENSES**

**R4-23-1001. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Section repealed by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

**R4-23-1002. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Repealed effective November 4, 1998 (Supp. 98-4).

**R4-23-1003. Records and Order Forms****A. Records.**

1. If the pharmacist-in-charge of a pharmacy is replaced by another pharmacist-in-charge, the new pharmacist-in-charge shall complete an inventory of all controlled substances in the pharmacy within 10 days of assuming the responsibility. This inventory and any other required controlled substance inventory shall:
  - a. Include an exact count of all Schedule II controlled substances;
  - b. Include an exact count of all Schedule III through Schedule V controlled substances or an estimated count if the stock container contains fewer than 1001 units;
  - c. Indicate the date the inventory is taken and whether the inventory is taken before opening of business or after close of business for the pharmacy;
  - d. Be signed by:
    - i. The pharmacist-in-charge; or
    - ii. For other required inventories, the pharmacist who does the inventory;
      - e. Be kept separately from all other records; and
      - f. Be available in the pharmacy for inspection by the Board or its designee for not less than three years.
2. A loss of a controlled substance shall be reported:
  - a. Within 10 days of discovery;
  - b. On a DEA form 106;
  - c. By the pharmacist-in-charge of a pharmacy or a manufacturer;
  - d. By the permittee or designated representative of a full-service wholesaler; and
  - e. To the federal Drug Enforcement Administration (DEA), the Narcotic Division of the Department of Public Safety (DPS), and the Board of Pharmacy. A copy of the DEA form 106 shall be kept on file by the pharmacy permittee. The DEA form 106 shall state whether the police investigated the loss.
3. Every person manufacturing any controlled substance, including repackaging or relabeling, shall record and retain for not less than three years the manufacturing, repackaging, or relabeling date for each controlled substance.
4. Every person receiving, selling, delivering, or disposing of any controlled substance shall record and retain for not less than three years the following information:
  - a. The name, strength, dosage form, and quantity of each controlled substance received, sold, delivered, or disposed;

- b. The name, address, and DEA registration number of the person from whom each controlled substance is received;
  - c. The name, address, and DEA registration number of the person to whom each controlled substance is sold or delivered or who disposes of each controlled substance; and
  - d. The date of each transaction.
5. A full-service drug wholesale permittee or the designated representative shall complete an inventory of all controlled substances in the manner prescribed in subsection (A)(1). The permittee or designated representative shall conduct this inventory:
    - a. On May 1 of each year or as directed by the Board; and
    - b. If there is a change of ownership, or discontinuance of business, or within 10 days of a change of a designated representative.
  6. A drug manufacturer permittee or the pharmacist-in-charge shall complete an inventory of all controlled substances in the manner prescribed in subsection (A)(1). The permittee or pharmacist-in-charge shall conduct this inventory:
    - a. On May 1 of each year or as directed by the Board; and
    - b. If there is a change of ownership, or discontinuance of business, or within 10 days of a change of a pharmacist-in-charge.
- B. Order form.** For purposes of A.R.S. § 36-2524, "Order Form" means DEA Form 222c.

**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4).  
Amended effective November 1, 1993 (Supp. 93-4).  
Amended effective April 1, 1995; filed January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).

**R4-23-1004. Repealed****Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Repealed effective November 4, 1998 (Supp. 98-4).

**R4-23-1005. Substances Excepted from the Schedules of Controlled Substances**

- A.** All over-the-counter non-narcotic substances containing limited amounts of controlled substances that are excluded from all controlled substance schedules by 21 CFR 1308.22 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.
- B.** All chemical preparations or mixtures containing one or more controlled substances listed in any schedule that are exempted from all controlled substance schedules by 21 CFR 1308.24 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.
- C.** All prescription-only drugs that are exempted by 21 CFR 1308.32 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.

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**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4).  
Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 2609, effective December 2, 2012 (Supp. 12-4).

**R4-23-1006. Substances Excepted from Drug Offenses**

The following materials, compounds, mixtures, or preparations containing any stimulant or depressant substance included in A.R.S. §§ 13-3401(6)(b) or 13-3401(6)(c) are excepted from the definition of dangerous drugs under the authority of A.R.S. § 32-1904(B)(14):

1. Over-the-counter drugs excepted in R4-23-1005(A).
2. Chemical preparations excepted in R4-23-1005(B).
3. Prescription-only drugs excepted in R4-23-1005(C).

**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4).  
Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

**ARTICLE 11. PHARMACY TECHNICIANS**

*Article 11, consisting of R4-23-1101 through R4-23-1105, made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).*

**R4-23-1101. Licensure and Eligibility**

- A.** License required. A person shall not work as a pharmacy technician or pharmacy technician trainee in Arizona, unless the person possesses a pharmacy technician or pharmacy technician trainee license issued by the Board.
- B.** Eligibility.
  1. To be eligible for licensure as a pharmacy technician trainee, a person shall:
    - a. Be of good moral character,
    - b. Be at least 18 years of age, and
    - c. Have a high school diploma or the equivalent of a high school diploma.
  2. To be eligible for licensure as a pharmacy technician, a person shall:
    - a. Meet the requirements of subsection (B)(1),
    - b. Complete a pharmacy technician training program that meets the standards prescribed in R4-23-1105, and
    - c. Pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination.
- C.** A pharmacy technician delinquent license. Before an Arizona pharmacy technician license will be reinstated, a pharmacy technician whose Arizona pharmacy technician license is delinquent for five or more consecutive years shall furnish to the Board satisfactory proof of fitness to be licensed as a pharmacy technician and pay all past due biennial renewal fees and penalty fees. Satisfactory proof includes:
  1. For a person with a delinquent license who is practicing as a pharmacy technician out-of-state with a pharmacy technician license issued by another jurisdiction:
    - a. Proof of current, unrestricted pharmacy technician licensure in another jurisdiction; and
    - b. Proof of employment as a pharmacy technician during the last 12 months; or
  2. For a person with a delinquent license who did not practice as a pharmacy technician within the last 12 months:
    - a. Take and pass a Board-approved pharmacy technician examination, and
    - b. Complete 20 contact hours or two CEUs of continuing education activity sponsored by an approved

provider, including at least two contact hours or 0.2 CEUs of continuing education activity in pharmacy law.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1).

**R4-23-1102. Pharmacy Technician Licensure**

- A.** Eligibility. An applicant for licensure as a pharmacy technician shall provide the Board proof that the applicant is eligible under R4-23-1101(B)(2), including documentation that the applicant:
  1. Completed a pharmacy technician training program that meets the standards prescribed in R4-23-1105(B)(2); and
  2. Passed the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination; or
  3. Meets the requirements of R4-23-1105(D)(1) or (2).
- B.** Application.
  1. An applicant for licensure as a pharmacy technician shall:
    - a. Submit a completed application electronically or manually on a form furnished by the Board, and
    - b. Submit with the application form:
      - i. The documents specified in the application form,
      - ii. The initial licensure fee specified in R4-23-205(A)(3)(a), and
      - iii. The wall license fee specified in R4-23-205(E)(1)(c).
  2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C.** Licensure.
  1. If an applicant is found to be ineligible for pharmacy technician licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
  2. If an applicant is found to be eligible for pharmacy technician licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician prior to receiving the certificate of licensure.
  3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician until the Board office issues a certificate of licensure as specified in subsection (2).
  4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- D.** License renewal.
  1. To renew a license, a pharmacy technician shall submit a completed license renewal application electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205(A)(3)(b).
  2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacy technician license is suspended and the licensee shall not practice as a pharmacy technician. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205(G)(1) to vacate the suspension.



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3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
- E. Time-frames for pharmacy technician licensure and license renewal. The Board office shall follow the time-frames established in R4-23-202(F).
- F. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-1103. Pharmacy Technician Trainee Licensure**

- A. Eligibility. An applicant for licensure as a pharmacy technician trainee shall provide the Board proof that the applicant is eligible under R4-23-1101(B)(1).
- B. Application.
  1. An applicant for licensure as a pharmacy technician trainee shall:
    - a. Submit a completed application electronically or manually on a form furnished by the Board, and
    - b. Submit with the application form:
      - i. The documents specified in the application form,
      - ii. The licensure fee specified in R4-23-205(A)(4), and
      - iii. The wall license fee specified in R4-23-205(E)(1)(d).
  2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.
- C. Licensure.
  1. If an applicant is found to be ineligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
  2. If an applicant is found to be eligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician trainee prior to receiving the certificate of licensure.
  3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician trainee until the Board office issues a certificate of licensure as specified in subsection (2).
  4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
  5. A pharmacy technician trainee license is valid for 24 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination before the pharmacy technician trainee's license expires is not eligible for

licensure as a pharmacy technician and shall not practice as a pharmacy technician or pharmacy technician trainee.

**D. Re-application for licensure.**

1. The Board may allow a pharmacy technician trainee whose license expires before the pharmacy technician trainee completes the prescribed training program and passes the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination to reapply for licensure not more than one time. A pharmacy technician trainee whose license has expired may make a special request to the Board under R4-23-401 for approval to reapply for licensure.
2. The Board shall base its decision to grant or deny a special request to reapply for licensure on an assessment of:
  - a. The reasons the pharmacy technician trainee did not complete a pharmacy technician training program and the likelihood that the pharmacy technician trainee will complete a pharmacy technician training program within the next 24 months,
  - b. The reasons the pharmacy technician trainee failed the pharmacy technician examination and the likelihood that the pharmacy technician trainee will pass the pharmacy technician examination within the next 24 months, and
  - c. Other extenuating circumstances.
3. A pharmacy technician trainee that receives Board approval to reapply for licensure shall submit a completed application manually on a form furnished by the Board and pay the licensure fee specified in R4-23-205(A)(4).
- E. Time-frames for pharmacy technician trainee licensure. The Board office shall follow the time-frames established in R4-23-202(F).
- F. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician trainee until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician trainee.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3).

**R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees**

- A. Permissible activities of a pharmacy technician trainee. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee may assist a graduate intern, pharmacy intern, or pharmacist with the following when applicable to the pharmacy practice site:
  1. Record on the original prescription order the prescription serial number and date dispensed;
  2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
  3. Record information in the refill record or patient profile;
  4. Type and affix a label for a prescription medication or enter information for a new or refill prescription medica-

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- tion into a computer, if a pharmacist verifies the accuracy and initials in handwriting or by another method approved by the Board or its designee the finished label prepared by the technician before the prescription medication is dispensed to the patient;
5. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
  6. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
  7. Prepackage drugs in accordance with R4-23-402(A); and
  8. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.
- B.** Permissible activities of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician may:
1. Perform the activities listed in subsection (A); and
  2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist, graduate intern, or pharmacy intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing.
- C.** When performing the activities listed in subsections (A) and (B) for which the pharmacy technician or pharmacy technician trainee has been trained, the pharmacy technician or pharmacy technician trainee shall perform those functions accurately.
- D.** Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a function reserved for a pharmacist, graduate intern, or pharmacy intern in accordance with R4-23-402 or R4-23-653.
- E.** A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.
- F.** Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with policies and procedures for pharmacy technician and pharmacy technician trainee activities as specified in subsection (G).
- G.** The policies and procedures shall include the following:
1. For all practice sites:
    - a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
    - b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
    - c. The activities a pharmacy technician or pharmacy technician trainee may perform as specified in R4-23-1104(A) and (B);
    - d. Pharmacist and patient communication;
    - e. Reporting, correcting, and avoiding medication and dispensing errors;
    - f. Security procedures for:
      - i. Confidentiality of patient prescription records, and
      - ii. The pharmacy area;
    - g. Automated medication distribution system;
    - h. Compounding procedures for pharmacy technicians; and
    - i. Brief overview of state and federal pharmacy statutes and rules;
  2. For community and limited-service pharmacy practice sites:
    - a. Prescription dispensing procedures for:
      - i. Accepting a new written prescription,
      - ii. Accepting a refill request,
      - iii. Selecting a drug product,
      - iv. Counting and pouring,
      - v. Labeling, and
      - vi. Obtaining refill authorization;
    - b. Computer data entry procedures for:
      - i. New and refill prescriptions,
      - ii. Patient's drug allergies,
      - iii. Drug-drug interactions,
      - iv. Drug-food interactions,
      - v. Drug-disease state contraindications,
      - vi. Refill frequency,
      - vii. Patient's disease and medical condition,
      - viii. Patient's age or date of birth and gender, and
      - ix. Patient profile maintenance; and
  3. For hospital pharmacy practice sites:
    - a. Medication order procurement and data entry,
    - b. Drug preparation and packaging,
    - c. Outpatient and inpatient drug delivery, and
    - d. Inspection of drug storage and preparation areas and patient care areas.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1).

**R4-23-1105. Pharmacy Technician Trainee Training Program, Pharmacy Technician Drug Compounding Training Program, and Alternative Pharmacy Technician Training**

- A.** Nothing in this Section prevents additional offsite training of a pharmacy technician.
- B.** Pharmacy technician trainee training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with a pharmacy technician trainee training program based on the needs of the individual pharmacy.
  2. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy technician trainee training program includes training guidelines that:
    - a. Define the specific tasks a pharmacy technician trainee is expected to perform,
    - b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician trainee's competency, and
    - c. Address the policies and procedures specified in R4-23-1104(G) and the permissible activities specified in R4-23-1104(A).
  3. A pharmacist-in-charge shall:
    - a. Document the date that a pharmacy technician trainee has successfully completed the training program, and
    - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.

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4. A pharmacy technician trainee shall perform only those tasks, listed in R4-23-1104(A), for which training and competency has been demonstrated.
- C. Pharmacy technician drug compounding training program.
  1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the same manner described in R4-23-653(A) and comply with a pharmacy technician drug compounding training program based on the needs of the individual pharmacy;
  2. A pharmacy permittee or pharmacist-in-charge shall ensure that the pharmacy technician drug compounding training program includes training guidelines that:
    - a. Define the specific tasks a pharmacy technician is expected to perform,
    - b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician's competency, and
    - c. Address the following procedures and tasks:
      - i. Area preparation,
      - ii. Component preparation,
      - iii. Aseptic technique and product preparation,
      - iv. Packaging and labeling, and
      - v. Area clean up;
  3. A pharmacist-in-charge shall:
    - a. Document the date that a pharmacy technician has successfully completed the pharmacy technician drug compounding training program, and
    - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
- D. Alternative pharmacy technician training.
  1. An individual who has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
  2. An individual who has completed a pharmacy technician certificate program and has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
  3. A pharmacist-in-charge shall:
    - a. Document the date that an individual licensed under subsection (D)(1) or (2) has successfully completed the on-the-job training program as part of the individual's employment orientation as required under subsection (D)(1) or (2), and
    - b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
- E. A pharmacy technician shall perform only those tasks, listed in R4-23-1104(B), for which training and competency has been demonstrated.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1).

**R4-23-1106. Continuing Education Requirements**

- A. General. According to A.R.S. § 32-1925(I), the Board shall not renew a pharmacy technician license unless the applicant has during the two years preceding the application for renewal:
  1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider defined in R4-23-110, and
  2. At least two of the contact hours or 0.2 of the CEUs are approved courses in pharmacy law. For a pharmacy technician licensed less than 24 months the continuing education contact hours are calculated by multiplying 0.83 hours times the number of months between the date of initial licensure and the licensee's next license renewal date.
- B. Valid CEUs. The Board shall:
  1. Only accept CEUs for continuing education activities sponsored by an Approved Provider;
  2. Only accept CEUs accrued during the two-year period immediately before licensure renewal;
  3. Not allow CEUs accrued in a biennial renewal period in excess of the required two CEUs to be carried forward to the succeeding biennial renewal period;
  4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in continuing education activities sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
  5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.
- C. Continuing education records and reporting CEUs. A pharmacy technician shall:
  1. Maintain continuing education records that:
    - a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
    - b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
  2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
  3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.
- D. The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct.

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duct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.

- E. A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1).

**ARTICLE 12. PRESCRIPTION MEDICATION DONATION PROGRAM****R4-23-1201. Eligibility Requirements for Participation in the Program**

A physician's office, a pharmacy, or a health care institution may participate in the prescription medication donation program, under A.R.S. § 32-1909, if all of the following requirements, as applicable, are met:

1. The physician-in-charge of the participating physician's office has a current license issued under A.R.S. Title 32, Chapter 13 or 17;
2. The pharmacy has a current permit issued under A.R.S. Title 32, Chapter 18;
3. The health care institution has a current license issued under A.R.S. Title 36, Chapter 4 and has a physician-in-charge or pharmacist-in-charge of dispensing; and
4. The physician's office, the pharmacy, or the health care institution complies with all federal and state drug laws, rules, and regulations.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1202. Donating Medications**

- A. The following may donate an eligible prescription medication, as specified in R4-23-1203, to a physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program:
1. An individual for whom the prescription medication was prescribed on a patient-specific prescription order or that individual's health care decision maker;
  2. A manufacturer that has a current permit issued under A.R.S. Title 32, Chapter 18; or
  3. A health care institution that has a current license issued under A.R.S. Title 36, Chapter 4.
- B. An individual or health care decision maker electing to donate an eligible prescription medication shall not have taken possession of the prescription medication before the donation and shall make the donation through a medical practitioner, pharmacy, or health care institution.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1203. Eligible Prescription Medications**

A prescription medication may be donated to a physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program if the prescription medication:

1. Is not a:
  - a. Controlled substance;
  - b. Drug sample; or
  - c. Drug that can only be dispensed to a patient registered with the drug's manufacturer, because donation could prevent the manufacturer from maintaining required patient registration data;

2. Is in its original sealed and tamper-evident unit dose packaging that is unopened or has only its outside packaging opened and its single unit dose packaging undisturbed;
3. Has been in the possession of a licensed health care professional, manufacturer, pharmacy, or health care institution and not in the possession of the individual specified in R4-23-1202(A)(1);
4. Has been stored according to federal and state drug law and the requirements of the manufacturer's package insert;
5. Has an expiration date or beyond-use-date later than six months after the date of donation;
6. Is in packaging that shows the lot number and expiration date or beyond-use-date of the prescription medication;
7. Does not have any physical signs of tampering or adulteration; and
8. Is in packaging that does not have any physical signs of tampering, except for the outside packaging as specified in subsection (2).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1204. Eligibility Requirements to Receive Donated Prescription Medications**

An individual is eligible to receive donated prescription medications from the prescription medication donation program if the individual:

1. Is a resident of Arizona;
2. Has an annual family income that is less than or equal to 300% of the poverty level;
3. Satisfies one of the following:
  - a. Has no health insurance coverage;
  - b. Has health insurance coverage that does not pay for the prescription medication prescribed;
  - c. Is an American or Alaska Native who:
    - i. Is eligible for, but chooses not to use, the Indian Health Service to receive prescription medications; and
    - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed; or
  - d. Is a veteran who:
    - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive prescription medications; and
    - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed;
4. Is ineligible for enrollment in AHCCCS; and
5. If eligible for Medicare, is ineligible for a full low-income subsidy.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1205. Donor Form**

- A. Before donating a prescription medication, a donor shall sign a form that includes:
1. A statement attesting that the donor is one of the entities identified in R4-23-1202(A) and intends to voluntarily donate the prescription medication to the prescription medication donation program;

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2. If the donor is the individual named on the prescription or the individual's health care decision maker:
  - a. The individual's name and address;
  - b. The name of the individual's health care decision maker, if applicable;
  - c. The name of the medical practitioner, pharmacy, or health care institution through which the donation is being made;
  - d. The following information about the donated prescription medication:
    - i. The brand name or generic name of the prescription medication donated;
    - ii. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication donated;
    - iii. The strength of the prescription medication donated;
    - iv. The quantity of the prescription medication donated;
    - v. The lot number of the prescription medication donated; and
    - vi. The expiration date or beyond-use-date of the prescription medication donated;
  - e. A statement attesting that the individual or the individual's health care decision maker has not had possession of the donated prescription medication;
  - f. The dated signature of the individual or the individual's health care decision maker;
  - g. If the donation is an ongoing donation as authorized under subsection (B), a statement that conforms to subsection (B);
  - h. A statement by the medical practitioner, pharmacy, or health care institution attesting that the medical practitioner, pharmacy, or health care institution through which the donation is being made has stored the donated prescription medication as required in R4-23-1203(4);
  - i. A statement by the medical practitioner, pharmacy, or health care institution attesting that the drugs being donated meet the specific requirements of R4-23-1203(1); and
  - j. The dated signature of the medical practitioner or of an authorized agent for the pharmacy or health care institution through which the donation is being made;
3. If the donor is a manufacturer:
  - a. The name and address of the manufacturer;
  - b. The information about the donated prescription medication specified in subsection (A)(2)(d);
  - c. A statement by the manufacturer that the manufacturer has stored the donated prescription medication as required in R4-23-1203(4); and
  - d. The dated signature of the manufacturer's authorized agent; and
4. If the donor is a health care institution:
  - a. The name and address of the health care institution;
  - b. The information about the donated prescription medication specified in subsection (A)(2)(d);
  - c. A statement attesting that the health care institution has stored the donated prescription medication as required in R4-23-1203(4);
  - d. A statement by the health care institution attesting that the drugs being donated meet the specific requirements of R4-23-1203(1); and
  - e. The dated signature of the health care institution's authorized agent.
- B. An individual who resides in a health care institution, or the individual's health care decision maker, may elect to make an ongoing donation of future unused eligible prescription medication:
  1. When future unused eligible prescription medication is a result of the individual's prescription medication being changed or discontinued by the individual's primary care provider; and
  2. By indicating the following on a donor form that complies with subsection (A): "From this day forward, I wish to donate all my remaining unused prescription medications that are eligible, under R4-23-1203, to the prescription medication donation program."
- C. To stop an ongoing donation, an individual who resides in a health care institution, or the individual's health care decision maker, shall submit written notice to the receiving physician's office, pharmacy, or health care institution indicating the individual's, or the health care decision maker's, desire to stop the ongoing donation.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1206. Recipient Form**

Before receiving a donated prescription medication from the prescription medication donation program, a recipient of a donated prescription medication shall sign a form:

1. Identifying the physician's office, pharmacy, or health care institution that is dispensing the donated prescription medication;
2. Stating that the recipient has been advised of and understands the immunity provisions of the program under A.R.S. § 32-1909(E) and (F);
3. Attesting that the recipient meets the eligibility requirements specified in R4-23-1204; and
4. Including the following:
  - a. The brand name or generic name of the prescription medication received;
  - b. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication received;
  - c. The strength of the prescription medication received;
  - d. The quantity of the prescription medication received;
  - e. The recipient's name and address; and
  - f. The dated signature of the recipient.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1207. Recordkeeping**

- A. Before transferring possession of a prescription medication donated by an individual or an individual's health care decision maker, a medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication and through which the donation is being made shall create an invoice that includes the following:
  1. The name and address of the medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication;
  2. The name of the individual who made the donation;
  3. The brand name or generic name of the prescription medication transferred;

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4. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication transferred;
  5. The strength of the prescription medication transferred;
  6. The quantity of the prescription medication transferred;
  7. The lot number of the prescription medication transferred;
  8. The expiration date or beyond-use-date of the prescription medication transferred;
  9. The date the prescription medication is transferred to a participating physician's office, pharmacy, or health care institution; and
  10. The name and address of the participating physician's office, pharmacy, or health care institution to which the donated prescription medication is transferred.
- B.** Before transferring possession of a prescription medication donated by a manufacturer, the manufacturer shall create an invoice that includes the manufacturer's name and address and the information described in subsections (A)(3) through (10).
- C.** Before transferring possession of a prescription medication donated by a health care institution, the health care institution shall create an invoice that includes the health care institution's name and address and the information described in subsections (A)(3) through (10).
- D.** A medical practitioner, pharmacy, health care institution, or manufacturer required to create an invoice under subsection (A), (B), or (C) shall:
1. Transmit a copy of the invoice and the donor form required under R4-23-1205 to the participating physician's office, pharmacy, or health care institution to which a donated prescription medication is transferred;
  2. Maintain a copy of the invoice for a minimum of three years from the date of the invoice;
  3. Maintain a copy of the donor form for a minimum of three years from the date signed; and
  4. Make a copy of the invoice or donor form available upon request for inspection by the Board, its designee, or other authorized officers of the law.
- E.** A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:
1. Maintain:
    - a. The documents required under R4-23-1206 for a minimum of three years from the date signed; and
    - b. Each invoice and donor form received under subsection (D)(1) for a minimum of three years from the date received; and
  2. Make the documents required under R4-23-1206 and subsection (D)(1) available upon request for inspection by the Board, its designee, or other authorized officers of the law.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1208. Handling Fee**

A physician's office, a pharmacy, or a health care institution that dispenses a donated prescription medication may charge a recipient of a donated prescription medication a handling fee of no more than \$4.50 per prescription to cover inspection, stocking, and dispensing costs.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1209. Policies and Procedures**

A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:

1. Develop, implement, and comply with policies and procedures for the receipt, storage, and distribution of prescription medications donated to the physician's office, the pharmacy, or the health care institution;
2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
3. Document the review required under subsection (2);
4. Assemble the policies and procedures as a written manual or in a readily accessible electronic format;
5. Make the policies and procedures available for reference by a physician's office, pharmacy, or health care institution personnel and, upon request, for inspection by the Board or its designee; and
6. Ensure that the written or electronic policies and procedures required under subsection (1) include provisions to ensure:
  - a. That each transferred prescription medication meets the eligibility requirements of Sections R4-23-1202 and R4-23-1203;
  - b. That each individual who receives a donated prescription medication under the prescription medication donation program signs the recipient form specified in R4-23-1206;
  - c. Compliance with the applicable requirements for recordkeeping in Section R4-23-1207;
  - d. Compliance with the requirements of Section R4-23-1210; and
  - e. Compliance with the requirements of Section R4-23-1211.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1210. Dispensing Donated Prescription Medications**

- A.** Before dispensing a donated prescription medication under the program, a participating physician's office, pharmacy, or health care institution shall:
1. Obtain and maintain a current drug identification reference or text in hard-copy or electronic media format;
  2. Inspect the donated prescription medication to ensure that the prescription medication has not been adulterated;
  3. Certify that the donated prescription medication has been stored in compliance with the requirements of the manufacturer's package insert;
  4. Comply with all federal and state laws regarding storage and distribution of a donated prescription medication;
  5. Obtain a prescription order of a licensed medical practitioner for the recipient to receive the donated prescription medication; and
  6. Properly label the donated prescription medication to be dispensed.
- B.** As specified in subsection (C) a participating physician's office, pharmacy, or health care institution may transfer a prescription medication donated under this Article to another participating physician's office, pharmacy, or health care institution, but the donated prescription medication shall not be resold.
- C.** A participating physician's office, pharmacy, or health care institution may transfer a donated prescription medication to another participating physician's office, pharmacy, or health care institution, if:
1. The transferring physician's office, pharmacy, or health care institution has available a prescription medication

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- that the receiving physician's office, pharmacy, or health care institution needs;
2. The transferring physician's office, pharmacy, or health care institution prepares an invoice that includes its name and address and the information described in R4-23-1207(B)(3) through (10);
  3. A copy of the invoice required in subsection (C)(2) is sent to the receiving physician's office, pharmacy, or health care institution with the transferred prescription medication; and
  4. The transferring physician's office, pharmacy, or health care institution and the receiving physician's office, pharmacy, or health care institution each:
    - a. Keep a copy of the invoice required in subsection (C)(2) on file for three years from the date of transfer; and
    - b. Make the invoice records available, upon request, for inspection by the Board or its designee.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

**R4-23-1211. Responsibilities of the Physician-in-charge or Pharmacist-in-charge of a Participating Physician's Office, Pharmacy, or Health Care Institution**

The physician-in-charge of a participating physician's office; the pharmacist-in-charge of a participating pharmacy; or the physician-in-charge or pharmacist-in-charge of dispensing for a participating health care institution shall, either personally or through a designee:

1. Coordinate the receipt of prescription medications donated by manufacturers or health care institutions or through medical practitioners, pharmacies, or health care institutions from eligible donors;
2. Check each donated prescription medication against the invoice and any additional alternate record and resolve any discrepancies;
3. Store and secure donated prescription medications as required by federal and state law;
4. Inspect each donated prescription medication for adulteration;
5. Certify that each donated prescription medication has been stored in compliance with the manufacturer's package insert;
6. Ensure that expired, adulterated, or unidentifiable donated prescription medication is not dispensed;
7. Ensure that prescription medications identified under subsection (6) are destroyed within 30 days of identification as specified in subsection (9);
8. Ensure safety in drug recalls by destroying any donated prescription medication that may be subject to recall if its lot number cannot exclude it from recall;
9. Ensure destruction of expired, adulterated, unidentifiable, and recalled donated prescription medication by:
  - a. Following federal, state, and local guidelines for drug destruction;
  - b. Creating a list of expired, adulterated, unidentifiable, or recalled donated prescription medications to be destroyed;
  - c. Following the destruction, signing the list described in subsection (9)(b) and having the list signed by a witness verifying the destruction; and
  - d. Keeping the list described in subsection (9)(b) on file for three years from the date of destruction;
10. Redact or remove all previous patient or pharmacy labeling on a donated prescription medication before dispensing the donated prescription medication;
11. Ensure that all dispensed donated prescription medications comply with the labeling requirements of A.R.S. § 32-1968(D);
12. Place on the label of each dispensed donated prescription medication a beyond-use-date that does not exceed the beyond-use-date or expiration date from the original label of the donated prescription medication or, if the dispensed donated prescription medication comes from multiple packages, the earliest beyond-use-date or expiration date from the donated prescription medication packages; and
13. Maintain the records required in this Article.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4320, effective January 3, 2009 (Supp. 08-4).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 4. Professions and Occupations**

### **Chapter 26. Board of Psychologist Examiners**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R4-26-101, R4-26-108 through R4-26-111, R4-26-203.03 and R4-26-203.04, R4-26-205 through R4-26-207, R4-26-210, R4-26-304, R4-26-310

REMOVE Supp. 15-4

Pages: 1 - 25

REPLACE with Supp. 16-4

Pages: 1 - 28

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS**

(Authority: A.R.S. § 32-2061 et seq.)

*Editor's Note: This Chapter contains amendments that were filed with the Secretary of State on March 3, 1995. At the time of filing, the original copy of the rulemaking package differed from the copy of the package filed at the same time. The Secretary of State uses the copy to prepare the Code supplement. The agency notified the Secretary of State that the wrong version was used. That led to the Secretary of State's discovery of the two versions filed in March 1995. The Secretary of State then used the original package to publish a corrected edition with Supp. 95-2. The Secretary of State has since been advised by the Attorney General that the original version as published with Supp. 95-1 was correct with the exception of one phrase in R4-26-207 that was inadvertently omitted. With this publication, this Chapter reflects the correct amendments, and the omitted phrase in R4-26-207 has now been added.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R4-26-01 through R4-26-10;  
Article 2, consisting of Sections R4-26-20 through R4-26-28; and  
Article 3, consisting of Sections R4-26-50 through R4-26-57,  
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**ARTICLE 1. GENERAL PROVISIONS****R4-26-101. Definitions**

**A.** The definitions in A.R.S. § 32-2061 apply to this Chapter.

**B.** Additionally, in this Chapter:

1. "Additional examination" means an examination administered by the Board to determine the competency of an applicant and may include questions about the applicant's knowledge and application of Arizona law, the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
2. "Administrative completeness review" means the Board's process for determining that an applicant has provided all of the information and documents required by the Board to determine whether to grant a license to the applicant.
3. "Advertising" means any media used to disseminate information regarding the qualifications of a psychologist or to solicit clients or patients for psychological services, regardless of whether the psychologist pays for the advertising. Methods of advertising include a published statement or announcement, directory listing, business card, personal resume, brochure, or any electronic communication conveying the psychologist's professional qualifications or promoting use of the psychologist's professional services.
4. "Applicant" means an individual requesting licensure, renewal, or approval from the Board.
5. "Application packet" means the forms and documents the Board requires an applicant to submit to the Board.
6. "Applied psychology," as used in A.R.S. § 32-2071(A), means the practice of psychology in the area of health service delivery. The Board shall consider education and training in applied psychology as qualification for licensure only if the education and training meet the standards specified in A.R.S. § 32-2071.
7. "Case," in the context of R4-26-106 (G), means a legal cause of action instituted before an administrative tribunal or in a judicial forum that relates to a psychologist's practice of psychology.
8. "Case conference" means a meeting that includes the discussion of a particular client or patient or case that is related to the practice of psychology.
9. "Client or patient record" means "adequate records" as defined in A.R.S. § 32-2061(2), "medical records" as defined in A.R.S. § 12-2291 (6), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.
10. "Complaint Screening Committee" means the committee of the Board established under A.R.S. § 32-2081 (H) to conduct an initial review of all complaints.
11. "Confidential record" means:
  - a. Minutes of an executive session of the Board;
  - b. A record that is classified as confidential by a statute or rule applicable to the Board;
  - c. All materials relating to an investigation by the Board, including a complaint, response, client or patient record, witness statement, investigative report, and any other information relating to a client's or patient's diagnosis, treatment, or personal or family life; and
  - d. The following regarding an applicant or licensee:
    - i. College or university transcripts;
    - ii. Home address, home telephone number, and e-mail address;
    - iii. Examination scores;
    - iv. Date of birth v. Place of birth;
- vi. Social Security number; and
- vii. Candidate identification number for the national examination required under A.R.S. § 32-2072(A).
12. "Credentialing agency" means the Association of State and Provincial Psychology Boards, the National Register of Health Service Providers in Psychology, or the American Board of Professional Psychology.
13. "Day" means a calendar day except in A.R.S. § 32-2075(A)(4), "day" means a total of eight hours in providing psychological services regardless of the number of calendar days over which the hours are accumulated.
14. "Diplomate or specialist" means a status bestowed on a person by the American Board of Professional Psychology after successful completion of the work and examinations required.
15. "Directly available," as used in A.R.S. § 32-2071 (F)(2), means immediately available in person or by telephone or electronic transmission.
16. "Disaster," as used in A.R.S. § 32-2075(A)(4), means a contingency or situation for which the governor declares a state of emergency under the authority provided at A.R.S. § 35-192. The Board acknowledges any state of emergency declared by the governor or determined by the Board.
17. "Dissertation" means a document prepared as part of a graduate doctoral program that includes, at a minimum, separate sections that:
  - a. Review the literature on the psychology topic being investigated and state each research question and hypothesis under investigation;
  - b. Describe the method or procedure used to investigate each research question or hypothesis;
  - c. Describe and summarize the findings and results of the investigation;
  - d. Discuss the findings and compare them to the relevant literature presented in the literature review section; and
  - e. List the references used in the various sections of the dissertation, a majority of which are either journals of the American Psychological Association, Psychological Abstracts, or classified as a psychology subject by the Library of Congress.
18. "Fellow" means a status bestowed on a person by a psychology association or society.
19. "Gross negligence" means an extreme departure from the ordinary standard of care.
20. "Internship training program" means the supervised professional experience required in A.R.S. § 32-2071 (F).
21. "Last client or patient activity," as used in R4-26-106, means the last date a particular client or patient received direct clinical contact from the psychologist retaining the client's or patient's record.
22. "License period" means:
  - a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and
  - b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.

## Board of Psychologist Examiners

23. "National examination" means the Examination for Professional Practice in Psychology provided by the Association of State and Provincial Psychology Boards.
24. "Party" means the Board, an applicant, a licensee, or the state.
25. "Practice monitor," as used in R4-26-310, means a Board-approved licensed psychologist who monitors or oversees the remediation of the practice of another psychologist as part of a disciplinary process.
26. "Primarily psychological," in the context of A.R.S. § 32-2071(A)(6), means subject matter that covers the practice of psychology as defined in A.R.S. § 32-2061 (9).
27. "Psychologist on staff," as used in A.R.S. § 32-2071(F)(2), means a psychologist who is designated by the staff psychologist specified in A.R.S. § 32-2071(F)(1) to fulfill the responsibilities of a supervising psychologist in the training program.
28. "Psychometric testing" means measuring cognitive and emotional processes and learning through the administration of psychological tests.
29. "Raw test data" means test scores, client or patient responses to test questions or stimuli, and notes and recordings concerning client or patient statements and behavior during a psychologist's assessment and evaluation.
30. "Regulatory jurisdiction" means a state or territory of the U.S., the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
31. "Renewal year" means:
  - a. Each odd-numbered year for a licensee who holds an odd-numbered license, and
  - b. Each even-numbered year for a licensee who holds an even-numbered license.
32. "Retired," as used in A.R.S. § 32-2073 (G), means a psychologist has stopped practicing psychology, as defined in A.R.S. § 32-2061 (9).
33. "Stipend" means a fee paid to a supervisee that is not based on productivity or revenue generated.
34. "Substantive review" means the Board's process for determining whether an applicant meets the requirements of A.R.S. § 32-2071 through § 32-2076 and this Chapter.
35. "Successfully completing," as used in A.R.S. § 32-2071(A)(4), means receiving a passing grade in a course from an institution of higher education.
36. "Supervision," as used in R4-26-310, means review and oversight of the professional work of a psychologist by a Board-approved licensed psychologist as part of a disciplinary process.
37. "Supervise" means to control, oversee, and review the activities of an employee, intern, trainee, or resident who provides psychological services.
38. "Supervisor," as referenced in A.R.S. § 32-2071(F)(2), means an individual who is:
  - a. Licensed or registered as a psychologist at the independent level in the regulatory jurisdiction in which the supervision occurs,
  - b. On staff as a supervisor with the training program for which supervision is provided, and
  - c. Directly available to the supervisee in case of an emergency or ensures another supervisor is directly available to the supervisee.
39. "Year," as used in A.R.S. § 32-2075(A)(4) means a calendar year.

**Historical Note**

Former Rule 1; Former Section R4-26-01 repealed, new Section R4-26-01 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3).

Former Section R4-26-101 renumbered to R4-26-102; new Section R4-26-101 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective

February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13

A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-102. Board Officers**

- A. Under A.R.S. § 32-2063(A)(8), the Board shall annually elect a chairperson, vice chairperson, and secretary.
- B. Officers elected under subsection (A) shall take office on January 1 following election and serve until December 31.
- C. If a vacancy occurs in the office of chairperson, vice chairperson, or secretary, the Board shall elect a replacement officer at the next scheduled Board meeting.

**Historical Note**

Former Rule 2; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-02 adopted effective July 27, 1979 (Supp. 79-4). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-102 renumbered to R4-26-103; new Section R4-26-102 renumbered from R4-26-101 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-103. Repealed****Historical Note**

Former Rule 3; Amended effective November 22, 1977 (Supp. 77-6). Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-03 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-103 renumbered to R4-26-104; new Section R4-26-103 renumbered from R4-26-102 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Repealed by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-104. Committees**

## Board of Psychologist Examiners

- A. As permitted under A.R.S. § 32-2064(B), the Board chairperson may appoint Board committees to assist the Board to fulfill the Board's responsibilities.
- B. The Board may appoint consulting committees to conduct investigations and make recommendations to the Board concerning official actions.

**Historical Note**

Former Rule 4; Former Section R4-26-04 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-04 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-04 repealed, new Section R4-26-04 adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Correction, paragraph (2), subparagraph (f) as amended effective June 17, 1981 (Supp. 84-1). Amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-104 renumbered to R4-26-105; new Section R4-26-104 renumbered from R4-26-103 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-105. Board Records**

- A. A person may view public records in the Board office only during business hours, which are Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding holidays.
- B. All Board records are open to public inspection and copying except confidential records as defined in R4-26-101 or as otherwise provided by law.

**Historical Note**

Former Rule 5; Former Section R4-26-05 repealed effective November 22, 1977 (Supp. 77-6). New Section R4-26-05 adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed effective September 15, 1978 (Supp. 78-5). Former Section R4-26-05 repealed, new Section R4-26-05 adopted effective July 27, 1979 (Supp. 79-4). Former Section R4-26-105 renumbered to R4-26-107; new Section R4-26-105 renumbered from R4-26-104 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-106. Client or Patient Records**

- A. A psychologist shall not condition release of a client or patient record on payment for services by the client, patient, or a third party.
- B. Except as provided in subsection (C), a psychologist shall, with a client's or patient's written consent, provide access to or a copy of the client's or patient's record, including raw test data and other information as provided by law to the client or patient or the client's or patient's health care decision maker unless the release violates copyright or other laws or violates one of the standards incorporated by reference at R4-26-301.
- C. A psychologist may deny a request to provide access to or a copy of a client's or patient's record if the psychologist determines:

1. Access by the client or patient is reasonably likely to endanger the life or physical safety of the client or patient or another person;
  2. The record makes reference to a person other than a health professional and access by the client or patient or the client's or patient's health care decision maker is reasonably likely to cause substantial harm to that other person;
  3. Access by the client's or patient's health care decision maker is reasonably likely to cause substantial harm to the client or patient or another person;
  4. Access by the client or patient or the client's or patient's health care decision maker will reveal information obtained under a promise of confidentiality with someone other than a health professional and access is reasonably likely to reveal the source of the information; or
  5. Access by the client or patient or the client's or patient's health care decision maker may result in misuse or misrepresentation of the information and potentially harm the client or patient.
- D. Without a client's or patient's consent, a psychologist shall release the client's or patient's raw test data only to the extent required by law or under court order compelling production.
  - E. A psychologist shall retain all client or patient records under the psychologist's control, including records of a client or patient who died, for at least six years from the date of the last client or patient activity. If a client or patient is a minor, the psychologist shall retain all client or patient records for at least three years past the client's or patient's 18th birthday or six years from the date of the last client or patient activity, whichever is longer.
  - F. Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (E).
  - G. A psychologist who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to that investigation or case until the psychologist receives written notice that the investigation is completed, the case is closed, or the matter has been fully adjudicated.
  - H. The provisions of this Section apply to all psychologists including a psychologist who is on inactive status under A.R.S. § 32-2073 (G).
  - I. A psychologist may retain client or patient records in electronic form. The psychologist shall ensure that client or patient records in electronic form are legible, stored securely, and an electronic backup copy is maintained.

**Historical Note**

Former Rule 6; Repealed effective November 22, 1977 (Supp. 77-6). New Section adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-107. Change of Name, Mailing, Residential, or E-mail Address, or Telephone Number**

- A. The Board shall communicate with a psychologist using the contact information provided to the Board. To ensure timely

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communication from the Board, a psychologist shall notify the Board, in writing, within 30 days of any change of name, mailing, residential, or e-mail address (giving both the old and new addresses), or residential, business, or mobile telephone number.

- B. A psychologist who reports a name change shall submit to the Board legal documentation that substantiates the name change.
- C. A psychologist's failure to receive a renewal notice or other mail that the Board sends to the most recent address on file with the Board office does not excuse an untimely license renewal or the omission of any other action required by the psychologist.

**Historical Note**

Former Rule 7; Repealed effective September 15, 1978 (Supp. 78-5). New Section R4-26-107 renumbered from R4-26-105 and amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-108. Fees and Charges**

- A. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following fees:
  1. Application for an active license to practice psychology: \$350;
  2. Application for a temporary license under A.R.S. § 32-2073(B): \$200
  3. Reapplication for an active license: \$200;
  4. Issuance of an initial active or temporary license (prorated, as applicable): \$500;
  5. Duplicate license: \$25;
  6. Biennial renewal of an active license: \$ 500;
  7. Biennial renewal of an inactive license: \$ 85;
  8. Reinstatement of an active or inactive license: \$200; and
  9. Delinquent compliance with continuing education requirements: \$200.
- B. As specifically authorized by A.R.S. § 32-2067(A), the Board establishes and shall collect the following charges for the services provided:
  1. Duplicate renewal receipt: \$5;
  2. Copy of statutes and rules: \$5;
  3. Verification of a license: \$2;
  4. Audio recording of a Board or Committee meeting: \$10;
  5. Electronic medium containing the name and address of each licensee: \$.05 per name;
  6. Customized electronic medium containing the name and address of each current licensee: \$.25 per name;
  7. Customized electronic medium containing additional, non-confidential, licensee information: \$.35 per name; and
  8. Copies of Board records, documents, letters, minutes, applications, files, and policy statements: \$.25 per page.
- C. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

**Historical Note**

Former Rule 8; Amended as an emergency effective June 15, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-3). Amended effective September 15, 1978 (Supp. 78-5). Repealed effective July 27, 1979 (Supp. 79-4). New Section R4-26-108 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains

the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Former Section R4-26-108 renumbered to R4-26-201 by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). New Section adopted by final rulemaking at 7 A.A.R. 1258, effective February 20, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-109. General Provisions Regarding Telepractice**

- A. Except as otherwise provided by law, a licensee who provides psychological service or supervision by telepractice to a client or patient or supervisee located outside Arizona shall comply with not only A.R.S. Title 32, Chapter 19.1, and this Chapter but also the laws and rules of the jurisdiction in which the client or patient or supervisee is located.
- B. Before providing psychological service or supervision by telepractice, a licensee shall establish competence in use of telepractice that conforms to prevailing standards of scientific and professional knowledge.
- C. A licensee who provides psychological service or supervision by telepractice shall maintain competence in use of telepractice through continuing education, consultation, or other procedures designed to address changing technology used in telepractice.
- D. A licensee who provides psychological service or supervision by telepractice shall take all reasonable steps to ensure confidential communications stored electronically cannot be recovered or accessed by an unauthorized person when the licensee disposes of electronic equipment or data.

**Historical Note**

Former Rule 9; Repealed effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-110. Providing Psychological Service by Telepractice**

- A. Before providing psychological service by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document in the client or patient's record required under R4-26-106 whether use of telepractice:
  1. Is consistent with the client or patient's knowledge and skill regarding use of the technology involved in providing psychological service by telepractice or with ready access to assistance with use of the technology, and
  2. Is in the best interest of the client or patient.
- B. A licensee shall not provide psychological service by telepractice unless both conditions of the risk analysis conducted under subsection (A) are met.
- C. Before providing psychological service by telepractice, a licensee shall:
  1. Obtain the written informed consent of the client or patient, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written informed consent addresses the following and a copy is placed in the client or patient's record required under R4-26-106:
    - a. The manner in which the licensee will verify the identity of the client or patient before each psychological service if the telepractice does not involve video;

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- b. The manner in which the licensee will ensure the client or patient's electronic communications are received only by the licensee or supervisee;
  - c. Limitations and innovative nature of using technology to provide psychological service;
  - d. Inherent confidentiality risk resulting from use of technology;
  - e. Potential risk of technology failure that disrupts provision of psychological service and how to re-establish communication if disruption occurs;
  - f. When and how the licensee will respond to routine electronic communications;
  - g. The circumstances under which the licensee and client or patient will use an alternative means of communication;
  - h. Who is authorized to access the electronic communication between the licensee and client or patient;
  - i. The manner in which the licensee stores the electronic communication between the licensee and the client or patient; and
  - j. The type of secure electronic technology the licensee will use to communicate with the client or patient;
2. Establish a written agreement with the client or patient that specifies contact information for sources of face-to-face emergency services in the client or patient's geographical area and requires the client or patient to contact a source of face-to-face emergency services when the client or patient experiences a suicidal or homicidal crisis or other emergency. If the licensee has knowledge the client or patient is experiencing a suicidal or homicidal crisis or other emergency, the licensee shall assist the client or patient to contact a source of face-to-face emergency services. The licensee shall place a copy of the written agreement required under this subsection in the client or patient's record required under R4-26-106.
  3. Obtain the name and contact information for an emergency contact;
  4. Obtain information about an alternative means of contacting the client or patient; and
  5. Provide the client or patient with information about an alternative means of contacting the licensee.
- D.** A licensee who provides psychological service by telepractice shall repeat the risk analysis required under subsection (A) as clinically indicated.
- E.** If a licensee does not provide psychological service by telepractice to a client or patient, the provisions of this Section do not apply to electronic communications with the client or patient regarding:
1. Scheduling an appointment, billing, establishing benefits, or determining eligibility for services; and
  2. Checking the welfare of the client or patient in accord with reasonable professional judgment.
2. Supervision provided through telepractice is conducted using secure, confidential, real-time visual telecommunication technology.
- B.** Before providing supervision by telepractice, a licensee who is in compliance with R4-26-109 shall conduct a risk analysis as clinically indicated and document whether providing supervision by telepractice:
1. Is appropriate for the issue presented by the supervisee's client or patient involved in the supervisory process,
  2. Is consistent with the supervisee's knowledge and skill regarding use of the technology involved in providing supervision by telepractice, and
  3. Is in the best interest of both the supervisee and the supervisee's client or patient involved in the supervisory process.
- C.** A licensee shall not provide supervision by telepractice unless all conditions of the risk analysis conducted under subsection (B) are met.
- D.** Before providing supervision by telepractice, a licensee shall:
1. Enter a written agreement with the supervisee, using language that is clear and understandable and consistent with accepted professional and legal requirements. The licensee shall ensure the written agreement addresses the following and a copy is provided to the supervisee:
    - a. The manner in which the licensee will identify the supervisee before each supervisory session that does not involve video;
    - b. Limitations and innovative nature of using technology to provide supervision;
    - c. Potential risk of technology failure that disrupts provision of supervision and how to re-establish communication if disruption occurs;
    - d. When and how the licensee will respond to routine electronic communications from the supervisee;
    - e. The circumstances under which the licensee and supervisee will use an alternative means of communication; and
    - f. The type of secure electronic technology the licensee will use to communicate with the supervisee;
  2. Obtain information about an alternative means of contacting the supervisee; and
  3. Provide the supervisee with information about an alternative means of contacting the licensee.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-112. Reserved through**

**R4-26-119. Reserved**

**R4-26-120. Renumbered**

**Historical Note**

Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

**R4-26-121. Renumbered**

**Historical Note**

Former Section R4-26-120 renumbered to R4-26-202 effective July 27, 1979 (Supp. 79-4).

**R4-26-122. Renumbered**

**Historical Note**

Adopted effective November 22, 1977 (Supp. 77-6).  
Repealed and readopted as Section R4-26-57 effective July 27, 1979 (Supp. 79-4). New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-111. Providing Supervision through Telepractice**

- A.** As specified under A.R.S. § 32-2071(F) and (G), a licensee who provides in-person individual supervision shall ensure that:
1. No more than 50 percent of the supervision is provided through telepractice; and



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**Historical Note**

Former Section R4-26-120 renumbered to R4-26-203 effective July 27, 1979 (Supp. 79-4).

**R4-26-123. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-204 effective July 27, 1979 (Supp. 79-4).

**R4-26-124. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-205 effective July 27, 1979 (Supp. 79-4).

**R4-26-125. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-206 effective July 27, 1979 (Supp. 79-4).

**R4-26-126. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-207 effective July 27, 1979 (Supp. 79-4).

**R4-26-127. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-208 effective July 27, 1979 (Supp. 79-4).

**R4-26-128. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-209 effective July 27, 1979 (Supp. 79-4).

**R4-26-129. Reserved**

through

**R4-26-149. Reserved****R4-26-150. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-301 effective July 27, 1979 (Supp. 79-4).

**R4-26-151. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-302 effective July 27, 1979 (Supp. 79-4).

**R4-26-152. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-303 effective July 27, 1979 (Supp. 79-4).

**R4-26-153. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-304 effective July 27, 1979 (Supp. 79-4).

**R4-26-154. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-305 effective July 27, 1979 (Supp. 79-4).

**R4-26-155. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-306 effective July 27, 1979 (Supp. 79-4).

**R4-26-156. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-307 effective July 27, 1979 (Supp. 79-4).

**R4-26-157. Renumbered****Historical Note**

Former Section R4-26-120 renumbered to R4-26-201 effective July 27, 1979 (Supp. 79-4).

**ARTICLE 2. LICENSURE****R4-26-201. Application Deadline**

- A. The Board shall consider a license application at the Board's next scheduled meeting if an administratively complete application packet, including reference forms mailed or e-mailed from the Board office, is received by the Board office at least 18 days before the date of the meeting.
- B. The Board shall consider a license application that is received fewer than 18 days before a scheduled meeting at a subsequent meeting.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsection (A) statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-120 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section R4-26-201 renumbered from R4-26-108 and amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-202. Doctorate**

- A. The Board shall apply the following criteria to determine whether a doctoral program provided by an institution of higher education met the standards in A.R.S. § 32-2071(A)(2) at the time an applicant began the degree program:
  1. The program is identified and labeled as a psychology program if there were institutional catalogues and brochures that specified the intent of the institution of higher education to educate and train psychologists;
  2. The program stands as a recognized, coherent organizational entity if there was an organized sequence of courses comprising a psychology curriculum; and
  3. The program has clearly identified entry and exit criteria within its psychology curriculum if there were specific prerequisites for entrance into the program and delineated requirements for graduation.
- B. The Board shall verify that an applicant completed the hours in the subject areas described in A.R.S. § 32-2071(A)(4). For this purpose, the applicant shall have the institution of higher education that the applicant attended provide directly to the Board an official transcript of all courses taken and verification of the dissertation or similar project.
  1. The Board may require additional documentation from the applicant or from the institution to determine whether the applicant satisfied the requirements of A.R.S. § 32-2071(A)(4).

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2. The Board shall count five quarter hours or six trimester hours as the equivalent of three semester hours, as required under A.R.S. § 32-2071(A)(4). When an academic term is other than a semester, quarter, or trimester, 15 classroom contact hours equals one semester hour.
- C. To determine whether a comprehensive examination taken by an applicant as part of a doctoral program in psychology satisfies the requirements of A.R.S. § 32-2071(A)(4), the Board shall review documentation provided directly to the Board by the institution of higher education that granted the doctoral degree, that demonstrates how the applicant's comprehensive examination was constructed, lists criteria for passing, and provides the information used to determine that the applicant passed.
- D. The Board shall not accept as core program hours required under A.R.S. § 32-2071(A)(4) credit:
  1. For workshops, practica, undergraduate courses, life experiences, continuing education courses, or experiential or correspondence courses;
  2. Transferred from institutions that are not accredited under A.R.S. § 32-2071(A)(1); or
  3. For seminars, readings courses, or independent study unless the applicant proves that the course was an in-depth study devoted to a particular core program content area by submitting one or more of the following:
    - a. Course description in the official catalogue of the institution of higher education,
    - b. Course syllabus, or
    - c. Signed statement from a dean or psychology department head affirming that the course was an in-depth study devoted to a particular core program content area.
- E. The Board shall count a course or comprehensive examination only once to satisfy a requirement of A.R.S. § 32-2071(A)(4).
- F. An honorary doctorate degree does not qualify an applicant for licensure as a psychologist.
- f. E-mail address;
- g. Gender;
- h. Date of birth;
- i. Place of birth; and
- j. Social Security number;
2. An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;
3. An indication whether the applicant is active military;
4. A statement of whether the applicant:
  - a. Holds a Certificate of Professional Qualification in Psychology, a National Register of Health Service Providers in Psychology credential, or is a diplomate or specialist of the American Board of Professional Psychology;
  - b. Is or ever has been licensed as a psychologist in another regulatory jurisdiction and if so, the name of the regulatory jurisdiction and license number;
  - c. Has applied for and been rejected or denied licensure as a psychologist in a regulatory jurisdiction and if so, the name of each regulatory jurisdiction, date of each application, and reason given for the rejection or denial;
  - d. Is or ever has been licensed or certified in a profession or occupation other than psychology and if so, the names of the professions or occupations, regulatory jurisdictions, and license numbers;
  - e. Has ever taken the national examination and if so, the name of each regulatory jurisdiction in which the examination was taken and each date of examination;
  - f. Has ever had an application for a professional license, certification, or registration other than psychology denied or rejected by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, type of license, certification, or registration denied or rejected, and date of denial or rejection;
  - g. Has ever withdrawn an application for a professional license, certification, or registration in lieu of administrative proceedings and if so, the reason for the withdrawal;
  - h. Has ever had disciplinary action initiated against the applicant's professional license, certification, or registration, or had a professional license, certification, or registration suspended or revoked by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction, date of the disciplinary action, and license number;
  - i. Has ever entered into a consent agreement or stipulation arising from a complaint against any professional license, certification, or registration and if so, the name of the regulatory jurisdiction, date, and license number;
  - j. Is a member of any professional association in the field of psychology and if so, name of the association;
  - k. Has ever had membership in a professional association in the field of psychology denied or revoked and if so, the name of the professional association and date of denial or revocation;
  - l. Is currently under investigation for or has been found guilty of violating a code of professional ethics of any professional organization and if so, the name of the professional organization and date of investigation;

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-121 and amended effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203. Application for Initial License**

- A. An individual who wishes to be licensed as a psychologist shall submit an application packet to the Board that includes an application form, which is available from the Board office and on its website, with an attestation that is signed and dated by the applicant, and provide the following:
  1. Personal information about the applicant:
    - a. Full name;
    - b. Other names by which the applicant is or ever has been known;
    - c. Residential address and telephone number;
    - d. Business name and address;
    - e. Work telephone and fax numbers;

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- m. Is currently under investigation for or has been found to have violated a professional code of conduct by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of investigation;
  - n. Has ever been sanctioned or placed on probation by a regulatory jurisdiction and if so, the name of the regulatory jurisdiction and date of action;
  - o. Is currently awaiting trial, has been convicted of, or pled no contest or guilty to any felony or a misdemeanor other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any convictions that have been expunged, deleted, or set aside and if so, the name of the jurisdiction, offense involved, date of offense, status of resolution, expected resolution date, and a narrative explanation;
  - p. Has been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a certificate or license in another profession, or the applicant's work as a member of a profession in which the applicant was not certified or licensed and if so, the name of the jurisdiction, allegation involved, and date;
  - q. Has ever been involuntarily terminated or resigned instead of termination from any psychological or behavioral health position or related employment and if so, the name of the employer involved and date;
  - r. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently; and
  - s. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently;
5. Information about the applicant's education and training:
- a. Name and address of each university or college from which the applicant graduated, dates attended, date of graduation, degree received, name of department, and major subject area of study;
  - b. Name and department of the applicant's major advisor;
  - c. Title of the applicant's dissertation or Psy.D. project for the doctoral degree;
  - d. Official title of the applicant's doctoral degree program or predoctoral specialty area;
  - e. Whether the doctoral degree program that the applicant attended was accredited by the American Psychological Association at the time of graduation;
  - f. Whether the applicant's internship training program was an American Psychological Association-accredited program or a member of the Association of Psychology and Postdoctoral Internship Centers;
  - g. Location of each internship training program in which the applicant participated and each supervisor's name and contact information; and
  - h. Documentation demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;
6. Areas of professional competence;
7. Intended area of professional practice in psychology;
8. Name, position, and address of at least two individuals to serve as references who:
- a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and who are not members of the Arizona Board of Psychologist Examiners;
  - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of application. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
  - c. Recommend the applicant for licensure;
9. History of employment for the past 10 years in the field of psychology including, for each position held, the:
- a. Beginning and ending dates of employment,
  - b. Number of hours worked per week,
  - c. Name and address of employer,
  - d. Name and address of supervisor, and
  - e. Type of employment; and
10. Information demonstrating that the applicant satisfied the core program requirements in A.R.S. § 32-2071(A)(4) and R4-26-202;
11. An attestation by the applicant, that the information on the application is about the applicant, is true and correct, and is not being submitted fraudulently;
- B.** Additionally, an applicant shall submit:
- 1. An original, un-retouched, passport-quality photograph of the applicant that is no larger than 1.5 X 2 inches and taken no more than 60 days before the date of application;
  - 2. The results of a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank;
  - 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law;
  - 4. The Board's Mandatory Confidential Information form;
  - 5. The fee required under R4-26-108; and
  - 6. Any other information authorized by statute.
- C.** In addition to the requirements in subsections (A) and (B), an applicant shall arrange to have the following directly submitted to the Board:
- 1. An official transcript from each university or college from which the applicant attended a graduate program or received a graduate degree that contains the date the degree was conferred;
  - 2. An official document from the degree-granting institution indicating that the applicant completed a residency that satisfies the requirements of A.R.S. § 32-2071 (K);
  - 3. For an applicant applying supervised preinternship hours toward licensure, an attestation submitted by the doctoral program training director, faculty supervisor, or other official of the doctoral-granting institution who is knowledgeable of the applicant's preinternship experience verifying that the applicant's preinternship experience meets the requirements of A.R.S. § 32-2071(D).
  - 4. An attestation from the applicant's supervisor, if available, or a psychologist knowledgeable of the applicant's internship training program, verifying that the applicant's internship training program meets the requirements in A.R.S. § 32-2071 (F). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable

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able psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;

5. For an applicant applying supervised postdoctoral experience toward licensure, an attestation from the applicant's postdoctoral supervisor, if available, or a psychologist knowledgeable of the applicant's postdoctoral experience verifying that the applicant's postdoctoral experience meets the requirements in A.R.S. § 32-2071 (G). If the supervisor or knowledgeable psychologist is not available, the Board shall accept primary source verification received from the Association of State and Provincial Psychology Boards. In this subsection, "not available" means the supervisor or knowledgeable psychologist is deceased or all reasonable efforts to locate the supervisor or knowledgeable psychologist were unsuccessful;
6. Verification of all other psychology licenses or certificates ever held in any regulatory jurisdiction; and
7. An official notification of the applicant's score on the national examination. An applicant who passed the national examination in accordance with the standard established at A.R.S. § 32-2072(A), shall have the examination score sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective April 25, 1980 (Supp. 80-2). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-122 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-203 repealed, new Section R4-26-203 renumbered from R4-26-204 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.01. Application for Licensure by Credential**

- A. An applicant for a psychologist license by credential under A.R.S. § 32-2071.01 (D) shall submit an application packet to the Board that includes:
  1. An application form, which is available from the Board office and on its website, signed and dated by the applicant, that contains the information required by R4-26-203(A)(1) through (4), (A)(5)(a) through (f), (A)(6), (A)(7), (A)(10), and R4-26-203 (B)(2) through (6);
  2. Verification sent directly to the Board by the credentialing agency that the applicant:
    - a. Holds a current Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology Boards;
    - b. Holds a current National Register of Health Service Providers in Psychology (NRHSP) credential and

has practiced psychology independently at the doctoral level for at least five years; or

- c. Is a diplomate or specialist of the American Board of Professional Psychology (ABPP); and
3. Verification of all other psychology licenses or certificates ever held in any jurisdiction.
- B. An applicant for a psychologist license by credential based on a National Register of Health Service Providers in Psychology credential shall have notification that the applicant obtain a passing score on the national examination sent directly to the Board by the Association of State and Provincial Psychology Boards or by the regulatory jurisdiction in which the applicant originally passed the examination.
- C. If the Board determines that an application for licensure by credential requires clarification, the Board may require that an applicant submit or cause the applicant's credentialing agency to submit directly to the Board any documentation including transcripts, course descriptions, catalogues, brochures, supervised experience verifications, examination scores, application for credential, or any other information that is deemed necessary by the Board.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.02. Application to Take National Examination before Completing Supervised Professional Experience Required for Licensure**

- A. As provided under A.R.S. § 32-2072(C), an individual who has completed the education requirements specified in A.R.S. § 32-2071(A) but has not completed the supervised professional experience requirements specified in A.R.S. § 32-2071(D) may apply to the Board for approval to take the national examination.
- B. To apply for approval under subsection (A), an individual shall submit to the Board the application form and applicable documents required under R4-26-203(A) through (C).
- C. When the Board approves an individual who makes application under subsections (A) and (B), the Board shall administratively close the applicant's application packet.
- D. An individual who is granted approval under subsection (C) to take the national examination may apply for an initial license under R4-26-203 after completing the supervised professional experience requirements specified in A.R.S. § 32-2071(D) as follows:
  1. Within 36 months after the application was administratively closed under subsection (C), request that the Board re-open the application packet; and
  2. Submit the portions of the application packet required under R4-26-203 that were not submitted under subsection (B).

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.03. Reapplication for License; Applying Anew**

- A. The following may reapply for a license:
  1. An individual who failed the national examination required under A.R.S. § 32-2072 and R4-26-204 no more than three times, and
  2. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the

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Board under R4-26-208(H) less than one year before reapplication.

- B. An individual identified in subsection (A) may ask the Board to base a licensing decision, in part, on applicable forms and documents previously submitted.
- C. An individual eligible under subsection (B) to reapply for licensure shall:
  - 1. Submit a reapplication form, which is available from the Board office, to the Board;
  - 2. If previously submitted references were submitted more than 12 months before the date of reapplication, provide the names, positions, and addresses of at least two individuals to serve as references who:
    - a. Are psychologists licensed or certified to practice psychology in a United States or Canadian regulatory jurisdiction and are not members of the Arizona Board of Psychologist Examiners;
    - b. Are familiar with the applicant's work experience in the field of psychology or in a postdoctoral program within the three years immediately before the date of reapplication. If more than three years have elapsed since the applicant last engaged in professional activities in the field of psychology or in a postdoctoral program, the references may pertain to the most recent three-year period in which the applicant engaged in professional activities in the field of psychology or in a postdoctoral program; and
    - c. Recommend the applicant for licensure;
  - 3. List all professional employment since the date of the most recent application or reapplication including:
    - a. Beginning and ending dates of employment,
    - b. Number of hours worked per week,
    - c. Name and address of employer,
    - d. Position title,
    - e. Nature of work, and
    - f. Nature of supervision;
  - 4. Submit the results of a self-query from the National Practitioner Data Bank—Healthcare Integrity and Protection Data Bank; and
  - 5. Pay the fee required under R4-26-108(A)(2).
- D. The following shall apply anew for a license rather than reapplying:
  - 1. An individual whose application submitted under R4-26-203 or R4-26-203.01 was denied by the Board,
  - 2. An individual who was permitted by the Board to withdraw an application submitted under R4-26-203 or R4-26-203.01 before the Board acted on the application,
  - 3. An individual whose application submitted under R4-26-203 or R4-26-203.01 was administratively closed by the Board under R4-26-208(H) more than one year before another application is submitted,
  - 4. An individual whose license was revoked under A.R.S. § 32-2081(N)(1),
  - 5. An individual whose license expired under A.R.S. § 32-2074,
  - 6. An individual whose license was cancelled under A.R.S. § 32-2074, and
  - 7. An individual who retired under A.R.S. § 32-2073(G).

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-204. Examinations****A. General rules.**

1. Under A.R.S. § 32-2072(C), an applicant who fails the national examination three times in any regulatory jurisdiction shall, before taking the national examination again, review the applicant's areas of deficiency and implement a program of study or practical experience designed to remedy the deficiencies. This remedial program may consist of any combination of course work, self-study, internship experience, and supervision.
2. An applicant required under subsection (A)(1) to implement a program of study or practical experience may apply anew for licensure. The applicant shall submit a new application packet, as described in R4-26-203, and include information about any actions proposed under subsection (A)(1).
3. Examination deadline. Unless the Board grants an extension, the Board shall administratively close the file of an applicant authorized by the Board to take an examination specified in subsection (B) or (C) who fails to take the examination within one year from the date of the Board's authorization. Upon written request to the Board's Executive Director received by the Board on or before the applicant's examination deadline, the Board shall grant the applicant one extension of up to six months to take the examination. The applicant may request additional extensions for good cause, which includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period. The Board shall ensure that an extension is for no more than six months. This Section does not apply to an applicant approved to take the national examination under R4-26-203.02.
4. The Board shall deny a license if an applicant commits any of the following acts with respect to the examination:
  - a. Violates the confidentiality of examination materials;
  - b. Removes any examination materials from the examination room;
  - c. Reproduces any portion of a licensing examination;
  - d. Aids in the reproduction or reconstruction of any portion of a licensing examination;
  - e. Pays or uses another person to take a licensing examination for the applicant or to reconstruct any portion of the licensing examination;
  - f. Obtains examination material, either before, during, or after an examination, for the purpose of instructing or preparing applicants for examinations;
  - g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;
  - h. Communicates with any other examiner during the administration of a licensing examination;
  - i. Copies answers from another examinee or permits the copying of answers by another examinee;
  - j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than material distributed during the examination; or
  - k. Impersonates another examinee.
- B. National examination. Under A.R.S. § 32-2072, the Board shall require that an applicant take and pass the national examination. An applicant authorized by the Board to take the national examination passes the examination if the applicant's

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score equals or exceeds the passing score specified in A.R.S. § 32-2072(A). After the Board receives the examination results, the Board shall notify the applicant in writing of the results.

**C. Additional examination.**

1. The Board shall require an applicant to pass the national examination before allowing the applicant to take an additional examination.
2. Under A.R.S. § 32-2072(B), the Board may administer an additional examination to an applicant to determine the adequacy of the applicant's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
  - a. The Board shall review and approve the additional examination before administration.
  - b. The additional examination may be developed and administered by the Board, a committee of the Board, consultants to the Board, or independent contractors.
  - c. Applicants, examiners, and consultants to the Board shall execute a security acknowledgment form and agree to maintain examination security.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended Introductory paragraph statute reference, effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-123 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-204 renumbered to R4-26-203, new Section R4-26-204 renumbered from R4-26-205 and amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-203.04. Temporary License under A.R.S. § 32-2073(B)**

- A.** To be eligible to be issued a temporary license under A.R.S. § 32-2073(B), an individual shall:
1. Have completed the educational requirements specified in A.R.S. § 32-2071(A) through (C);
  2. Have completed 1,500 hours of supervised professional experience as described in A.R.S. § 32-2071(F); and
  3. Be participating in a supervised postdoctoral professional experience as described in A.R.S. § 32-2071(G).
- B.** An applicant seeking a temporary license under A.R.S. § 32-2073(B), shall submit an application packet to the Board that includes:
1. The application form required under R4-26-203 and provide all required information except that specified in R4-26-203(C)(3), (5), and (7); and
  2. The written training plan required under A.R.S. § 32-2071(G)(7) from the entity at which the supervised postdoctoral professional experience is occurring that includes at least the following:
    - a. Goal and content of each training experience,

- b. Expectations regarding the nature, quality, and quantity of work to be done by the supervisee during the supervised postdoctoral professional experience,
- c. Methods of evaluating the supervisee and the supervised postdoctoral professional experience,
- d. Total number of hours to be accrued during the supervised postdoctoral professional experience,
- e. Total number of face-to-face contact hours the supervisee is to have with clients or patients during the supervised postdoctoral professional experience,
- f. Total number of hours of supervision the supervisee is to receive during the supervised postdoctoral professional experience,
- g. Qualifications of all individuals who provide supervision during the supervised postdoctoral professional experience including documentation that each is qualified under the standards at A.R.S. § 32-2071(G), and
- h. Acknowledgement that ethics training is included in the training experience.

**C.** An individual issued a temporary license under A.R.S. § 32-2073(B) shall practice psychology only under supervision. It is unprofessional conduct for the holder of a temporary license issued under A.R.S. § 32-2073(B) to practice psychology without supervision.

**D.** A temporary license issued under A.R.S. § 32-2073(B) is valid for 36 months and is not renewable. If the Board denies an active license under R4-26-203 to the holder of a temporary license issued under A.R.S. § 32-2073(B), the temporary license terminates at the time of license denial.

**E.** The holder of a temporary license issued under A.R.S. § 32-2073(B) shall:

1. Comply fully with all provisions of A.R.S. Title 32, Chapter 19.1, and this Chapter;
2. Not practice psychology outside the postdoctoral experience specified in the written training plan required under subsection (B)(2) and
3. Submit to the Board any modification to the written training plan required under subsection (B)(2) within 10 days after the effective date of the modification.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**Appendix A. Repealed**

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Renumbered from R4-26-205, Appendix A (Supp. 95-1). Appendix A repealed by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1).

**R4-26-205. Renewal of License**

- A.** Beginning May 1, 2017, a license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.
- B.** The Board considers a license renewal application packet timely submitted if delivered or mailed to the Board's office and date stamped or postmarked on or before the last day of a licensee's birth month during the licensee's renewal year.
- C.** To renew a license, a licensee shall submit to the Board a renewal application form, which is available from the Board

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office and on its website, signed and dated by the licensee, and provide the following:

1. Personal information about the applicant:
  - a. Full name;
  - b. Other names by which the applicant is or ever has been known;
  - c. License number;
  - d. Home address and telephone number;
  - e. Business name and address;
  - f. Work telephone and fax numbers;
  - g. E-mail address;
  - h. Gender;
  - i. Date of birth;
  - j. Place of birth; and
  - k. Social Security number;
2. An indication of the address and telephone number to be listed in the Board's public directory and used in correspondence;
3. An indication whether the applicant is active military;
4. A statement of whether the applicant:
  - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access to client or patient records and if not, explain;
  - b. Is currently licensed or certified as a psychologist in a regulatory jurisdiction other than Arizona and if so, the name of the regulatory jurisdiction and license number;
  - c. Is a licensed or certified member of another profession and if so, the name of the profession, regulatory jurisdiction, and license number;
  - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or panel;
  - e. Has completed the required 40 hours of continuing education and if not, an explanation of why the required hours have not been completed;
  - f. Has, during the last license period, been denied a license or certificate to practice any profession by any regulatory jurisdiction and if so, the name of the profession and regulatory jurisdiction and the reason for denial or a copy of the notice of denial;
  - g. Has, during the last license period, relinquished responsibilities, resigned a position, or been terminated while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;
  - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, the military, or provider panel or surrendered a license while a complaint against the applicant was being investigated or adjudicated and if so, the dates and entity conducting the investigation or adjudication;
  - i. Has, during the last license period, been disciplined by an agency in any regulatory jurisdiction including the Arizona Board of Psychologist Examiners, the military, or a health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a psychologist or as a professional in any other field and if so, the name and address of the agency, nature and date of the disciplinary action, and statement of the charges and findings;
  - j. Is currently awaiting trial, has, during the last license period, been convicted of or pled no contest or guilty to any felony or a misdemeanor, other than a minor traffic offense (a DUI is not a minor traffic offense), or ever entered into a diversion program instead of prosecution, including any conviction that was expunged, deleted, or set aside in any state or country and if so, the convicting jurisdiction, offense, date of offense, status of resolution, expected resolution, a narrative explanation, and copies of relevant documents;
5. Is currently under investigation by any professional organization, the military, health care institution, or provider panel of which the applicant is a member or on staff, or regulatory agency concerning the ethical propriety or legality of the applicant's conduct and if so, name of the entity involved and conduct at issue;
6. Has, during the last license period, been sued or prosecuted for an act or omission relating to the applicant's practice as a psychologist, the applicant's work under a license or certificate in another profession, or the applicant's work as a member of a profession in which the applicant was not licensed or certified and if so, the name of the jurisdiction, allegation involved, date, and copies of relevant documents;
7. Is delinquent in payment of a judgment for child support and if so, the court that issued and date of the support order;
8. Has, during the last license period, had an application for membership in any professional organization rejected, or has had any professional organization suspend or revoke the applicant's membership, place the applicant on probation, or otherwise censure the applicant for unethical or unprofessional conduct or other violation of eligibility or membership requirements and if so, name of the professional organization and date of the action;
9. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice psychology safely and competently;
10. Has a medical, physical, or psychological condition that may impair or limit the applicant's ability to practice psychology safely and competently; and
11. Is submitting the renewal application timely and if not, whether the applicant has practiced psychology in Arizona since the license expired and if so, a complete explanation;
12. The license status for which application is made:
  - a. Active,
  - b. Inactive due to mental or physical disability,
  - c. Voluntary inactive,
  - d. Medical or inactive continuation, or
  - e. Retired. If retired status is requested, the applicant shall designate whether retired status is to be achieved by allowing the license to expire or requesting voluntary inactive status;
13. The following information about the continuing education completed during the previous license period:
  - a. Title of the continuing education;
  - b. Date completed;
  - c. Sponsoring organization, publication, or educational institution;
  - d. Number of hours in the continuing education; and
  - e. Brief description of the continuing education;
14. A signed attestation of the veracity of the information provided; and
15. Any other information authorized by statute.

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- D. Additionally, to renew a license, a licensee shall submit to the Board:
1. The license renewal fee required under R4-26-108;
  2. If the documentation previously submitted under R4-26-203(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
  3. The Board's Mandatory Confidential Information form.
- E. If a completed application, including the information about continuing education completed, is timely submitted under subsections (C) and (D), the licensee may continue to practice psychology under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice psychology until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F. Under A.R.S. § 32-2074 (C), the license of a licensee who fails to submit a renewal application, including the information about continuing education completed, on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing psychology.
- G. A psychologist whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after the last day of the licensee's birth month during the licensee's renewal year:
1. The license renewal application required under subsection (C), including the information about continuing education completed, and the documents required under subsections (D)(2) and (3); and
  2. The license renewal and reinstatement fees required under R4-26-108.
- H. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
  2. Paying the fee for reinstatement of an active or inactive license as specified in R4-26-108(A)(7).
- I. A psychologist whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-203.
- J. If the Board audits the continuing education records of a licensee and determines that some of the hours do not conform to the standards listed in R4-26-207, the Board shall disallow the non-conforming hours. If the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements and provide notice of the disallowance to the licensee. The licensee has 90 days from the mailing date of the Board's notification of disallowance to complete the continuing education requirements for the past reporting period and shall provide the Board with an affidavit documenting completion. If the Board does not receive an affidavit within 90 days of the mailing date of notification of disallowance or the Board deems the affidavit insufficient, the Board may take disciplinary action under A.R.S. § 32-2081.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended subsections (A) and (B) statute references, effective June 30, 1981 (Supp. 81-3). Amended effective November 1, 1985 (Supp. 85-6). Renumbered from R4-26-124 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-205 renumbered to R4-26-204; new Section R4-26-205 renumbered from R4-26-206 and

amended effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-206. Reinstatement of License from Inactive to Active Status; Cancellation of License**

- A. Except as provided in subsection (C), when considering reinstatement of a psychologist from inactive to active status, the Board shall presume that the psychologist has maintained and updated the psychologist's professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education, calculated under subsection (B).
- B. A psychologist who is on inactive status for at least two years may reinstate the license to active status by presenting to the Board documentation of completion of at least 40 hours of continuing education that meets the standards in R4-26-207. A psychologist who is on inactive status for less than two years may reinstate the license to active status by presenting to the Board documentation of completion of a prorated amount of continuing education. To calculate the prorated amount of continuing education hours required, the Board shall multiply 1.67 by the number of months from the date of inactive status until the date the application for reinstatement is received by the Board. For every six months of inactive status, the Board shall require one hour of continuing education in:
1. Ethics, as specified under R4-26-207(B)(1); and
  2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under R4-26-207(B)(2).
- C. A psychologist may request that the Board cancel the psychologist's license if the psychologist is not under investigation by any regulatory jurisdiction. Fees paid to obtain a license are not refundable when the license is cancelled. If an individual whose request for license cancellation is approved by the Board subsequently decides to practice psychology, the individual shall submit a new application under R4-26-203 and meet the requirements in A.R.S. § 32-2071.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981 (Supp. 81-3). Renumbered from R4-26-125 effective July 3, 1991 (Supp. 91-3). Former Section R4-26-206 renumbered to R4-26-205; new Section R4-26-206 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2007, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 1493, effective



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tive June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-207. Continuing Education**

- A.** A licensee shall complete at least 40 hours of continuing education during each license period. Unless specified otherwise, one clock hour of instruction, training, or making a presentation equals one hour of continuing education.
- B.** A licensee shall ensure the continuing education hours obtained include at least four hours in each of the following:
  1. Professional ethics; and
  2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults. The topic of bullying satisfies the requirement for child abuse.
- C.** During the license period in which an individual is initially licensed, the Board shall pro-rate the number of continuing education hours, including a pro-rated number of hours addressing ethics, domestic violence, intimate partner abuse, abuse of vulnerable adults, child abuse, and bullying that the new licensee must complete during the initial license period. To calculate the number of continuing education hours that a new licensee must obtain, the Board shall divide the 40 hours of continuing education required in a license period by 24 and multiply the quotient by the number of whole months from the date of initial licensure until the end of the license period. During the first license period, for every six months from the month of license issuance to the end of the license period, the Board shall require one hour of continuing education in:
  1. Ethics, as specified under subsection (B)(1); and
  2. Domestic violence, intimate partner abuse, child abuse, or abuse of vulnerable adults, as specified under subsection (B)(2).
- D.** If the standards in subsection (F) are met, the Board shall accept the following for continuing education hours.
  1. Post-doctoral study sponsored by a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1) and provides a graduate-level degree program;
  2. A course, seminar, workshop, or home study for which a certificate of attendance or completion is provided;
  3. A continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider;
  4. Teaching a graduate-level course in applied psychology at a university or college that is regionally accredited under A.R.S. § 32-2071(A)(1). A licensee who teaches a graduate-level course in applied psychology receives the same number of continuing education hours as number of classroom hours for those who take the graduate-level course;
  5. Organizing and presenting a continuing education activity. A licensee who organizes and presents a continuing education activity receives the same number of continuing education hours as those who attend the continuing education activity;
  6. Serving as a complaint consultant. During a license period, a licensee who serves as a Board complaint consultant to review Board complaints and provides written reports to the Board or provides expert testimony on behalf of the Board may receive continuing education hours equal to the actual number of hours served as a complaint consultant to a maximum of 20 hours. A licensee who is paid by the Board for services rendered shall not receive continuing education credit for the time or services for which payment was made;
- 7.** The Board shall allow a maximum of 10 continuing education hours for each of the following during a license period:
  - a. Attending a Board meeting or serving as a member of the Board. A licensee receives up to six continuing education hours in professional ethics for attending both morning and afternoon sessions of a Board meeting and three continuing education hours for attending either the morning or afternoon session or at least four hours of a Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting;
  - b. Having an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published. A licensee who has an authored or co-authored psychology book, psychology book chapter, or article in a peer-reviewed psychology journal published receives 10 continuing education hours in the year of publication;
  - c. Participating in a study group for professional growth and development as a psychologist. A licensee receives one hour of continuing education for each hour of participation to a maximum of 10 continuing education hours for participating in a study group. The Board shall allow continuing education hours for participating in a study group only if the licensee maintains the documentation required under subsection (G)(5);
  - d. Presenting a symposium or paper at a state, regional, national, or international psychology meeting. A licensee who presents a symposium or paper receives the same number of continuing education hours as hours of the session, as published in the agenda of the meeting, at which the symposium or paper is presented to a maximum of 10 continuing education hours;
  - e. Presenting a poster during a poster session at a state, regional, national, or international psychology meeting. A licensee who presents a poster receives an hour of continuing education for each hour the licensee is physically present with the poster during the poster session, as published in the agenda of the meeting, to a maximum of 10 continuing education hours; and
  - f. Serving as an elected officer of an international, national, regional, or state psychological association or society. A licensee who serves as an elected officer may receive continuing education hours equal to the actual number of hours served to a maximum of 10 continuing education hours.
- E.** The Board shall not allow continuing education credit more than once in a license period for:
  1. Teaching the same graduate-level course,
  2. Organizing and presenting a continuing education activity on the same topic or content area, or
  3. Presenting the same symposium or paper at a state, regional, national, or international psychology meeting.
- F.** Standards for continuing education. To be acceptable for continuing education credit, an activity identified in subsections (D)(1) through (4) shall:
  1. Focus on the practice of psychology, as defined at A.R.S. § 32-2061(9), for at least 75 percent of the program hours; and

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2. Be taught by an instructor who is readily identifiable as competent in the subject of the continuing education by having an advanced degree, teaching experience, work history, published professional articles, or previously presented continuing education on the same subject.
- G. The Board shall accept the following documents as evidence of completion of continuing education hours:
  1. A certificate of attendance or completion;
  2. Statement signed by the provider verifying participation in the activity;
  3. Copy of transcript of course completed under subsection (D)(1);
  4. Documents indicating a licensee's participation as an elected officer or appointed member as specified in subsection (D)(7)(f); or
  5. An attestation signed by all participants of a study group under subsection (D)(7)(c) that includes a description of the activity, subject covered, dates, and number of hours.
- H. A licensee shall maintain the documents listed in subsection (G) through the license period following the license period in which the documents were obtained.
- I. The Board may audit a licensee's compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.
- J. A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-205.
  1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.
  2. The Board shall not grant an extension longer than one year.
  3. A licensee who cannot complete the continuing education requirement within the extension may apply to the Board for inactive license status under A.R.S. § 32-2073 (G).
- K. No continuing education hours may be carried over to the next licensing period.
- L. The Board shall not accept for continuing education hours a course, workshop, seminar, or symposium designed to increase income or office efficiency.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-126 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-207 repealed; new Section R4-26-207 adopted effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995. Text corrected. (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444,

effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-208. Time Frames for Processing Applications**

- A. For the purpose of A.R.S. § 41-1073, the Board establishes the time frames listed in Table 1. An applicant or a person requesting an approval from the Board and the Board's Executive Director may agree in writing to extend the substantive review and overall time frames by no more than 25 percent of the overall time frame.
- B. The administrative completeness review time frame begins when the Board receives an application packet or request for approval. During the administrative completeness review time frame, the Board shall notify the applicant or person requesting approval that the application packet or request for approval is either complete or incomplete. If the application packet or request for approval is incomplete, the Board shall specify in the notice what information is missing.
- C. If an applicant or person requesting approval receives a notice of incompleteness under subsection (B), the applicant or person requesting approval shall submit the missing information to the Board within the time to complete listed in Table 1. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (B) until the Board receives all of the missing information.
- D. Upon receipt of all missing information, the Board shall send a written notice of administrative completeness to the applicant or person requesting approval. The Board shall not send a separate notice of completeness if the Board grants or denies a license or approval within the administrative completeness time frame listed in Table 1.
- E. The substantive review time frame listed in Table 1 begins on the date of the Board's notice of administrative completeness sent under subsection (D).
- F. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant or person requesting approval a comprehensive written request for additional information.
- G. An applicant or person requesting approval who receives a request under subsection (F) shall submit the additional information to the Board within the time for response listed in Table 1. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.
- H. An applicant or person requesting approval may receive a 30-day extension of the time provided under subsection (C) or (G) by providing written notice to the Board before the time expires. If an applicant or person requesting approval fails to submit to the Board the missing or additional information within the time provided under Table 1 or the time as extended, the Board shall administratively close the applicant's or person's file.
- I. At any time before the overall time frame provided in Table 1 expires, an applicant or person requesting approval may, with approval by the Board, withdraw the application or request.
- J. Within the overall time frame listed in Table 1, the Board shall:
  1. Grant a license or approval if the Board determines that the applicant or person requesting approval meets all criteria required by statute and this Chapter; or
  2. Deny a license or approval if the Board determines that the applicant or person requesting approval does not meet all criteria required by statute and this Chapter.

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- K. If the Board denies a license or approval, the Board shall send the applicant or person requesting approval a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
  2. The right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
  3. The time for appealing the denial; and
  4. The right to request an informal settlement conference.
- L. If the last day of a time frame falls on a Saturday, Sunday, or an official state holiday, the time frame ends on the next business day.

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective January 23, 1981 (Supp. 81-1). Amended effective July 3, 1984 (Supp. 84-4). Amended effective February 24, 1988 (Supp. 88-1). Renumbered from R4-26-127

effective July 3, 1991 (Supp. 91-3). Former Section R4-26-208 repealed; new Section R4-26-208 amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**Table 1. Time Frames (in days) for Processing Applications**

Type of Application or Request	Statutory or Rule Authority	Administrative Completeness Time Frame	Time to Respond to Notice of Deficiency	Substantive Review Time Frame	Time to Respond to Request for Additional Information	Overall Time Frame
Application for initial license	A.R.S. §§ 32-2071, 32-2071.01, 32-2072, and R4-26-203	30	240	90	240	120
Application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and A.A.C. R4-26-203.01	30	240	90	240	120
Application to Take National Examination before Completing Experience Required for Licensure	A.R.S. §§ 32-2072(C) and A.A.C. R4-26-203.02	30	240	90	240	120
Reapplication for Licensure	A.R.S. §§ 32-2067 and A.A.C. R4-26-203.03	30	240	90	240	120
Application for license renewal	A.R.S. § 32-2074; A.A.C. R4-26-205	60	N/A	90	N/A	150
Application for reinstatement of expired license	A.R.S. § 32-2074; A.A.C. R4-26-206	60	N/A	90	N/A	150
Request for extension of time to complete continuing education	A.R.S. § 32-2074 A.A.C. R4-26-207	60	N/A	90	N/A	150

**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 737, effective February 19, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 778, effective April 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005

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(Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-209. General Supervision**

- A. Under A.R.S. § 32-2071(D), an applicant is required to obtain 3,000 hours of supervised professional experience.
- B. A supervising psychologist shall not supervise a member of the psychologist's immediate family or the psychologist's employer or business partner.
- C. Payment between a supervisor and supervisee.
  - 1. A supervising psychologist may pay a monetary stipend or fee to a supervisee if the amount paid by the supervisor is not based on the supervisee's productivity or revenue generated by the supervisee;
  - 2. A supervising psychologist who accepts a fee for providing the supervisory service in Arizona may be subject to disciplinary action by the Board; and
  - 3. The Board shall look to the law of the jurisdiction in which the supervision occurred to determine whether to include as part of the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D) hours for which an applicant paid the supervisor.
- D. A psychologist who supervises the professional experience of an unlicensed individual is professionally responsible for all work done by the individual during the supervised experience.
- E. The Board shall include in the 3,000 hours of supervised professional experience required under A.R.S. § 32-2071(D), hours obtained through a training program only if the training program provides the supervision required under A.R.S. § 32-2071(F)(2).

**Historical Note**

Adopted effective January 23, 1981 (Supp. 81-1). Renumbered from R4-26-128 and amended effective July 3, 1991 (Supp. 91-3). Former Section R4-26-209 renumbered to R4-26-208; new Section R4-26-209 adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-210. Supervised Professional Experience**

- A. The Board shall use the following criteria to determine whether an applicant's supervised preinternship professional experience complies with A.R.S. § 32-2071 (E):
  - 1. The supervised preinternship professional experience was part of the applicant's doctoral program from an institution of higher education that meets the standards in A.R.S. § 32-2071(A);
  - 2. The applicant completed appropriate academic preparation before beginning the supervised preinternship professional experience. The Board shall not include any assessment or treatment conducted as part of the required academic preparation in the hours of supervised preinternship professional experience; and
  - 3. For each supervised preinternship professional experience training site, the applicant has a written training plan with both the training site and the institution of higher education at which the applicant is pursuing a doctoral degree that includes at least the following:
    - a. Training activities included and the amount of time allotted to each activity,
    - b. Goals and objectives of each training activity,
    - c. Methods of evaluating the supervisee and the supervised preinternship professional experiences provided,
    - d. Approval of all individuals providing supervision at sites external to the training site,
    - e. Total number of hours to be accrued during the supervised preinternship professional experience,
    - f. Total number of hours of face-to-face contact hours with clients or patients during the supervised preinternship professional experience,
    - g. Total number of hours of supervision during the supervised preinternship professional experience,
    - h. Qualifications of all individuals who provide supervision during the supervised preinternship professional experience, and
    - i. Acknowledgement that ethics training will be included in all activities.

- B. The Board shall use the following criteria to determine whether an applicant's internship or training program qualifies as supervised professional experience under A.R.S. § 32-2071 (F):
  - 1. The written statement required under A.R.S. § 32-2071 (F)(9):
    - a. Was established no later than the time the applicant entered the internship or training program; and
    - b. Corresponds to the internship or training program the applicant completed;
  - 2. A supervisor was directly available to the applicant when decisions were made regarding emergency psychological services provided to a client or patient as required under A.R.S. § 32-2071 (F)(2);
  - 3. Course work used to satisfy the requirements of A.R.S. § 32-2071(A) or dissertation time is not credited toward the face-to-face, individual supervision time required by A.R.S. § 32-2071 (F)(6);
  - 4. The two hours a week of other learning activities required under A.R.S. § 32-2071 (F)(6) include one or more of the following
    - a. Case conferences involving a case in which the applicant was actively involved,
    - b. Seminars involving clinical issues,
    - c. Co-therapy with a professional staff person including discussion,
    - d. Group supervision, or
    - e. Additional individual supervision;
  - 5. The training program had the applicant work with other doctoral level psychology trainees and included in the written statement required under A.R.S. § 32-2071 (F)(9) a description of the program policy specifying the opportunities and resources provided to the applicant for working or interacting with other doctoral level psychology trainees in the same or other sites; and
  - 6. Time spent fulfilling academic degree requirements, such as course work applied to the doctoral degree, practicum, field laboratory, dissertation, or thesis credit, is not credited toward the 1,500 hours of supervised professional experience hours required by A.R.S. § 32-2071 (F). This subsection does not restrict a student from participating in activities designed to fulfill other doctoral degree requirements. However, the Board shall not credit time spent participating in activities to fulfill academic degree requirements toward the hours required under A.R.S. § 32-2071 (F).

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- C. Under A.R.S. § 32-2071(G)(5), at least 40 percent of an applicant's supervised postdoctoral experience shall involve direct client or patient contact. If an applicant's supervised postdoctoral hours applied toward licensure include less than 40 percent direct contact hours, the applicant shall work additional time to achieve the required percentage of direct contact hours. While additional direct contact hours may be obtained to meet this requirement, the Board shall count no more than 1,500 hours of total postdoctoral experience for the purpose of licensure.

**Historical Note**

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-211. Foreign Graduates**

- A. Under A.R.S. § 32-2071(B), an applicant for licensure whose application is based on graduation from an institution of higher education located outside the U.S. and its territories shall demonstrate that the applicant's formal education is equivalent to a doctoral degree in psychology from a regionally accredited educational institution as described in A.R.S. § 32-2071(A).
- B. The Board shall find that the institution of higher education from which an applicant under subsection (A) graduated is equivalent to a regionally accredited education institution only if the institution of higher education is included in one of the following:
1. International Handbook of Universities, published for the International Association of Universities by Stockton Press, 345 Park Avenue South, 10th floor, New York, NY 10010-1708;
  2. Commonwealth Universities Yearbook, published for the Association of Commonwealth Universities by John Foster House, 36 Gordon Square, London, England, WC1H 0PF; or
  3. Another source the Board determines provides reliable information.
- C. The academic transcript of an applicant under subsection (A) who graduated from an institution included under subsection (B) shall be translated into English and evaluated by a member organization of the National Association of Credential Evaluation Services (NACES). The applicant is responsible for paying all expenses incurred to obtain a translation and review of the academic transcript. An applicant can find information about obtaining a professional credential review at [www.naces.org](http://www.naces.org).
- D. When the credential review required under subsection (C) is completed, the NACES member organization shall submit the review report to the Board. The Board shall review the report and determine whether the applicant's education meets the standard in subsection (A).
- E. Upon written request, the Board may waive the credential review required under subsection (C) for an applicant who graduated from a doctoral program that is accredited by the accreditation panel of the Canadian Psychological Association.
- F. After the Board determines that the formal education of an applicant under subsection (A) is equivalent to a doctoral degree in psychology from a regionally accredited educational institution, the applicant shall provide evidence to the Board that the applicant has met all other requirements for licensure.

**Historical Note**

Adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**ARTICLE 3. REGULATION****R4-26-301. Rules of Professional Conduct**

- A. The Board incorporates by reference standards 1.01 through 10.10 of the "Ethical Principles of Psychologists and Code of Conduct" adopted by the American Psychological Association, effective June 1, 2003. The incorporated materials do not include any later amendments or editions. A copy of the standards is available from the American Psychological Association Order Department, 750 First Street, NE, Washington, DC 20002-4242, [www.apa.org/ethics/code](http://www.apa.org/ethics/code), or the Board office.
- B. A licensee shall practice psychology in accordance with the standards incorporated under subsection (A).

**Historical Note**

Adopted effective July 27, 1979 (Supp. 79-4). Amended effective June 17, 1981. Amended effective June 30, 1981 (Supp. 81-3). Renumbered from R4-26-150 and amended effective July 3, 1991 (Supp. 91-3). Repealed effective March 3, 1995 (Supp. 95-1). Corrections made to text; agency filed different versions of text in original and copies; corrections reflect the original version (Supp. 95-2). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-302. Informal Interviews**

- A. When a complaint is scheduled for informal interview, the Board shall send written notice of an informal interview to the licensee who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 20 days before an informal interview.
- B. The Board shall include the following in the written notice of an informal interview:
1. The time, date, and place of the interview;
  2. An explanation of the informal nature of the proceedings;
  3. The licensee's right to appear at the informal interview with legal counsel licensed in Arizona or without legal counsel;
  4. A statement of the allegations and issues involved;
  5. The licensee's right to a formal hearing instead of the informal interview; and
  6. Notice that the Board may take disciplinary action at the conclusion of the informal interview;
- C. The procedure used during an informal interview may include the following:
1. Swearing in and taking testimony from the licensee, complainant, and witnesses, if any;

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2. Optional opening and closing remarks by the licensee;
3. An opportunity for the complainant to address the Board, if requested;
4. Board questions to the licensee, complainant, and witnesses, if any; and
5. Deliberation and discussion by the Board.

**Historical Note**

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-303. Titles**

A person shall not use a title that claims a potential or future degree or qualification such as "Ph.D. (Cand)," "Ph.D. (ABD)," "License Eligible," "Candidate for Licensure," or "Board Eligible." The use of a title that claims a potential or future degree or qualification is a violation of A.R.S. § 32-2061 et seq.

**Historical Note**

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section adopted effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-304. Representation before the Board by Attorney Not Admitted to State Bar of Arizona**

An attorney who is not a member of the State Bar of Arizona shall not represent a party before the Board unless the attorney is admitted to practice *pro hac vice* before the Board under Rule 38(a) of the Rules of the Supreme Court of Arizona.

**Historical Note**

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**R4-26-305. Confidentiality of Investigative Materials**

- A. A psychologist shall not disclose a confidential record, as defined by R4-26-101, that relates to a Board investigation to any person or entity other than the psychologist's attorney, except:
  1. A redacted summary that ensures the anonymity of the client or patient;
  2. Information regarding the nature of a complaint, the processes utilized by the Board, and the outcomes of a case;
  3. As required by law;
  4. As required by a court order compelling production; or
  5. If disclosure is protected under the United States or Arizona Constitutions.
- B. A psychologist who violates this Section commits an act of unprofessional conduct.

**Historical Note**

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3). New Section made by final rulemaking at 13 A.A.R. 1493, effective June 2, 2007 (Supp. 07-2).

Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-306. Renumbered****Historical Note**

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3).

**R4-26-307. Renumbered****Historical Note**

Renumbered from R4-26-151 effective July 3, 1991 (Supp. 91-3).

**R4-26-308. Rehearing or Review of Decision**

- A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Board who is aggrieved by a Board order or decision may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for rehearing or review. For purposes of this subsection, service is complete on personal service or five days after the date that a Board order or decision is mailed to the party's last known address.
- B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A party may file a response within 15 days after service of the motion or amended motion by any other party. The Board may require written briefs regarding the issues raised in the motion and may provide for oral argument.
- C. The Board may grant rehearing or review of a Board order or decision for any of the following causes materially affecting the moving party's rights:
  1. An irregularity in the administrative proceedings of the agency, its hearing officer, or the prevailing party, or any order or abuse of discretion that caused the moving party to be deprived of a fair hearing;
  2. Misconduct of the Board, its hearing officer, or the prevailing party;
  3. An accident or surprise that could not be prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
  7. The order or decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties, on all or part of the issues, for any of the reasons specified in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only the matters specified.
- E. Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.
- F. When a motion for rehearing or review is based on affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board for good cause or by written agreement

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of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.

- G. If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.
- H. For purposes of this Section, "contested case" is defined in A.R.S. § 41-1001 and "appealable agency action" is defined in A.R.S. § 41-1092.
- I. A person who files a complaint with the Board against a licensee:
  - 1. Is not a party to:
    - a. A Board administrative action, decision, or proceeding; or
    - b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
  - 2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

**Historical Note**

Former Section R4-26-10 renumbered and adopted as R4-26-57 effective July 27, 1979 (Supp. 79-4). Amended subsection (c)(4) effective June 30, 1981 (Supp. 81-3).

Renumbered from R4-26-157 effective July 3, 1991 (Supp. 91-3). Amended effective March 3, 1995 (Supp. 95-1). Pursuant to the advice of the Attorney General, the text of this Section now contains the text certified by the Attorney General and filed as a copy effective March 3, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 3297, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4743, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-309. Complaints against Judicially Appointed Psychologists**

- A. A.R.S. § 32-2081(B) applies when a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order even if the psychologist is not specifically named in the court order.
- B. If a complaint is filed against a psychologist who conducts an evaluation, treatment, or psycho-education under a court order, the Board shall return the complaint to the complainant with instructions that the court issuing the order must find there is a substantial basis to refer the complaint for consideration by the Board.

**Historical Note**

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4).

**R4-26-310. Disciplinary Supervision; Practice Monitor**

- A. If the Board determines, after a hearing conducted under A.R.S. Title 41, Chapter 6, Article 10, after an informal interview under A.R.S. § 32-2081(K), or through an agreement with the Board, that to protect public health and safety and ensure a licensee's ability to engage safely in the practice of psychology, it is necessary to require that the licensee practice psychology for a specified term under another licensee who provides supervision or service as a practice monitor, the

Board shall enter into an agreement with the licensee or issue an order regarding the disciplinary supervision or practice monitoring.

- B. Payment between a licensee and supervisor or practice monitor.
  - 1. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under the supervision of another licensee may pay the supervising licensee for the supervisory service;
  - 2. A licensed psychologist who provides supervisory service to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under supervision may accept payment for the supervisory service;
  - 3. A licensed psychologist who enters into an agreement with the Board or is ordered by the Board to practice psychology under a practice monitor may pay the practice monitor for the service provided; and
  - 4. A licensed psychologist who provides practice monitoring to a licensed psychologist who has been ordered by the Board or entered into an agreement with the Board to practice psychology under a practice monitor may accept payment for the service provided.
- C. A licensed psychologist who supervises or serves as a practice monitor for a licensed psychologist who has entered an agreement with the Board or been ordered by the Board to practice psychology under supervision or with a practice monitor is professionally responsible only for work specified in the agreement or order.

**Historical Note**

Section made by final rulemaking at 21 A.A.R. 3444, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 3083, October 4, 2016 (Supp. 16-4).

**ARTICLE 4. BEHAVIOR ANALYSIS****R4-26-401. Definitions**

- A. The definitions in A.R.S. § 32-2091 apply in this Article.
- B. Additionally, in this Article:
  - 1. "Advertising" means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
  - 2. "Applicant" means an individual who applies to the Board for an initial or renewal license.
  - 3. "BACB" means the Behavior Analyst Certification Board.
  - 4. "Confidential information" means:
    - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);
    - b. A record that is classified as confidential by a statute or rule applicable to the Board;
    - c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client's diagnosis, treatment, or personal family life; and
    - d. The following regarding an applicant or licensee:
      - i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;
      - ii. Home address, telephone number, and e-mail address;
      - iii. Test scores;
      - iv. Date of birth;

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- v. Place of birth; and
- vi. Social Security number.
- 5. "Gross negligence" means an extreme departure from the ordinary standard of care.
- 6. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
- 7. "License period" means the two years between May 1 of one odd-numbered year and April 30 of the next odd-numbered year.
- 8. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
  - a. Nature of the alleged conduct,
  - b. Severity of the alleged conduct,
  - c. Recentness of the alleged conduct,
  - d. Actions taken by the applicant to remedy potential violations, and
  - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
- 9. "Party" means the Board, an applicant, a licensee, or the state.
- 10. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
- 11. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
- 12. "Recognized accrediting agency" means a regional accrediting agency recognized by the U.S. Department of Education or a quality assurance or accreditation entity authorized to operate by a foreign government.
- 13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
- 14. "Supervised experience" means supervised work experience, independent fieldwork, university practicum, or intensive university practicum.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-402. Fees and Charges**

- A. As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
  - 1. Application for an active license: \$350;
  - 2. Renewal of an active license: \$500;
  - 3. Renewal of an inactive license: \$85;
  - 4. Issuance of an initial license: \$500; and
  - 5. Reinstatement of expired license: \$200.
- B. As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
  - 1. Duplicate license: \$25;
  - 2. Duplicate renewal receipt: \$5;
  - 3. Copy of the Board's statutes and rules: \$5;
  - 4. Verification of a license: \$2;
  - 5. Audio recording of a Board meeting: \$10 per meeting;
  - 6. Electronic medium containing the name and address of all licensees: \$.05 per name;

- 7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
- 8. Customized electronic medium: \$.35 per name; and
- 9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.

- C. Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-403. Application for Initial License**

- A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall submit an application form, which is available from the Board office and on its website, and provide the following information:
  - 1. Full name;
  - 2. Other names by which the applicant is or ever has been known;
  - 3. Home address and telephone number;
  - 4. Business name and address;
  - 5. Work telephone and fax numbers;
  - 6. E-mail address;
  - 7. Gender;
  - 8. Date of birth;
  - 9. Social Security number;
  - 10. An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;
  - 11. Place of birth;
  - 12. A statement of whether the applicant:
    - a. Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;
    - b. Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;
    - c. Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
    - d. Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;
    - e. Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;
    - f. Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
    - g. Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntarily terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
    - h. Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;
    - i. Is or ever has been under investigation by any professional organization, health care institution, pro-



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- vider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the investigation;
- j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
  - k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
  - l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
  - m. Currently uses alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and
  - n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently;
13. Name and address of every institution of higher learning attended, dates attended, degree received, name of department, and major subject area studied;
  14. Title of graduate degree program;
  15. Name of major advisor and department;
  16. Title of thesis or dissertation, if applicable;
  17. Title of specialty area, if applicable;
  18. A statement of whether:
    - a. The graduate program completed was accredited at the time of graduation and if so, the name of the accrediting agency;
    - b. The applicant completed a minimum of 225 classroom hours of graduate-level instruction that meet the standards prescribed under R4-26-405; and
    - c. The applicant completed degree, coursework, and supervised experience after January 1, 2000, and if so, whether the applicant completed 1,500 hours of supervised experience in the practice of behavior analysis in no less than 12 months; or
    - d. The applicant completed degree, coursework, or supervised experience before January 1, 2000, and if so, whether:
      - i. The coursework or supervised experience occurred in a setting outside of a college or university program;
      - ii. The coursework or supervised experience was acquired after the graduate degree program and before January 1, 2000; and
      - iii. The applicant is certified by the BACB;
  19. A list of the applicant's supervised experience and the names of individuals the applicant has asked to complete verification forms under subsection (C);
  20. A statement of whether the applicant has completed a minimum of 1,500 hours of supervised experience in behavior analysis that meets the requirements under A.R.S. § 32-2091.03;
  21. A statement of whether the applicant's supervised experience included:
    - a. Conducting behavioral assessment and assessment activities related to the need for behavioral interventions;
    - b. Designing, implementing, and monitoring behavior analysis programs for clients;
    - c. Overseeing the implementation of behavior analysis programs by others; and
    - d. Performing or participating in other activities normally performed by a behavior analyst;
  22. The applicant's signature attesting that all statements in the application are true in every respect.
- B.** Additionally, an applicant shall submit:
1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
  2. The application fee required under R4-26-402;
  3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
  4. The Board's Mandatory Confidential Information form.
- C.** Additionally, an applicant shall ensure that the following is submitted directly to the Board:
1. Verification that the applicant has passed the examination referenced in R4-26-404 submitted by the BACB;
  2. Verification of supervised experience submitted by an individual with direct knowledge of the supervised work experience, independent fieldwork, university practicum, or intensive university practicum;
  3. Official transcripts from all graduate institutions attended submitted by the institutions; and
  4. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-404. License Examination**

- A.** To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB as part of its certification process.
- B.** An individual who fails the BACB examination three times, regardless of jurisdiction, shall not take the examination again until the individual complies with additional requirements that the Board specifies based on an assessment of the knowledge and skill inadequacies causing the individual to fail.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-405. Coursework Requirement**

- A.** As required under A.R.S. § 32-2091.03(A)(3), an applicant for licensure shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under A.R.S. § 32-2091.03(A)(1), 225 classroom hours of graduate-level instruction. The applicant shall ensure that the classroom hours include the following content areas:
1. Ethical and professional conduct: 15 hours;
  2. Definitions and characteristics; principles, processes, and concepts: 45 hours;
  3. Behavioral assessment; selecting intervention outcomes and strategies: 30 hours;
  4. Experimental evaluation of interventions: 20 hours;

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5. Measurement of behavior; displaying and interpreting behavioral data: 20 hours;
  6. Behavioral change procedures; systems support: 45 hours; and
  7. Discretionary content related to behavior analysis: 50 hours.
- B.** The Board shall accept only classroom hours of graduate-level instruction taken at an institution accredited by a recognized accrediting agency.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-406. Ethical Standard**

The Board incorporates by reference BACB Guidelines for Responsible Conduct for Behavior Analysts, July 2010, published by the BACB and available for review at the Board office and online at [www.BACB.com](http://www.BACB.com). The incorporated material includes no later editions or amendments.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-407. License by Reciprocity**

An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-403 and submitting evidence that the individual:

1. Obtained a graduate degree from an institution of higher learning accredited by a recognized accrediting agency;
2. Completed a minimum of 1,500 hours of supervised experience;
3. Completed a minimum of 225 classroom hours of graduate-level instruction in the content areas listed in R4-26-405; and
4. Passed the examination referenced in R4-26-404.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-408. License Renewal**

- A.** A license issued by the Board, whether active or inactive, expires on May 1 of every odd-numbered year unless renewed.
- B.** The Board shall provide a licensee with 60 days notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.
- C.** To renew a license, a licensee shall, on or before April 30 of every odd-numbered year, submit to the Board a renewal application form, which is available from the Board office and on its website, and provide the following information:
1. License number;
  2. Name;
  3. Other names by which the licensee is or ever has been known;
  4. Home address and telephone number;
  5. Business name and address;
  6. Work telephone and fax number;
  7. E-mail address;
  8. Date of birth;
  9. Social Security number;
  10. BACB certificate number;
  11. A statement of whether the licensee:
    - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;

- b. Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;
  - c. Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
  - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;
  - e. Is currently a member of a professional association and if so, the name of the professional association;
  - f. Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
  - g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
  - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;
  - i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;
  - j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
  - k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
  - l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
  - m. Currently uses alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and
  - n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis safely and competently;
12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;
13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and

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14. The licensee's signature attesting that the information provided is true in every respect.
- D.** Additionally, to renew a license, a licensee shall submit:
  1. The license renewal fee required under R4-26-402;
  2. If the documentation previously submitted under R4-26-403(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
  3. The Board's Mandatory Confidential Information form.
- E.** If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.
- F.** Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before April 30 of an odd-numbered year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.
- G.** A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board on or before June 30 of the year in which the license expired:
  1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
  2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and
  3. The license renewal and license reinstatement fees.
- H.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:
  1. Complying with subsections (G)(1) through (3) on or before the following April 30th, and
  2. Providing proof of competency and qualifications to the Board.
- I.** A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.
1. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation;
2. Courses that directly relate to behavior analysis and are provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;
3. Self-study, online, or correspondence course that is directly related to behavior analysis and offered by BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider;
4. Teaching a continuing education program offered by a BACB-approved provider or approved or offered by an accredited educational institution: One hour of continuing education for each hour taught;
5. Credentialing activities approved for continuing education by the BACB: One hour of continuing education for each hour of participation;
6. Publication of a peer-reviewed article or text book on the practice of behavior analysis: 15 hours of continuing education; and
7. Attending a Board meeting: Two hours for attending a morning or afternoon session of a Board meeting and four hours for attending a full-day Board meeting.
- D.** The number of hours of continuing education is limited as follows:
  1. No more than 25 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(4). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than two times during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;
  2. No more than 25 percent of the required hours may be obtained from continuing education under subsections (C)(3) and (5).
  3. No more than six of the required hours may be obtained under subsection (C)(7). Hours obtained under subsection (C)(7) may be used to complete the ethics requirement under subsection (A).
  4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
  1. Name of the licensee;
  2. Title of the continuing education;
  3. Name of the continuing education provider;
  4. Date, time, and location of the continuing education; and
  5. Number of hours of continuing education obtained.
- F.** A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-409. Continuing Education Requirement**

- A.** A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.
- B.** During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.
- C.** A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-410. Voluntary Inactive Status**

- A.** A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:

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1. The behavior analyst no longer provides behavior analysis services in Arizona,
  2. The behavior analyst is retired, or
  3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B.** To place a license on inactive status, a licensee shall comply with R4-26-408.
- C.** To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before April 30 of every odd-numbered year.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-411. License Reinstatement**

A licensee seeking reinstatement from an inactive to an active license shall:

1. Comply with the provisions of R4-26-408(C) and (D);
2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-412. Client Records**

- A.** A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B.** A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C.** A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.
- D.** Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E.** A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F.** A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G.** The provisions of this Section apply to all licensees including those on inactive status.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number**

- A.** The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.
- B.** A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-414. Complaints and Investigations**

- A.** Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:
1. An individual licensed under this Article; or
  2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B.** Complaint requirements. A complainant shall:
1. Submit the complaint to the Board in writing; and
  2. Provide the following information:
    - a. Name and business address of licensee or other individual who is the subject of complaint;
    - b. Name and address of complainant;
    - c. Allegations constituting unprofessional conduct;
    - d. Details of the complaint with pertinent dates and activities;
    - e. Whether the complainant has contacted any other organization regarding the complaint; and
    - f. Whether complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-415. Informal Interview**

- A.** As authorized by A.R.S. § 32-2091.09(H), the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.
- B.** The Board shall ensure that the written notice of informal interview contains the following information:
1. The time, date, and place of the informal interview;
  2. An explanation of the informal nature of the proceedings;
  3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
  4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
  5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
  6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
  7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C.** The Board shall ensure that an informal interview proceeds as follows:

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1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
2. Introduction of the Board members, staff, and Assistant Attorney General present;
3. Swearing in of the respondent, complainant, and witnesses;
4. Brief summary of the allegations and purpose of the informal interview;
5. Optional opening comment by the respondent and complainant;
6. Questioning of the respondent and witnesses by the Board;
7. Questioning of the complainant by the respondent through the Chair;
8. Optional additional comments by the respondent and complainant; and
9. Deliberation by the Board.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-416. Rehearing or Review of Decision**

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
  1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Misconduct of the Board, its staff, or an administrative law judge;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive or insufficient penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
  7. The findings of fact or a decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
- I.** An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-417. Licensing Time-frames**

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames:
  1. Initial license.
    - a. Overall time-frame: 120 days,
    - b. Administrative completeness review time-frame: 30 days, and
    - c. Substantive review time-frame: 90 days; and
  2. Renewal license.
    - a. Overall time-frame: 150 days,
    - b. Administrative completeness review time-frame: 60 days, and
    - c. Substantive review time-frame: 90 days; and
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25% of the overall time-frame.
- C.** The administrative completeness review time-frame begins when the Board receives the application materials required under R4-26-403 or R4-26-408(C) and (D). During the administrative completeness review time-frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D.** An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time-frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E.** Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time-frame listed in subsection (A)(1)(b) or (A)(2)(b).
- F.** The substantive review time-frame begins on the date of the Board's notice of administrative completeness.
- G.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H.** An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time-frames are suspended from the date of the Board's request until the Board receives the additional information.
- I.** An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the

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time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.

**J.** Within the overall time-frame listed in subsection (A), the Board shall:

1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.

**K.** If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).

**L.** If the Board denies a license, the Board shall send the applicant a written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;

3. The time for appealing the denial; and
4. The applicant's right to request an informal settlement conference.

**M.** If a time-frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**R4-26-418. Mandatory Reporting Requirement**

- A.** As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.
- B.** A list of reportable misdemeanors is available on the Board's website.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 6. Economic Security**

### **Chapter 5. Department of Economic Security - Social Services**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R6-5-5201, R6-5-5202, R6-5-5207, R6-5-5217, R6-5-5218, R6-5-5219

REMOVE Supp. 16-3  
Pages: 1 - 152

REPLACE with Supp. 16-4  
Pages: 1 - 152

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

Agency: Department of Economic Security  
Name: Rodney K. Huenemann  
Address: P.O. Box 6123, Mail Drop 1292, Phoenix, AZ 85005  
Telephone: (602) 542-6159  
Fax: (602) 542-6000  
E-mail: [rhuenemann@azdes.gov](mailto:rhuenemann@azdes.gov)

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



**TITLE 6. ECONOMIC SECURITY****CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES**

(Authority: A.R.S. § 41-1954 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).**Editor's Note: Sections and Appendices of this Chapter were adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005 (A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules (Supp. 98-2).**Editor's Note: Sections of this Chapter were adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Under Laws 1997, Chapter 300, § 74(B), the Department is required to institute the formal rulemaking process on these Sections on or before December 31, 1997. Because these rules are exempt from the regular rulemaking process, the Chapter is printed on blue paper.***ARTICLE 1. REPEALED***Former Article 1 consisting of Sections R6-5-01 through R6-5-103 repealed effective August 3, 1978.***ARTICLE 2. REPEALED***Former Article 2 consisting of Sections R6-5-201 through R6-5-209 repealed effective August 8, 1978.***ARTICLE 3. REPEALED***Former Article 3 consisting of Sections R6-5-301 through R6-5-308 repealed effective July 6, 1976.***ARTICLE 4. REPEALED***Former Article 4 consisting of Sections R6-5-401 through R6-5-420 repealed effective August 3, 1978.***ARTICLE 5. REPEALED***Former Article 5 consisting of Sections R6-5-501 through R6-5-504 repealed effective July 6, 1976.***ARTICLE 6. REPEALED***Former Article 6 consisting of Sections R6-5-601 through R6-5-622 repealed effective July 6, 1977.***ARTICLE 7. REPEALED***Former Article 7 consisting of Sections R6-5-701 through R6-5-716 repealed effective August 3, 1978.***ARTICLE 8. REPEALED***Former Article 8 consisting of Sections R6-5-801 through R6-5-808 repealed effective September 16, 1976.***ARTICLE 9. REPEALED***Former Article 9 consisting of Sections R6-5-901 through R6-5-904 repealed effective August 3, 1978.***ARTICLE 10. REPEALED***Former Article 10 consisting of Sections R6-5-1001 through R6-5-1003 repealed effective August 3, 1978.***ARTICLE 11. REPEALED***Former Article 11 consisting of Sections R6-5-1101 through R6-5-1109 repealed effective August 11, 1976.***ARTICLE 12. REPEALED***Former Article 12 consisting of Sections R6-5-1201 through R6-5-1206 repealed effective May 17, 1976.***ARTICLE 13. REPEALED***Former Article 13 consisting of Sections R6-5-1301 through R6-5-1309 repealed effective November 23, 1976.***ARTICLE 14. REPEALED***Former Article 14 consisting of Sections R6-5-1401 through R6-5-1413 repealed effective May 24, 1976.***ARTICLE 15. REPEALED***Former Article 15 consisting of Sections R6-5-1501 through R6-5-1504 repealed effective August 11, 1976.***ARTICLE 16. RESERVED****ARTICLE 17. REPEALED***Former Article 17 consisting of Sections R6-5-1701 through R6-5-1704 repealed effective August 11, 1976.***ARTICLE 18. REPEALED***Former Article 18 consisting of Sections R6-5-1801 through R6-5-1804 repealed effective August 11, 1976.***ARTICLE 19. REPEALED***Former Article 19 consisting of Sections R6-5-1901 through R6-5-1906 repealed effective July 6, 1976.***ARTICLE 20. REPEALED***Former Article 20 consisting of Sections R6-5-2001 through R6-5-2006 repealed effective December 17, 1993.*

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2310, repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

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### ARTICLE 24. APPEALS AND HEARINGS

Article 24 consisting of Sections R6-5-2401 through R6-5-2405 adopted effective March 1, 1978.

Former Article 24 consisting of Sections R6-5-2401 through R6-5-2404 repealed effective March 1, 1978.

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Former Article 26, consisting of Sections R6-5-2601 through R6-5-2607, repealed effective June 5, 1997 (Supp. 97-2).

### ARTICLE 27. REPEALED

Former Article 27, consisting of Sections R6-5-2701 through R6-5-2707, repealed effective June 5, 1997 (Supp. 97-2).

### ARTICLE 28. REPEALED

Former Article 28, consisting of Sections R6-5-2801 through R6-5-2804, repealed effective November 8, 1982.

### ARTICLE 29. REPEALED

Article 29, consisting of Sections R6-5-2901 through R6-5-2912, repealed effective December 17, 1993 (Supp. 93-4).

### ARTICLE 30. REPEALED

Former Article 30, consisting of Sections R6-5-3001 through R6-5-3007, repealed effective August 29, 1984.

### ARTICLE 31. REPEALED

Former Article 31, consisting of Sections R6-5-3101 through R6-5-3110, repealed effective November 8, 1982.

### ARTICLE 32. REPEALED

Article 32, consisting of Sections R6-5-3201 through R6-5-3211, repealed effective December 17, 1993 (Supp. 93-4).

### ARTICLE 33. RESERVED

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### ARTICLE 48. RESERVED

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Article 49, consisting of Sections R6-5-4901 through R6-5-4922 and Appendix A, adopted effective July 31, 1997 (Supp. 97-3).

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*Article 51, consisting of Sections R6-5-5101 through R6-5-5107, expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).*

*Article 51, consisting of Sections R6-5-5101 through R6-5-5107, adopted effective June 17, 1985.*

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*Article 52, consisting of Sections R6-5-5201 through R6-5-5211, repealed effective May 11, 1994 (Supp. 94-2).*

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**ARTICLE 53. REPEALED**

*Former Article 53 consisting of Sections R6-5-5301 through R6-5-5305 repealed effective April 9, 1981.*

**ARTICLE 54. REPEALED**

*Former Article 54 consisting of Sections R6-5-5401 through R6-5-5411 repealed effective November 8, 1982.*

**ARTICLE 55. CHILD PROTECTIVE SERVICES**

*Article 55, consisting of Sections R6-5-5501 through R6-5-5504, adopted effective December 8, 1983.*

*Former Article 55, consisting of Sections R6-5-5501 through R6-5-5526, repealed effective December 8, 1983.*

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*Article 56, consisting of new Sections R6-5601 through R6-5612, adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).*

*Article 56, consisting of Sections R6-5-5601 through R6-5-5624, recodified to A.A.C. R6-8-201 through R6-8-224 effective February 13, 1996 (Supp. 96-1).*

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<i>Article 57, consisting of Sections R6-5-5701 thru R6-5-5709, repealed effective April 9, 1998 (Supp. 98-2).</i>		
<i>Article 57, consisting of Sections R6-5-5701 through R6-5- 5709, adopted effective November 5, 1984.</i>		
<i>Former Article 57, consisting of Sections R6-5-5701 through R6-5-5711, repealed effective November 5, 1984.</i>		
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<i>Article 58, consisting of Sections R6-5-5801 through R6-5- 5850, adopted effective January 10, 1997 (Supp. 97-1).</i>		
<i>Former Article 58, consisting of Sections R6-5-5801 through R6-5-5807, repealed effective January 10, 1997 (Supp. 97-1).</i>		
<i>Article 58, consisting of Sections R6-5-5801 through R6-5- 5807, adopted effective April 1, 1981.</i>		
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*Article 61, consisting of Sections R6-5-6101 through R6-5-6104, repealed effective June 5, 1997 (Supp. 97-2).*

*Article 61, consisting of Sections R6-5-6101 through R6-5-6104, adopted effective August 29, 1984.*

*Former Article 61, consisting of Sections R6-5-6101 through R6-5-6108, repealed effective August 29, 1984.*

**ARTICLE 62. REPEALED**

*Former Article 62 consisting of Sections R6-5-6201 through R6-5-6209 repealed effective August 29, 1984.*

**ARTICLE 63. REPEALED**

*Former Article 63 consisting of Sections R6-5-6301 through R6-5-6304 repealed effective November 8, 1982.*

**ARTICLE 64. REPEALED**

*Former Article 64 consisting of Sections R6-5-6401 through R6-5-6408 repealed effective February 1, 1979.*

**ARTICLE 65. EXPIRED**

*Article 65, consisting of Sections R6-5-6501 through R6-5-6511, adopted effective January 2, 1996 (Supp. 96-1).*

*Article 65, consisting of Sections R6-5-6501 through R6-5-6509, repealed effective January 2, 1996 (Supp. 96-1).*

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**ARTICLE 66. EXPIRED**

*Article 66, consisting of Sections R6-5-6601 through R6-5-6624, adopted effective January 2, 1996 (Supp. 96-1).*

*Article 66, consisting of Sections R6-5-6601 through R6-5-6610, repealed effective January 2, 1996 (Supp. 96-1).*

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**ARTICLE 68. REPEALED**

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*Article 70, consisting of Sections R6-5-7001 through R6-5-7040, adopted effective January 2, 1996 (Supp. 96-1).*

*Article 70, consisting of Sections R6-5-7001 through R6-5-7040, repealed effective January 2, 1996 (Supp. 96-1).*

*Article 70 consisting of Sections R6-5-7001 through R6-5-7040 adopted as permanent rules effective January 23, 1987.*

*Article 70 consisting of Sections R6-5-7001 through R6-5-7040 adopted as an emergency effective October 17, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.*

*Article 70 consisting of Sections R6-5-7001 through R6-5-7006 adopted as an emergency effective January 1, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency renewed effective April 1, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.*

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#### ARTICLE 71. REPEALED

*Article 71, consisting of Sections R6-5-7101 through R6-5-7104, repealed effective April 9, 1998 (Supp. 98-2).*

*Article 71, consisting of Sections R6-5-7101 through R6-5-7104, adopted as permanent rules effective July 11, 1986.*

*Former Article 71, consisting of Sections R6-5-7101 through R6-5-7104, adopted as an emergency effective January 1, 1986 and renewed as an emergency effective April 1, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency effective April 1, 1986 expired.*

*Former Article 71, consisting of Sections R6-5-7101 through R6-5-7104, repealed effective November 8, 1982.*

#### ARTICLE 72. REPEALED

*Former Article 72 consisting of Sections R6-5-7201 through R6-5-7214 repealed effective July 12, 1984.*

#### ARTICLE 73. REPEALED & RENUMBERED

*Article 73, consisting of Sections R6-5-7301 through R6-5-7306 and R6-5-7309, repealed; Sections R6-5-7307 and R6-5-7308 renumbered to Sections in Article 74, filed with the Secretary of State's Office May 15, 1997; effective July 1, 1997 (Supp. 97-2). Effective date corrected Supp. 98-2.*

*Article 73 consisting of Sections R6-5-7301 through R6-5-7309 adopted effective January 21, 1985.*

*Former Article 73, consisting of Sections R6-5-7301 through R6-5-7320, repealed effective February 26, 1979.*

#### ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR CHILD WELFARE AGENCIES OPERATING RESIDENTIAL GROUP CARE FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS

*Article 74, consisting of Sections R6-5-7401 through R6-5-7469, and Appendix 1 adopted; and Sections R6-5-7470 and R6-5-7471 renumbered from Article 73 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Effective date corrected Supp. 98-2.*

*Former Article 74, consisting of Sections R6-5-7401 through R6-5-7413, repealed effective May 15, 1997 (Supp. 97-2).*

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**ARTICLE 81. REPEALED**

*Former Article 81 consisting of Sections R6-5-8101 through R6-5-8104 repealed effective November 8, 1982.*

**ARTICLE 82. REPEALED**

*Former Article 82 consisting of Sections R6-5-8201 through R6-5-8204 repealed effective November 8, 1982.*

**ARTICLE 83. REPEALED**

*Article 83, consisting of Sections R6-5-8301 through R6-5-8308, repealed effective December 17, 1993 (Supp. 93-4).*

**ARTICLE 84. REPEALED**

*Former Article 84 consisting of Sections R6-5-8401 through R6-5-8404 repealed effective November 8, 1982.*

**ARTICLE 85. REPEALED**

*Former Article 85 consisting of Sections R6-5-8501 through R6-5-8508 repealed effective November 8, 1982.*

**ARTICLE 86. REPEALED**

*Article 86, consisting of Sections R6-5-8601 through R6-5-8604, repealed effective December 17, 1993 (Supp. 93-4).*

*Article 86 consisting of Sections R6-5-8601 through R6-5-8604 adopted effective March 8, 1979.*

*Former Article 86 consisting of Sections R6-5-8601 through R6-5-8611 repealed effective March 8, 1979.*

**ARTICLE 87. REPEALED**

*Article 87, consisting of Sections R6-5-8701 through R6-5-8704, repealed effective December 17, 1993 (Supp. 93-4).*

**ARTICLE 88. REPEALED**

*Former Article 88 consisting of Sections R6-5-8801 through R6-5-8804 repealed effective November 8, 1982.*

**ARTICLE 89. RESERVED****ARTICLE 90. RESERVED****ARTICLE 91. REPEALED**

*Article 91, consisting of Sections R6-5-9101 through R6-5-9104, repealed effective December 17, 1993 (Supp. 93-4).*

**ARTICLE 92. REPEALED**

*Article 92, consisting of Sections R6-5-9201 through R6-5-9204, repealed effective December 17, 1993 (Supp. 93-4).*

**ARTICLE 93. REPEALED**

*Former Article 93 consisting of Sections R6-5-9301 through R6-5-9304 repealed effective November 8, 1982.*

**ARTICLE 94. REPEALED**

*Former Article 94 consisting of Sections R6-5-9401 through R6-5-9404 repealed effective November 8, 1982.*

**ARTICLE 95. REPEALED**

*Former Article 95 consisting of Sections R6-5-9501 through R6-5-9504 repealed effective November 8, 1982.*

**ARTICLE 96. REPEALED**

*Former Article 96 consisting of Sections R6-5-9601 through R6-5-9604 repealed effective November 8, 1982.*

**ARTICLE 97. REPEALED**

*Former Article 97 consisting of Sections R6-5-9701 through R6-5-9704 repealed effective November 8, 1982.*

**ARTICLE 98. REPEALED**

*Former Article 98 consisting of Sections R6-5-9801 through R6-5-9804 repealed effective November 8, 1982.*

**ARTICLE 99. REPEALED**

*Former Article 99 consisting of Sections R6-5-9901 through R6-5-9904 repealed effective November 8, 1982.*

**ARTICLE 100. REPEALED**

*Former Article 100 consisting of Sections R6-5-10001 through R6-5-10004 repealed effective November 8, 1982.*

**ARTICLE 101. REPEALED**

*Former Article 101 consisting of Sections R6-5-10101 through R6-5-10104 repealed effective November 8, 1982.*

**ARTICLE 102. REPEALED**

*Former Article 102 consisting of Sections R6-5-10201 through R6-5-10204 repealed effective November 8, 1982.*

**ARTICLE 103. REPEALED**

*Former Article 103 consisting of Sections R6-5-10301 through R6-5-10304 repealed effective November 8, 1982.*

**ARTICLE 104. REPEALED**

*Article 104, consisting of Sections R6-5-10401 through R6-5-10404, repealed effective December 17, 1993 (Supp. 93-4).*

**ARTICLE 105. REPEALED**

*Article 105, consisting of Sections R6-5-10501 through R6-5-10504, repealed effective December 17, 1993 (Supp. 93-4).*

**ARTICLE 106. REPEALED**

*Former Article 106 consisting of Sections R6-5-10601 through R6-5-10604 repealed effective November 8, 1982.*

**ARTICLE 107. REPEALED**

*Former Article 107 consisting of Sections R6-5-10701 through R6-5-10704 repealed effective November 8, 1982.*

**ARTICLE 108. REPEALED**

*Former Article 108 consisting of Sections R6-5-10801 through R6-5-10804 repealed effective November 8, 1982.*

**ARTICLE 109. REPEALED**

*Former Article 109 consisting of Sections R6-5-10901 through R6-5-10904 repealed effective November 8, 1982.*

**ARTICLE 110. REPEALED**

*Former Article 110 consisting of Sections R6-5-11001 through R6-5-11004 repealed effective November 8, 1982.*



**ARTICLE 1. REPEALED**

*Former Article 1 consisting of Sections R6-5-01 through R6-5-103 repealed effective August 3, 1978.*

**ARTICLE 2. REPEALED**

*Former Article 2 consisting of Sections R6-5-201 through R6-5-209 repealed effective August 8, 1978.*

**ARTICLE 3. REPEALED**

*Former Article 3 consisting of Sections R6-5-301 through R6-5-308 repealed effective July 6, 1976.*

**ARTICLE 4. REPEALED**

*Former Article 4 consisting of Sections R6-5-401 through R6-5-420 repealed effective August 3, 1978.*

**ARTICLE 5. REPEALED**

*Former Article 5 consisting of Sections R6-5-501 through R6-5-504 repealed effective July 6, 1976.*

**ARTICLE 6. REPEALED**

*Former Article 6 consisting of Sections R6-5-601 through R6-5-622 repealed effective July 6, 1977.*

**ARTICLE 7. REPEALED**

*Former Article 7 consisting of Sections R6-5-701 through R6-5-716 repealed effective August 3, 1978.*

**ARTICLE 8. REPEALED**

*Former Article 8 consisting of Sections R6-5-801 through R6-5-808 repealed effective September 16, 1976.*

**ARTICLE 9. REPEALED**

*Former Article 9 consisting of Sections R6-5-901 through R6-5-904 repealed effective August 3, 1978.*

**ARTICLE 10. REPEALED**

*Former Article 10 consisting of Sections R6-5-1001 through R6-5-1003 repealed effective August 3, 1978.*

**ARTICLE 11. REPEALED**

*Former Article 11 consisting of Sections R6-5-1101 through R6-5-1109 repealed effective August 11, 1976.*

**ARTICLE 12. REPEALED**

*Former Article 12 consisting of Sections R6-5-1201 through R6-5-1206 repealed effective May 17, 1976.*

**ARTICLE 13. REPEALED**

*Former Article 13 consisting of Sections R6-5-1301 through R6-5-1309 repealed effective November 23, 1976.*

**ARTICLE 14. REPEALED**

*Former Article 14 consisting of Sections R6-5-1401 through R6-5-1413 repealed effective May 24, 1976.*

**ARTICLE 15. REPEALED**

*Former Article 15 consisting of Sections R6-5-1501 through R6-5-1504 repealed effective August 11, 1976.*

**ARTICLE 16. RESERVED****ARTICLE 17. REPEALED**

*Former Article 17 consisting of Sections R6-5-1701 through R6-5-1704 repealed effective August 11, 1976.*

**ARTICLE 18. REPEALED**

*Former Article 18 consisting of Sections R6-5-1801 through R6-5-1804 repealed effective August 11, 1976.*

**ARTICLE 19. REPEALED**

*Former Article 19 consisting of Sections R6-5-1901 through R6-5-1906 repealed effective July 6, 1976.*

**ARTICLE 20. REPEALED****R6-5-2001. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2001 repealed, new Section R6-5-2001 adopted effective May 17, 1976 (Supp. 76-3). Amended as an emergency effective August 3, 1976 (Supp. 76-4). Former Section R6-5-2001 repealed, new Section R6-5-2001 adopted effective November 8, 1982 (Supp. 82-6). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2002. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2002 repealed, new Section R6-5-2002 adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Former Section R6-5-2002 repealed, new Section R6-5-2002 adopted effective November 8, 1982 (Supp. 82-6). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2003. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2003 repealed, new Section R6-5-2003 adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Former Section R6-5-2003 repealed, new Section R6-5-2003 adopted effective November 8, 1982 (Supp. 82-6). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2004. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2004 repealed, new Section R6-5-2004 adopted effective May 17, 1976 (Supp. 76-3). Amended as an emergency effective August 3, 1976 (Supp. 76-4). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Former Section R6-5-2004 repealed, new Section R6-5-2004 adopted effective November 8, 1982 (Supp. 82-6). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 1, 1983, through June 30, 1984, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 83-3). Exhibit I, Title XX, Social Services Plan, incorporated herein by reference, amended as an emergency effective September 30, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Emergency expired. Permanent amendment adopted effective January 3, 1984 (Supp. 84-1). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 1, 1984, through June 30, 1985, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 84-3). Exhibit I, Title

XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 1, 1985, through June 30, 1986, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 85-3). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period July 2, 1986, through June 30, 1987, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 86-4). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period September 24, 1987, through June 30, 1988, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 87-3). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2) of this rule, is adopted for the program period September 22, 1988, through June 30, 1989, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 88-3). Exhibit I, Title XX, Social Services Plan, incorporated by reference in subsection (C), paragraph (2), of this rule, is adopted for the program period July 1, 1989, through June 30, 1990, and the former Exhibit I, Title XX, Social Services Plan is repealed accordingly (Supp. 89-3). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2005. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Former Section R6-5-2005 repealed, new Section R6-5-2005 adopted effective November 8, 1982 (Supp. 82-6). A new Exhibit I, Title XX, Social Services Plan, referred to in subsection (1) of this rule, is adopted for the program period September 22, 1988 through July 30, 1989 (Supp. 88-3). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2006. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective February 10, 1977 (Supp. 77-1). Amended effective October 31, 1978 (Supp. 78-5). Repealed effective November 8, 1982 (Supp. 82-6).

**ARTICLE 21. REPEALED**

*Former Article 21 consisting of Sections R6-5-2101 through R6-5-2110 repealed effective November 8, 1982.*

**ARTICLE 22. REPEALED**

*Former Article 22 consisting of Sections R6-5-2202 through R6-5-2209 repealed effective November 8, 1982.*

**ARTICLE 23. REPEALED****R6-5-2301. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2301 repealed, new Section R6-5-2301 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2302. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975

(Supp. 75-1). Former Section R6-5-2302 repealed, new Section R6-5-2302 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2303. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2303 repealed, new Section R6-5-2303 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2304. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2304 repealed, new Section R6-5-2304 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2305. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2305 repealed, new Section R6-5-2305 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2306. Repealed****Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2306 repealed, new Section R6-5-2306 adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2307. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2308. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2309. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**R6-5-2310. Repealed****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2).

**ARTICLE 24. APPEALS AND HEARINGS**

*Article 24 consisting of Sections R6-5-2401 through R6-5-2405 adopted effective March 1, 1978.*

*Former Article 24 consisting of Sections R6-5-2401 through R6-5-2404 repealed effective March 1, 1978.*

#### **R6-5-2401. Expired**

##### **Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2401 repealed, new Section R6-5-2401 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2401 repealed, new Section R6-5-2401 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

#### **R6-5-2402. Expired**

##### **Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2402 repealed, new Section R6-5-2402 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2402 repealed, new Section R6-5-2402 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

#### **R6-5-2403. Expired**

##### **Historical Note**

Adopted as an emergency effective October 2, 1975 (Supp. 75-1). Former Section R6-5-2403 repealed, new Section R6-5-2403 adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2403 repealed, new Section R6-5-2403 adopted effective March 1, 1978 (Supp. 78-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 607, effective October 31, 2011 (Supp. 12-1).

#### **R6-5-2404. Basis for a hearing**

- A.** A person will be granted a hearing for any of the following reasons:
1. Right to apply for social services has been denied.
  2. Application is denied in whole or in part.
  3. Action on an application has not been taken by the Department within 30 days of the date of application.
  4. Service is suspended, terminated or reduced when such action has occurred as a result of an eligibility determination.
- B.** Change in law or policy. A hearing shall not be granted when a change in federal or state law or policy requires service adjustments or discontinuance for classes of recipients.

##### **Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-2404 repealed, new Section R6-5-2404 adopted effective March 1, 1978 (Supp. 78-2).

#### **R6-5-2405. Hearing process**

- A.** Filing of appeal
1. A request for a hearing shall be filed in writing with the Department or provider within 15 calendar days after the mailing date of the decision letter, except that for appeals on denying, revoking or suspending a license of a child welfare agency or foster home the request shall be filed within 20 calendar days.
  2. Except as otherwise provided by statute or by Department regulation, any appeal, application, request, notice, report, or other information or document submitted to the Department shall be considered received by and filed with the Department:

- a. If transmitted via the United States Postal Service or its successor, on the date it is mailed. The mailing date will be as follows:
    - i. As shown by the postmark.
    - ii. In the absence of a postmark the postage-meter mark of the envelope in which it is received;
    - iii. If not postmarked or postage-meter marked, or if the mark is illegible, the date entered on the document as the date of completion.
  - b. If transmitted by any means other than the United States Postal Service or its successor, on the date it is received by the Department.
  - c. The submission of any appeal, application, request, notice, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation or to delay or other action of the United States Postal Service or its successor.
  - d. Any notice, determination, decision or other data mailed by the Department shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the notice, determination, decision or other data unless otherwise indicated by the facts. Computation of time shall be made in accordance with Rule 6(a) of the Rules of Civil Procedure, 16 A.R.S.
3. Benefits shall not be reduced or terminated prior to a hearing decision unless due to a subsequent change in household eligibility another notice of adverse action is received and not timely appealed.
  4. The local office or provider shall advise the client of any community legal services available and, when requested, shall assist in completing the hearing request.
- B.** Notice of hearing
1. Hearings will be held at the local office or any other place mutually agreed upon by the hearing officer and appellant. They shall be scheduled not less than 20 nor more than 30 days from the date of filing of the request for hearing. The appellant shall be given no less than 15 days notice of hearing, except that the appellant may waive the notice period or request a delay. For appeals on denying, revoking or suspending a license of a child welfare agency or foster home, however, the hearing shall be held within ten days of the date of filing of the request for hearing.
  2. The notice of hearing shall inform the appellant of the date, time, and place of the hearing, the name of the hearing officer, the issues involved, and of his rights to present his case in person or through a representative; examine and copy any documents in his case file and all documents and records to be used by the agency at the hearing at a reasonable time prior to the hearing as well as at the hearing; obtain assistance from the local office in preparing his case; and of his opportunity to make inquiry at the local office about the availability of community legal resources which could provide representation at the hearing.
  3. Appellant, in lieu of a personal appearance, may submit a written statement, under oath or affirmation, setting forth the facts of the case provided that the statement is submitted to the Department prior to or at the time of the hearing. All parties shall be ready and present with all

witnesses and documents at the time and place specified in the notice of hearing, and shall be prepared at such time to dispose of all issues and questions involved in the appeal.

4. The hearing officer may take such action for the proper disposition of an appeal as he deems necessary, and on his own motion, or at the request of any interested party upon a showing of good cause disqualify himself, or may continue the hearing to a future time or reopen a hearing before a decision is final to take additional evidence. If an interested party fails to appear at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or may make his decision upon record and such evidence as may be presented at the scheduled hearing. If, within ten days of the scheduled hearing, appellant files a written application requesting reopening of the proceedings and establishes good cause for failure to appear at the scheduled hearing, the hearing shall be rescheduled. Notice of the time, place, and purpose of any continued, reopened or rescheduled hearing shall be given to all interested parties.

**C. Prehearing summary**

1. A prehearing summary of the facts and grounds for the action taken shall be prepared and forwarded to the hearing officer no less than four days prior to the hearing.
2. The summary shall be provided to the appellant prior to the commencement of the hearing.

**D. Subpoena of witnesses.** The hearing officer may subpoena any witnesses or documents requested by the Department or claimant to be present at the hearing. The request shall be in writing and shall state the name and address of the witness and the nature of his testimony. The nature of the witnesses' testimony must be relevant to the issues of the hearing, otherwise the hearing officer may deny the request. The request for the issuance of a subpoena shall be made to give sufficient time, a minimum of three working days, prior to the hearing. A subpoena requiring the production of records and documents shall specifically describe them in detail and further set forth the name and address of the custodian thereof.

**E. Review of file.** In the presence of a Department representative, the appellant and/or his authorized representative shall be permitted to review, obtain or copy any Department record necessary for the proper presentation of the case.

**F. Conduct of the hearing**

1. Hearings shall be conducted in an orderly and dignified manner.
2. Hearings are opened, conducted and closed by the hearing officer who shall rule on the admissibility of evidence and shall direct the order of proof. He shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses, the production of books, papers, correspondence, memoranda and other records he deems necessary as evidence in connection with a hearing.
3. Evidence not related to the issue shall not be allowed to become a part of the record.
4. The hearing officer may, on his own motion, or at the request of the appellant or Department representative, exclude witnesses from the hearing room.
5. The worker, supervisor or other appropriate person may be designated Department representative for the hearing.
6. The appellant and Department representative may testify, present evidence, cross-examine witnesses and present arguments.
7. The appellant may appear for himself or be represented by an attorney or any other person he designates.

8. A full and complete record shall be kept of all proceedings in connection with an appeal, and such records shall be open for inspection by the claimant or his representative at a place accessible to him. A transcript of the proceedings need not, however, be made unless it is required for further proceedings. When a transcript has been made for further proceedings, a copy shall be furnished without cost to each interested party.

**G. Hearing decision**

1. The hearing decision shall be rendered exclusively on the evidence and testimony produced at the hearing, appropriate state and federal law, and Department rules governing the issues in dispute.
2. The decision shall set forth the pertinent facts involved, the conclusions drawn from such facts, the sections of applicable law or rule, the decision and the reasons thereof. A copy of such decision, together with an explanation of the appeal rights, shall be delivered or mailed to each interested party and their attorneys of record not more than 60 days from the date of filing the request for appeal, unless the delay was caused by the appellant.
3. In those cases where the local office must take additional action as a result of a decision, such action must be taken immediately.
4. All decisions in favor of the appellant apply retroactively to the date of the action being appealed, or to the date the hearing officer specifically finds appropriate.
5. When a hearing decision upholds the proposed action of reducing, suspending or terminating a grant, an overpayment is the result.
6. All hearing decisions will be made accessible to the public, subject to meeting the provision for safeguarding confidential information relating to the client.
7. Decision of the hearing officer will be the final decision of the Department unless a reconsideration is requested in accordance with subsection (I).

**H. Withdrawal of appeal.** An appeal may be withdrawn as follows:

1. Voluntary withdrawal. This may be accomplished by completing and signing the proper Department form or by submitting a letter properly signed.
2. Abandonment or involuntary withdrawal. This occurs when an appellant fails to appear at a scheduled hearing and within ten days thereof fails to request a rescheduled hearing or fails to appear at a rescheduled hearing which he has requested. A hearing may not be considered abandoned if the claimant provides notification up to the time of the hearing that he is unable, due to good cause, to keep the appointment and that he still wishes a hearing.

**I. Reconsideration**

1. An appellant, within ten calendar days after the decision was mailed or otherwise delivered to him, may request the Director to review the decision. The request shall be in writing and should set forth a statement of the grounds for review, and may be filed personally or by mail.
2. After receipt of an application for leave to appeal, the Director shall:
  - a. Deny the application, or
  - b. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered, or
  - c. Grant the application and decide the appeal on the record.
3. The Director shall promptly adopt his decision which shall be the final decision of the Department. A copy of the decision, together with a statement specifying the

rights for judicial review, shall be distributed to each interested party.

**Historical Note**

Adopted effective March 1, 1978 (Supp. 78-2).

**ARTICLE 25. REPEALED**

**R6-5-2501. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-2501 repealed, new Section R6-5-2501 adopted effective February 26, 1979 (Supp. 79-1). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2502. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-2502 repealed, new Section R6-5-2502 adopted effective February 26, 1979 (Supp. 79-1). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2503. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 26. REPEALED**

**R6-5-2601. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2602. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2603. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2604. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2605. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2606. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2607. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 27. REPEALED**

**R6-5-2701. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2702. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2703. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2704. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2705. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2706. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-2707. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 28. REPEALED**

*Former Article 28 consisting of Sections R6-5-2801 through R6-5-2804 repealed effective November 8, 1982.*

**ARTICLE 29. REPEALED**

**R6-5-2901. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2902. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2903. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2904. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2905. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2906. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2907. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2908. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2909. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2910. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2911. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-2912. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 30. REPEALED**

*Former Article 30, consisting of Sections R6-5-3001 through R6-5-3007, repealed effective August 29, 1984.*

**ARTICLE 31. REPEALED**

*Former Article 31, consisting of Sections R6-5-3101 through R6-5-3110, repealed effective November 8, 1982.*

**ARTICLE 32. REPEALED****R6-5-3201. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3202. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3203. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3204. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3205. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3206. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3207. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3208. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3209. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3210. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-3211. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 33. RESERVED****ARTICLE 34. RESERVED****ARTICLE 35. RESERVED****ARTICLE 36. RESERVED****ARTICLE 37. RESERVED****ARTICLE 38. RESERVED****ARTICLE 39. RESERVED****ARTICLE 40. RESERVED****ARTICLE 41. RESERVED****ARTICLE 42. RESERVED****ARTICLE 43. RESERVED****ARTICLE 44. RESERVED****ARTICLE 45. RESERVED****ARTICLE 46. RESERVED****ARTICLE 47. RESERVED****ARTICLE 48. RESERVED****ARTICLE 49. CHILD CARE ASSISTANCE**

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for*

*review and approval; and the Department was not required to hold public hearings on this Section.*

#### **R6-5-4901. Definitions**

The following definitions apply to this Article:

1. "Adequate notice" means written notification that explains the action the Department intends to take, the reason for the action, the specific authority for the action, the client's appeal rights, and right to benefits pending appeal, and that is mailed before the effective date of the action.
2. "Appellant" means an applicant or recipient of assistance who is appealing a negative action by the Department.
3. "Availability" means the portion of time that a parent or caretaker can provide care to their own child, as determined by the Department, because the parent or caretaker is not participating in an eligible activity.
4. "Applicant" means a person who has filed an application for Child Care Assistance.
5. "Authorized" means the specific amount of Child Care Assistance approved by the Department for an eligible family for a specific period of time.
6. "CCA" means the DES Child Care Administration.
7. "Caretaker relative" means a relative who exercises the responsibility for the day-to-day physical care, guidance, and support of a child who physically resides with the relative.
8. "Cash Assistance" means the program administered by the Family Assistance Administration that provides temporary Cash Assistance to needy families.
9. "Cash Assistance participant" means a recipient of Cash Assistance.
10. "Child care" means the compensated service the Department provides to a child who is unaccompanied by a parent or guardian during a portion of a 24-hour day.
11. "Child Care Assistance" means money payments for child care services paid by the Department for the benefit of an eligible family.
12. "Child Care Provider" means a child care facility licensed under A.R.S. Title 36, Chapter 7.1, Article 4, child care home providers, in-home providers, noncertified relative providers, and regulated child care on military installations or federally recognized Indian Tribes.
13. "Client" means a person who has requested, has been referred for, or who is currently receiving Child Care Assistance.
14. "Countable income" means the gross income of individuals included in family size that the Department considers to determine eligibility and calculate an assistance amount.
15. "CPS or Child Protective Services" means the child welfare services administration within the Department's Division of Children, Youth, and Family Services.
16. "Day" means a calendar day unless otherwise specified.
17. "DDD" means the Division of Developmental Disabilities.
18. "Denial" means a formal decision of ineligibility on an application, referral, or request for Child Care Assistance.
19. "Department" means the Arizona Department of Economic Security.
20. "Dependent" child means a person less than age 18, who resides with the applicant and whom the applicant has the legal financial obligation to support.
21. "DES-certified child care provider" means a provider who is certified by the Department of Economic Security under A.R.S. § 46-807 and who provides care in either the child's or the provider's own home.
22. "DHS-certified group home" means a provider who is certified by the Department of Health Services under A.R.S. § 36-897.01.
23. "DHS-licensed child care center" means a provider who is licensed by the Department of Health Services as prescribed in A.R.S. § 36-881.
24. "EITC" means Earned Income Tax Credit and is a federal income tax credit for low-income working individuals and families.
25. "Eligibility criteria" means the requirements an individual or family must meet to receive Child Care Assistance.
26. "Eligible activity" means a specific type of activity that causes an applicant or recipient and any other parent or responsible person in the eligible family to be unavailable to provide care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
27. "Eligible child" means a child less than 13 years of age.
28. "Eligible family" means a group of persons whose needs, income, and other circumstances are considered as a whole for the purpose of determining eligibility and amount of Child Care Assistance.
29. "Eligible need" means a specific type of need that causes an applicant or recipient, or any other parent or responsible person in the eligible family, to be unavailable or incapable to provide child care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
30. "E.S.O.L." means English for Speakers of Other Languages.
31. "Existing client" means an individual who is currently receiving Child Care Assistance or who has an open Child Care Assistance case with the Department.
32. "Family size" means the number of individuals considered when determining income eligibility, and includes the applicant, other parent or responsible person, and their dependent children who reside in the same household, subject to R6-5-4914 (D).
33. "Federal poverty level" (FPL) means the poverty guidelines issued by the United States Department of Health and Human Services under Section 673(2) of the Omnibus Reconciliation Act of 1981; and reported annually in the Federal Register; which are converted into monthly amounts by the Department; which shall become effective for use in determining eligibility for Child Care Assistance on the first day of the state fiscal year immediately following the publication of the annual amount in the Federal Register.
34. "Foster care" means that the Department or an Arizona Tribe placed a child in the custody of a licensed foster parent.
35. "Foster parent" means any person licensed by the Department or an Arizona Tribe to provide for the out of home care, custody, and control of a child.
36. "Gap in employment" means a period of 30 consecutive days of Child Care Assistance that begins the first day after the last day worked and ends the 30th day after the last day worked for an existing client who has lost employment.
37. "G.E.D." means General Equivalency Diploma.
38. "Homebound" means a person who is confined to their home because of physical or mental incapacity.
39. "Homeless shelter" means a public or private nonprofit program that is targeted to assist homeless families and is designed to provide temporary or transitional living

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- accommodations and services to assist such families toward self-sufficiency.
40. “Income” means earned and unearned income combined.
  41. “Jobs” means the Department program that assists Cash Assistance participants to prepare for, obtain, and retain employment. “Jobs” Program also includes the Tribal Jobs Program and any other entities that contract with the state to perform this function.
  42. “Jobs participant” means a Cash Assistance participant who is participating in the Jobs program as a condition of receiving Cash Assistance.
  43. “Local office” means a CCA location that is designated as the location in which Child Care Assistance applications and other documents are filed with the Department and in which eligibility and assistance amounts are determined for a particular geographic area of the state.
  44. “Lump sum income” means a single payment of earned or unearned income, such as a retroactive monthly benefit, non-recurring pay adjustment or bonus, inheritance, or personal injury and workers’ compensation award.
  45. “Mailing date” when used in reference to a document sent first-class, postage prepaid, through the United States mail, means the date:
    - a. Shown on the postmark;
    - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
    - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
  46. “Minor parent” means a parent less than the age of 18 years.
  47. “Negative action” means one of the Department actions described in R6-5-4918, including action to terminate assistance or increase the fee level and copayment for Child Care Assistance.
  48. “Noncertified relative provider” means a person who is at least 18 years of age, who is by blood, marriage, or adoption the grandparent, great grandparent, sibling not residing in the same household, aunt, great aunt, uncle or great uncle of the eligible child, who provides child care services to an eligible child, and meets the Department’s requirements to be a noncertified relative provider.
  49. “Notice date” means the date that appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
  50. “OSI” or “Office of Special Investigations” means the Department office to which CCA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies and other similar functions.
  51. “Other related child” means a child who is related to the applicant or recipient by blood, marriage, or adoption, and who is not the applicant’s or recipient’s natural, step, or adoptive child.
  52. “Overpayment” means a Child Care Assistance payment received by a child care provider or for an eligible family that exceeds the amount to which the provider or family was lawfully entitled.
  53. “Parent” means the biological mother or father whose name appears on the birth certificate, the person legally acknowledged as a mother or father, a father who has had an adjudication of paternity, or the adoptive mother or father of the child.
  54. “Positive action” means the approval, increase, or resumption of service such as increasing the amount of assistance or decreasing the fee level and copayment.
  55. “Recipient” means a person who is a member of an eligible family receiving Child Care Assistance.
  56. “Relative” means a person who is by blood, adoption, or marriage a parent, grandparent, great-grandparent, sibling of the whole or half blood, stepbrother, stepsister, aunt, uncle, great-aunt, great-uncle, or first cousin.
  57. “Request for Hearing” means a clear written expression by an applicant or recipient, or such person’s representative, indicating a desire to appeal a Department decision to a higher authority.
  58. “Responsible person” means one or more persons, residing in the same household, who have the legal responsibility to financially support:
    - a. One or more of the children for whom Child Care Assistance is being requested, or
    - b. The applicant or recipient of Child Care Assistance.
  59. “Review” means the Department’s review of all factors affecting an eligible family’s eligibility and assistance amount.
  60. “Self-Sufficiency Declaration” means a written statement signed and dated by the child care recipient that lists the specific actions the recipient has taken during the most recent six or 12-month period to maintain or increase self-sufficiency.
  61. “Tax Claimant” means a relative more than age 17 who resides with a parent who has applied for or is receiving Child Care Assistance, and who states their intention to claim any member of the eligible family as a tax dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
  62. “Tax Dependent” means a member of an eligible family applying for or receiving Child Care Assistance who is included in family size, and who the tax claimant states an intention to claim as a dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
  63. “Time Limit” means that each child in the eligible family may receive no more than 60 cumulative months of Child Care Assistance in a lifetime, unless the parent, caretaker relative, or legal guardian of the child needing care can prove they are making efforts to improve skills and move toward self-sufficiency, under A.R.S. § 46-803(K)(1).
  64. “Unit” means a part or full day measurement of Child Care Assistance authorized by the Department to meet the needs of an eligible family based on the participation of parents, caretaker relatives, or legal guardians of the children needing care in an eligible activity.
  65. “Waiting List” means the prioritization of applicants by the Department to manage resources within available funding by placing applicants determined eligible for Child Care Assistance on a list, until the Department determines that sufficient funds are available to fund Child Care Assistance for families on the list.
  66. “Work” means the performance of duties on a regular basis for wages or salary.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor’s Note: The following Section was adopted and repealed under an exemption from the provisions of A.R.S. Title*



*41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### **R6-5-4902. Repealed**

##### **Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section automatically repealed July 31, 1998 (Supp. 98-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### **R6-5-4903. Repealed**

##### **Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### **R6-5-4904. Access to Child Care Assistance**

##### **A. Application for Child Care Assistance.**

1. Any person may apply for Child Care Assistance by filing, either in person or by mail, a Department-approved application form with any CCA office.
2. The application file date is the date any CCA office receives an identifiable application. An identifiable application contains, at a minimum, the following information:
  - a. The legible name and address of the person requesting assistance; and
  - b. The signature, under penalty of perjury, of the applicant or, if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.
3. In addition to the identifiable information described in subsection (A)(2), a completed application shall contain:
  - a. The names of all persons living with the applicant and the relationship of those persons to the applicant, and
  - b. All other eligibility information requested on the application form.

##### **B. Request for Child Care Assistance.**

1. Cash Assistance participants who need Child Care Assistance for employment activities are not required to complete an application.

2. Child Care Assistance for Cash Assistance participants may begin effective the start date of the eligible activity but not earlier than the date that the participant requests Child Care Assistance from a local CCA office after the Department has verified eligibility criteria.

##### **C. Referral for Child Care Assistance.**

1. Jobs Participants. Cash Assistance participants in Jobs-approved work participation activities who request child care shall be referred by the Jobs Program for Child Care Assistance.
2. Child Protective Services Families (CPS). CPS shall refer families that CPS deems eligible for Child Care Assistance on a case-by-case basis.
3. CPS and DDD Foster Families - CPS or DDD shall determine eligibility for and refer children in the care, custody, and control of DES who need child care services as documented in a foster care case plan.

##### **Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### **R6-5-4905. Initial Eligibility Interview**

- A.** Upon receipt of an identifiable application, the Department shall schedule an initial eligibility interview for the applicant. Upon request, the Department shall conduct the interview at the residence of a person who is homebound.
- B.** The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.
- C.** The Department may conduct a telephone interview if the applicant has previously verified citizenship or legal residency status as prescribed in R6-5-4911(E).
- D.** During the interview, a Department representative shall:
  1. Assist the applicant in completing the application form;
  2. Witness the signature of the applicant;
  3. Discuss information pertinent to the applicant's child care needs;
  4. Provide the applicant with written information explaining:
    - a. The terms, conditions, and obligations of the Child Care Assistance program;
    - b. Any additional verification information as prescribed in R6-5-4906 which the applicant must provide for the Department to conclude the eligibility evaluation;
    - c. The Department practice of exchanging eligibility and income information among Department programs;
    - d. The coverage and scope of the Child Care Assistance program;
    - e. The applicant's rights, including the right to appeal a negative action; and
    - f. The requirement to report all changes within two work days from the date the change becomes known;

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5. Review the penalties for perjury and fraud, as printed on the application;
6. Explain to the applicant who is included in family size for the purpose of determining income eligibility, and whose availability is considered in determining the amount of Child Care Assistance authorized for each child needing care as prescribed in R6-5-4914(D);
7. If the applicant is the parent of the children needing care, explain the tax claimant provision under R6-5-4914(D)(3);
8. Provide the applicant with the tax claimant declaration form if there is a potential tax claimant in the household;
9. Provide the following information to assist the family in continuing to move toward self-sufficiency:
  - a. Availability of the Earned Income Tax Credit (EITC). Provide the applicant with the current U.S. Department of Internal Revenue Service (IRS) EITC information if the applicant comes into the office for the initial interview;
  - b. Availability of child support services through the Division of Child Support Enforcement (DCSE) to assist with paternity establishment, establishment of a child support order, or enforcement of an existing child support order. Provide the applicant with written information regarding child support services if the applicant comes into the office for the initial interview; and
  - c. Availability of Department-sponsored or contracted employment services that may assist the applicant and spouse or other parent in finding a job, or pursuing a better job or career. Provide the applicant with written information regarding employment services if the applicant comes into the office for the initial interview;
10. Explain to the applicant the 60-month per child time limit for Child Care Assistance:
  - a. Describe the child care programs to which the 60-month time limit applies;
  - b. Describe how child care utilization is measured per child to calculate the 60-month limit; and
  - c. Explain the criteria for extensions of the time limit based on continued efforts to improve job skills and move toward self-sufficiency;
11. Discuss the six-child limit for Child Care Assistance:
  - a. Explain that no more than six children in a family may receive Child Care Assistance at any point in time; and
  - b. Explain the child care programs to which the six-child limit applies;
12. Discuss the waiting list for Child Care Assistance:
  - a. Describe the programs to which it applies;
  - b. Explain prioritization for assistance based upon income for families on the waiting list;
  - c. Indicate whether the waiting list is currently in effect; and
  - d. Explain that, based on funding availability, the Department may implement a waiting list at any point in time;
13. Review any verification information already provided;
14. Explain the applicant's duties to:
  - a. Notify the Department regarding initial provider selection or changes in provider in advance of using services or changing providers;
  - b. Pay DES required copayments to the child care provider as assigned by the Department; and
  - c. Pay any additional charges to the provider for the cost of care in excess of the amount paid by the Department; and
15. Review all ongoing reporting requirements, and explain that the applicant may incur overpayments for failure to make timely reports.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4906. Verification of Eligibility Information**

- A. The Department shall obtain independent verification or corroboration of information provided by the client when required by law, or when it is necessary to determine eligibility, fee level and copayment assignment, or service authorization amount.
- B. The Department may verify or corroborate information by any reasonable means including:
  1. Contacting third parties such as employers and educational institutions,
  2. Asking the client to provide written documentation such as pay stubs or school schedules, and
  3. Conducting a computer data match through other Department programs' computer systems.
- C. The client is responsible for providing all required verification. The Department shall offer to assist a client who has difficulty in obtaining the verification and requests help.
- D. A client shall provide the Department with all requested verification within 10 calendar days from the notice date of a written request for such information. When a client does not timely comply with a request for information, the Department shall deny the application as provided in R6-5-4908(B).

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4907. Withdrawal of an Application**

- A. An applicant may withdraw an application at any time prior to its disposition by providing the Department with a written request for withdrawal signed by the applicant.
- B. If an applicant makes an oral request to withdraw an application:
  1. The Department shall accept the oral request, provide the applicant with a written withdrawal form, and request

that the applicant complete the form and return it to the Department. The Department shall inform the applicant of the consequences of not returning the withdrawal form within 10 days of the notice date.

2. If the applicant fails to return the completed withdrawal form, the Department shall deny the application for failure to provide information unless the applicant rescinds the oral withdrawal request within 10 days of the date the Department provides the applicant a withdrawal form.
- C. A withdrawal is effective as of the application file date unless the applicant specifies a different date on the withdrawal form.
- D. An application that has been withdrawn shall not be reinstated; an applicant who has withdrawn an application shall reapply anew.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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#### R6-5-4908. Child Care Assistance Approvals and Denials

- A. The Department shall complete the eligibility determination within 30 calendar days of the application file date or referral receipt date, unless:
  1. The application or referral is withdrawn,
  2. The application or referral is rendered moot because the applicant has died or cannot be located, or
  3. There is a delay resulting from a Department request for additional verification information as provided in R6-5-4906(D).
- B. The Department shall deny Child Care Assistance when the applicant fails to:
  1. Complete the application and an eligibility interview, as described in R6-5-4905;
  2. Submit all required verification information within 10 days of the notice date of a written request for verification, or within 30 days of the application file date whichever is later; or
  3. Cooperate during the eligibility determination process as required by R6-5-4911(A).
- C. When an applicant satisfies all eligibility criteria, the Department shall determine the service authorization amount, the fee level and copayment amount (if applicable), approve Child Care Assistance, and send the applicant an approval notice. The approval notice shall include the amount of assistance, fee level and copayment information, and an explanation of the applicant's appeal rights.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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*mit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-5-4909. 12-month Review

- A. The Department shall complete a review of all eligibility factors for each client at least once every 12 months, beginning with the 12th month following the first month of Child Care Assistance eligibility.
- B. The Department may elect to review eligibility factors more frequently than every 12 months.
- C. At least 30 days prior to the 12-month review date, the Department shall mail the client a notice advising of the need for a review, and the requirement to submit a completed review application and verification of income and other eligibility factors for the most recent calendar month.
- D. In response to such notice, the client shall mail or deliver to the Department a completed review application and verification by the date on the notice.
- E. The Department shall verify the client's income and any eligibility factors that have changed or are subject to change.
- F. The Department shall terminate Child Care Assistance effective the review date and deny the review application if the client:
  1. Fails to submit the review application by the review date, or
  2. Fails to submit requested verification by the review date as required by the Department for a redetermination of eligibility.
- G. If the client submits the review application and required verification within 30 days after the review date, the Department shall not require the client to appear for an intake interview and shall approve Child Care Assistance effective the date that the application and verification were received if other eligibility criteria are met.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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#### R6-5-4910. Reinstatement of Assistance

- A. If the Department has terminated Child Care Assistance, the Department shall not reinstate assistance unless the client files a new application.
- B. Notwithstanding subsection (A), the Department shall reinstate assistance within 10 calendar days when:
  1. Termination was due to Department error; the Department shall reinstate assistance effective the date following the date of termination;
  2. The Department receives a court order or administrative hearing decision mandating reinstatement; the Department shall reinstate assistance effective the date prescribed by the court order or hearing decision; or
  3. The recipient files a request for a fair hearing within 10 days of the notice date of the termination notice and requests that assistance be continued pending the out-

come of an appeal; the Department shall reinstate assistance effective the date following the date of termination.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

#### R6-5-4911. General Eligibility Criteria

##### A. Applicant and Recipient Responsibility.

1. An applicant for or recipient of Child Care Assistance shall cooperate with the Department as a condition of initial and continuing eligibility. The client shall:
  - a. Give the Department complete and truthful information;
  - b. Within two business days from the date the change becomes known, inform the Department of all changes in:
    - i. Income;
    - ii. Eligible activities as described in R6-5-4912;
    - iii. Work or school schedules;
    - iv. Persons moving in or out of the household;
    - v. Tax claimants moving in or out of the household;
    - vi. Other circumstances affecting eligibility or the amount of assistance authorized; and
  - c. Comply with all the Department's procedural requirements.
2. The Department may deny an application for or reduce or terminate assistance, if the client fails or refuses to cooperate with the Department to determine eligibility.

##### B. Eligible Applicants.

1. In order to be considered an eligible applicant for Child Care Assistance, a client shall reside with the child needing care and shall be:
  - a. The parent of the child for whom assistance is being requested; or
  - b. The caretaker relative related by blood, adoption, or marriage to the child for whom assistance is requested, including a brother, sister, aunt, uncle, first cousin, grandmother, grandfather, and persons of preceding generations as denoted by "grand," "great," or "great-great."
  - c. A court-appointed legal guardian for the child for whom assistance is requested, or a person who can provide documentation from the court that the process of legal guardianship has been initiated.
2. When more than one applicant resides in the home, or the child resides with two different caretakers intermittently, the Department shall determine the eligible applicant for Child Care Assistance as follows:
  - a. If both the parent and a caretaker relative are in the home, the parent is the eligible applicant;
  - b. If both a legal guardian and the parent are in the home, the legal guardian is the eligible applicant;
  - c. If a caretaker relative whose legal guardianship has been terminated and the parent are both in the home, the parent is the eligible applicant;

- d. When the child resides with a caretaker relative or legal guardian who is acting as caretaker at least 51 percent of the time, and the parent either maintains a separate residence and visits the child intermittently, or resides outside of the child's home for an indefinite period of time, the caretaker relative or legal guardian of the child is the eligible applicant for the child.

- i. An eligible applicant cannot be the noncertified relative provider or certified provider of the child for whom he or she is applying for assistance.

- ii. The Department shall not consider the tax claimant status of the caretaker relative or legal guardian under R6-5-4914(D) with respect to any member of the eligible family.

- e. When the child resides with two or more caretaker relatives, the caretaker relative who will be claiming the child as a dependent for income tax purposes is the eligible applicant for Child Care Assistance.

3. Acceptable verification of guardianship shall include the following court documents:

- a. Petition for Temporary Appointment of Guardian (date stamped as received by the court);
- b. Petition for Permanent Appointment of Guardian (date stamped as received by the court);
- c. Order of Appointment of a Temporary Guardian;
- d. Order of Appointment of a Permanent Guardian;
- e. Letters and Acceptance of Permanent Guardianship.

4. If the client has not been appointed as a guardian when the Department authorizes Child Care Assistance, the client shall to continue the legal process for appointment in order to retain eligibility for Child Care Assistance.

5. The client shall verify relationship or guardianship status as requested by the Department.

- C. Arizona Residency. The client and the child for whom assistance is requested shall be Arizona residents and shall be physically present within Arizona.

- D. Age of the Child. An eligible child is birth through 12 years of age only; a child aged 13 or older is ineligible for Child Care Assistance.

- E. Citizenship and Legal Residency Requirements.

1. The client shall be a United States citizen or shall be a legal resident of the United States.
2. The client shall verify citizenship or legal residency status as requested by the Department by providing a birth certificate, naturalization documentation, or alien or immigration registration documentation from the U.S. Immigration and Naturalization Service (INS).

- F. Eligible Activity or Need.

1. The client, and any other parent or responsible person in the household shall be engaged in an eligible activity, or have an eligible need for Child Care Assistance as prescribed in R6-5-4912 that causes each client, parent, or responsible person to be unavailable to provide care to the child for whom assistance is requested.
2. The Department does not require a tax claimant to be engaged in an eligible activity, unless the tax claimant is the other parent of a child receiving Child Care Assistance.

- G. Availability of the Client, Parent, and Responsible Person.

1. The Department shall consider the availability of the client, and any other parent or responsible person in the household in determining eligibility and the amount of Child Care Assistance authorized for each individual child needing care.

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2. The client, parent, and any other responsible person in the household shall be unavailable to provide care to the child for whom assistance is being requested for a portion of a 24-hour day due to an eligible activity or need.
3. In a family with more than one parent or responsible person, the Department shall authorize Child Care Assistance for the period of time that neither the parent nor the responsible person is available due to an eligible activity or need.
4. The Department shall not consider the availability of a tax claimant in determining eligibility or amount of Child Care Assistance authorized for the client's children, unless the tax claimant is the other parent of a child receiving Child Care Assistance.

**H. Provider Selection and Arrangements.**

1. The Department shall not authorize Child Care Assistance until the applicant has selected a child care provider. An allowable child care provider for DES Child Care Assistance:
  - a. Shall be one of the following:
    - i. A DHS-licensed child care center;
    - ii. A DHS-certified group home;
    - iii. A DES-certified family child care home;
    - iv. A DES-certified in home care provider;
    - v. A DES-noncertified relative provider;
    - vi. A regulated provider meeting requirements established by military installations or federally recognized Indian Tribes.
  - b. Shall have a registration agreement with the Department.
2. The Department shall not authorize Child Care Assistance with a noncertified relative provider when Child Care Assistance is requested for a CPS referred family, or a CPS or DDD foster family;
3. The Department shall not authorize Child Care Assistance with a noncertified relative or certified provider when:
  - a. The relative or certified provider is the natural, step, or adoptive parent of the child for whom assistance is requested;
  - b. Child Care Assistance is requested by a Cash Assistance participant and the relative or certified provider is included in the same Cash Assistance grant as the child care applicant; or
  - c. The relative or certified provider is included in family size as prescribed in R6-5-4914(D), is the applicant for Child Care Assistance, or is the applicant's spouse.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4912. Eligible Activity or Need**

- A.** Eligible activities and needs for Child Care Assistance are described in this subsection:

1. Employment. Full or part-time employment for monetary compensation;
2. Self Employment. Full or part time self employment for monetary compensation.
3. Education and Training Activities with Minimum Work Requirement. A client who is employed shall be eligible to receive Child Care Assistance for education and training activities as prescribed in subsections (A)(3)(a), (b), and (c).
  - a. Post-secondary education in a college or trade school.
    - i. The client is employed an average of at least 20 hours per week, per calendar month.
    - ii. A self-employed client meets the 20-hour work requirement if the client's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
    - iii. The education or training activity is related to the client's employment goal.
    - iv. The client's educational level is freshman or sophomore as defined by the educational institution, or the educational activities are in pursuit of an Associate Degree, or the client is in training at a vocational or trade school.
    - v. The client shall maintain satisfactory progress in the educational activity and remain in good standing, as defined by the educational institution.
    - vi. The client has not received more than the life-time limit of 24 months of Child Care Assistance for education and training activities. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 24-month limit.
    - vii. Countable months toward the 24-month limit are those calendar months in which the Department authorized additional child care services for education and training needs; the Department shall not calculate the 24-month limit based on monthly usage.
    - viii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational or employment goals are attained.
    - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
    - x. Correspondence courses, home study courses, and study time are not eligible educational activities for Child Care Assistance.
  - b. High School, G.E.D., E.S.O.L., and Remedial Educational Activities for Adults age 20 and Older.
    - i. The client is employed an average of at least 20 hours per week, per month.
    - ii. A self-employed client meets the 20-hour work requirement if the person's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
    - iii. The educational or training activity is related to the client's employment goal.
    - iv. The client shall maintain satisfactory progress in the educational activity and remain in good

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- standing, as defined by the educational institution.
- v. The client has not received more than the life-time limit of 12 months of Child Care Assistance for education and training activities described in this Section. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 12-month limit.
  - vi. Countable months toward the 12-month limit are those calendar months in which the Department authorized additional child care services for education and training needs. The Department shall not calculate the 12-month limit based on monthly usage.
  - vii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational and employment goals are attained.
  - viii. Allowable educational activities are attendance at high school, G.E.D. or E.S.O.L. classes, or remedial educational activities as determined allowable by the Department.
  - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
  - x. Correspondence courses, home study courses, and study time are not allowable educational activities for DES Child Care Assistance.
- c. Cash Assistance participants who are sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month when a Jobs sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.
4. Teen Parents in Education and Training Activities. Teen parents are eligible for Child Care Assistance for education and training activities according to the following criteria:
    - a. The teen parent is under age 20.
    - b. The teen parent is attending high school, G.E.D., or E.S.O.L. classes, or remedial educational activities in pursuit of a high school diploma.
    - c. Child Care Assistance for teen parents for the educational activities described in this Section is not time-limited. The teen parent shall continue to receive assistance for the educational activity if eligibility criteria are met and until the teen parent:
      - i. Receives a diploma or certificate; or
      - ii. Attains the age of 20 years, whichever occurs first.
    - d. If the teen parent attends post-secondary educational activities, the eligibility criteria outlined under "Post- Secondary Education" in subsection (A)(3)(a) shall apply.
    - e. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
    - f. Correspondence courses, home study courses, and study time are not allowable educational activities for Child Care Assistance.
    - g. Cash Assistance participants who have been sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month that a Jobs noncompliance sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.
  5. Participation in Jobs Approved Activities. Individuals participating in the Jobs Program and who receive Cash Assistance shall be eligible for Child Care Assistance if the following criteria are met.
    - a. The individual is referred by a Jobs Program Specialist to CCA for Child Care Assistance.
    - b. The individual is required to contact a local DES Child Care Office to notify CCA of the selection of a provider, and to cooperate with CCA to arrange child care services.
    - c. The Child Care service authorization shall be based on the days and hours of the approved Jobs activity as specified by the Jobs Program Specialist in the Jobs referral.
    - d. Jobs participants shall receive Child Care Assistance for Jobs approved educational and training activities only. Educational and training activities that are not Jobs approved are not eligible activities for Child Care Assistance for Jobs participants.
  6. Unable or Unavailable to Provide Care. Clients who are unable or unavailable to care for their own children for a portion of a 24-hour day are eligible for Child Care Assistance according to the following criteria.
    - a. Clients who are unable to care for their own children due to a physical, mental, or emotional disability are eligible for Child Care Assistance when the diagnosis, inability to care for the children, and anticipated recovery date (or the date of the next medical evaluation) have been verified by a licensed physician, certified psychologist, or certified behavioral health specialist.
    - b. The Department shall authorize Child Care Assistance to cover:
      - i. The amount of time the client is unable to care for the child; and
      - ii. The amount of time needed for ongoing treatment for the specified condition as verified by the physician, certified psychologist, or certified behavioral health specialist.
    - c. Child Care Assistance shall not cover intermittent and routine appointments that are not part of an ongoing treatment plan.
    - d. Clients participating in a drug rehabilitation program are eligible for Child Care Assistance to participate in activities as specified by the drug rehabilitation program.
    - e. Clients participating in a court-ordered community service program are eligible for Child Care Assistance to support required community service participation as specified by the court.
    - f. Clients who are residents of a homeless or domestic violence shelter are eligible for Child Care Assistance based on shelter residency, and on verification provided by an authorized representative at the shelter. Child Care Assistance shall cover:
      - i. The days and hours that the client is unavailable to provide care to their own child due to participation in shelter-directed activities as verified by an authorized representative of the shelter; and

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- ii. The days and hours that the client is unable to provide care to the client's own child due to a physical, mental, or emotional disability as verified by a licensed physician, certified psychologist, or a certified behavioral health specialist.
- B. Gaps In Employment.** Clients receiving Child Care Assistance are eligible for continued assistance during gaps in employment.
  - 1. The Department shall continue Child Care Assistance for each parent, legal guardian, or relative caretaker in the eligible family during no more than two gaps in employment of 30 days in each 12-month period.
  - 2. The Department shall authorize Child Care Assistance during a 30-day gap in employment beginning the day after the last day worked, after the client provides verification of his or her job termination date.
  - 3. Gaps in employment may be consecutive (if requested).
    - a. The Department shall continue Child Care Assistance for an additional 30 days upon request of the client, if the client has not already used Child Care Assistance during two gaps in employment in the most recent 12-month period immediately preceding the job termination date.
    - b. The second gap in employment shall begin the day after the last day of the first gap in employment.
  - 4. The Department shall continue to authorize the same number of units of Child Care Assistance as previously authorized for the employment activity.
  - 5. The Department shall decrease the client's fee level and copayment under Appendix A, based on the loss of earned income effective the date that terminated employment has been verified, or the day after the last day worked, whichever is the later date.
  - 6. The Department shall end Child Care Assistance during a gap in employment on the 30th day after the client's last day worked, or on the 60th day after the client's last day worked if two consecutive gaps were authorized, unless the client can verify participation in a new eligible activity.
  - 7. When a client fails to report job loss timely as described under R6-5-4911(A)(1), and continues to use Child Care Assistance, the Department shall automatically reduce the overpayment period by subtracting any unused gaps in employment in lieu of the corresponding months of overpayment.
  - 8. Child care utilized during a gap in employment shall count toward the 60 month per child time limit for Child Care Assistance under R6-5-4919.
  - 9. CPS Referred Families and CPS and DDD Foster Families.
    - a. Child Care Assistance shall be provided to families requiring assistance as documented in a CPS case plan, or to children who are in the care, custody, and control of the Department, and who need Child Care Assistance as documented in a foster care case plan.
    - b. Eligibility for Child Care Assistance under this provision shall be determined by CPS and DDD on a case by case basis.
- C. Verification of Eligible Activity or Need.** The client shall verify eligible activities and needs as requested by the Department. Acceptable verification shall include:
  - 1. Pay stubs for the most recent 30-day period;
  - 2. Employer's statement verifying start date, hourly rate of pay, work schedule, and frequency of pay including:
    - a. The date of receipt of the first full paycheck if the client is newly employed; and
    - b. The last day worked, if the client's employment has terminated.
  - 3. Quarterly or annual tax statement for the most recent calendar quarter or year to verify self-employment activities;
  - 4. Self-employment log to document self-employment activities and income accompanied by receipts for gross sales and business expenses for the most recent calendar month or quarter;
  - 5. Written verification from an educational institution to verify days and hours of attendance, start and end dates of the activity, educational level, and satisfactory progress;
  - 6. Written verification from a licensed physician, certified psychologist, or certified behavioral health specialist indicating the diagnosis, inability to care for the child, days and hours that child care is needed, and the anticipated recovery date;
  - 7. Written verification from a homeless or domestic violence shelter indicating the days, hours, and duration that child care is needed as prescribed in subsection (A)(6)(f).

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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**R6-5-4913. Applicants and Recipients as Child Care Providers**

- A.** The client for Child Care Assistance may also be the child care provider for any child for whom assistance is requested when:
  - 1. The client works for but is not the DES contracted party for the provision of Child Care Assistance;
  - 2. The client receives monetary compensation for work performed as a child care provider;
  - 3. The client cares for other unrelated children, for whom client does not receive Child Care Assistance, as well as for the child for whom the client has applied for Child Care Assistance; and
  - 4. The client is unavailable to provide care to the child for whom assistance is requested. When the client is also the child care provider, this is defined as:
    - a. There is no "not for compensation" slot available for the child; and
    - b. Caring for the child as well as for the other children for whom the child care provider receives compensation, would exceed the ratio per state certification or licensing standards pursuant to A.R.S. § 36-897.01 and 6 A.A.C. 5, Article 52.
- B.** If there is no "not for compensation" slot available for the child, and other eligibility criteria described in this Article are met, the client for Child Care Assistance may also be the child care provider for the child for whom assistance is requested.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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#### **R6-5-4914. Income Eligibility Criteria**

- A.** Child Care Assistance Without Regard to Income. The Department shall not determine income eligibility for Child Care Assistance for the following:
  1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA as prescribed in R6-5-4904(B).
  2. Cash Assistance participants who need Child Care Assistance to maintain employment.
  3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA as prescribed in R6-5-4904(B).
- B.** Child Care Assistance With Regard to Income. The Department shall determine income eligibility for Child Care Assistance for the following:
  1. Former Cash Assistance participants who need Child Care Assistance to maintain employment as prescribed in R6-5-4916(A).
  2. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment.
  3. Teen parents who need Child Care Assistance for educational activities as prescribed in R6-5-4912(A)(4).
  4. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter as prescribed in R6-5-4912(A)(6).
- C.** Income Maximum for Child Care Assistance. The Department shall determine income eligibility by calculating the gross monthly income of all family members included in family size unless otherwise excluded as prescribed in subsections (D), (E), (F), and (H).
  1. If the gross monthly income for the family is equal to or less than 165% FPL, the family meets the income eligibility requirements for Child Care Assistance.
  2. If the gross monthly income for the family exceeds 165% FPL, the family does not meet the income eligibility requirements for Child Care Assistance.
- D.** Family Size Determination. The Department shall include the countable income of every person included in family size for the purpose of determining income eligibility as prescribed in this subsection.
  1. Family size shall consist of:
    - a. The applicant for Child Care Assistance;
    - b. The applicant's natural, adoptive, and step children;
    - c. Any other parent or responsible person living in the household who is legally and financially responsible for either the applicant, or for the children needing care;
    - d. The children of the other parent or responsible person residing in the same household; and
    - e. The tax claimant under subsection R6-5-4914(D)(3).
  2. When a parent applies for Child Care Assistance for a natural, adoptive, or step child, the Department shall:
    - a. If the applicant and other adult in the household are married, or have children in common who need child care, make one family size determination for the family.
    - b. Count the income of both parents.
3. When a tax claimant resides in the household with a parent who is applying for or receiving Child Care Assistance, the Department shall include the tax claimant in family size if:
  - a. The tax claimant states an intention to claim any of the following members of the eligible family residing in the same household as a dependent on the tax claimant's federal or state income tax return for the current calendar year:
    - i. The parent who is the applicant;
    - ii. The parent's natural, adoptive, or step children less than 18 years of age;
    - iii. The parent's spouse;
    - iv. The other parent of the children for whom assistance is requested, or who are receiving Child Care Assistance; or
    - v. The dependent children of the other parent residing in the household, and who are included in family size.
  - b. The tax claimant signs a declaration stating the intention to claim specific members of the eligible family as tax dependents for the current calendar year.
4. The Department shall include the tax claimant's dependent children under age 18 and spouse residing in the same household in family size.
5. When the applicant and his or her spouse are legally married and do not reside in the same household, but have the intention of remaining a family, the Department shall include the spouse in family size if the absent spouse is engaged in an eligible activity under R6-5-4912.
6. When a caretaker relative applies for Child Care Assistance for another related child only:
  - a. Family size shall consist of the other related child or children only; and
  - b. The Department shall exclude both the caretaker relative and his or her spouse from the family size determination.
7. When the applicant applies for Child Care Assistance for natural, adoptive, or step children, and also for another related child, the Department shall make one family size determination for the family:
  - a. Family size shall consist of the applicant, the applicant's child, any other related eligible children who need care, and any other parent or responsible person in the household.
  - b. Any income received by or for an "other related" child less than 13 years of age shall be counted.
  - c. If there is another relative in the household who states an intention to claim an other related child as a dependent for income tax purposes, this tax claimant must be the applicant for the child. The Department shall determine family size separately for this child under R6-5-4914(D)(6).
8. When an unwed minor parent applies for Child Care Assistance for his or her own child, and resides with his or her parents:
  - a. The Department shall include the following in family size, unless the minor parent or the minor parent's children are tax dependents as described under subsection (d) below:
    - i. The minor parent; and
    - ii. The minor parent's child.



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- b. The Department shall not include the parents and siblings of the unwed minor parent in family size.
  - c. The Department shall deem a portion of the monthly gross countable income received by the parent of the minor parent to be available to meet the needs of the unwed minor parent and his or her children as described in this subsection, unless the parent of the minor parent is a tax claimant, under subsection (d) below.
    - i. The Department shall calculate the monthly gross countable income of the parents of the unwed minor parent;
    - ii. The Department shall subtract the amount of monthly gross countable income that equates to 165% FPL as specified in Appendix A, for the number of parents and siblings of the unwed minor parent residing in the same household only; and
    - iii. The Department shall count the remaining monthly gross countable income received by the parents of the unwed minor parent as available to meet the needs of the unwed minor parent and his or her children in the income eligibility determination.
  - d. If a parent of the minor parent is a tax claimant who intends to claim the minor parent or the minor parent's child as a tax dependent, the Department shall determine family size as follows:
    - i. The Department shall include the tax claimant, the tax claimant's spouse, and the tax claimant's dependent children residing in the same household in family size with the minor parent, and his or her child; and
    - ii. The Department shall count all countable income received by the tax claimant and the tax claimant's spouse in the income eligibility determination.
9. When a married, separated, widowed, or divorced minor parent applies for Child Care Assistance for his or her own children:
- a. The Department shall include the minor parent and his or her own dependent children in family size;
  - b. The Department shall include monthly gross countable income received by the minor parent and the other parent or responsible person residing in the home in the income eligibility determination;
  - c. The Department shall not consider income received by the parent of the minor parent in the income eligibility determination, unless the parent of the minor parent is a tax claimant, under subsection (8)(d); and
  - d. The Department shall not include parents and siblings of the minor parent in family size, unless the parent of the minor parent is a tax claimant, under subsection (8)(d).
10. If a tax claimant included in family size is also a parent who needs Child Care Assistance for his or her own child, the tax claimant shall submit a separate application.
- a. The Department shall make a separate eligibility and family size determination for the tax claimant's dependent children less than age 18.
  - b. The Department shall include the parent, spouse or other parent or responsible person, and their dependent children in family size.
11. When a guardian applies for Child Care Assistance for a child in guardianship only, the Department shall:
- a. Make one family-size determination for the child in guardianship.
  - b. Include all children in guardianship in family size.
  - c. Exclude the guardian and the guardian's spouse from family size.
  - d. Count the income received by or for the children in guardianship.
  - e. If the parent of the child needing care is also in the household, the Department shall not include the parent in family size; and shall not count his or her income.
12. When the applicant applies for Child Care Assistance for natural, step, or adoptive children in addition to the children in guardianship, the Department shall:
- a. Make one family-size determination.
  - b. Include in family size the applicant, the applicant's children, the children in guardianship less than 13 years of age who need care, and any other parent or responsible person in the household.
  - c. Count the applicant's and other parent's or responsible person's income.
  - d. Count the income received by or for the children in guardianship less than 13 years of age.
13. When a foster parent applies for Child Care Assistance for his or her own children:
- a. The Department shall include the applicant, other parent or responsible person, and their children in family size; and
  - b. The Department shall not include the foster child in family size unless the foster child is a relative.
- E. Verification of Tax Claimant Status**
- 1. The Department shall verify tax claimant status as described in R6-5-4914(D) by requiring:
    - a. The client to submit a signed and dated declaration stating that no relative 18 years of age or older residing in the same household intends to claim any member of the eligible family as a tax dependent for the current calendar year; or,
    - b. The client and the relative 18 years of age or older residing in the same household who intends to claim a member of the eligible family as a tax dependent for the current calendar year to:
      - i. Submit a signed and dated declaration stating that fact; and,
      - ii. State the name of the family member whom the relative intends to claim as a tax dependent.
  - 2. The Department shall include the tax claimant, his or her spouse, and dependent children in family size upon receipt of the signed declaration.
  - 3. If the tax claimant no longer intends to claim a member of the eligible family as a tax dependent, the client must sign and date a new declaration.
    - a. The new declaration shall specify that the tax claimant no longer intends to claim a member of the eligible family as a tax dependent.
    - b. The Department shall remove the tax claimant, tax claimant's spouse, and his or her dependent children from family size after receipt of the signed declaration.
- F. Countable Income.** The Department shall count the gross monthly income of a family as prescribed in subsection (D); countable income shall include:
- 1. Gross earnings received for work including wages, salary, armed forces pay (with the exception of specifically designated allotments for food and shelter costs), commis-

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- sions, tips, overtime, piece-rate payments, and cash bonuses earned, before any deductions.
2. Net income from non-farm self employment including gross receipts minus business expenses. Gross receipts include the value of all goods sold and services rendered. Business expenses include costs of goods and services purchased or produced, rent, heat, light, power, depreciation charges, wages, and salaries paid, business taxes, and other expenses incurred in operating the business. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.
  3. Net income from farm self employment which includes gross receipts minus operating expenses. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include costs of feed, fertilizer, seed, and other farming supplies, wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes, and other expenses incurred in operation of the farm. The value of fuel, food, or other farm products used for family living is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.
  4. Social Security payments prior to deductions for medical insurance including Social Security benefits and “survivors” benefits, and permanent disability insurance payments made by the Social Security Administration.
  5. Railroad retirement insurance income.
  6. Dividends including interest on savings, stocks and bonds, income and receipts from estates or trusts, net rental income or royalties, receipts from boarders or lodgers (net income received from furnishing room and board shall be 1/3 of the total amount charged). Interest on Series H. United States Government Savings bonds.
  7. Mortgage payments received shall be prorated on a monthly basis.
  8. Public assistance payments including payments from the following programs: Cash Assistance, Supplemental Security Income (SSI), State Supplementary Payments (SSP), General Assistance (GA), Bureau of Indian Affairs General Assistance (BIAGA), and Tuberculosis Control (TC).
  9. Pensions and annuities including pensions or retirement benefits paid to a retired person or their survivors by a former employer or by a union, or distributions or withdrawals from an individual retirement account.
  10. Unemployment Insurance payments including compensation received from government unemployment insurance agencies or private companies during periods of unemployment, and any strike benefits received from union funds.
  11. Workers’ compensation payments.
  12. Money received from the Domestic Volunteer Act when the adjusted hourly payment is equal to or greater than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP).
  13. Alimony or spousal maintenance which shall be counted the month received.
  14. Child support which shall be counted the month received.
  15. Veterans’ pensions including benefits and disability payments paid periodically by the Veterans Administration to members of the Armed Forces or to a survivor of deceased veterans.
  16. Cash gifts received on a monthly basis from relatives, other individuals, and private organizations, as a direct payment in the form of money.
  17. Money received through the lottery, sweepstakes, contests, or through gambling ventures whether received on an annuity or lump sum basis.
  18. Any other source of income not specifically excluded in subsection (F).
- G. Excluded Income.** The Department shall exclude the items listed in this subsection when determining a family’s gross monthly income.
1. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
  2. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of the Act;
  3. Money or capital gains received as a lump sum, from the sale of personal or real property, such as stocks, bonds, or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self employment);
  4. Withdrawals of bank deposits;
  5. Loans; money borrowed;
  6. Tax refunds;
  7. Any monies received through the federal Earned Income Credit (EIC);
  8. One time lump sum awards or benefits, including:
    - a. Inherited funds;
    - b. Insurance awards;
    - c. Damages recovered in a civil suit;
    - d. Monies contributed by a client to a retirement fund that are later withdrawn prior to actual retirement; and
    - e. Retroactive public assistance payments;
  9. The value of U.S. Department of Agriculture (USDA) Food Stamps;
  10. The value of USDA-donated food;
  11. The value of any supplemental food assistance received under the Child Nutrition Act of 1966 and special food service program for children under the National School Lunch Act, the Women, Infant, and Children Program (WIC), Child and Adult Care Food Program (C.A.C.F.P.), and the School Lunch Program;
  12. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (for example, Navajo/Hopi Relocation Act);
  13. Earnings of a child who is under the age of 18 and attending high school or other training program, and who is not a minor parent who needs Child Care Assistance for his or her own child;
  14. Home produce used for household consumption;
  15. Government-sponsored training program expenses (TRE payments) such as training-related expenses paid to JOBS participants and Job Training Partnership Act (JTPA) training expenses paid directly to the client;
  16. The value of goods or services received in exchange for work;
  17. Interest on Series E, United States Government Savings bonds;

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18. Foster care maintenance payments received for care of foster children;
  19. Adoption subsidy payments received for the care of adopted children;
  20. Educational loans, grants, awards, and scholarships regardless of their source, including Pell Grants, Supplemental Educational Opportunity Grants (SEOG), Bureau of Indian Affairs (BIA) Student Assistance Grants, college work-study income, Carl D. Perkins Vocational and Applied Technology Education Act income, and any other state or local, public, or private educational loans, grants, awards, and scholarships;
  21. Money received from the Domestic Volunteer Act when the adjusted hourly payment is less than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP);
  22. Housing and Urban Development (HUD) benefits, cash allowances and credits against rent;
  23. Vendor payments including payments made directly to a third party by friends, relatives, charities, or agencies to pay bills for the client;
  24. Vocational Rehabilitation training-related expenses (TRE) which are reimbursements for expenses paid. Subsistence and maintenance allowances, and incentive payments not designated as wages;
  25. Disaster relief funds and emergency assistance provided under the Federal Disaster Relief Act, and comparable assistance provided by a state or local government, or disaster assistance organization;
  26. Energy assistance including all state or federal benefits designated as “energy assistance” or assistance from a municipal utility or non-profit agency;
  27. Agent Orange payments;
  28. Any other income specifically excluded by applicable state or federal law.
- H. Income Deduction.** Child support that is paid for dependents who do not reside in the same household with the eligible family shall be deducted from the monthly gross countable income prior to income calculation and fee level and copayment assignment as prescribed in subsection (I) and R6-5-4915.
- I. Income Calculation.** The Department shall calculate monthly income as prescribed in this subsection.
1. The Department shall include all income of all family members included in the family-size determination, other than income excluded as prescribed in R6-5-4914(F) in the determination of income eligibility.
  2. The Department shall calculate a monthly figure for each source of income separately with the appropriate method used for calculation.
  3. After calculating monthly income for each source of income, the Department shall add the monthly amounts from each source to obtain the total monthly income.
  4. The Department shall convert income received less often than monthly to a monthly figure as provided in this subsection.
    - a. The Department shall prorate the total income over the number of months that the income is intended to cover.
    - b. If the income is received on or after the date of application, a monthly share of income shall be considered beginning with its earliest possible effective date and for a number of months equal to the number of months which the income covers.
      - c. If the family receives the income prior to the date of application, the number of months that the income is intended to cover shall be equal to the number of months of coverage remaining.
5. The Department shall anticipate income for a current or future month based on the averaged income received in the most recent 30-day period, unless the Department receives new information that indicates that the income has changed, as verified under subsection (J).
- a. If the income received by the household has increased due to receipt of a new source of income, an increased work schedule, or a raise in salary or wages, the Department shall calculate the gross monthly countable income for the household based on the amount of income anticipated to be received on a monthly basis. The Department shall begin counting the new or increased income as described under subsection (6).
  - b. If the income received by the household has decreased due to loss of a source of income, a decreased work schedule, or a reduction in salary or wages, the Department shall cease counting the income effective the date that the client provides verification of the loss or reduction in income.
6. When a family receives a new or increased income source that will be received monthly, weekly, bi-weekly, or semi-monthly:
- a. The income shall not be considered available to the family until the date that the first full payment is received.
  - b. The Department shall not assess a new fee level or ineligibility to the client until the monies are available.
  - c. Once the client has already received the payment that includes the new or increased income source, and a higher fee level or ineligibility results:
    - i. The Department shall increase the fee level or terminate assistance no earlier than 10 days after the first full paycheck has been received; and
    - ii. The Department shall send a 10-day negative action notice prior to increasing the fee level or terminating assistance.
7. The Department shall convert income received more often than monthly, for a period covering less than a month, to a monthly amount by one of the methods listed below.
- a. If the income amount does not vary and is received monthly, weekly, bi-weekly, or semi-monthly, the conversion to a monthly amount will be obtained by multiplying the pay period amount by:
    - i. 1, if monthly;
    - ii. 4.3, if weekly;
    - iii. 2.15, if bi-weekly; or
    - iv. 2, if semi-monthly.
  - b. This amount shall be applied as income on an ongoing monthly basis until there is a change in the income.
  - c. If the monthly income received varies in amount and frequency, and exact monthly figures are unavailable, the Department shall use an average monthly figure.
8. When the Department calculates the gross monthly income for the family, the whole dollar amount only shall be used to determine income eligibility, and fee level and copayment assignment; any amount that is a fraction of a

whole dollar shall be rounded down to the next whole dollar.

- J. Verification of Income.** The client shall verify income by providing written documentation of income as requested by the Department such as:
1. Pay stubs for the most recent calendar month, or for any month of potential overpayment;
  2. Employer's statement verifying work schedule, hourly rate of pay, and frequency of pay;
  3. Benefit award statements for the most recent benefit period;
  4. Statements of account to verify interest income;
  5. Quarterly or annual tax returns for the most recent quarter or year for self-employment income;
  6. Self-employment log accompanied by gross sales receipts and business expense receipts for the most recent calendar month or quarter; and
  7. Other written documentation from the source of the income indicating the amount of income received, source of income, frequency received, and naming the payee.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**Editor's Note:** The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

#### R6-5-4915. Fee Level and Copayment Assignment

- A. The Department shall assign a fee level to the family based on family size and monthly gross countable income, as specified in Appendix A.
- B. The Department shall assign individual minimum required copayment amounts for each child in the family based on the fee level assignment, and the number of children needing care, as specified in Appendix A.
- C. The Department shall not assign a fee level or minimum required copayment to Jobs participants, Cash Assistance participants who need Child Care Assistance for employment, or families determined eligible and referred by CPS or DDD.
- D. When a client fails to pay the DES-required copayment, or fails to make satisfactory arrangements for payment of the DES-required copayment with a child care provider, the client is ineligible for Child Care Assistance.
- E. When the Department has determined that an client is ineligible for Child Care Assistance due to nonpayment of the copayment, the client is ineligible for any Child Care Assistance program that requires a copayment until past-due copayments have been paid, or until satisfactory arrangement have been made with the provider for payment.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**Editor's Note:** The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S.

**Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.**

#### R6-5-4916. Special Eligibility Criteria

##### A. Transitional Child Care

1. Former Cash Assistance participants who are attempting to achieve independence from the Cash Assistance program, who need Child Care Assistance for employment, and who are otherwise eligible shall receive up to 24 months of Transitional Child Care Assistance.
2. The former Cash Assistance participant shall have received Cash Assistance in Arizona in at least one month and shall apply for Child Care Assistance within six months after the Cash Assistance case closure date.
3. The former Cash Assistance participant and any other parent or responsible person in the household shall need Child Care Assistance to maintain employment.
4. The most recent Cash Assistance case closure shall not have been due to a sanction for Jobs or Child Support noncompliance, and the Cash Assistance participant shall not have been sanctioned due to intentional program violation (IPV) at the time of the most recent Cash Assistance case closure.

##### B. Cash Assistance Diversion Participants.

1. Applicants for Cash Assistance who are diverted from long-term Cash Assistance through the Cash Assistance Diversion program shall be treated as Cash Assistance participants during the three-month period that the Cash Assistance Diversion payment covers.
2. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for employment activities without regard to income as prescribed in R6-5-4914(A) during the three-month Diversion period.
3. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for job search activities during the three-month Diversion period.
4. Cash Assistance Diversion participants shall be eligible for Transitional Child Care after the three-month Diversion period if the income eligibility requirements in R6-5-4914(B) and the TCC requirements in subsection (A) of this provision are met.

#### Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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#### R6-5-4917. Waiting List for Child Care Assistance

##### A. Implementation of a Waiting List for Child Care Assistance.

1. The Department may implement a waiting list for Child Care Assistance whenever it determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.

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- a. The Department may implement a waiting list for all applicants under subsection (B); or,
  - b. The Department may implement a partial waiting list and prioritize access to Child Care Assistance for applicants based on income under subsection (D).
2. When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list under this subsection, and shall not authorize Child Care Assistance until the Department determines that sufficient funding is available.
- B. Applicants Who Are Subject To the Waiting List.** When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list, including individuals who are reapplying for Child Care Assistance following case closure. The Department shall place the following applicants on the waiting list:
  1. Applicants who are not Cash Assistance participants but who need Child Care Assistance to maintain employment under R6-5-4912(A).
  2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D).
  3. Applicants who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
- C. Applicants Who Are Not Subject To the Waiting List.** When the waiting list is in effect, the Department shall not place the following applicants determined eligible for Child Care Assistance on the waiting list, and shall proceed to authorize Child Care Assistance under R6-5-4918.
  1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B).
  2. Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4904(B).
  3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B).
  4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- D. Prioritization of Applicants for Child Care Assistance When the Waiting List Is In Effect.** The Department shall prioritize applicants for authorization of Child Care Assistance when the waiting list is in effect under this subsection.
  1. **Prioritization Based On Income.**
    - a. Families with gross monthly incomes at or below 100% of the Federal Poverty Level (FPL) receive the highest priority for assistance;
    - b. The Department shall prioritize the remainder of families applying for Child Care Assistance when the waiting list is in effect in the following order:
      - i. Families with gross monthly incomes between 101% FPL and 110% FPL;
      - ii. Families with gross monthly incomes between 111% FPL and 120% FPL;
      - iii. Families with gross monthly incomes between 121% FPL and 130% FPL;
      - iv. Families with gross monthly incomes between 131% FPL and 140% FPL;
      - v. Families with gross monthly incomes between 141% FPL and 150% FPL;
      - vi. Families with gross monthly incomes between 151% FPL and 160% FPL;
      - vii. Families with gross monthly incomes between 161% FPL and 165% FPL;
  2. **Prioritization Based On Application Date.** The Department shall place clients determined eligible for Child Care Assistance on the waiting list effective the date that the Department receives an identifiable application, under R6-5-4904(A)(2).
- E. Cooperation Requirement for Clients on the Waiting List.**
  1. Clients shall cooperate with the Department to maintain eligibility while on the waiting list, under R6-5-4911(A).
  2. If the family's household income changes, the client shall notify the Department of the change in income within 2 workdays.
  3. If someone moves in or out of the household, the client is required to notify the Department within 2 workdays.
  4. The Department shall recalculate gross household income and notify the client of any changes in priority status described under subsection (D) based on the change in income or family size.
- F. Loss of Employment While On the Waiting List.**
  1. If the parent or caretaker of the child loses employment while on the waiting list, the family may remain on the waiting list without an eligible activity.
  2. When the Department selects the family for release from the waiting list under subsection (H), the Department shall require the parent or caretaker of the child to verify participation in an eligible activity under R6-5-4912 before the Department authorizes the family to receive Child Care Assistance.
- G. Determination of Ineligibility While On the Waiting List.**
  1. If the family becomes ineligible for Child Care Assistance while on the waiting list, or during release from the waiting list under subsection (J), the Department shall remove the client from the waiting list and close the case.
  2. The client shall submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date.
- H. Selection from the Waiting List.**
  1. The Department shall select clients for release from the waiting list within each level of income priority as described under subsection (D), and in application date order.
  2. When the Department notifies the client that he or she is being released from the waiting list, the Department may require the client to verify income, employment, other household circumstances or provider selection prior to being authorized for Child Care Assistance.
- I. Clients Determined Eligible Upon Selection for Release from the Waiting List.**
  1. The Department shall authorize Child Care Assistance effective a date specified by the Department based on the availability of funding, after the client has submitted any requested verification and the Department has determined that the family remains eligible for Child Care Assistance.
  2. If the client is eligible for Child Care Assistance, the Department shall authorize Child Care Assistance, and shall notify the client in writing regarding:
    - a. The start date of Child Care Assistance;
    - b. The amount of assistance authorized for each child under R6-5-4918; and
    - c. The assigned fee level and copayment for each child.

- J.** Clients Determined Ineligible Upon Selection for Release from the Waiting List.
1. If the client is not eligible for Child Care Assistance as described in R6-5-4920, the Department shall notify the client regarding ineligibility under R6-5-4921.
  2. The Department shall require the client to submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date, if a waiting list remains in effect.
- K.** Clients Selected for Release from the Waiting List in Error.
1. If the Department determines that a client was not eligible for selection from the waiting list, and the waiting list remains in effect, the Department shall proceed as described under this subsection.
  2. If the Department determines that the client is currently at a lower level of priority for assistance under subsection (D)(1) due to a previously unreported change in income or family size, the Department shall not authorize Child Care Assistance.
  3. The Department shall reinstate the client on the waiting list effective the existing application date; and,
  4. Notify the family in writing of reinstatement to the waiting list and the newly assigned level of priority.
- Historical Note**
- Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4917 renumbered to R6-5-4918; new R6-5-4917 made by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).
- Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*
- R6-5-4918. Authorization of Child Care Assistance**
- A.** Authorization Based on Eligible Activity or Need. The Department shall authorize Child Care Assistance for a portion of each 24-hour day based on the verified eligible activity or need of the parent and responsible person for the child needing care.
- B.** Authorization Based on Unavailability. The amount of Child Care Assistance authorized by the Department shall be based on the amount of time that the client and any other parent or responsible person in the household are unavailable or incapable to provide care to their own children due to an eligible activity or need as prescribed in R6-5-4911(F) and R6-5-4912. When there are two or more parents or responsible persons in the household, Child Care Assistance shall be authorized for the amount of time that neither parent or responsible person is available due to an eligible activity or need.
- C.** Authorization for Self-employment Activities.
1. The Department shall authorize Child Care Assistance for self-employment activities based on monthly net income divided by the current hourly minimum wage standard.
  2. Authorization of Child Care Assistance for self-employment activities shall not exceed the lesser of:
    - a. The maximum number of Child Care Assistance units that can be authorized as prescribed in subsections (B) and (D), or
    - b. The number of hours calculated by dividing monthly net income from self-employment by the amount of the hourly minimum wage standard, or
    - c. The number of hours of Child Care Assistance needed by the client to perform self employment activities.
- D.** Six-child Authorization Limit.
1. The Department shall authorize no more than six children in the eligible family at any given point in time.
    - a. The six-child authorization limit applies to clients under this subsection.
      - i. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;
      - ii. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and
      - iii. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
    - b. The six-child authorization limit shall not apply to the following clients:
      - i. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
      - ii. Cash Assistance participants who need Child Care Assistance to maintain employment;
      - iii. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
      - iv. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
    - c. For eligible families who are not subject to the six-child limit, there is no limit to the number of eligible children whom the Department can authorize to receive Child Care Assistance in the eligible family.
  2. If the eligible family requests Child Care Assistance for more than six children, the family shall select the six children to be authorized to receive Child Care Assistance.
  3. If the family fails to designate six children to receive Child Care Assistance as requested, the Department shall authorize the six youngest children.
  4. If the client is already receiving Child Care Assistance for six children and requests assistance for a new child, the Department shall not authorize assistance for the new child until the client notifies the Department which child will no longer receive Child Care Assistance.
- E.** Units of Child Care Assistance.
1. The Department shall authorize Child Care Assistance in full- and part-day units;
  2. The Department shall not authorize more than 31 units for each child, per child care provider in a calendar month;
  3. A part-day unit of Child Care Assistance is less than six hours;
  4. A full-day unit of Child Care Assistance is six hours or more;
  5. Each child care provider determines the upper limit of what constitutes a full day of care for that provider.

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- F. Date of Eligibility.** The Department shall approve eligibility for Child Care Assistance effective the application file date or referral receipt date as described in R6-5-4904 if the client satisfies all applicable conditions of eligibility as prescribed in this Article.
- G. Date of Authorization.**
1. The Department shall authorize Child Care Assistance to begin effective the start date of the eligible activity or need, but not earlier than application file date, request date, or referral receipt date as described in R6-5-4904.
  2. The Department may authorize Child Care Assistance with an effective date that precedes the referral receipt date when the referral is received untimely due to administrative delay and the eligible start date of the activity or need precedes the referral receipt date for clients who are referred for Child Care Assistance as described in R6-5-4904 (B).
- H. Exclusion from Authorization.** The Department shall not authorize Child Care for educational services for children enrolled in grades 1 through 12 when such services are provided during the regular school day.
- Historical Note**
- Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4918 renumbered to R6-5-4920; new R6-5-4918 renumbered from R6-5-4917 and amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).
- Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*
- R6-5-4919. Time Limit for Child Care Assistance**
- Under A.R.S. § 46-803(K), each child shall receive time-limited Child Care Assistance, unless the child's parents or caretakers qualify for an extension under this Section.
- A. Clients Who Are Subject To the Time Limit.**
1. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;
  2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and
  3. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
- B. Clients Who Are Not Subject To the Time Limit.**
1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
  2. Cash Assistance participants who need Child Care Assistance to maintain employment;
  3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
  4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- C. Effective Date of the Time Limit.** The 60-month time limit shall begin:
1. For applicants of Child Care Assistance eligible under any of the categories listed in subsection (A) who file an application on or after January 1, 2007, on the date the application is received by the Department.
  2. For clients receiving Child Care Assistance on January 1, 2007 under subsection (A), January 1, 2007.
  3. For clients receiving Child Care Assistance on January 1, 2007 under subsection (B), the first date that the Department determines that the existing client is eligible for Child Care Assistance under one of the categories described in subsection (A).
- D. Calculation of the Time Limit.**
1. Each child receiving Child Care Assistance under subsection (A) shall receive time-limited assistance for:
    - a. Any combination of 1380 paid full or part day child care units; or
    - b. Child Care Assistance that spans 60 calendar months, whichever is later. A calendar month is one in which the Department pays for at least one full- or part-day unit.
  2. Any unit of assistance used by the child, and later identified as a provider or agency caused overpayment shall not count toward the child's time limit.
  3. Any unit of assistance used by the child, and later identified as a client-caused overpayment shall not count toward the child's time limit, if the family repays the overpayment.
  4. The Department shall apply the time limit individually to each child in the family, and not to the parent or caretaker of the child.
    - a. If a different caretaker applies for the child at a later point in time, each child will be entitled to the remaining portion of time-limited Child Care Assistance that has not yet been utilized.
    - b. Any Child Care Assistance utilized by the child as part of an eligible family that was exempt from the time limit under subsection (B) shall not count toward the child's time limit.
- E. Expiration of the Time Limit.**
1. When a child exhausts time-limited of Child Care Assistance under this subsection, the Department shall stop assistance for the child unless the parents or caretakers of the child qualify for an extension under Section (F).
  2. When all of the children in a family have exhausted the time limits of Child Care Assistance, the Department shall terminate assistance for the family unless the parents or caretakers:
    - a. Qualify for an extension under subsection (F); or
    - b. Are no longer subject to the time limit as described in subsection (B).
- F. Extension of the Time Limit for Child Care Assistance.**
1. The Department shall grant a 6-month extension to the time limit if the parents or caretakers show efforts toward self-sufficiency during the most recent 6-month period. The Department may elect to grant extensions on a 12-month basis. In order to qualify for an extension, the parents or caretakers in the family shall:
    - a. Currently be engaged in an activity that promotes self-sufficiency, which means the parents or caretakers continue to:
      - i. Be employed a monthly average of 20 or more hours per week;
      - ii. Be employed less than 20 hours per week and earning at least minimum wage;

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- iii. Be employed a monthly average of at least 20 hours per week while attending school or training;
  - iv. Remain self-employed with a net profit equating to a monthly average of 20 hours per week times minimum wage;
  - v. Attend high school, G.E.D. classes, or remedial education for the attainment of a high school diploma for a teen parent under 20 years of age;
  - vi. Follow the treatment plan prescribed by a physician, psychiatrist, psychologist for the treatment of a specified mental, physical, or emotional condition, which precludes the parent or caretaker for caring for his or her own child for a portion of a 24-hour day;
  - vii. Participate in a drug/alcohol rehabilitation plan or court-ordered community service plan; or
  - viii. Participate in a homeless or domestic violence case plan while residing in a shelter; and,
- b. Sign and date the “Self-Sufficiency Statement” and declare that the parents or caretakers have taken at least one of the following actions during the most recent six or 12-month period to promote self-sufficiency:
- i. Received a job promotion, or an increase in wages, hours, or benefits;
  - ii. Remained consistently employed;
  - iii. Remained self-employed and consistently demonstrated a net profit;
  - iv. Applied for a better job;
  - v. Left one job for a better job (higher pay, more hours, better schedule, or better benefits);
  - vi. Registered with DES Employment Services (e.g., One Stop Career Center or DES Job Service) or another public or private employment agency, or job searched independently;
  - vii. Not requested Cash Assistance;
  - viii. Engaged in activities to pursue or maintain child support payments from an absent parent through DES Child Support Enforcement, the county attorney’s office, or a private attorney;
  - ix. Attended work-related school or training, or pursued a degree or certificate that will lead to enhanced career opportunities;
  - x. Attended high school, remedial education for the attainment of a high school diploma or G.E.D. classes;
  - xi. Attended English for Speakers of Other Languages (E.S.O.L.) classes;
  - xii. Attended a trade or vocational school, college or university and made satisfactory progress in the activity;
  - xiii. Continued with a course of treatment under the direction of a physician, psychiatrist, or psychologist;
  - xiv. Followed a shelter case plan while residing in a domestic violence/homeless shelter;
  - xv. Participated in or completed a drug/alcohol rehabilitation or court-ordered community service program;
  - xvi. Participated in other employment-related activities or career-related training activities; or
  - xvii. Any other similar action acceptable to the Department that demonstrates that the parents or caretakers are moving toward self sufficiency.
- 2. If the parents or caretakers do not meet the conditions specified at subsections (1)(a) and (b), the family does not qualify for an extension of the time limit.
  - 3. If the parents or caretakers meet the conditions specified at subsections (1)(a) and (b), and all other eligibility criteria are met, the family shall qualify for additional six or 12-calendar month extension periods if the parents or caretakers continue to meet the criteria at the end of each extension period.
- G. Extension of the Time Limit after Case Closure.** When a parent or caretaker applies for Child Care Assistance after the time limit for the child in care has been exhausted, the parent or caretaker of the child may qualify for an extension as follows:
- 1. The parent or caretaker shall be an eligible applicant under R6-5-4911(B), and shall meet the criteria for Child Care Assistance eligibility;
  - 2. All parents or caretakers shall meet the self-sufficiency criteria prescribed at R6-5-4919(F); and
  - 3. The parent or caretaker may qualify for successive extensions of the time limit under subsection (F).

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4919 renumbered to R6-5-4921; new R6-5-4919 made by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**Editor’s Note:** *The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor’s Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4920. Denial or Termination of Child Care Assistance**

The Department shall deny or terminate Child Care Assistance and provide written notification as prescribed in R6-5-4921 when the client:

- 1. Is not an eligible applicant as prescribed in R6-5-4911(B);
- 2. Is not a U.S. citizen or legal resident of the U.S.;
- 3. Is not a resident of the state of Arizona;
- 4. Has no children under the age of 13;
- 5. Has income that exceeds the maximum allowable as prescribed in R6-5-4914(C);
- 6. Does not have an eligible need, and is not engaged in an eligible activity as prescribed in R6-5-4912;
- 7. Is available to care for the children for whom assistance is requested (or there is another parent or responsible person in the household who is not engaged in an eligible activity and is available to provide care);
- 8. Has not provided the information or documentation required for a determination or redetermination of eligibility;
- 9. Has failed to cooperate in the arrangement of child care services;
- 10. Has not selected a child care provider who is registered with the Department;
- 11. Has requested that the application be withdrawn or that assistance be terminated;
- 12. Is a member of a family that already has an active case or pending application on file for Child Care Assistance;



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13. Cannot be located by phone or mail and mail addressed to last known address has been returned;
14. Is deceased, incarcerated, or confined to an institution; or
15. Does not satisfy one or more eligibility criteria listed in R6-5-4904 through R6-5-4916;
16. Has exhausted the 60-month lifetime limit for all children in the eligible family under R6-5-4919(D) and does not qualify for an extension.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4920 renumbered to R6-5-4923; new R6-5-4920 renumbered from R6-5-4918 and amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4921. Notification Requirements**

- A. The Department shall mail or deliver written notice to the client as follows:
  1. On a decision about an application, within 30 calendar days of the date that the Department receives the completed application.
  2. On a positive action, the Department shall mail adequate notice on or before the date the action will become effective.
  3. On a change in the amount of authorized units based on a change in need, the Department shall mail adequate notice on or before the date the action will become effective.
  4. On a negative action, the Department shall mail the notice at least 10 calendar days in advance of the date the action will become effective.
  5. On changes in law or policy which affect entire classes or groups and concern issues not related to individual questions of fact, the Department shall issue notice of such action at least 10 calendar days in advance of the effective date of the action.
- B. The Department shall not provide notice on a negative action when:
  1. Child Care Assistance authorized for a specified period of time is terminated and the individual was informed in writing of the termination date when the Child Care Assistance was initiated;
  2. The applicant, client, or child is deceased; and
  3. There is a loss of contact with the client and mail addressed to the last known address has been returned.
- C. Written notice shall include a statement of the action to be taken, the reasons for the intended action, citation to the specific rule supporting the action, and an explanation of the client's rights regarding a request for a fair hearing.

**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4921 renumbered to R6-5-4924; new R6-5-4921 renumbered from R6-5-4919 by exempt

rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4922. Repealed****Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

**R6-5-4923. Overpayments**

- A. Overpayments; Date of Discovery.
  1. The Department shall pursue collection of all client- and provider-caused overpayments.
  2. The Department discovers an overpayment on the date the Department determines that an overpayment exists.
  3. The Department shall write an overpayment report within 90 days of the discovery date.
  4. If the CCA office suspects that an overpayment was caused by fraudulent activity, it shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.
  5. The Department shall not attempt to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of fraud, and the Department has exhausted reasonable efforts to collect the overpayment and has determined that it is no longer cost effective to pursue the claim.
- B. Overpayments: Persons Liable. The Department shall pursue collection of an overpayment from:
  1. The client if the overpayment was caused by the client;
  2. Any individual member of the family who was included in family size as prescribed in R6-5-4914 (D) during the overpayment period if the overpayment was caused by the client; or
  3. The child care provider if the overpayment was caused by the provider.

**Historical Note**

Adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed in the Secretary of State's Office June 30, 1998 (Supp. 98-2). Former R6-5-4923 renumbered to R6-5-4925; new R6-5-4923 renumbered from R6-5-4920 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**R6-5-4924. Appeals**

- A. Entitlement to a Hearing.

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1. An applicant for or recipient of Child Care Assistance is entitled to a hearing to contest the following Department actions:
    - a. Denial of the right to apply for assistance;
    - b. Complete or partial denial of an application for assistance;
    - c. Failure to make an eligibility determination on an application within 30 days of the application file date;
    - d. Suspension, termination, reduction, or withholding of assistance except as provided in subsection (B);
    - e. Increase in the fee level and DES-required copayment amount; or
    - f. The existence or amount of an overpayment attributed to the family or the terms of a plan to repay the overpayment.
  2. Applicants and recipients are not entitled to a hearing to challenge benefit adjustments made automatically as a result of changes in federal or state law, unless the Department has incorrectly applied such law to the individual seeking the hearing.
- B. Request for Hearing; Time Limits.**
1. A person who wishes to appeal a negative action shall file a written request for a fair hearing with a local CCA office, within 10 days of the negative action notice date.
  2. A request for a hearing is deemed filed;
    - a. On the date it is mailed, if transmitted via the United States Postal Service or its successor. The mailing date is as follows:
      - i. As shown by the postmark;
      - ii. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
      - iii. The date entered on the document as the date of its completion, if there is no postmark or no postage meter mark, or if the mark is illegible.
    - b. On the date actually received by the Department, if not sent through the mail as provided in subsection (B)(2)(a).
  3. The submission of any document is considered timely if the appellant proves that delay in submission was due to Department error or misinformation, or to delay caused by the U.S. Postal Service or its successor.
  4. Any document mailed by the Department is considered as having been given to the addressee on date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date shown on the document, unless otherwise indicated by the facts.
  5. The Office of Appeals shall deny any request that is not timely filed. A party may appeal a decision on the timeliness of an appeal.
- C. Hearing Requests; Preparation and Processing.**
1. Within two work days of receiving a request for appeal, the local CCA office shall notify the Office of Appeals of the hearing request.
  2. Within 10 days of receiving a request for appeal, the local CCA office shall prepare and forward to the Office of Appeals a prehearing summary which shall include:
    - a. The appellant's name (and case name, if different);
    - b. The appellant's SSN (or case number, if different);
    - c. The local office responsible for the appellant's case;
    - d. A brief summary of the facts surrounding, and the grounds supporting, the negative action;
    - e. Citations to the specific provisions of this Article or the Department's CCA manual which support the Department's action; and
    - f. The decision notice and any other documents relating to the appeal.
3. The local office shall mail the appellant a copy of the summary. Upon receipt of a hearing request, the Office of Appeals shall schedule the hearings.
- D. Continuation of Assistance Pending Appeal; Exceptions.**
1. If an appellant files a request for appeal within 10 calendar days of the negative action notice date, the Department shall continue assistance at the current level unless:
    - a. The appellant waives continuation of current assistance,
    - b. The appeal results from a change in federal or state law which mandates an automatic adjustment for all classes of recipients and does not involve a misapplication of the law, or
    - c. The appellant is requesting continuation of TCC benefits for longer than the 24-month eligibility period.
  2. The negative action shall be stayed until receipt of an official written decision in favor of the Department, except in the following circumstances:
    - a. At the hearing and on the record, the hearing officer finds that the sole issue involves application of law, and the Department properly applied the law and computed the assistance due the appellant;
    - b. A change in eligibility or assistance amount occurs for reasons other than those being appealed, and the eligible family receives and fails to timely appeal a notice of negative action concerning such change;
    - c. Federal or state law mandates an automatic adjustment for classes of recipients;
    - d. The appellant withdraws the request for hearing; or
    - e. The appellant fails to appear for a scheduled hearing without prior notice to the Office of Appeals, and the hearing officer does not rule in favor of the appellant based upon the record.
  3. Upon receipt of a decision in favor of the Department, the Department shall write an overpayment for the amount of any assistance the family received in excess of the correct amount, while the stay was in effect.

**Historical Note**

Section R6-5-4924 renumbered from R6-5-4921 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

**R6-5-4925. Maximum Reimbursement Rates For Child Care**  
The Department shall pay the maximum reimbursement rates for child care as set forth in Appendix B.

**Historical Note**

Section R6-5-4925 renumbered from R6-5-4923 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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## Appendix A. Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule

**ARIZONA DEPARTMENT OF ECONOMIC SECURITY**  
**CHILD CARE ASSISTANCE GROSS MONTHLY INCOME ELIGIBILITY CHART AND FEE SCHEDULE**  
 Effective October 1, 2015

FAMILY SIZE	FEE LEVEL 1 (L1) INCOME MAXIMUM EQUAL TO OR LESS THAN 85% FPL*	FEE LEVEL 2 (L2) INCOME MAXIMUM EQUAL TO OR LESS THAN 100% FPL*	FEE LEVEL 3 (L3) INCOME MAXIMUM EQUAL TO OR LESS THAN 135% FPL*	FEE LEVEL 4 (L4) INCOME MAXIMUM EQUAL TO OR LESS THAN 145% FPL*	FEE LEVEL 5 (L5) INCOME MAXIMUM EQUAL TO OR LESS THAN 155% FPL*	FEE LEVEL 6 (L6) INCOME MAXIMUM EQUAL TO OR LESS THAN 165% FPL*
1	0 – 834	835 – 981	982 – 1,325	1,326 – 1,423	1,424 – 1,521	1,522 – 1,619
2	0 – 1,129	1,130 – 1,328	1,329 – 1,793	1,794 – 1,926	1,927 – 2,059	2,060 – 2,192
3	0 – 1,424	1,425 – 1,675	1,676 – 2,262	2,263 – 2,429	2,430 – 2,597	2,598 – 2,764
4	0 – 1,718	1,719 – 2,021	2,022 – 2,729	2,730 – 2,931	2,932 – 3,133	3,134 – 3,335
5	0 – 2,013	2,014 – 2,368	2,369 – 3,197	3,198 – 3,434	3,435 – 3,671	3,672 – 3,908
6	0 – 2,308	2,309 – 2,715	2,716 – 3,666	3,667 – 3,937	3,938 – 4,209	4,210 – 4,480
7	0 – 2,602	2,603 – 3,061	3,062 – 4,133	4,134 – 4,439	4,440 – 4,745	4,746 – 5,051
8	0 – 2,897	2,898 – 3,408	3,409 – 4,601	4,602 – 4,942	4,943 – 5,283	5,284 – 5,624
9	0 – 3,192	3,193 – 3,755	3,756 – 5,070	5,071 – 5,445	5,446 – 5,821	5,822 – 6,196
10	0 – 3,486	3,487 – 4,101	4,102 – 5,537	5,538 – 5,947	5,948 – 6,357	6,358 – 6,645**
11	0 – 3,781	3,782 – 4,448	4,449 – 6,005	6,006 – 6,450	6,451 – 6,783**	
12	0 – 4,076	4,077 – 4,795	4,796 – 6,474	6,475 – 6,922**		

## MINIMUM REQUIRED COPAYMENTS

Per child in care	full day = \$1.00 part day = \$.50	full day = \$2.00 part day = \$1.00	full day = \$3.00 part day = \$1.50	full day = \$5.00 part day = \$2.50	full day = \$7.00 part day = \$3.50	full day = \$10.00 part day = \$5.00
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**For families receiving Transitional Child Care (TCC) there is no co-pay assigned beyond the third child in the family**

Full day = Six or more hours; Part day = Less than six hours.

Families receiving Child Care Assistance based on Department of Child Safety Foster Care, the Jobs Program or those who are receiving Cash Assistance (CA) and are employed, do not have an assigned fee level or a minimum required copayment. However, all families may be responsible for charges above the minimum required copayments if a provider's rates exceed allowable state reimbursement maximums or the provider has other additional charges.

\*Federal Poverty Level (FPL) = US Department of Health and Human Services 2015 poverty guidelines. The Arizona state statutory limit for child care assistance is 165 percent of the Federal Poverty Level.

\*\*The Federal Child Care & Development Fund (CCDF) statutory limit for child care assistance is 85 percent of the Low Income Home Energy Assistance Program State Median Income (SMI) Estimates for Federal Fiscal Year (FFY) 2016, October 1, 2015 through September 30, 2016. 80 FR, Page 32958-32959, June 10, 2015.

## Historical Note

Appendix A adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Appendix A repealed; new Appendix A adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed with the Office of the Secretary of State June 30, 1998 (Supp. 98-2). Appendix A repealed; new Appendix A adopted by exempt rulemaking at 5 A.A.R. 2379, effective July 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 6 A.A.R. 2726, effective July 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 3111, effective July 1, 2001 (Supp. 01-2). Amended by exempt rulemaking at 8 A.A.R. 2952, effective July 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 9 A.A.R. 3207, effective July 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 2938, effective July 1, 2004 (Supp. 04-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 11 A.A.R. 2731, effective July 1, 2005 (Supp. 05-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 11 A.A.R. 4137, effective October 1, 2005 (Supp. 05-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 12 A.A.R. 2700, effective July 1, 2006 (Supp. 06-3). Appendix A amended by exempt rulemaking at 13 A.A.R. 2583, effective July 1, 2007 (Supp. 07-2). Appendix A amended by exempt rulemaking at 14 A.A.R. 2859, effective July 1, 2008 (Supp. 08-2). Appendix A amended by exempt rulemaking at 15 A.A.R. 702, effective April 1, 2009 (Supp. 09-1). Appendix A repealed; new Appendix A made by exempt rulemaking at 15 A.A.R. 1222, effective July 1, 2009 (Supp. 09-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 17 A.A.R. 1334, effective July 1, 2011 (Supp. 11-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 18 A.A.R. 2070, effective July 1, 2012 (Supp. 12-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 19 A.A.R. 1988, effective July 1, 2013 (Supp. 13-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 22

## Department of Economic Security – Social Services

A.A.R. 1603, effective October 1, 2014, with an automatic repeal date of September 30, 2015; filed June 3, 2016, therefore these exempt rules were in effect prior to the release of Supp. 16-1 (Supp. 16-1). Appendix A repealed; new Appendix A made by exempt rulemaking at 22 A.A.R. 1607, effective October 1, 2015; filed June 3, 2016, therefore these exempt rules were in effect prior to the release of Supp. 16-2 (Supp. 16-2).

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*Editor's Note: The following Appendix was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit this Appendix to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Appendix.*

**Appendix B. Maximum Reimbursement Rates for Child Care**

**ARIZONA DEPARTMENT OF ECONOMIC SECURITY  
DIVISION OF EMPLOYMENT AND REHABILITATION SERVICES  
CHILD CARE ADMINISTRATION  
MAXIMUM REIMBURSEMENT RATES FOR CHILD CARE CENTERS  
(effective for services provided on or after 7/1/2007)**

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr:						
Full day	31.71	28.35	23.52	22.05	31.50	33.60
Part day	23.52	20.79	19.32	19.95	26.25	26.25
1 yr < 3 yrs:						
Full day	27.93	26.25	21.84	19.95	29.40	21.84
Part day	21.00	19.07	18.90	18.90	15.75	18.48
3 yrs < 6 yrs:						
Full day	24.99	23.19	21.00	18.90	21.00	19.95
Part day	17.85	16.80	15.75	16.80	13.02	13.65
6 yrs < 13 yrs:						
Full day	24.57	23.10	17.85	17.85	20.10	19.95
Part day	16.80	15.75	14.70	15.75	14.00	13.65

**GROUP HOMES**

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr:						
Full day	25.20	23.10	24.15	21.00	19.95	22.26
Part day	16.80	16.80	24.15	14.70	13.13	18.90
1 yr < 3 yrs:						
Full day	23.10	23.10	23.10	18.90	19.95	22.31
Part day	15.75	16.80	15.75	12.60	12.60	17.85
3 yrs < 6 yrs:						
Full day	21.00	21.00	23.10	18.90	19.95	19.43
Part day	15.75	16.80	14.65	12.60	12.60	16.80
6 yrs < 13 yrs:						
Full day	18.90	21.00	17.85	18.90	19.95	19.42
Part day	14.70	16.60	14.65	12.60	12.60	17.85

**CERTIFIED FAMILY HOMES AND CERTIFIED IN-HOME PROVIDERS**

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr:						
Full day	21.00	19.95	18.90	18.90	21.00	18.90
Part day	14.70	12.60	10.50	11.03	12.60	10.50
1 yr < 3 yrs:						
Full day	21.00	18.90	17.85	17.85	20.10	17.85
Part day	13.65	12.60	10.50	11.03	11.55	10.50
3 yrs < 6 yrs:						
Full day	18.90	18.90	16.80	17.85	18.90	16.80
Part day	12.60	12.60	10.50	11.03	10.50	10.50
6 yrs < 13 yrs:						
Full day	17.85	18.90	16.80	16.80	18.90	16.80
Part day	12.60	11.55	10.50	10.50	10.50	10.50

The actual reimbursement amount is equal to the reimbursement rate minus any DES designated co-payment. However, in no event shall the amount reimbursed exceed the lesser of the provider's actual charges or the maximum reimbursement rate minus any DES designated co-payment.

Payment Rates for Non-Certified Relative Providers (NCRPs) will be \$11.03 for Full day and \$6.30 for Part day, minus any DES designated co-payment. This rate will be paid to NCRPs statewide for care provided to children of all ages.

The maximum reimbursement rates may be increased by up to ten percent for child care providers who are nationally accredited.

Full day = six or more hours per day. Part day = less than six hours per day.

#### Historical Note

Appendix B adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed with the Office of the Secretary of State June 30, 1998 (Supp. 98-2). Appendix B repealed; new Appendix B adopted by exempt rulemaking at 5 A.A.R. 2379, effective July 1, 1999 (Supp. 99-3). “Non-Certified Relative Providers” section amended by exempt rulemaking at 6 A.A.R. 2726, effective July 1, 2000 (Supp. 00-2). “Centers,” “Group Homes,” and “Certified Family Homes and Certified In-home Providers” sections amended by exempt rulemaking at 7 A.A.R. 4884, effective October 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3207, effective July 1, 2003 (Supp. 03-3). Appendix B amended by exempt rulemaking at 13 A.A.R. 2443, effective July 1, 2006 (Supp. 07-1). Appendix B amended by exempt rulemaking at 13 A.A.R. 2586, effective July 1, 2007 (Supp. 07-2).

### ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM

#### R6-5-5001. Definitions

The following definitions apply in this Article.

1. “ADE” means the Arizona Department of Education, which administers the CACFP at the state level.
2. “Alternate approval” means a status the ADE confers on an uncertified, unlicensed provider that demonstrates compliance with CACFP child care standards to the ADE.
3. “Caregiver state licensing ratio requirements” means Arizona Department of Health Services (DHS) regulations that mandate DHS oversight of child care facilities with five or more children in care for compensation where child care is provided for periods of less than 24 hours per day.
4. “Child care” means a compensated service that is provided to a child unaccompanied by a parent or guardian during a portion of a 24-hour day. The service includes supervised and planned care, training, recreation, and socialization.
5. “CACFP” means the Child and Adult Care Food Program, funded and administered at the federal level by the Food and Consumer Services, a program of the U.S. Department of Agriculture.
6. “CCR&R” means child care resource and referral, a service the Department administers under A.R.S. § 41-1967.
7. “Center” means the same as “child care facility” in A.R.S. § 36-881(3).
8. “Certified” or “licensed” means a provider holds a license as prescribed in A.R.S. § 36-882, or is certified under A.R.S. § 46-807 or A.R.S. § 36-897.
9. “Child with special needs” means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, within a child care setting, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child with a disability.
10. “Compensation” means something given or received in return for child care, such as money, goods, or services.
11. “Contractor” means an agency with which the Department contracts for provision of CCR&R services.
12. “Customer” means a person who is requesting information from a CCR&R contractor.
13. “Database” means a computerized collection of CCR&R facts, figures, and information for licensed, certified, and registered providers and customers arranged for ease and speed of retrieval.
14. “Department” or DES means the Arizona Department of Economic Security.
15. “Dropped for cause” means an ADE Sponsoring Organization has terminated a family child care provider from participation in the CACFP.
16. “Exclude” means to refuse to include a particular provider in or to remove a provider from the CCR&R database.
17. “Family child care” means child care provided by a certified or registered provider in the provider’s own home.
18. “In-home child care” means child care provided in a child’s own home.
19. “Information only listing” means a provider listed on the CCR&R who will receive training information and other information about child care issues and activities, but who will not receive any referrals.
20. “Listing status” means the condition under which a provider may receive a referral (referral listing) or is restricted from receiving a referral (information only listing).
21. “Over-Ratio Referral Form” means a communication tool used to relay to the Department of Health Services (DHS) information concerning a potential violation of caregiver state licensing ratio requirements.
22. “Personally identifiable information” means any information about a person other than a provider, that, when considered alone, or in combination with other information, identifies or permits another person to readily identify the person who is the subject of the information. Personally identifiable information includes:
  - a. Name, address, and telephone number;
  - b. Date of birth or age;
  - c. Physical description;
  - d. School;
  - e. Place of employment; and
  - f. Any unique identifying number, such as driver’s license number, a social security number, or regulatory license number.
23. “Program Administrator” means the person who oversees the Child Care Administration, a unit of the Department.
24. “Provider” means an adult who, or a facility that, provides child care services.
25. “Provider type” means a category of provider or program such as a center, family child care, and in-home child care.
26. “Referral” means the information listed in R6-5-5005(C), (D), and (E), that a Contractor gives to a customer.
27. “Referral listing” means that a contractor may refer a provider listed on the CCR&R registry or database to customers, and the provider may receive training and other information about child care issues and activities.
28. “Registered provider” means a family child care provider who is an adult and is not licensed or certified by any

government agency, but who meets the requirements to be listed in the CCR&R registry.

29. "Registry" means the list of providers that:
  - a. Are not licensed or certified by a government agency,
  - b. Voluntarily list with CCR&R, and
  - c. Meet the requirements under A.R.S. § 41-1967 to receive referrals and training information.
30. "Regulated" means a provider who is required to meet licensing or certification standards set by a government agency, including a federal, state, or tribal government agency.
31. "Revocation" means the permanent removal of a child care provider's license or certificate by a government agency.
32. "SDA" means service delivery area, which is a specific geographic area where CCR&R services are offered.
33. "Sponsoring organization" means a public or non-profit private organization that administers the CACFP on behalf of ADE.
34. "Suspension" means that a regulatory agency has temporarily removed a provider's certificate or license.
35. "Work day" means Monday through Friday, excluding Arizona state holidays.

#### Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

#### R6-5-5002. Provider Participation Requirements

- A. To be considered for inclusion in the CCR&R database, a provider shall submit the following information to the Contractor for the provider's SDA:
  1. Provider's name;
  2. Address;
  3. Phone number;
  4. Days and times the facility is open;
  5. Ages of children accepted;
  6. Capacity;
  7. Regulatory affiliation, if any;
  8. Meals provided to children in care;
  9. Training and experience;
  10. Accreditation;
  11. Fees;
  12. School transportation;
  13. DES Provider ID, if applicable;
  14. The provider's choice of listing status; and
  15. DHS Child Development Center (CDC) or Small Group Home (SGH) number.
- B. Regulated Providers: Before adding a regulated provider to the CCR&R database, the Contractor shall confirm the provider's regulatory affiliation with the appropriate regulatory agency. For the purpose of this subsection, confirmation of the regulatory affiliation is based solely on the accuracy of the information obtained from the regulatory agency.
- C. Registered Providers: The provisions in this subsection govern provider participation requirements for registered family child care providers.
  1. In addition to the information listed in subsection (A), a registered family child care provider shall complete and submit to the Contractor, on Department-approved forms, a notarized sworn statement and a notarized certification statement attesting that the provider is not subject to

exclusion or removal from the CCR&R database under any of the grounds specified in A.R.S. § 41-1967(E).

2. Before adding a registered family child care provider to the CCR&R registry and database, a Contractor shall review the provider's sworn statement and certification statement described in subsection (C)(1) and include on the registry only those providers who affirm that they are not subject to exclusion or removal under A.R.S. § 41-1967(E).
3. Before adding a registered family child care provider to the CCR&R registry and database, a Contractor shall receive clearance from the Department that neither a provider nor anyone providing care in the provider's home has had a child abuse or neglect investigation that has been substantiated by Child Protective Services (CPS) in this state.

#### Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

#### R6-5-5003. Notification of Changes

- A. A provider listed on the CCR&R database shall notify the Contractor of any changes to the information or statement given under R6-5-5002(A) or (C)(1).
- B. A provider may modify self-initiated changes in listing status at any time by notifying the Contractor.

#### Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

#### R6-5-5004. Referrals Not Guaranteed

- A. A Contractor shall make referrals to participating providers on a random basis based on a family's self-reported needs.
- B. A Contractor shall not:
  1. Guarantee the number or frequency of referrals to a participating provider; or
  2. Guarantee that listing on the CCR&R will result in economic benefit or gain to a participating provider.

#### Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

#### R6-5-5005. Referral Process

- A. To obtain a referral, a customer shall give the contractor the following information, if available, about the customer's child care needs:
  1. Customer name;
  2. Address;
  3. Phone number;
  4. Days and times child care is needed;
  5. Preferred type of child care provider;
  6. Location where care is needed or preferred, and
  7. Age of child.
- B. A Contractor shall give a customer a referral that is consistent with the customer's stated preferences.
  1. The Contractor shall not make a referral unless the Contractor can give the customer the names of at least three

- potential providers within the customer's search parameters.
2. If the Contractor cannot name at least three potential providers meeting the customer's stated preferences, the Contractor shall ask the customer to expand the search parameters until the Contractor can name at least three potential providers.
- C.** The Contractor shall provide the customer with provider profile information on each referred provider, including the following:
1. Provider's name;
  2. Address or major cross streets;
  3. Phone number;
  4. Days and hours of operation;
  5. Ages of children accepted;
  6. Ratio and capacity;
  7. Regulatory affiliation, if any;
  8. Meal information;
  9. Training and experience;
  10. Accreditation;
  11. Fees and available subsidies;
  12. School transportation.
- D.** As part of a referral, a Contractor shall give each customer written information that includes the following:
1. That the Contractor selects providers based on the customer's stated preferences;
  2. That the Contractor provides referrals and does not recommend, endorse, or guarantee any particular child care provider;
  3. That the Contractor does not regulate, monitor, or verify information supplied by a provider;
  4. That a child's parent or guardian is solely responsible for choosing an appropriate child care provider to meet a family's needs; and
  5. That a provider's listing status may change after their initial placement on the registry or database and that customers are encouraged to call back periodically for updated information.
- E.** As part of a referral, a Contractor shall provide the customer with the following Department-approved educational information:
1. A list of criteria to consider when selecting quality child care;
  2. A description of the types of child care providers in Arizona;
  3. A description of CCR&R services and a list of office locations and phone numbers statewide; and
  4. An explanation of the process for filing a child care related complaint.

#### Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

#### **R6-5-5006. Monitoring; Complaint Recording and Reporting Requirements**

- A.** Monitoring and Investigation: Neither the Department nor its Contractors monitor or investigate the activities of a provider, or investigate any complaint about a provider, except as otherwise prescribed by law for a family child care provider.
- B.** Regulated Providers: Upon receipt of a complaint about a regulated provider, a Contractor shall refer the complainant to the appropriate regulatory agency, law enforcement agency, or Child Protective Services.

- C.** Registered Providers: The provisions in this subsection govern complaints about a registered provider.

1. Any person may complain about a registered family child care provider on the registry by notifying a Contractor. Upon receipt of a complaint on a registered family child care provider, a Contractor shall:
  - a. Refer the complainant to the appropriate investigative agency (law enforcement or child protective services), if the issue raised in the complaint is suspected child abuse or neglect. The contractor shall forward a complaint involving law enforcement or child protective services to the DES Child Care Administration for resolution;
  - b. Refer the complainant to DHS and forward an over-ratio referral form to DHS if the complaint alleges that the provider is caring for more children than the law allows; or
  - c. Take a complaint made in reference to a CACFP home provider not regulated by any other agency and forward the complaint to ADE for resolution by its sponsoring agencies.
  - d. Take the complaint if it raises an issue other than those described in subsections (C)(1)(a), (b) or (c).
2. If the Contractor takes the complaint as under subsection (C)(1)(c) or (d), the Contractor shall obtain and record, on a Department approved form, the following information, if available:
  - a. Provider name and address;
  - b. Summary of the complaint, including date and time of incident;
  - c. Name, address, and phone number of the person making the complaint, unless the complainant indicates that the complainant or someone else may come to substantial harm. The Contractor shall document a complainant's claim that substantial harm may result as a result of disclosure of the complainant's name, as prescribed in A.R.S. § 41-1010; and
  - d. If applicable, witness information, such as name, address, and phone number.
3. The person recording the information shall sign and date the form.
4. After redacting personally identifiable information, the Contractor shall send the complaint form to the provider for response within three work days.
5. The provider shall respond to the complaint by completing the provider response portion of the complaint form within 30 days of the complaint mailing date;
6. The Contractor shall allow the public to inspect the complaint, and the provider's response, if given, with all personally identifiable information redacted. After the 30-day provider response period has expired, the Contractor shall make a complaint available for public inspection at the Contractor's office or the Contractor may mail a copy of the complaint.

#### Historical Note

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

#### **R6-5-5007. Provider Listing Status**

- A.** Regulated Providers:
1. When the Department learns that a regulatory agency has suspended a regulated provider's license, certificate, or



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alternate approval, the Department shall direct a Contractor to change the provider's listing status from referral listing to information only listing, using the process in R6-5-5009.

2. If a Contractor has changed a provider to information only listing status under subsection (A)(1), the Department shall direct the Contractor to return the provider to referral listing status if the regulatory agency removes the provider's suspension status.
3. The Department shall notify the provider in writing when the Department returns the provider to referral status. The Department shall send the notice within 10 work days of the change in status, and shall include the effective date of the change.

**B. Registered Providers:**

1. When the Department receives a complaint or is notified that a registered provider may have failed or may be unable to meet the needs of a family due to one of the following circumstances, the Department shall direct a Contractor to change a registered provider's listing status from referral listing to information listing using the process in R6-5-5009:
  - a. A child has allegedly been abused, neglected, exploited, or abandoned while in the registered provider's care;
  - b. A registered provider has allegedly been involved in activities or circumstances that may threaten the health, safety, or emotional well-being of a child, including, acts of physical violence, domestic disputes, or incidents involving deadly weapons or dangerous or narcotic drugs; or
  - c. As determined by DHS, a registered provider has allegedly violated state law by providing care to more than four children at any one time for compensation.
2. If a Contractor has changed a registered provider to information only listing status, as prescribed in subsection (B)(1), the Department shall direct the Contractor to return the registered provider to referral listing status if one of the following occurs:
  - a. Child Protective Services or a law enforcement agency determines that the allegation cannot be substantiated;
  - b. Child Protective Services or a law enforcement agency determines that the threat to a child has been eliminated; or
  - c. DHS determines that the registered provider may continue child care activities without obtaining a certificate or license.
3. As used in subsection (B)(2), substantiation by a law enforcement agency means that law enforcement has referred a case to a prosecutorial agency with a recommendation to file charges.
4. The Department shall notify the registered provider in writing when the provider is returned to referral status. The Department shall send the notice within 10 work days of the change in status, and shall include the effective date of the change.

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Section repealed effective November 8, 1982 (Supp. 82-6). New Section adopted effective November 19, 1996 (Supp. 96-4). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5008. Provider Exclusion or Removal**

- A. The Department may direct a Contractor to exclude or remove a provider from the database according to the process in R6-5-5009, for the following reasons:
  1. The provider fails or refuses to provide information as requested by the Department or a Contractor;
  2. A regulatory agency or sponsoring organization verifies that the provider's license, certificate, or alternate approval has been denied, revoked, terminated, or dropped for cause;
  3. The Department learns that information in the written, sworn, and notarized statements submitted by the provider under R6-5-5002(C) is false;
  4. The provider is subject to removal or exclusion for any reason listed in A.R.S. § 41-1967(E); or,
  5. The provider fails to comply with these rules.
- B. A Contractor may summarily and without notice remove a provider from the CCR&R database for the following reasons:
  1. The Contractor is unable to contact the provider because:
    - a. The provider's phone is disconnected;
    - b. The provider is no longer at the last known address and has given no forwarding address; or
    - c. The provider has died; or
  2. The provider requests removal.
- C. A provider removed under subsection (B) may request reinstatement by calling the Contractor for the provider's SDA and providing current information.
- D. Upon receipt of a request for reinstatement, the Contractor shall update the information listed in R6-5-5002 and, if applicable, confirm that the provider has submitted information requested by the Department or Contractor.
- E. The Contractor shall reinstate the provider unless there are grounds for removal under subsections (A)(1) through (5).

**Historical Note**

Adopted effective November 19, 1996 (Supp. 96-4).  
Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5009. Administrative Review Process**

- A. When the Department receives information indicating that the Department may need to change a provider's listing status or remove or exclude a provider, the Department Program Administrator or designee shall review the information and decide whether grounds exist as listed in R6-5-5007 or R6-5-5008(A).
- B. If the Department decides to change a provider's listing status or to remove or exclude a provider, the Department shall:
  1. Notify the Contractor to change the listing status or to remove or exclude the provider; and
  2. Within 10 work days of the effective date of the change of listing status, removal or exclusion, send the provider written notice via certified mail of the action taken.
- C. The notice shall include the following information:
  1. The effective date of the change in listing status or the removal or exclusion;
  2. The reason for the change in listing status or the removal or exclusion;
  3. The statutory provision requiring the provider's change in listing status or the removal or exclusion;
  4. An explanation of the provider's right to an administrative review; and,
  5. A statement explaining where the provider may file a written request for an administrative review and the time period for doing so.
- D. The Department shall mail the notice to the provider's last known address. The mailing date is presumed to be the date appearing on the notice.

- E. A provider may request an administrative review by filing a written request for review with the Department, within 15 work days after the mailing date of the Department's notice.
- F. The provider shall mail the written request for administrative review to:  
Department of Economic Security  
Child Care Administration  
Program Administrator  
P.O. Box 6123 S.C. 801A  
Phoenix, Arizona 85005
- G. In the written request, the provider shall include the reason for requesting an administrative review and any documentation supporting the reinstatement request.
- H. A request for an administrative review is timely if:
  1. The Department receives it within the 15-day appeal period in subsection (E); or
  2. The envelope in which the request was mailed is postmarked or postage-meter marked within the period in subsection (E).
- I. The Program Administrator or designee shall review the Department's decision and all documentation submitted by the provider.
- J. The Program Administrator or designee shall notify the provider and the Contractor of the results of the administrative review within 15 work days from the date the Department receives the request for review.
  1. The decision shall be in writing and mailed to the provider's last known address. The date on the decision is presumed to be the mailing date.
  2. The decision shall include information about the provider's right to further appeal.
- K. The provider may appeal the Department's decision under R6-5-5010.

**Historical Note**

Adopted effective November 19, 1996 (Supp. 96-4).  
Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**R6-5-5010. Administrative Appeal Process**

- A. A provider may appeal the Department's administrative review decision under 6 A.A.C. 5, Article 75 by filing a request for an appeal with the Department within 15 work days after the mailing date of the Department's administrative review decision described in R6-5-5009(J).
- B. A provider shall mail the written request for an appeal to:  
Department of Economic Security  
Child Care Administration  
Program Administrator  
P.O. Box 6123 S.C. 801A  
Phoenix, Arizona 85005
- C. In the written request, the provider shall include the reason for requesting an appeal and any documentation supporting the request.
- D. The Department's actions in reference to removal or exclusion from the database or changes in listing status are not appealable under this Article if the action is based on:
  1. Failure to clear a fingerprint or criminal background check; or
  2. Failure to clear a Child Protective Services background check
- E. A request for an appeal is timely if:
  1. The Department receives it within the 15-day appeal period in subsection (A); or
  2. The envelope in which the request is mailed is postmarked or postage-meter marked within the 15-day period prescribed in subsection (A).

**Historical Note**

Adopted effective November 19, 1996 (Supp. 96-4).  
Amended effective June 4, 1998 (Supp. 98-2). Amended by exempt rulemaking at 8 A.A.R. 2956, effective July 1, 2002 (Supp. 02-2).

**ARTICLE 51. EXPIRED****R6-5-5101. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5101 repealed, new Section R6-5-5101 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5101 repealed, new Section R6-5-5101 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5102. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5102 repealed, new Section R6-5-5102 adopted effective September 30, 1977 (Supp. 77-5). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5102 repealed, new Section R6-5-5102 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5103. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5103 repealed, new Section R6-5-5103 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5103 repealed, new Section R6-5-5103 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5104. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5104 repealed, new Section R6-5-5104 adopted effective September 30, 1977 (Supp. 77-5). Amended effective April 25, 1978 (Supp. 78-2). Amended effective March 26, 1979 (Supp. 79-2). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5104 repealed, new Section R6-5-5104 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5105. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5105 repealed, new Section R6-5-5105 adopted effective September 30, 1977 (Supp. 77-5). Amended effective April 25, 1978 (Supp. 78-2). Amended paragraph (3) effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5105 repealed, new Section R6-5-5105 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5106. Expired**

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5106 repealed, new Section R6-5-5106 adopted effective September 30, 1977 (Supp. 77-5). Former Section R6-5-5106 repealed, new Section R6-5-5106 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5107. Expired****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5107 repealed, new Section R6-5-5107 adopted effective September 30, 1977 (Supp. 77-5). Amended effective March 17, 1981 (Supp. 81-2). Former Section R6-5-5107 repealed, new Section R6-5-5107 adopted effective June 17, 1985 (Supp. 85-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

## **ARTICLE 52. CERTIFICATION AND SUPERVISION OF FAMILY CHILD CARE HOME PROVIDERS**

**R6-5-5201. Definitions**

The following definitions apply in this Article:

1. "Abandonment" has the meaning ascribed to "abandoned" in A.R.S. § 8-201 (1).
2. "Abuse" has the meaning ascribed in A.R.S. § 8-201 (2).
3. "Age" means years of a person's lifetime when used in reference to a number, unless the term "months" is used.
4. "Adult" means a person age 18 or older.
5. "Applicant" means a person who submits a written application to the Department to become certified as a child care provider.
6. "Backup provider" means an adult who, or an entity that, provides child care when a provider is not available.
7. "CACFP" means the Child and Adult Care Food Program.
8. "Certificate" means a document the Department issues to a provider as evidence that the provider has met the child care standards of this Article.
9. "Child" means a person younger than age 18.
10. "Child care" means the compensated care, supervision, recreation, socialization, guidance, and protection of a child who is unaccompanied by a parent.
11. "Child care personnel" means all adults residing in a home facility, an in-home provider, and any backup provider.
12. "Child care registration agreement" means a written contract between a provider and the Department; that establishes the rights and duties of the provider and the Department for provision of child care.
13. "Child care specialist" means a Department child care eligibility and/or certification staff person.
14. "CHILDS" means the Children's Information Library and Data Source, which is a comprehensive, automated system to support child welfare policies and procedures, and includes information on investigations, ongoing case management, and payments.
15. "CHILDS Central Registry" means the Child Protective Services Central Registry, a confidential, computerized database within CHILDS, which the Department maintains according to A.R.S. § 8-804.
16. "Child with special needs" means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child who has a physical or mental impairment that substantially limits one or more major life activities; has a record of having a physical or mental impairment that substantially limits one or more of the child's major life activities; or who is regarded as having an impairment, regardless of whether the child has the impairment.
17. "Client" means a person who applies for and meets the eligibility criteria for a child care service program administered by the Department.
18. "Compensation" means something given or received, such as money, goods, or services, as payment for child care services.
19. "Corporal punishment" means any act that is administered as a form of discipline and that either is intended to cause bodily pain, or may result in physical damage or injury.
20. "CPS" means Child Protective Services, a Department administration that operates a program to investigate allegations of child maltreatment and provide protective services.
21. "Department" means the Arizona Department of Economic Security.
22. "Developmentally appropriate" means an action that takes into account:
  - a. A child's age and family background;
  - b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
  - c. The individual child's pattern and timing of growth, personality, and learning style.
23. "DHS" means the Arizona Department of Health Services.
24. "Direct supervision" means within sight and sound.
25. "Exploitation" means an act of taking advantage of, or making use of a child selfishly, unethically, or unjustly for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
26. "Evening care" means child care provided at any time between 6:30 p.m. and midnight.
27. "Heating device" means an instrument designed to produce heat for a room or inside area and includes a non-electric stove, fireplace, freestanding stove, or space heater.
28. "Home facility" means a provider's residence that the Department has certified as a location where child care services may be provided.
29. "Household member" means a person who does not provide child care services and who resides in the home facility of a provider for 21 consecutive days or longer or who resides periodically throughout the year for a total of at least 21 days.
30. "Infant" means:
  - a. A child who is younger than 12 months old; and
  - b. A child who is younger than 18 months old and not walking.
31. "In-home provider" means a provider who cares for a child in the child's home.
32. "Maltreatment" means abuse, neglect, exploitation, or abandonment of a child.
33. "Medication" means any prescribed or over-the-counter drug or medicine.
34. "Mechanical restraint" means a device to restrict a child's movement.

35. "Neglect" has the same meaning ascribed in A.R.S. § 8-201.
  36. "Night-time care" means child care provided at any time between midnight and 6:00 a.m.
  37. "Non-parent relative" means a caretaker relative who exercises responsibility for the day-to day physical care, guidance, and support of a child who physically resides with the relative and who is by affinity, consanguinity, or court decree, a grandparent, great grandparent, sibling of the whole or half-blood, stepbrother, stepsister, aunt, uncle, great aunt, great uncle, or first cousin of the child.
  38. "Parent" means the biological or adoptive parent of a child, a court-appointed guardian, or a non-parent relative.
  39. "Provider" means an adult who is not the parent or guardian of a child needing care, and to whom the Department has issued a certificate, and includes a backup provider who performs the provider's duties when the provider is unavailable.
  40. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement.
  41. "Safeguard" means to use reasonable efforts and developmentally appropriate measures to eliminate the risk of harm to a child in care and ensure that a child in care will not be harmed by a particular object, substance, or activity. Safeguarding may include:
    - a. Locking up a particular substance or item;
    - b. Putting a substance or item beyond the reach of a child who is not mobile;
    - c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
    - d. Mandating the use of a protective safety device; or
    - e. Providing direct supervision.
  42. "Sanitize" means treatment by a heating or chemical process that reduces the bacterial count, including pathogens, to a safe level.
  43. "Time out" means removing a child from a situation by directing the child to remain in a specific chair or place identified as the time out place, for no more than one minute for each year of a child's age, but no more than 10 minutes.
  44. "Undue hardship" means significant difficulty or substantial expense concerning the operation of a provider's program. In this subsection, "significant" and "substantial" are measured relative to the level of net income the provider earns from child care services.
  45. "Unusual incident" means any accident, injury, behavior problem, or other extraordinary situation involving a provider or a child in care, including suspected child maltreatment.
- D. An applicant shall designate one or more backup providers from the following list:
    1. An individual who is age 18 or older and who satisfies the requirements for backup providers outlined in this Article;
    2. A DHS-licensed child care center;
    3. A DHS-certified child care group home; or
    4. A DES-certified family child care home.
  - E. An applicant shall participate in any orientation and training and shall cooperate in conducting any pre-certification interviews and inspections the Department may require.
  - F. An applicant shall give the Department the names of three references who:
    1. Have known the applicant at least one year;
    2. Are unrelated by blood or marriage to the applicant, and
    3. Can furnish information regarding the applicant's character and ability to care for a child.
  - G. An applicant and any designated individual backup provider shall furnish a self-statement of physical and mental health on a form provided by the Department.
  - H. An applicant and each designated individual backup provider shall have the physical, mental, and emotional health necessary to perform the duties and meet the responsibilities established by this Article. If the Department has questions about the applicant's health that the applicant cannot satisfactorily answer or explain, the applicant, upon request by the Department, shall submit to a physical or psychological examination by a licensed physician, psychologist, or psychiatrist, and shall provide the Department with a professional opinion addressing the Department's questions. The applicant shall bear the cost of any professional examinations that the Department needs to determine whether the individual is qualified.
  - I. The Department may require an applicant to furnish at least the following information about the applicant, the applicant's spouse, members of the applicant's household, children residing outside of the applicant's home, and the individual backup provider:
    1. Name;
    2. Current address;
    3. Telephone number;
    4. Date of birth;
    5. Social security number;
    6. Maiden name, aliases, and nicknames;
    7. Relationship to the applicant or backup provider;
    8. Marital status and marital history;
    9. Educational background;
    10. Ethnicity;
    11. Gender;
    12. Birthplace;
    13. Physical characteristics; and
    14. Citizenship status.
  - J. Child care personnel shall submit the notarized criminal history certification form required by A.R.S. § 41-1964, and disclose whether they have committed any acts of child maltreatment or have been the subject of a Child Protective Service investigation.
  - K. On a Department form, an applicant, all adult household members, and all individual backup providers shall provide employment histories for the five-year period immediately preceding the application date, beginning with the individual's present or most recent job.
  - L. An applicant shall furnish proof that the applicant, the individual backup provider, and members of the applicant's household who are age 13 or younger are immune from measles, rubella, diphtheria, tetanus, pertussis, polio, and any other dis-

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

#### R6-5-5202. Initial Application for Certification

- A. To become a certified child care provider, an applicant shall comply with all requirements of this Article and other applicable requirements of federal, state, or local law.
- B. An applicant shall be at least age 18.
- C. An applicant shall submit a complete, signed application form to the Department.

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eases for which routine immunizations are readily and safely available.

1. The Department may waive the requirements of this subsection for a household member if the applicant will be certified as an in-home provider only and submits an affidavit attesting that household members will not be present when child care services are provided.
  2. The Department shall waive the requirements of this subsection if the applicant:
    - a. Submits an affidavit stating that household members are being raised in a religion whose teachings oppose immunization; and
    - b. Affirms, in writing, that families will be notified of the religious exemption before child care services are provided.
- M.** An applicant shall submit evidence of current freedom from pulmonary tuberculosis for the applicant, all household members, and all individual backup providers. If the application is approved, this evidence shall be submitted each succeeding calendar year.
1. Evidence required under this subsection is limited to:
    - a. A report of a negative Mantoux skin test performed within three months of the date or anniversary date of initial certification.
    - b. A physician's written statement based on an examination performed within three months of the date or anniversary date of initial certification.
  2. The Department shall waive the requirements of this subsection for household members if the applicant will be certified as an in-home provider only and submits an affidavit that household members will not be present when child care services are provided.
- N.** An applicant shall provide a statement of services on a Department form. The statement shall describe:
1. The home at which services will be provided, location, and hours of operation;
  2. The applicant's daily rates and fees;
  3. The ages of children the applicant will accept;
  4. The equipment, materials, daily activities, and play areas available to children in care;
  5. Any special child care skills, knowledge, or training the applicant has; and
  6. The behavior, guidance, and discipline methods the applicant uses.
- O.** During an interview with the child care specialist, an applicant shall complete a Department questionnaire describing:
1. The applicant's child rearing philosophy;
  2. The home environment, including intra-family relationships and attitudes toward child care;
  3. The parenting and discipline methods employed by the applicant and the applicant's parents; and
  4. The applicant's child care training and experience.
- P.** Upon Department request, an applicant, all members of the applicant's household, and all individual backup providers shall comply with any additional requirements and requests for interviews, inspections, or information necessary to determine the applicant's fitness to serve as a certified child care provider.
- Q.** A complete application package consists of an applicant's completed application form and evidence that the applicant, all members of the applicant's household, and all individual backup providers have met all requirements and submitted all information and documentation listed in this Section.
- R.** The Department shall send an applicant a notice of administrative completeness or deficiency, as described in A.R.S. § 41-1074, indicating the additional information, if any, that the

applicant must provide for a complete application package. The Department shall send the notice after receiving the application and before expiration of the administrative completeness review time-frame described in R6-5-5205. If the applicant does not supply the missing information listed in the notice, the Department may close the file.

- S.** An applicant whose file is closed may reapply for certification.
- T.** After an applicant submits a complete application for initial certification, the Department shall inspect the applicant's home to determine whether the home meets the regulations of this Article.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5203. Initial Certification: The Home Facility**

A provider's home facility shall meet the requirements of this Section.

1. A provider shall maintain the indoor and outdoor premises of the home facility in a safe and sanitary condition, free from hazards and vermin, and in good repair. A mobile home shall have skirting to ensure that a child in care cannot go beneath the mobile home.
2. Any area to be occupied by a child in care shall have heat, light, ventilation, and screening. The provider shall maintain the home facility between 68° and 85° F.
3. A provider shall vent and safeguard all heating devices to protect each child from burns and harmful fumes.
4. A provider shall safeguard all potentially dangerous objects from children, including:
  - a. Household and automotive tools;
  - b. Sharp objects, such as knives, glass objects, and pieces of metal;
  - c. Fireplace tools, butane lighters and igniters, and matches;
  - d. Machinery;
  - e. Electrical boxes;
  - f. Electrical outlets;
  - g. Electrical wires; and
  - h. Chemicals, cleaners, and toxic substances.
5. A provider shall store firearms and ammunition separately from one another, under lock and key or combination lock.
6. A home facility shall have adequate space and equipment to accommodate each child in care, and other household members who are in the home facility at the same time as children in care. In this subsection, "adequate" means sufficient space and equipment to:
  - a. Permit all persons in the dwelling to have safe freedom of movement;
  - b. Permit children in care to be seated together for meals and snacks; and
  - c. Permit all children in care to be engaged in developmentally appropriate activities at the same time and in a room where the provider can keep all children within sight.
7. A provider shall keep outside play areas clean and safe and shall fence the play area if there are conditions that may pose a danger to any child playing outside. The fence shall be at least 4 feet high and free of hazards, including splinters and protruding nails or wires. The

fence shall have only self-closing, self-latching, lockable gates.

8. A home facility shall have the following equipment:
  - a. A charged, readily accessible, operable, multi-purpose (ABC class) fire extinguisher that the applicant knows how to operate;
  - b. At least one UL-approved, working smoke detector, properly mounted on each level of the dwelling;
  - c. At least two usable outdoor exits;
  - d. A posted written plan or diagram for emergency evacuation;
  - e. A working telephone or other two-way communication device acceptable to the Department; and
  - f. An easily accessible life-saving device if the home facility has a pool or other body of water more than 12 inches deep. A “life-saving device” means a ring buoy with at least 25 feet of 1/2-inch rope attached or a shepherd’s crook.
9. If a home facility has a swimming pool or other body of water more than 12 inches deep, the pool or body of water shall be enclosed by a permanent fence that separates it from all other outdoor areas and from doors and windows into the home facility. The fence shall be at least 5 feet high and shall have only self-closing, self-latching, lockable gates. Open spaces between upright or parallel posts and poles on fences and gates shall be no more than 4 inches apart. When the pool or body of water is not in use, the provider shall lock the gates.
10. A provider shall enclose spas and hot tubs with fencing as described in subsection (9), or with a hard, locked cover that prevents access and can support at least 100 pounds.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Amended effective March 5, 1979 (Supp. 79-2). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5204. Initial Certification: Department Responsibilities**

- A. Before issuing a certificate, the Department shall:
  1. Conduct at least one face-to-face interview with an applicant;
  2. Contact any other person necessary to determine an applicant’s fitness to be a certified provider;
  3. Ensure that an applicant and all individual backup providers have complied with and satisfy the requirements of R6-5-5202;
  4. Inspect the home where an applicant will provide child care, unless it is the child’s own home, and ensure that it meets the requirements of R6-5-5203;
  5. Conduct a CHILDS Central Registry check for:
    - a. An applicant;
    - b. The applicant’s household members;
    - c. The applicant’s emancipated children who live outside the applicant’s home, if any; and
    - d. Any individual backup provider.
  6. Find that an applicant has the intent and ability to provide child care that is safe, developmentally appropriate, and in compliance with the requirements of this Article.
- B. The Department shall objectively determine whether to certify an applicant based on the applicant’s entire application package, and the information the Department has acquired during the course of the application process.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994

(Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5205. Certification Time-frames**

For the purpose of A.R.S. § 41-1073, the Department established the following certification time-frames:

1. Administrative completeness review time-frame: 60 days,
2. Substantive review time-frame: 30 days, and
3. Overall time-frame: 90 days.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5205 renumbered to R6-5-5206 and new Section adopted by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5206. Certificates: Issuance; Non-transferability**

- A. A certificate is valid for three years from the date of issuance. The Department may revoke a certificate before expiration as provided in this Article and by law.
- B. A certificate is not transferable and is valid only for the provider and location identified on the certificate.
- C. A provider shall post the certificate in a conspicuous location in the home facility.
- D. A certificate is the property of the state of Arizona. Upon revocation or voluntary closure, a provider shall surrender the certificate issued to the provider to the Department within seven days.
- E. The Department shall designate on the certificate issued to the provider the total number of children to be allowed in child care at any one time. The total shall not exceed the limits set in R6-5-5220.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Amended effective February 24, 1977 (Supp. 77-1). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5206 renumbered to R6-5-5207; new Section R6-5-5206 renumbered from R6-5-5205 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5207. Maintenance of Certification: General Requirements; Training**

- A. Child care personnel and all individual backup providers shall be fingerprinted and pay all required fingerprint fees within the time prescribed in A.R.S. § 41-1964.
- B. A provider and all individual backup providers shall maintain the physical, mental, and emotional health necessary to fulfill all legal requirements for child care providers.
- C. No later than 60 days after the date of provider certification, a provider and individual backup providers shall furnish the Department with proof of acceptable first aid training and certification in infant/child cardiopulmonary resuscitation (“CPR”). As used in this Section, “acceptable training” means a classroom or blended-learning course that conforms to the current guidelines of the American Red Cross or the American Heart Association, as confirmed in writing by the training provider. The Department may extend the time for completing this requirement and children may remain in care during an extension, if:
  1. The class was not available within the 60-day time period; or
  2. The provider, individual backup provider, or a dependent was ill, and the provider or backup provider was unable to attend a scheduled class due to the illness.

- D. A provider and individual backup providers shall maintain current training and certification in first aid and infant/child CPR through acceptable training courses.
  - E. A certified provider shall attend at least six hours of training each calendar year in any of the following subjects:
    1. The Department's child care program, policies, and procedures;
    2. Child health and safety, including recognition, control, and prevention of illness and disease;
    3. Child growth and development;
    4. Child abuse prevention, detection, and reporting;
    5. Positive guidance and discipline;
    6. Child nutrition;
    7. Communication with families; family involvement;
    8. Developmentally appropriate practices; and
    9. Other similar subjects designed to improve the provider's ability to provide child care.
  - F. A provider shall maintain a record of all training, and annually furnish the Department with proof of attendance.
  - G. A provider shall maintain a safe and clean home facility, including furnishings, equipment, supplies, materials, utensils, toys, and grounds, that meets the standards in this Article.
  - H. At all times, a provider shall allow the Department access to all parts of the home facility. The Department shall make at least two onsite visits each year to each home facility and in-home provider. At least one visit shall be unannounced.
  - I. A provider shall allow a parent or a designated representative access to the home facility at all times when the parent's child is present, and shall give parents and designated representatives written notice explaining this right.
  - J. A provider shall directly supervise a visitor to the home facility while the visitor is in an area with a child in care.
  - K. A provider shall not expose a child in care to tobacco products or smoke.
  - L. A provider shall not care for a child while under the influence of alcoholic beverages, medication, or any other substance, that may or does impair the provider's ability to care for a child.
  - M. A provider shall not consume alcoholic beverages while caring for a child.
  - N. A provider shall not refuse to provide care to any child on the basis of color, sex, religion, disability, or national origin.
  - O. If a provider is notified that a child or household member has a communicable disease, the provider shall ensure that a child who lacks written evidence of immunity to the communicable disease is not permitted to be present in the home facility until:
    1. A parent provides written evidence of the child's immunity to the disease; or
    2. A local health department notifies the provider that the child may return to the home facility
- ences in the provision of child care services during the current certification period.
- B. A provider shall demonstrate the continued physical, mental, and emotional health necessary to perform the duties and fulfill the responsibilities in this Article.
  - C. Before recertification, a provider and designated individual backup provider shall furnish a self statement of physical and mental health and freedom from communicable diseases on a form furnished by the Department.
  - D. The Department shall renew a certificate only after a provider demonstrates the intent and ability to provide child care that is safe, developmentally appropriate, and in compliance with the requirements of this Article.
  - E. Unless the Department, in its sole discretion, accepts a provider's written assurance of future compliance with the requirements of this subsection, the Department shall deny recertification or take other enforcement action when the provider does not accept Department-referred children on three separate occasions unless the refusal is for:
    1. Illness, accident, or incapacity of the provider;
    2. Illness, accident, or incapacity of any household member, if the existing condition will pose a risk to children in care, or limit the provider's ability to provide child care in accordance with the law;
    3. The provider is not equipped or trained to provide care to the referred child, and the provider cannot acquire the equipment or training without undue hardship;
    4. The provider has no available slots;
    5. The situations listed in R6-5-5222 and a backup provider is unavailable;
    6. A child has not been immunized, and the parent or guardian is unwilling to obtain appropriate immunization, in accordance with R6-5-5219(F); or
    7. The home facility is in temporary disrepair or under construction.
  - F. The Department may obtain any supplemental information needed to determine continuing fitness to serve as a certified child care provider.
  - G. A provider, all household members, and an individual backup provider shall cooperate with the Department in providing all information required for recertification.
  - H. The Department shall determine whether to recertify a provider based on the provider's original application package, all previous monitoring reports, and all additional information the Department receives during the recertification process.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5208 renumbered to R6-5-5209; new Section R6-5-5208 renumbered from R6-5-5207 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### R6-5-5209. Program and Equipment

#### R6-5-5208. Recertification Requirements

- A. Before recertifying a provider, the Department shall interview the provider at the location where child care will be provided. The Department Representative may interview an in-home provider at the in-home provider's residence. The interview shall include a discussion and review of the provider's experi-

- A. A provider shall offer a program that is developmentally appropriate for, and meets the needs of each child in care. The daily program and activity schedule shall include a balance of the following:
  1. Indoor and outdoor activities;
  2. Activities that encourage movement and quiet time;
  3. Activities that encourage a child's creativity;
  4. Individual and group activities;
  5. Small and large muscle development activities; and
  6. Activities that include social interaction, problem solving, and negotiating skills.

- B. A provider shall incorporate into the program each child's daily routine activities, such as diapering, toileting, eating, dressing, resting, and sleeping, in accordance with the developmental needs of each child.
- C. A provider shall develop a flexible, developmentally appropriate program that the provider can adjust to accommodate unanticipated events such as the illness of a child or changes in the weather.
- D. A provider shall have play equipment and materials sufficient to meet the program requirements described in subsections (A) through (C), and to ensure that all children in care can be occupied in developmentally appropriate play at the same time.
- E. A provider who cares for a child who is younger than age 2 shall have a variety of developmentally appropriate play equipment and supplies available for the child, such as:
  1. Touch boards;
  2. Soft puppets;
  3. Soft or plastic blocks;
  4. Simple musical instruments;
  5. Push-pull toys for beginning walkers;
  6. Picture and texture books;
  7. Developmentally appropriate art materials, including crayons, paints, finger paints, watercolors, and paper;
  8. Simple, 2-3 piece puzzles and peg boards; and
  9. Large beads to string or snap.
- F. A provider who cares for a child age 2 or older shall have a variety of developmentally appropriate play equipment and supplies available for the child, such as:
  1. Art supplies;
  2. Blocks and block accessories;
  3. Books and posters;
  4. Dramatic play areas with toys and dress-up clothes;
  5. Large muscle equipment;
  6. Manipulative toys;
  7. Science materials; and
  8. Musical instruments.
- G. A provider shall have a bed, cot, mat, crib, or playpen for each child in care who requires a daily nap or rest period. Each infant in care shall have a safe crib, port-a crib, bassinet, or playpen.
- G. A provider shall have written permission from a parent or guardian before allowing a child to engage in water play. In this subsection, "water play" means any activity in which water is likely to get into a child's ears.
- H. A provider shall directly supervise any child who is in a pool area.
- I. A provider shall accompany a child who is using a public or semi-public swimming place.
- J. A provider shall have written permission from a child's parent or designated representative to bathe or shower the child, or to allow the child to bathe or shower independently.
- K. A provider shall not permit a child younger than age 6 to bathe or shower unsupervised.
- L. A provider shall report suspected child abuse or neglect to CPS or the local law enforcement department as required by A.R.S. § 13-3620.
- M. A provider shall use developmentally appropriate precautions to separate a child in care from hazardous areas, including locked doors and safe portable folding gates.
- N. A provider shall release a child only to the child's parent or to an adult who has been designated in writing by the parent.
- O. A provider shall not allow a person addicted to or under the influence of illegal drugs or alcohol in the home facility while children in care are present.
- P. A provider shall not permit a person who is abusive to children, or who uses unacceptable disciplinary methods as described in R6-5-5212, into the home facility when children in care are present.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Amended effective March 5, 1979 (Supp. 79-2). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5210 renumbered to R6-5-5211; new Section R6-5-5210 renumbered from R6-5-5209 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### R6-5-5211. Sanitation

#### R6-5-5210. Safety; Supervision

- A. When a provider is unavailable to care for a child for a reason described in R6-5-5222(B), the provider may use only the backup provider designated under R6-5-5202 or R6-5-5222(E).
- B. A provider shall give parents and guardians written notice of the provider's backup care plan.
- C. A provider shall not engage in activities that interfere with the ability to supervise and care for children, including other employment, and volunteer or recreational activities. An in-home provider shall not perform housekeeping duties unrelated to the care of the child.
- D. A provider shall directly supervise each child who is awake.
- E. A provider shall have unobstructed access to and shall be able to hear each child who is sleeping.
- F. A provider shall not permit a child in care to use a spa or hot tub.
- A. A provider and each child in care shall wash their hands with soap and running water after playing with animals or using the toilet, and before and after handling, serving, or eating food. If a child cannot reach a sink with running water, due to the child's age or some limiting condition, the provider shall clean that child's hands with an individual, clean, washcloth.
- B. A provider shall wash, in hot soapy water, and sanitize, all utensils used for eating, drinking, and food preparation.
- C. A provider shall have a garbage can with a close-fitting lid.
- D. A provider shall dispose of garbage in the home facility at least once a day.
- E. A provider shall empty and sanitize wading pools measuring 12 inches deep or less, after each use.
- F. A provider shall maintain, in a sanitary condition, a swimming pool or other area or container, which is more than 12 inches deep and used for water play.
- G. A provider shall frequently check the diaper of each child in care and shall immediately change a soiled diaper.
- H. A provider shall have sanitary arrangements for diaper changing and disposal of soiled diapers, including the following:
  1. The diaper changing area shall not be in an area where food is prepared or consumed;
  2. The diapering surface shall be cleaned, sanitized, and dried after each diaper change;
  3. Following bulk stool disposal into a toilet, soiled cloth diapers shall not be rinsed, but shall be bagged in plastic, individually labeled with child's name, stored in a cov-



- ered container out of reach of children, and returned to the child's parent each day; and
4. Soiled disposable diapers shall be discarded in a tightly covered, lined container out of reach of children.

- I. Before and after each diaper change, a provider shall wash hands with soap and running water in a sink not used for food preparation.
- J. A provider shall sanitize a bathtub before bathing each child in care.

#### Historical Note

Adopted effective July 6, 1976 (Supp. 76-4). Section repealed, new Section adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5211 renumbered to R6-5-5212; new Section R6-5-5211 renumbered from R6-5-5210 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### R6-5-5212. Discipline

- A. A certified provider and all individual backup providers shall sign a written agreement to abide by the Department's policy on developmentally appropriate discipline.
- B. Only a provider may discipline a child in care;
- C. A provider may physically restrain a child whose behavior is uncontrolled, only when the physical restraint:
  1. Is necessary to prevent harm to the child or others;
  2. Occurs simultaneously with the uncontrolled behavior;
  3. Does not impair the child's breathing; and
  4. Cannot harm the child.

A provider shall use the minimum amount of restraint necessary to bring the child's behavior under control.
- D. A provider shall not use the following disciplinary measures:
  1. Corporal punishment, including shaking, biting, hitting, or putting anything in a child's mouth;
  2. Placing a child in isolation or in a closet, laundry room, garage, shed, basement, or attic;
  3. Locking a child out of the home facility;
  4. Placing a child in any area where the provider cannot directly supervise the child;
  5. Methods detrimental to the health or emotional needs of a child;
  6. Administering medications;
  7. Mechanical restraints of any kind;
  8. Techniques intended to humiliate or frighten a child;
  9. Discipline associated with eating, sleeping, or toileting; or
  10. Abusive or profane language.
- E. As a disciplinary measure, a provider may place a child in time out. During the time out period, the provider shall keep the child in full view. Time out shall not be used for children less than age 3.
- F. A provider shall maintain consistent, reasonable rules that define acceptable behavior for a child in care.
- G. A provider shall use discipline only to teach acceptable behavior and to promote self-discipline, not for punishment or retribution.

#### Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5212 renumbered to R6-5-5213; new Section R6-5-5212 renumbered from R6-5-5211 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### R6-5-5213. Evening And Nighttime Care

- A. A provider who offers evening or nighttime care shall remain awake until each child in care is asleep.

- B. A provider who offers nighttime care shall have a safe and sturdy crib for each infant, and a safe and sturdy bed or cot with mattress for each child. Crib bars or slats shall be no more than 2 3/8 inches apart, and the crib mattress shall fit snugly into the crib frame so that no space remains between the mattress and frame.
- C. A provider may allow siblings to share a bed only if the provider has received written parental permission.

#### Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5213 renumbered to R6-5-5214; new Section R6-5-5213 renumbered from R6-5-5212 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### R6-5-5214. Children Younger than Age 2

A provider who cares for a child younger than age 2 shall comply with the following requirements:

1. A provider shall frequently hold a child and give each infant and toddler physical contact and attention throughout the day.
2. A provider shall respond promptly to a child's distress signals and need for comfort.
3. A provider shall get written permission from a parent or guardian to give a child a bedtime or nap-time bottle. If the provider receives permission, the provider shall use only water in the bottles, unless otherwise directed by the child's physician.
4. A provider shall not confine a child in a crib, high chair, swing, or playpen, for more than one consecutive waking hour.
5. A provider shall not feed cereal by bottle, except with the written instruction of a physician.
6. A provider shall hold an infant younger than age 1 for any bottle feeding, and shall not prop bottles with a child in care.

#### Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5214 renumbered to R6-5-5215; new Section R6-5-5214 renumbered from R6-5-5213 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### R6-5-5215. Children with Special Needs

- A. When enrolling a child with special needs, a provider shall comply with the requirements of this Section:
  1. A provider shall consult with parents to establish a mutually agreed upon plan regarding services for a child with special needs;
  2. A provider shall have the physical ability and appropriate training to provide the care required by a child with special needs;
  3. A provider shall use best efforts to integrate a child with special needs into the daily activities of the home facility in a manner that is the least restrictive, and that meets the child's individual needs;
  4. If a provider regularly cares for a child with special needs older than age 3 who requires diapering, the home facility shall have a diaper changing area that permits the child to have privacy. Proper sanitation shall be maintained as described in R6-5-5211.
- B. A provider shall make reasonable accommodations in the home facility, equipment, and materials for a child with special needs.

#### Historical Note

Adopted effective May 11, 1994 (Supp. 94-2). Former

Section R6-5-5215 renumbered to R6-5-5216; new Section R6-5-5215 renumbered from R6-5-5214 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5216. Transportation**

- A.** A provider shall obtain prior written permission from a child's parent before transporting a child in a privately owned vehicle or on public transportation.
- B.** A provider shall ensure that a child in care is transported in a private vehicle by a person who has:
  - 1. A valid Arizona driver's license;
  - 2. Automobile insurance that meets the financial responsibility requirement of Arizona law; and
  - 3. No convictions for driving while intoxicated within three years before the date of transportation.
- C.** A provider shall transport a child only in a mechanically safe vehicle. "Mechanically safe" means a vehicle with:
  - 1. Functioning brakes, signal lights, and headlights;
  - 2. Tires with tread; and
  - 3. Structural integrity.
- D.** A provider shall not transport a child on a motorcycle or in a vehicle that is not constructed for the purpose of transporting people, such as a truck bed, camper, or any trailered attachment to a motor vehicle.
- E.** A provider shall transport a child in a separate car seat, seat belt, or child-restraint device in compliance with A.R.S. § 28-907.
- F.** A provider shall never leave a child unattended in a vehicle.
- G.** A provider shall maintain first-aid supplies in a privately owned vehicle used to transport children in care.
- H.** A provider shall carry a child's emergency-information card when transporting a child in care.
- I.** A provider shall sign a form that states that the provider will abide by R6-5-5216.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5216 renumbered to R6-5-5217; new Section R6-5-5216 renumbered from R6-5-5215 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5217. Meals and Nutrition**

- A.** A provider shall serve a child in care wholesome and nutritious foods and beverages. In this Section, "wholesome and nutritious" means foods and beverages consistent with the requirements of 7 CFR 226.20 (January 1, 1998), which is incorporated by reference and available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona 85007 and in the office of the Secretary of State at 1700 West Washington, Phoenix, Arizona. The incorporated material contains no later amendments or editions.
- B.** A provider shall supplement meals and snacks supplied by a parent when the supplied food does not provide a child with a wholesome and nutritious diet.
- C.** A provider shall make available to a child in care meals and snacks that satisfy the child's appetite and dietary needs.
- D.** A provider shall consult with a parent to identify, in writing, any special dietary needs or instructions for a child in care.
- E.** A provider shall give a child any necessary assistance in feeding and shall teach self-feeding skills, but shall not force a child to eat.
- F.** A provider shall monitor all perishable foods, including infant formulas and sack lunches. The provider shall ensure that food is individually labeled with a child's name, dated, covered, and properly stored to prevent spoilage at temperatures of 45°F or less.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5217 renumbered to R6-5-5218; new Section R6-5-5217 renumbered from R6-5-5216 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

#### **R6-5-5218. Health Care; Medications**

- A.** When a provider enrolls a child for care, the provider shall make written arrangements with the child's parent for emergency medical care of the child.
- B.** If a child becomes ill while in care, a provider shall:
  - 1. Make the child comfortable and keep the child in full view; and
  - 2. Notify the parent or other designated person that the child is ill and must be immediately removed from care.
- C.** A provider shall notify the parent of other children in care when a child in care contracts an infectious illness.
- D.** A provider shall not provide care while knowingly infected with or presenting symptoms of an infectious disease.
- E.** If a child exhibits symptoms of an infectious disease, the child may return to care when fever free and symptom free, or with written permission from the child's medical practitioner that returning will not endanger the health of the child or other children in care.
- F.** A provider shall not admit a child in need of professional medical attention to the home facility and shall direct the parent to obtain medical attention for the child.
- G.** Only a provider shall administer medication with signed written instructions for administering the medication from the child's parent.
- H.** A provider shall not administer:
  - 1. Medication that is date expired or in something other than its original container; or
  - 2. Prescription medication that does not bear the date of issue, the child's name, the amount and frequency of dosage, and the doctor's name.
- I.** A provider shall maintain a written log of all medications administered. The log shall include:
  - 1. The name of the child receiving the medication;
  - 2. The name of the medication;
  - 3. The date and time of administration; and
  - 4. The dosage administered.
- J.** A provider shall use a sanitary medication measure for accurate dosage.
- K.** A provider shall keep all medication in a locked storage container, and refrigerate if necessary.
- L.** A provider shall have first-aid supplies available at the home facility, which shall be administered only by the provider.
- M.** A provider is responsible for obtaining only emergency medical treatment for a child in care.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5218 renumbered to R6-5-5219; new Section R6-5-5218 renumbered from R6-5-5217 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

#### **R6-5-5219. Recordkeeping; Unusual Incidents; Immunizations**

- A.** A provider shall maintain a daily attendance log on a Department-approved form and shall require that each child be

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- signed in and out on the log by the parent or other individual designated in writing by the parent.
- B.** On a form approved by the Department, a provider shall promptly log all accidents, injuries, behavior problems, or other unusual incidents at the home facility, including any suspected child abuse or neglect.
  - C.** A provider shall immediately report all unusual incidents to a parent or guardian of the child involved and shall report the incidents to the Department within 24 hours of the time of occurrence.
  - D.** A provider shall maintain records in accordance with the requirements of the provider's child care registration agreement. The provider shall make the following records readily available for inspection by the Department and shall keep them separate from household and other personal records:
    1. Information listed in subsection (E);
    2. Immunization records identified in subsection (F) and R6-5-5202 (L);
    3. Documentary evidence of freedom from communicable tuberculosis as required by R6-5-5202 (M);
    4. The provider's certification, re-certification, and monitoring records;
    5. Health records of child care personnel;
    6. The provider's training records;
    7. Unusual incident reports; and
    8. Daily logs of attendance, accidents, injuries, medications administered, behavior problems, or other unusual incidents.
  - E.** A provider shall maintain at least the following information for each child in care:
    1. The child's name, home address, telephone number, gender, and date of birth;
    2. The name, home and business addresses, and telephone numbers of the child's parent;
    3. The name, address and telephone number of the child's physician or health care provider and hospital;
    4. Authorization and instructions for emergency medical care when the parent cannot be located; and
    5. Written authorization to release a child to any individual other than the parent and the name, home and work addresses, and telephone numbers of that individual.
  - F.** A provider shall maintain an immunization record or exemption affidavit for each child in care.
    1. Documentation required under this subsection is limited to:
      - a. An immunization record prepared by the child's health care provider stating that child has received current, age-appropriate immunizations specified in R9-6-702, including immunizations for Diphtheria, Haemophilus influenzae type b, Hepatitis B, Measles, Mumps, Pertussis, Poliomyelitis, Rubella, and Tetanus;
      - b. An affidavit signed by the child's health care provider stating that the child has a medical condition that causes the required immunizations to endanger the child's health; or
      - c. An affidavit signed by the child's parent stating that the child is being raised in a religion whose teachings oppose immunization.
    2. If a child has received all current immunizations but requires further inoculations to be fully immunized, the provider shall require the parent to verify that the parent will have the child complete all immunizations in accordance with the DHS recommended schedule identified in R9-6-702. The provider shall:
      - a. Require the parent to produce documented records from the child's health care provider of the immunizations as they are completed; and
      - b. Maintain the records as required by subsection (F)(1).
  - 3.** The provider shall not permit a child in care to remain enrolled for more than 15 days if the parent does not provide proof of current, age-appropriate immunizations, a statement of timely completion of further inoculations, or exemption from immunization.
  - G.** Children exempted from immunizations for religious or medical reasons shall be excluded from the home facility if there is an outbreak of an immunizable disease at the home facility.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5219 renumbered to R6-5-52020; new Section R6-5-5219 renumbered from R6-5-5218 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 22 A.A.R. 3185, effective October 28, 2016 (Supp. 16-4).

**R6-5-5220. Provider/Child Ratios**

- A.** The Department may certify a provider in a home facility to care for a maximum of four children at a time, from birth through age 12, for compensation. A provider in a home facility may care for a maximum of six children at a time, from birth through age 12, or a child age 13 or older who is a child with special needs, when all of the following conditions are met:
  1. No more than four children in care are for compensation; and
  2. No more than two of the children in care are younger than age 1, unless a sibling group.
- B.** The Department may certify an in-home provider to provide the following care:
  1. An in-home provider may care for a sibling group of no more than six children.
  2. An in-home provider shall care only for the children who live in that home.
  3. An in-home provider may bring the in-home provider's own children to the in-home location with the written permission of the client, and so long as the total number of children at the in-home location does not exceed six children.
- C.** The Department may further limit the ratios allowed in subsections (A) and (B) to protect the well-being of children in care. The Department may impose additional restrictions when:
  1. There are more than two children residing in the home facility who are counted in the ratio;
  2. The Department determines that the home facility and the furnishings are inadequate to accommodate four children at a time for compensation, as provided in Section R6-5-5203(6);
  3. The Department has determined that a provider is physically unable to care for four children at a time; for compensation or
  4. A provider requests certification for fewer than four children at a time for compensation.
- D.** For the sole purpose of establishing and monitoring ratios, the Department shall not count any child who is age 13 or older, except as provided in subsection (A) for a child with special needs.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5220 renumbered to R6-5-5221; new Sec-

tion R6-5-5220 renumbered from R6-5-5219 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5221. Change Reporting Requirements**

At least 15 days before the effective date of any scheduled change, or within 24 hours after an unscheduled change, which significantly affects the provision of child care services, a provider shall furnish the Department with written notice of the change. Significant changes include, but are not limited to:

1. Home remodeling;
2. Home repair;
3. Pool installation;
4. Relocating to a new residence;
5. Change in household composition;
6. Telephone number change;
7. Change of backup provider;
8. Voluntarily relinquishing the certificate; and
9. Any other change in the home facility or the provider's personal circumstances that affect the provider's ability to provide stable child care services.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5221 renumbered to R6-5-5222; new Section R6-5-5221 renumbered from R6-5-5220 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5222. Use of A Backup Provider**

- A. A provider shall maintain a backup provider, and shall keep clients and the Department apprised of the backup provider's identity and location.
- B. A provider may use a backup provider only in the following circumstances:
  1. When the provider is ill;
  2. When the provider is attending to an emergency related to the provision of child care;
  3. When the provider has an emergency involving the provider or the provider's dependent family members;
  4. When the provider needs to attend a non-emergency appointment for the provider or the provider's dependent family members, and the provider cannot schedule the appointment outside of normal child care hours;
  5. When the provider is attending classes to meet training requirements listed in this Article; or
  6. When the provider is taking a vacation.
- C. At the time of enrollment of a child in care, a provider shall advise the parent of the possible use of a backup provider.
- D. A provider shall notify the Department within 24 hours of the onset of the use of a backup provider.
- E. When a provider designates a new backup provider, the provider shall ensure that the backup provider meets the requirements for backup providers in R6-5-5202.
- F. A provider shall execute a backup provider agreement form furnished by the Department, which identifies the backup provider and contains assurances that the backup provider will be used in accordance with the requirement of this Section.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5222 renumbered to R6-5-5223; new Section R6-5-5222 renumbered from R6-5-5221 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5223. Claims For Payment**

- A. A provider shall submit claims for payment in the manner prescribed in the child care registration agreement with the Department.
- B. A provider shall make all financial arrangements with a backup provider. The Department shall not make direct payments to the backup provider.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5223 renumbered to R6-5-5224; new Section R6-5-5223 renumbered from R6-5-5222 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5224. Complaints; Investigations**

- A. Any person may register, with the Department, a written or verbal complaint about a provider or the operation of a home facility. Upon receipt of a complaint, or in response to the observations of Department staff, the Department shall investigate the allegations made and any matters related to certification and compliance with the child care registration agreement.
- B. A provider who is the subject of a complaint shall cooperate with the Department in conducting an investigation. The provider shall allow a Department representative to inspect the home facility and all records, and to interview any child care personnel, or household member.
- C. The Department shall maintain a file on all complaints against a provider and shall make information on valid complaints available to parents and to the general public upon request and as permitted by law.
- D. Following an investigation, the Department shall take appropriate administrative action as described in this Article.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5224 renumbered to R6-5-5225; new Section R6-5-5224 renumbered from R6-5-5223 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5225. Probation**

- A. The Department may place a provider on probation when a Department representative observes a problem or the Department receives and validates a complaint in an area of noncompliance that does not endanger a child in care.
- B. The Department shall set a term of probation that does not exceed 30 days.
- C. The Department may suspend a provider's child care certificate if the same infraction that resulted in probation is repeated during a provider's current certification period and the Department determines that the provider has not demonstrated either the intent or ability to comply with the requirements of this Article.
- D. The Department shall not authorize any new child for payment to a provider who is on probation. Children already in that provider's care may remain authorized.
- E. Probationary status is not appealable.

#### **Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5225 renumbered to R6-5-5226; new Section R6-5-5225 renumbered from R6-5-5224 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

#### **R6-5-5226. Certification, Denial, Suspension, and Revocation**

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- A.** The Department may deny, suspend, or revoke certification when:
1. An applicant or provider violates or fails to comply with any statute or rule applicable to the provision of Child Care Services.
  2. An applicant or provider has a certificate or license to operate a child care home or facility denied, revoked, or suspended in any state or jurisdiction.
  3. An applicant or provider fails to disclose requested information or provides false or misleading information to the Department.
  4. A provider's contract with the Department to furnish child care services expires or is terminated.
  5. Child care personnel fail or refuse to comply with or meet the requirements of A.R.S. § 41-1964.
  6. A provider fails or refuses to correct or repeats a violation that resulted in probation or suspension.
  7. The Department, through its CPS hotline, receives a report of alleged child maltreatment by an applicant, provider, or household member who is under investigation by CPS or a law enforcement agency or is being reviewed in a civil, criminal, or administrative hearing.
  8. An applicant or provider fails or refuses to cooperate with the Department in providing information required by these rules or any information necessary to determine compliance with these rules.
  9. An applicant, provider, or household member engages in any activity or circumstance that may threaten or adversely affect the health, safety, or welfare of children, including inadequate supervision or failure to protect from actual or potential harm.
  10. An applicant or provider is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.
  11. The Department, through its CPS hotline, receives a report of alleged child maltreatment in a home facility that is under investigation by CPS or a law enforcement agency or is being reviewed in a civil, criminal, or administrative proceeding.
  12. An applicant, provider, or household member is the subject of a substantiated or undetermined report of child maltreatment in any state or jurisdiction. Substantiated child maltreatment includes, but is not limited to, a probable cause finding by CPS or a law enforcement agency.
  13. CPS or a law enforcement agency substantiates a report of child maltreatment in a home facility.
- B.** In determining whether to take disciplinary action against a provider, or to grant or renew a certificate, the Department may evaluate the provider's history from other certification periods, both in Arizona and in other jurisdictions, and shall consider multiple violations of statutes or rules applicable to the provision of child care services as evidence that the applicant or provider is unable or unwilling to meet the needs of children.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Former Section R6-5-5226 repealed; new Section renumbered from R6-5-5225 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5227. Adverse Action; Notice Effective Date**

- A.** When the Department denies, suspends, or revokes certification, it shall mail a written, dated notice of the adverse action to the applicant or the provider at the applicant's or provider's last known address.
- B.** A notice of adverse action shall specify:

1. The adverse action taken and date the action will be effective;
  2. The reasons supporting the adverse action; and
  3. The procedures by which the applicant or provider may contest the action taken and the time period in which to do so.
- C.** Except as provided in subsection (D), a revocation, suspension, or denial of recertification is effective 20 calendar days from the date on the notice or letter advising the provider of the adverse action.
- D.** A suspension, revocation, or denial of recertification is effective on the date of the notice or letter advising the person of the adverse action if:
1. The adverse action is based on the failure of child care personnel to comply with or meet the requirements of A.R.S. § 41-1964; or
  2. The Department bases the adverse action on a determination that the health, safety, or welfare of a child in care is in jeopardy.
- E.** The Department shall stop payment authorization for all subsidized children in care on the effective date of a suspension, revocation, or denial of recertification.
- F.** The Department shall not authorize the referral of additional children to a provider after mailing a notice of adverse action to the provider's last known address.

**Historical Note**

Adopted effective May 11, 1994 (Supp. 94-2). Amended effective June 4, 1998 (Supp. 98-2). Former Section R6-5-5227 renumbered to R6-5-5228 and new Section adopted by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**R6-5-5228. Appeals**

- A.** An applicant or provider may appeal the following Department decisions:
1. Denial of certification or re-certification;
  2. Suspension of a certificate; and
  3. Revocation of a certificate.
- B.** A person who wishes to appeal an adverse action shall file a written request for a hearing with the Department within 15 calendar days of the date on the notice or letter advising the provider of the adverse action.
- C.** The Department shall conduct a hearing as prescribed in 6 A.A.C. 5, Article 75. Decisions based on failure to clear a fingerprint check or criminal history check are not appealable under this Article.
- D.** Matters relating to contractual agreements with the Department, including payment rates and amounts, are not appealable under this Article.
- E.** When an adverse action based on R6-5-5226(A)(7) is appealed under this Article, allegations of child maltreatment are not at issue and shall not be adjudicated in an administrative proceeding conducted under subsection (C).

**Historical Note**

New Section R6-5-5228 renumbered from R6-5-5227 and amended by final rulemaking at 5 A.A.R. 1983, effective May 20, 1999 (Supp. 99-2).

**ARTICLE 53. REPEALED**

*Former Article 53 consisting of Sections R6-5-5301 through R6-5-5305 repealed effective April 9, 1981.*

**ARTICLE 54. REPEALED**

*Former Article 54 consisting of Sections R6-5-5401 through R6-5-5411 repealed effective November 8, 1982.*

**ARTICLE 55. CHILD PROTECTIVE SERVICES****R6-5-5501. Definitions**

The definitions in A.R.S. §§ 8-531, 8-201, and 8-801, and the following definitions apply in this Article:

1. “Abandonment” has the same meaning ascribed to “abandoned” in A.R.S. § 8-201(1).
2. “Abuse” means the same as A.R.S. § 8-201(2).
3. “Aggravating factor” means a specific circumstance that increases the risk of harm to a child and may result in a shorter investigation response time.
4. “Alleged abuser” means a child’s parent, guardian, or custodian accused of child maltreatment.
5. “Alternative investigation” means, under R6-5-5507, a method to determine that a report of child maltreatment is unsubstantiated without a field investigation.
6. “Alternative response” means a report referred to Family Builders for assessment and services and not investigated by CPS according to Laws 1997, Chapter 223, § 2.
7. “Caregiver” means a child’s parent, guardian, or custodian.
8. “Child” means a person less than age 18.
9. “Child Abuse Hotline,” or “the Hotline,” means a state-wide, toll-free telephone service, including TDD service, that the Department operates 24 hours per day, seven days per week, to receive calls about child maltreatment.
10. “CHILDS” means the Children’s Information Library and Data Source, which is a comprehensive automated system to support child welfare policies and procedures and includes information on investigations, ongoing case management, and payments.
11. “CHILDS Central Registry” means the Child Protective Services Central Registry, a confidential computerized database within CHILDS, that the Department maintains according to A.R.S. § 8-804.
12. “Child welfare agency” has the same meaning as in A.R.S. § 8-501(A)(1).
13. “CPS” means Child Protective Services, a program within the Administration for Children, Youth and Families (ACYF), a division of the Department designated to receive and investigate allegations of child maltreatment and provide protective services as described in subsection (40).
14. “CPS Administrator” means the DES Administrator responsible for operation of CPS, or that person’s designee, which may include the Field Operations Manager, the CPS District Program Manager (“DPM”), the CPS Assistant District Program Manager (“APM”), or the CPS Local Office Manager.
15. “CPS Specialist” has the same meaning ascribed to “protective services worker” in A.R.S. § 8-801(2).
16. “CPS-CIU” means the Child Protective Services Central Intake Unit that operates the Child Abuse Hotline, screens incoming communications, and transmits reports to a CPS unit.
17. “Custodian” means a person defined in A.R.S. § 8-201(8). For CPS reporting purposes, a custodian is also any person with whom the child resides at the time of a maltreatment and includes a:
  - a. Friend,
  - b. Relative,
  - c. Foster parent, and
  - d. Child welfare agency.
18. “DCYF” means the Department’s Division of Children, Youth and Families, an administrative unit that includes CPS.
19. “DDD” means the Department’s Division of Developmental Disabilities.
20. “Delinquent act” has the same meaning prescribed in A.R.S. § 8-201(9).
21. “Department” means the Arizona Department of Economic Security.
22. “Exploitation” means use of a child by a parent, guardian, or custodian for material gain, which may include forcing a child to panhandle, steal, or perform other illegal activities.
23. “Family” means persons, including at least one child, who are related by blood or law, who are legal guardians of a child, or who reside in the same household.
24. “Family assessment” means a process that:
  - a. CPS uses to evaluate a family’s strengths, weaknesses, and problems;
  - b. Is based on the family’s history, observations about the family, professional opinions, and other information; and
  - c. Includes a child safety assessment to determine the probability of risk to a child under R6-5-5512.
25. “Family Builders” means a program that allows CPS to refer selected reports to community-based providers for a family assessment and services according to Laws 1997, Chapter 223, § 2.
26. “Guardian” means the same as A.R.S. § 8-531(9).
27. “Incoming communication” means a telephonic, written, or in-person contact to CPS that is received by or ultimately directed to the Child Abuse Hotline.
28. “Licensing specialist” means a person who is:
  - a. Designated by the Department or another state licensing agency; and
  - b. Responsible for licensing, supervision, support, and monitoring of foster homes or child welfare agencies.
29. “Lifestyle” means a way of life or pattern of conduct that reflects the values and attitudes of a child’s parent, guardian, or custodian.
30. “Maltreatment” means abuse, neglect, abandonment, or exploitation of a child. When used in reference to CPS activities, maltreatment means that a parent, guardian, or custodian:
  - a. Has committed an act of maltreatment,
  - b. May commit an act of maltreatment,
  - c. Has permitted another person to commit an act of maltreatment, or
  - d. Had reason to know that another person might commit an act of maltreatment and did not act to prevent the potential maltreatment.
31. “Mandated reporter” means a person who is required to report suspected child maltreatment under A.R.S. § 13-3620.
32. “Minor hygienic problem” means a body condition that does not pose a risk of serious or immediate harm, such as body odor, dirty hair, matted hair, dirty clothing, and treated chronic head lice.
33. “Mitigating factor” means a specific circumstance that reduces the risk of harm to a child and may permit a longer investigation response time.
34. “Neglect” or “neglected” means the same as A.R.S. § 8-201(21).
35. “Non-abusive caregiver” means a parent, guardian, or custodian who is not the subject of a CPS report or an investigation of alleged maltreatment.
36. “Notice of removal” means a form of notification that CPS gives to a person other than a caregiver when CPS

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removes a child and places the child in temporary custody.

37. "Ongoing protective services" are voluntary or involuntary social services designed to help a family resolve problems that contribute to child abuse and may include counseling, parenting classes, parent aide services, and voluntary foster care placement.
38. "Out-of-home placement" means a place where a child resides when the child is unable to reside at home because of maltreatment and includes:
  - a. A relative home,
  - b. A foster home,
  - c. A licensed child welfare agency,
  - d. A behavioral health facility,
  - e. An unlicensed nonrelative,
  - f. An independent living program, and
  - g. A group home for persons with developmental disabilities.
39. "Probable cause" means that the Department has some evidence that an allegation is more likely to be true than not true.
40. "Protective services" means the same as A.R.S. § 8-801(1).
41. "PSRT" means the DCYF Protective Services Review Team that administers the process described in A.R.S. § 8-811 for appeal of proposed substantiated findings of abuse or neglect.
42. "Report" means a classification assigned to an incoming communication after the Child Abuse Hotline has screened the communication and found it to include:
  - a. An allegation of maltreatment about a person who is currently a child, and
  - b. Sufficient information for CPS to locate the child who is the subject of the maltreatment.
43. "Screening" means an initial process of determining whether an incoming communication contains an allegation of child maltreatment and should be classified as a report.
44. "Standard response time" means the period between the time a local CPS office receives a report from the Hotline and an action is taken to determine that a child victim is safe, in the absence of aggravating or mitigating factors.
45. "Substantiated" means that a CPS Specialist has concluded, after an investigation, that there is probable cause to believe an alleged abuser committed an act of child maltreatment.
46. "TDD" means a telecommunication device for the deaf.
47. "Unsubstantiated" means that a CPS Specialist has concluded, after an investigation, that there is no probable cause to believe an alleged abuser committed an act of child maltreatment.

**Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5501 repealed, new Section R6-5-5501 adopted effective December 8, 1983 (Supp. 83-6). Amended by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5502. Receipt and Screening of Information; Child Abuse Hotline**

- A. The Department operates a Child Abuse Hotline to receive and screen incoming communications. If a person calls, visits, or writes a Department office other than the Child Abuse Hotline to report child maltreatment, the Department shall refer the person or written communication to the Hotline.

- B. The Department accepts anonymous calls of alleged maltreatment.
- C. When the Hotline receives a communication, the Hotline staff shall:
  1. Ask a caller's identity;
  2. Use the standardized questions listed in Appendix 1 to this Article, to determine:
    - a. The type of maltreatment alleged, and
    - b. Whether to classify the communication as a report, and
  3. Check the CHILDS Central Registry and other DES computer databases for prior reports on the same persons.
- D. When the Department receives an oral report from a mandated reporter, the Department shall ask the mandated reporter to file a written statement confirming the oral report.

**Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5502 repealed, new Section R6-5-5502 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1). Numbering of subsection (C)(3) amended to correct typographical error (Supp. 00-2).

**R6-5-5503. Non-Reports**

Unless a communication includes an allegation of child maltreatment, the Department shall not classify as a report statements concerning the following matters:

1. A child's absence from school;
2. A child age 8 or older who allegedly committed a delinquent act;
3. Siblings of a child age 8 or older who allegedly committed a delinquent act;
4. A child whose parents are absent but made arrangements for the child's care;
5. A child who is receiving treatment from an accredited Christian Science practitioner, or other religious or spiritual healer, unless the child's health is:
  - a. In imminent harm, under R6-5-5512(B); or
  - b. Endangered by lack of medical care;
6. A child with minor hygienic problems;
7. The lifestyle of a child's parent, guardian, or custodian;
8. Custody disputes, including:
  - a. A noncustodial parent who is denied visitation by the custodial parent, and
  - b. A relative or other person who wants legal custody of a child; and
9. Spiritual neglect of a child or the religious practices or beliefs to which a child is exposed.

**Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5503 repealed, new Section R6-5-5503 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5504. Preliminary Screening Classifications**

- A. Screening Classifications. After preliminary screening, Child Abuse Hotline staff shall classify a communication into one of the following categories:
  1. A communication that is a non-report, or
  2. A report for investigation.
- B. Communication that is a non-report.
  1. If a caller describes a problem that does not involve child maltreatment, the Hotline staff shall refer the caller to a community resource that can help with the problem.

2. If a communication involves a child who is already in the Department's care, custody, and control, the Hotline staff shall record the information and send it to the child's case manager for action. If a communication involves a licensed out-of-home care provider, the Hotline shall also notify the provider's licensing specialist or the appropriate licensing authority.
  3. If a communication involves suicidal or homicidal behavior, or presents a danger to self or others, the Hotline staff shall refer the caller to law enforcement or behavioral health services.
  4. If a communication involves an incorrigible or delinquent child who is age 8 or older, the Hotline staff shall refer the caller to the local county juvenile probation office.
  5. If a communication involves child maltreatment by a person other than a child's caregiver, without the caregiver's knowledge, the Hotline staff shall notify, and direct the caller to notify, local law enforcement.
- C. Review of non-reports.**
1. If the information provided by a caller is not a report, the CPS Hotline staff shall:
    - a. Record the information;
    - b. Inform a caller that the information is not a report; and
    - c. If a caller disagrees with the decision not to take a report, advise the caller that a request may be made for a supervisory review.
  2. If a caller requests a supervisory review, the Hotline staff shall transfer the caller to an available supervisor. The caller may request further review by the Child Abuse Hotline Assistant Program Manager, Hotline Program Manager, and ultimately, the ACYF Field Operations Manager.
  3. A Child Abuse Hotline supervisor or a CPS quality assurance specialist shall review all communications not classified as a report within 48 hours of receipt to verify that the communication was properly classified.
- D. Communication that is a report for investigation.**
1. If a communication contains the information required for a report, the Hotline staff shall gather additional information using the standardized questions listed in Appendix 2.
  2. The Hotline staff shall assign each report a priority code and may assign a tracking code.
  3. The Hotline staff may shorten or lengthen the response time based on aggravating or mitigating factors received during the screening.
  4. The Hotline staff shall give the caller the name and phone number of the local office supervisor receiving the report.
  5. The Hotline staff shall enter the report information into CHILDS.
  6. The Hotline staff shall immediately transmit the report to a local office for disposition.

**Historical Note**

Adopted effective June 2, 1976 (Supp. 76-3). Former Section R6-5-5504 repealed, new Section R6-5-5504 adopted effective December 8, 1983 (Supp. 83-6). Section repealed, new Section adopted at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5505. Priority Codes; Initial Response Time****A. Priority codes and initial response times are:**

1. Priority 1: High Risk;
  - a. Standard Response Time: two hours;
  - b. Mitigated Response Time: 24 hours.
2. Priority 2: Moderate Risk;

- a. Standard Response Time: 48 hours;
  - b. Aggravated Response Time: 24 hours;
  - c. Mitigated Response Time: 72 hours.
  3. Priority 3: Low Risk;
    - a. Standard Response Time: 72 hours;
    - b. Aggravated Response Time: 48 hours;
    - c. Mitigated Response Time: 72 hours excluding weekends and Arizona state holidays.
  4. Priority 4: Potential Risk;
    - a. Standard Response Time: seven days;
    - b. Aggravated Response Time: 72 hours excluding weekends and Arizona state holidays.
- B.** All response times are measured from the time that the CPS local office receives the report from the Child Abuse Hotline to the time action is taken to determine the current safety of the alleged victim.
- C.** To comply with the priority response time, entities other than CPS, such as law enforcement personnel, emergency personnel, or paramedics, may initially respond to a report.
- D.** If law enforcement or emergency personnel initially respond to a report, CPS shall respond and investigate the report no later than the mitigated response time for the designated priority.

**Historical Note**

Former Section R6-5-5505 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5506. Methods for Investigation of Reports**

- A.** Upon receipt of a report, a CPS unit supervisor:
1. May aggravate or mitigate the response time, if the Child Abuse Hotline has not assigned a mitigating or aggravating factor, but shall not change any aggravating or mitigating factors assigned by the Hotline; and
  2. Shall assign one of the following dispositions:
    - a. Field investigation;
    - b. Alternative investigation under R6-5-5507;
    - c. Legally prohibited investigation. A federal, state statute, or court order prohibits CPS from investigating if, for example:
      - i. The alleged maltreatment occurs on a United States military base or Tribal reservation land, or
      - ii. A court orders CPS not to investigate; or
    - d. Alternative response, such as reports referred to Family Builders.
- B.** The CPS unit supervisor shall document the action taken and the disposition.

**Historical Note**

Former Section R6-5-5506 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5507. Alternative Investigation**

- A.** Upon receipt of a report, a CPS unit supervisor may conduct an alternative investigation.
- B.** To conduct an alternative investigation, CPS shall contact a mandatory reporting source who is currently involved with the family and can provide information that:
1. The child and other children residing in the home are not:
    - a. Current victims of maltreatment, or
    - b. At risk of imminent harm; and
  2. The allegations are unsubstantiated.



- C. A CPS administrator shall review and approve any decision to conduct an alternative investigation.
- D. If information gathered during an alternative investigation indicates that an alleged victim may be at risk of harm, the CPS Supervisor shall immediately assign the case for field investigation.
- E. CPS shall not conduct an alternative investigation if an allegation involves an alleged victim who is:
  1. Already in Department custody,
  2. Currently the subject of an open CPS case,
  3. In a DES- or DHS-licensed or certified facility, or
  4. In a DES-licensed family foster home.

#### Historical Note

Former Section R6-5-5507 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

#### R6-5-5508. Conduct of a Field Investigation

- A. When conducting a field investigation, a CPS Specialist shall determine:
  1. The name, age, location, and current physical and mental condition of all children in the home of the alleged victim;
  2. Whether any child in the home has suffered maltreatment; and
  3. Whether any child in the home is at risk of maltreatment in the future.
- B. A CPS Specialist shall investigate allegations using the following methods:
  1. Interview the alleged victim;
  2. Interview the alleged victim's caregiver who allegedly committed the abuse;
  3. Interview other adults and children residing in the home;
  4. Interview other persons who may have relevant information, including the reporting source, medical personnel, relatives, neighbors, and school personnel;
  5. Review available documentation including medical and psychiatric reports, police reports, school records, and prior CPS files; or
  6. Consult with law enforcement.
- C. A CPS Specialist may interview a child without prior parental consent under A.R.S. § 8-802(C)(2).
- D. A CPS Specialist may exclude the alleged abuser from participating in an interview with the alleged victim, the alleged victim's siblings, or other children residing in the alleged victim's household.
- E. Before interviewing a caregiver, a CPS Specialist shall:
  1. Orally inform the caregiver of the rights and duties under A.R.S. § 8-803(B);
  2. Give the caregiver a written statement summarizing the same information; and
  3. Ask the caregiver to sign a written acknowledgment of receipt of the information.
- F. A CPS Specialist may take temporary custody of a child under A.R.S. §§ 8-821(A) and (B) and 8-802(C)(4). The CPS Specialist shall take temporary custody of an alleged victim if the alleged victim needs to be examined and the caregiver will not consent to the examination.
- G. If a CPS Specialist finds more allegations of maltreatment during the investigation, the CPS Specialist shall incorporate the allegations into the report and investigate under this Article.

#### Historical Note

Former Section R6-5-5508 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final

rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

#### R6-5-5509. Establishing Probable Cause of Child Maltreatment

To determine whether to recommend a substantiated allegation of maltreatment, the CPS Specialist shall consider all information gathered during the investigation, including:

1. Whether the alleged abuser or non-abusive caregiver admitted the maltreatment;
2. Whether a child provided a developmentally appropriate description of maltreatment;
3. Witness statements from persons other than the caregivers and the alleged victim;
4. Physical or behavioral signs of maltreatment or damage;
5. Medical opinions and opinions from treating professionals, including any conflict of opinion;
6. The consistency of the information provided; and
7. History of child maltreatment.

#### Historical Note

Former Section R6-5-5509 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

#### R6-5-5510. Investigation Findings; Required Documentation

After completing an investigation, a CPS Specialist shall:

1. Unsubstantiate the allegations or make a proposed finding that the allegation is substantiated based on whether the CPS Specialist finds probable cause to believe maltreatment occurred, and after considering the information listed in R6-5-5509;
2. Determine whether the family has any unresolved problems involving child maltreatment and needs further services;
3. Document in the case record the reason for the finding;
4. Include in the case record any oral and written statements or other documentation provided by a caregiver;
5. Notify the PSRT of a proposed substantiated allegation finding under A.R.S. § 8-811;
6. Enter an unsubstantiated allegation finding into the CHILDS Central Registry and send the caregiver written notice of the unsubstantiated allegation finding.

#### Historical Note

Former Section R6-5-5510 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

#### R6-5-5511. Ongoing Services; Imminent Harm Not Identified; Case Closure

- A. If a finding is unsubstantiated or substantiated without unresolved problems, the CPS Specialist shall close the case.
- B. If a finding is unsubstantiated or substantiated, and there is no risk of imminent harm to a child, but the family has unresolved problems that create a potential for maltreatment, CPS shall determine whether to open the case for ongoing protective services if:
  1. A family requests ongoing protective services, or
  2. A dependency action is pending.
- C. CPS shall offer a family voluntary protective services before filing a dependency action.
- D. When CPS offers a family voluntary protective services, CPS shall:
  1. Document the family's acceptance or refusal of services,
  2. Document any services provided, and

3. Document any action that CPS has taken to ensure that a child is safe.
- E. To determine how to proceed for ongoing services, CPS shall consider the following criteria:
  1. Whether a family acknowledges past maltreatment or potential for future maltreatment,
  2. Whether the services are available to help a family address risk factors, and
  3. Whether a family is willing to cooperate with the provision of services.

#### Historical Note

Former Section R6-5-5511 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

#### R6-5-5512. Procedures for Substantiated Reports; Removal; Imminent Harm

- A. If CPS recommends a substantiated finding of maltreatment, CPS shall determine whether the child can safely remain in the home or needs to be removed.
- B. The following situations indicate imminent harm and require CPS to intervene as provided in R6-5-5513:
  1. No caregiver is present and a child cannot care for himself or herself or for other children in the household;
  2. A child has severe or serious nonaccidental injuries that require immediate medical treatment, such as:
    - a. Head injury, with risk of damage to the central nervous system;
    - b. Internal injuries;
    - c. An injury resulting in coma;
    - d. Multiple plane injuries indicative of battering;
    - e. Facial bruises;
    - f. Fractures or bruises in a nonambulatory child;
    - g. Instrumentation injury with risk of impairment; or
    - h. Immersion burns;
  3. A child requires immediate medical treatment for a life-threatening medical condition or a condition likely to result in impairment of bodily functions or disfigurement, and the child's caregiver is not willing or able to obtain treatment;
  4. A child is suffering from nutritional deprivation that has resulted in malnourishment or dehydration to the extent that the child is at risk of death or permanent physical impairment;
  5. A doctor or psychologist determines that a child's caregiver is unable or unwilling to provide minimally adequate care;
  6. The physical or mental condition of a child's caregiver endangers a child's health or safety, such as a caregiver who:
    - a. Exhibits psychotic behavior and fails to take prescribed medications,
    - b. Suffers from a deteriorating physical condition or illness, or
    - c. Takes prescribed or nonprescribed drugs that result in a child being neglected;
  7. The home environment has conditions that endanger a child's health or safety, such as human or animal feces, undisposed-of garbage, exposed wiring, access to dangerous objects, or harmful substances that present a substantial risk of harm to the child;
  8. A doctor or psychologist has determined that:
    - a. A child's caregiver has emotionally damaged the child;

- b. The child is exhibiting severe anxiety, depression, withdrawal, or aggressive behavior due to the emotional damage; and
- c. The caregiver is unwilling or unable to seek treatment for the child; or
9. A CPS Specialist has probable cause to believe that a caregiver has engaged in sexual conduct with a child or has allowed the child to participate in sexual activity with others.
- C. In situations not listed in subsection (B), a CPS specialist shall determine the risk of imminent harm and need for removal by:
  1. Doing a family assessment to identify family strengths and risk factors; and
  2. Evaluating all facts and circumstances surrounding a child and family situation, including the following:
    - a. Whether a law enforcement official or medical professional expresses concern about risk to the child victim if the child victim returns to or remains in the home;
    - b. The alleged abuser's behavior towards the child victim;
    - c. Other adults in the household's behavior towards the child victim;
    - d. Whether the child victim resides with a parent or other adult who is willing and able to protect the child;
    - e. The conditions of the home environment and whether those conditions threaten the child victim's safety or physical health;
    - f. Whether there has been a pattern of maltreatment, particularly a pattern of incidents of increasing severity;
    - g. The nature and severity of the alleged maltreatment;
    - h. Whether DES is able to provide services to the child or family to alleviate conditions or problems that pose a risk of maltreatment, without the need for removal;
    - i. Whether the child's caregiver refuses access to a child or declined an offer of in-home services;
    - j. The family's strengths and risk factors;
    - k. The child's current physical and mental condition; and
    - l. Whether the child victim has injuries that require immediate medical treatment.

#### Historical Note

Former Section R6-5-5512 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

#### R6-5-5513. Alternatives to Involuntary Removal; Voluntary Placement; Removal

- A. Before removing a child from home without the consent of the child's caregiver, CPS shall consider whether:
  1. CPS may help the family obtain resources such as emergency food, shelter, clothing, or utilities, so that the child can safely remain in the home;
  2. CPS may enter into an agreement with the child's caregivers that provides for the alleged abuser to leave the home and for remaining family members to protect the child;
  3. The caregiver identifies a relative or friend who can temporarily care for the child without court intervention or orders;
  4. CPS may help the protective caregiver and the child leave the home of the alleged abuser;

5. CPS may place the child in voluntary foster care under A.R.S. § 8-806.
- B. If a child is at risk of imminent harm and the alternative methods identified in subsection (A) will not eliminate the risk of harm, CPS shall take temporary custody of the child as provided in A.R.S. § 8-821.
- C. CPS shall document the placement alternatives considered and the reasons for not selecting the options listed in subsection (A).

**Historical Note**

Former Section R6-5-5513 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5514. Removal Review**

- A. Under A.R.S. § 8-822(3), within 48 hours of removing a child and before filing a dependency petition, CPS shall have a removal review team assess alternatives to continued out-of-home placement and the need for CPS to file a dependency petition.
- B. The removal review team shall include the CPS specialist who conducted the investigation and removed the child and the CPS specialist's supervisor. The removal review team shall also include at least one other qualified professional such as a psychologist or counselor.
- C. The removal review team shall consider the factors listed in R6-5-5512 and R6-5-5513(A) to determine whether to return a child, pursue a voluntary placement option, or file a dependency petition.
- D. The team shall document, in the child's case record, alternatives considered and the reason for the action taken.
- E. Within 48 hours of removing a child, DES shall either file a dependency petition or return the child, as required by A.R.S. § 8-821.

**Historical Note**

Former Section R6-5-5514 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5515. Procedures for Investigations of Maltreatment in a Licensed Child Welfare Agency**

- A. Before CPS investigates an allegation of maltreatment in a licensed child welfare agency ("agency"), the CPS Specialist shall advise the agency's chief executive officer, or that person's designee, of the following:
  1. The nature of the allegation,
  2. How CPS will conduct the investigation,
  3. The names of the agency staff members and children that the CPS Specialist plans to interview, and
  4. The rights listed in subsection (C).
- B. Notwithstanding subsection (A), CPS may conduct an unannounced investigation if:
  1. The agency's chief executive officer is the subject of a maltreatment allegation, or
  2. Prior notice of the investigation may jeopardize the safety of a child in the agency's care.
- C. When CPS investigates an allegation of maltreatment at an agency, the agency may:
  1. Seek legal counsel at any time during the investigation;
  2. Present information about the allegation before CPS issues a finding; and
  3. Receive:
    - a. An oral status report on the progress of an investigation not completed within 21 days,

- b. A copy of the report with personally identifiable information redacted, and
- c. Written notice of the investigation finding.

- D. The Department shall document the investigation and findings in an agency's licensing file.

**Historical Note**

Former Section R6-5-5515 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5516. Procedures for Investigations of Out-of-Home Care Providers**

- A. In this Section, an "out-of-home care provider" means:
  1. A child in the custody of the Department by court order or voluntary foster care under A.R.S. § 8-806 and placed with:
    - a. An unlicensed nonrelative,
    - b. An unlicensed relative,
    - c. A licensed family foster home,
    - d. A certified adoptive home; and
  2. A family child care home provider certified by the Department under A.R.S. § 46-807.
- B. A CPS Specialist shall notify the following of an investigation of an allegation of abuse or neglect by an out-of-home care provider:
  1. The parent or legal guardian of each child in the home,
  2. The case manager or supervisor for each child in the home,
  3. The attorney and guardian ad litem for each child in the home, and
  4. The provider's licensing or certification specialist.
- C. When CPS investigates an allegation of sexual abuse, a CPS Specialist shall audiotape or videotape all interviews.
- D. Unless a situation jeopardizes the safety of a child, a CPS Specialist shall consult with the following individuals before removing a child from an out-of-home care provider:
  1. The child's case manager or supervisor,
  2. The foster home licensing specialist or supervisor,
  3. The ACYF District Program Manager, and
  4. The Assistant Attorney General if the child is in the physical custody of the provider.
- E. CPS shall notify the parent or legal guardian of each child in the provider's care, the out-of-home care provider, and each child's case manager of the investigation findings.
- F. CPS shall hold a case conference in three days, if CPS intends to substantiate a report to discuss the investigation findings and to determine the Department's recommendations regarding licensing.
- G. An out-of-home care provider may bring a person representing the provider's interests to the case conference after waiving the provider's right to confidentiality.
- H. The Department shall document the investigation and findings in the case record.

**Historical Note**

Former Section R6-5-5516 repealed effective December 8, 1983 (Supp. 83-6). New Section adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**R6-5-5517. Repealed****Historical Note**

Former Section R6-5-5517 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5518. Repealed****Historical Note**

Former Section R6-5-5518 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5519. Repealed****Historical Note**

Former Section R6-5-5519 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5520. Repealed****Historical Note**

Former Section R6-5-5520 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5521. Repealed****Historical Note**

Former Section R6-5-5521 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5522. Repealed****Historical Note**

Former Section R6-5-5522 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5523. Repealed****Historical Note**

Former Section R6-5-5523 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5524. Repealed****Historical Note**

Former Section R6-5-5524 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5525. Repealed****Historical Note**

Former Section R6-5-5525 repealed effective December 8, 1983 (Supp. 83-6).

**R6-5-5526. Repealed****Historical Note**

Former Section R6-5-5526 repealed effective December 8, 1983 (Supp. 83-6).

**Appendix 1. Pre-screening Cue Questions**

1. May I have your name, phone number, and relationship to the child? (Assure the reporting source he or she can remain anonymous. Explain that CPS will not be able to contact him/her for additional information without a name and phone number.)
2. What is your concern about the child? How old is the child?
3. What is the family's home address? Does the child live there? If not, where can we locate the child, that is, school, day care, relative? Who is living in the home?
4. Do you know who abused or neglected the child? If so, who? (This includes staff of a licensed or certified DES facility or foster or child care home or a licensed DHS Level I, II, or III Behavioral Health Treatment facility.) Do you know when he or she will see the child next?
5. Did the \_\_\_\_\_ (parent, guardian, or custodian) know about the abuse or neglect?
6. Is the \_\_\_\_\_ (parent, guardian, or custodian) letting the child see this person?

**Historical Note**

New Appendix 1 adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**Appendix 2. Cue Questions**

IF IT IS DETERMINED TO HAVE ALL OF THE ELEMENTS OF A REPORT FOR FIELD INVESTIGATION (that is, a child victim, maltreatment by a parent, guardian, or custodian, and the child can be located), CHECK CPSCR AND GATHER REPORT DEMOGRAPHICS.

Include the address of the child, the name of the apartment complex, trailer park, and directions as needed.

**PHYSICAL ABUSE CUE QUESTIONS:**

1. Describe the injury (size, shape, color, and location).
2. Do you know when the injury occurred? Has abuse occurred before? How often does the abuse occur?
3. Did the child say what happened?
4. Do you know if the child was seen by a medical doctor? If so, what is the name and phone number of the doctor? If the source is a medical doctor, is the injury consistent with the explanation?

**If the call concerns a licensed or certified DES facility, foster or child care home, or a DHS Level I, II, or III Behavioral Health Treatment facility, ask:**

5. Did the injury occur as a result of restraint?
6. What kind of restraint was used?
7. Why was the child restrained?
8. Will the staff person have contact with the child or other children in the facility?
9. Do you know the name of the licensing specialist? If so, what is the name and phone number?
10. Do you know the name of the child's case manager? If so, what is the name and phone number?

**EMOTIONAL ABUSE CUE QUESTIONS:**

1. Specifically, what is the person doing (to have the impact on the child)?
2. Have you noticed a change in the child's behavior?
3. What signs or behaviors is the child exhibiting?
4. Do you think the child's behavior is related to what the parent, guardian, or custodian is doing? If so, how?
5. Do you know if the child has seen a medical doctor, psychologist, or mental health professional? If so, what is the name and phone number? Do you know the diagnosis?

**NEGLECT CUE QUESTIONS:****A. INADEQUATE SUPERVISION**

1. Is the child alone NOW? If yes, how long has the child been alone? Where is the person who is supposed to be watching the child? When will the person return? Have you called the police?
2. If the child is not alone, who is watching the child now? What are your concerns about the person who is watching the child?
3. Do you know how often and when this happens?
4. What happens when the child is alone or inadequately supervised?
5. Does this child know how to contact the parent, guardian, or custodian?
6. Does the child have emergency numbers and know how to use the phone?
7. Do you know if anyone is checking on the child? If so, what is the name and phone number? How often?

If the call concerns a licensed or certified DES facility, foster or child care home, or DHS Level I, II, or III Behavioral Health Treatment facility, ask:

8. What supervision was being provided at the time of the sexual conduct or physical injury between the children?

9. Did the facility or foster or child care home know that the child may physically or sexually assault another child?
10. Did the staff or foster or child care home person know that the child may physically or sexually assault another child?
11. What steps were being taken to prevent the child from assaulting other children?
12. What steps are being taken to restrict contact between the child and other children?
13. Do you know the name of the licensing specialist? If so, what is the name and phone number?
14. Do you know the name of the child's case manager? If so, what is the name and phone number?

**B. SHELTER**

1. When was the last time you saw the child or the home?
2. Describe any health or safety hazards where they live. Has anything happened to the child?
3. Do you know how long they have been in this situation?
4. Do you know why they live like this?

**C. MEDICAL CARE**

1. What are the child's symptoms?
2. Is the parent, guardian, or custodian aware of the problem?
3. Do you know when they last saw a medical doctor? Who was the medical doctor? If so, why?
4. Do you know the reasons the person is not getting medical care for the child?

If reporting source is a medical doctor or doctor's representative, ask only the following questions:

5. What is the medical or psychiatric condition or diagnosis of this child and when did it begin?
6. What medical care is needed?
7. What will happen if the child does not receive the medical care?
8. What are your concerns about the parent, guardian, or custodian response to the problem?

**D. FOOD**

1. What makes you believe the child is not getting enough food? Describe the physical condition of the child.
2. Do you know if someone else is feeding the child? If so, who?
3. When was the last time you saw the child or have you been in the home? If so, describe the food you saw.
4. Do you know if the child has seen a medical doctor? If so, what is the name and phone number?

**E. CLOTHING**

1. Describe what the child is wearing and the weather conditions.
2. What effect is it having on the child?

**SEXUAL ABUSE CUE QUESTIONS:**

1. Why do you think the child has been sexually abused or is at risk of sexual abuse (activities, physical signs, or behaviors)?
2. Who saw these activities, signs, or behaviors?
3. Has the child told anyone? If so, who and when?
4. What is the child saying about sexual abuse?
5. Do you know where and when this last occurred?
6. Do you know what contact this person has with the child?
7. Do you know if the child *has* seen a medical doctor? If so, what is the name and number?

**ABANDONED CUE QUESTIONS:**

1. Do you know where the parent is now?
2. When did the parent last have contact with the child?
3. When do you think the parent is coming back?
4. What arrangements did the parent make for care of this child?
5. How long are you able or willing to care for the child? Are there relatives available?

6. If so, what is the name, address, phone number?

**DRUG-EXPOSED INFANTS CUE QUESTIONS:**

1. Has the child or mother been tested? If so, what are the results?
2. What is the name of the medical doctor or hospital?
3. What is the parental history of drug use? (What drugs, when was last drug use, used during what trimester?)
4. What is the parental history of drug treatment?
5. Describe the medical and physical condition of the child?
  - a. Birth weight,
  - b. Gestational age,
  - c. Apgar score,
  - d. Prenatal care.
6. Have preparations been made in the home for the new baby?

**NONSEXUAL EXPLOITATION CUE QUESTIONS:**

1. Describe how the child is being exploited.
2. What reason was given for the exploitation?
3. How long has this been going on?

**POTENTIAL ABUSE AND NEGLECT CUE QUESTIONS:**

1. Describe behaviors (of the parent, guardian, custodian, or child) that give you reason to believe that abuse or neglect may occur.
2. Has abuse or neglect happened before? If so, when and where?
3. Has the \_\_\_\_\_ (parent, guardian, or custodian) expressed concerns about hurting or not being able to care for the child?

**CLOSURE CUE QUESTIONS**

1. Do you know what school or child care facility the child attends? If so, what is the name of the school or child care facility? Dismissal or pick-up time?
2. Has the child expressed concerns about going home? If so, what did the child say to you?
3. Has law enforcement been notified? DR or Badge number?
4. Does the child have any of these special needs or problems?
  - a. Abuse of drugs or alcohol,
  - b. Bizarre behavior,
  - c. Extremely angry or volatile,
  - d. Physically ill,
  - e. Mentally ill,
  - f. Language other than English.
5. Does the \_\_\_\_\_ (parent, guardian, or custodian) have any of these special needs or problems:
  - a. Abuse of drugs or alcohol,
  - b. Bizarre behavior,
  - c. Extremely angry or volatile,
  - d. Physically ill,
  - e. Mentally ill,
  - f. Language other than English.
6. Do you know if CPS or any other agency has been involved with this family?
7. If this report is assigned for field investigation, are there any issues we need to be aware of to ensure the worker's safety (guns, dogs)?

**Historical Note**

New Appendix 2 adopted by final rulemaking at 5 A.A.R. 444, effective January 15, 1999 (Supp. 99-1).

**ARTICLE 56. CONFIDENTIALITY AND RELEASE OF CPS INFORMATION****R6-5-5601. Definitions**

The definitions contained in A.R.S. §§ 8-531, 8-201, 8-801, R6-5-5501, and the following definitions apply in this Article:

1. "Abuse" means the same as in A.R.S. § 8-201(2).

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2. “CASA” or “Court Appointed Special Advocate” means a person appointed under A.R.S. § 8-522.
3. “Caregiver” means a child’s parent, guardian, or custodian.
4. “Completed request” means a written communication to the program or a form provided by the Department asking for CPS information with all information filled in.
5. “Copying fee” means the final amount a requester is required to pay to the Department before the Department releases the requested CPS information.
6. “CPS” means Child Protective Services, a program within the Division of Children, Youth and Families (DCYF) to receive and investigate allegations of child abuse and neglect and provide protective services as described in A.R.S. § 8-801(4).
7. “CPS Information” means the same as in A.R.S. § 8-807(U)(1) and includes information contained in a hard copy or electronic case record, and both oral and written information.
8. “DCYF” means the Division of Children, Youth and Families within the Department of Economic Security.
9. “Department” means the Arizona Department of Economic Security, which is sometimes referred to as “DES” or “ADES.”
10. “Estimated copying fee” means an amount a requester is required to pay to the Department before the Department copies and redacts requested CPS information.
11. “FCRB” means the Foster Care Review Board established pursuant to A.R.S. § 8-515.01.
12. “Neglect” means the same as in A.R.S. § 8-201(22).
13. “Person that provides oversight” means those individuals, entities, or bodies described in A.R.S. § 8-807(H) and any other individual, entity or body as authorized by law.
14. “Person who is the subject of CPS information” means a caregiver, child or other person identified in the CPS report.
15. “Personally identifiable information” means information that specifically identifies a protected individual and includes:
  - a. Name;
  - b. Date of Birth;
  - c. Street address;
  - d. Telephone, fax number, or email address;
  - e. Photograph;
  - f. Fingerprints;
  - g. Physical description;
  - h. Place, address, and telephone number of employment;
  - i. Social security number;
  - j. Tribal affiliation and identification number;
  - k. Driver’s license number;
  - l. Auto license number;
  - m. Any other identifier that is specific to an individual; and
  - n. Any other information that would permit another person to readily identify the subject of the CPS information.
16. “Protected individual” means a living person who is the subject of a CPS investigation and includes:
  - a. An alleged victim,
  - b. An alleged victim’s sibling,
  - c. A parent,
  - d. A foster parent,
  - e. A child living with the alleged victim,
  - f. The person who made the report of child abuse or neglect, and
  - g. Any person whose life or safety would be endangered by disclosure of CPS information.
17. “Redacting” means striking or blacking out personally identifiable information contained in CPS hard copy or electronic case records on protected individuals so that no one can read the information.
18. “Report” means an incoming communication containing an allegation that:
  - a. A child is the subject of abuse or neglect;
  - b. A parent, guardian or custodian inflicted, may inflict, permitted another person to inflict, or had reason to know another person may inflict such abuse or neglect; and
  - c. Contains sufficient information to locate the child.
19. “Request” means a written communication for CPS information.
20. “Requester” means an individual, entity, or body that has made a request for CPS information.
21. “Research requester” means an individual or organization that seeks CPS information for a research or evaluation project.
22. “Workday” means Monday through Friday excluding Arizona state holidays and mandatory furlough days.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5601 repealed, new Section R6-5-5601 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5601 recodified to A.A.C. R6-8-201 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5602. Scope and Application**

- A. This Article governs requests for and release of CPS information made under A.R.S. § 8-807.
- B. CPS maintains information in accordance with federal laws under A.R.S. § 8-807.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5602 repealed, new Section R6-5-5602 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5602 recodified to A.A.C. R6-8-202 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5603. Procedures for Requesting CPS Information**

- A. A person who wishes to obtain CPS information under A.R.S. § 8-807 shall comply with the requirements of this Section, and any applicable limitations and conditions in R6-5-5605 and R6-5-5607.
  1. This Section does not apply to a person or entity entitled to receive CPS information to:
    - a. Meet its duties to provide for the safety, permanency, and well-being of a child;
    - b. Provide services to the child or family to strengthen the family;
    - c. Enforce or prosecute violations of child abuse or neglect laws; or
    - d. Provide CPS information to a defendant as required by an order of the criminal court.
  2. This Section also does not apply to juvenile, domestic relations, family or conciliation courts, the parties or their attorneys in a dependency, guardianship, or termination

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of parental rights proceeding, the FCRB, a CASA, or a person that provides oversight.

- B.** The requester shall send the Department a completed written request or use the form provided by the Department. The request shall include the following information:
1. Requester's name, address, and telephone number;
  2. Name of the child victim who is the subject of the CPS report, with as much of the following information as the requester can provide on the child victim:
    - a. Other possible spellings, names, or aliases for the child;
    - b. Date of birth;
    - c. The name of the child's caregivers; and
    - d. The date of the CPS report or time-frame for the report;
  3. Any other data that the requester believes will be likely to assist the Department in identifying the CPS information requested, such as:
    - a. The name of the child's siblings;
    - b. The child's Social Security number;
    - c. The name of the CPS Specialist handling the case; and
    - d. The location of the alleged abuse or neglect.
- C.** Before releasing CPS information under this Section, the Department shall determine that the person or entity requesting the CPS information is a person or entity entitled to receive the CPS information under this Article and A.R.S. § 8-807.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5603 repealed, new Section R6-5-5603 adopted effective January 13, 1977 (Supp. 77-1). R6-5-5603 recodified to A.A.C. R6-8-203 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5604. Procedures for Processing a Request for CPS Information**

- A.** Upon receipt of a request for CPS information, the Department shall determine whether the request is complete. If the request is incomplete, the Department shall either:
1. Return the request to the requester with a statement explaining the additional information the Department needs to process the request; or
  2. Contact the requester to obtain the missing information.
- B.** Upon receipt of a completed request, the Department shall stamp the receipt date on the request. The receipt date is the day the Department receives the completed request.
- C.** Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
1. A statement that the requested CPS information does not exist;
  2. The requested CPS information;
  3. A statement that the Department cannot provide the requested CPS information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
  4. A statement that the Department cannot release the requested CPS information, with the statutory citation and the reason for the denial.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5604 repealed, new Section R6-5-5604 adopted effective January 13, 1977 (Supp. 77-1). R6-5-

5604 recodified to A.A.C. R6-8-204 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5605. Procedures for Processing a Request for CPS Information from a Person or Entity Providing Services in Official Capacity**

- A.** The Department shall release CPS information without obtaining the fee required by R6-5-5610 when a person or entity entitled to receive CPS information requires information to:
1. Meet its duties to provide for the safety, permanency, and well-being of a child;
  2. Provide services to the child or family to strengthen the family;
  3. Enforce or prosecute a violation of child abuse or neglect laws;
  4. Provide CPS information to a defendant as required by an order of the criminal court; or
  5. Provide CPS information to:
    - a. A juvenile, domestic relations, family or conciliation court;
    - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
    - c. The FCRB;
    - d. A CASA; or
    - e. A person that provides oversight.
- B.** Before releasing CPS information under this Section, the Department shall determine that the person requesting CPS information is a person entitled to receive CPS information under this Section and A.R.S. § 8-807.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5604 renumbered as Section R6-5-5605 effective January 13, 1977 (Supp. 77-1). R6-5-5605 recodified to A.A.C. R6-8-205 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5606. Release of Summary CPS Information to a Person Who Reported Suspected Child Abuse and Neglect**

- A.** A person who reports alleged child abuse or neglect to CPS may contact CPS to obtain a summary of the outcome of the investigation, as permitted by A.R.S. § 8-807.
- B.** After receiving a request and before releasing CPS information, the Department shall determine that the person requesting CPS information was the person who made the report as follows:
1. Obtain the name and telephone number of the requester, and
  2. Compare the requester's name with the name of the person listed as the reporting source on the CPS report.
- C.** After determining the identity of the requester, the Department shall call and advise the requester whether the Department has statutory authority to provide the requested CPS information.
- D.** If the requester is entitled to receive the requested CPS information, CPS shall verbally provide the person a summary of the outcome with the following CPS information:
1. Disposition of the report;
  2. Investigation findings, if available; and
  3. A general description of the services offered or provided to the child and family.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5605 renumbered as Section R6-5-5606 effective January 13, 1977 (Supp. 77-1). R6-5-5606 recodified to A.A.C. R6-8-206 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5606 repealed; new Section R6-5-5606 renumbered from R6-5-5607 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5607. Release of CPS Information for a Research or Evaluation Project**

- A. A person seeking CPS information for a research or evaluation project shall send a written request to the Department. A request shall include the following information:
1. If the person works for a research organization:
    - a. The name of the organization, and
    - b. The organization's mission;
  2. A description of the research or evaluation project, which explains how the results of the project will improve the child protection system;
  3. A description of the plan for maintaining the confidentiality of personally identifiable information and disseminating the results of the project; and
  4. The funding source for the research or evaluation project.
- B. Within 30 workdays of receipt of a completed request from a research requester, the Department shall:
1. Advise the requester whether the Department will provide the requested CPS information,
  2. Inform the requester of the estimated copying fee required under R6-5-5610, and
  3. Inform the requester of the expected time-frame for providing the requested CPS information.
- C. Upon receipt of the copying fee, the Department shall provide the requester with the requested CPS information.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5606 renumbered as Section R6-5-5607 effective January 13, 1977 (Supp. 77-1). R6-5-5607 recodified to A.A.C. R6-8-207 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5607 renumbered to R6-5-5606; new Section R6-5-5607 renumbered from R6-5-5608 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5608. Release of CPS Information to a Legislator or Another Person that Provides Oversight**

- A. A person that provides oversight of child protective services and seeks CPS information shall send a written request to the Department and include the following information:
1. The name of the person seeking the information;
  2. The purpose of the request and its relationship to the person's official duties; and
  3. The person's signature, or the signature of an authorized agent for an entity or other body, confirming that the person or authorized agent understands the CPS information shall not be further disclosed unless authorized by A.R.S. § 8-807.
- B. A legislator or committee of the legislature seeking CPS information to perform official duties shall send a written request to the presiding officer of the body of which the state legislator is a member and include the name of the person whose case record is to be reviewed and any other information that will

assist the Department in locating the record. The legislator shall also sign the request, confirming that the legislator understands that the CPS information shall not be further disclosed unless authorized by A.R.S. § 8-807. The presiding officer shall forward the request to the Department within five workdays of receiving the request.

- C. The copying fee required under R6-5-5610 does not apply to this Section.
- D. Within 10 workdays of receiving the request, the Department shall provide the requester with one of the following written responses:
1. A statement that the requested CPS information does not exist;
  2. The requested CPS information;
  3. A statement that the Department cannot provide the requested CPS information within 10 workdays, the reason for the delay and the anticipated time-frame for response; or
  4. A statement that the Department cannot provide the requested CPS information, with the statutory citation and the reason for denial.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5607 renumbered as Section R6-5-5608 effective January 13, 1977 (Supp. 77-1). R6-5-5608 recodified to A.A.C. R6-8-208 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5608 renumbered to R6-5-5607; new Section R6-5-5608 renumbered from R6-5-5609 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5609. Release of CPS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality**

- A. A person who requests CPS information under A.R.S. § 8-807 concerning a case of child abuse, abandonment, or neglect that resulted in a fatality or near fatality, shall send a written request to the Department.
- B. Upon receipt of the request, the Department shall stamp the receipt date on the request and begin gathering the requested CPS information.
- C. The Department shall notify the requester in writing of the estimated copying fee. If the requester does not want to proceed, the requester shall notify the Department within 72 hours to cancel the request. If this notification is oral, the requester shall confirm the cancellation in writing.
- D. The requester shall pay the estimated copying fee before the Department copies any CPS information.
- E. After receipt of the final copying fee, the Department shall provide CPS information consistent with A.R.S. § 8-807.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5608 renumbered as Section R6-5-5609 effective January 13, 1977 (Supp. 77-1). R6-5-5609 recodified to A.A.C. R6-8-209 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5609 renumbered to R6-5-5608; new Section R6-5-5609 renumbered from R6-5-5610 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5610. Fees**



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- A. If the Department determines a request for CPS information will result in a copying fee, the Department shall notify the requester of the estimated fee before copying any CPS information.
- B. Unless otherwise exempted by this Chapter, the Department shall charge a copying fee at the current rate set by the Department, as provided on the DES website at <http://www.azdes.gov>.
- C. The copying fee applies to both paper and electronic copies. If the CPS information does not already exist in an electronic format, additional fees that reflect the actual cost of conversion will apply to copy the CPS information to an electronic format.
- D. The Department shall notify the requester in writing of the final copying fee.
- E. The Department shall reimburse the requester if final copying costs are less than the estimated copying fee.

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5609 renumbered as Section R6-5-5610 effective January 13, 1977 (Supp. 77-1). R6-5-5610 recodified to A.A.C. R6-8-210 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section R6-5-5610 renumbered to R6-5-5609; new Section R6-5-5610 renumbered from R6-5-5612 and amended by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5611. Repealed****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5610 renumbered as Section R6-5-5611 effective January 13, 1977 (Supp. 77-1). R6-5-5611 recodified to A.A.C. R6-8-211 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). Section heading corrected at request of the Department, Office File No. M12-330, filed September 4, 2012 (Supp. 12-2). Repealed by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5612. Renumbered****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5611 renumbered as Section R6-5-5612 effective January 13, 1977 (Supp. 77-1). R6-5-5612 recodified to A.A.C. R6-8-212 effective February 13, 1996 (Supp. 96-1). New Section adopted by final rulemaking at 5 A.A.R. 1804, effective May 18, 1999 (Supp. 99-2). R6-5-5612 renumbered to R6-5-5610 by final rulemaking at 18 A.A.R. 2708, effective December 2, 2012 (Supp. 12-4).

**R6-5-5613. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5612 renumbered as Section R6-5-5613 effective January 13, 1977 (Supp. 77-1). R6-5-5613 recodified to A.A.C. R6-8-213 effective February 13, 1996 (Supp. 96-1).

**R6-5-5614. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5613 renumbered as Section R6-5-5614 effective

January 13, 1977 (Supp. 77-1). R6-5-5614 recodified to A.A.C. R6-8-214 effective February 13, 1996 (Supp. 96-1).

**R6-5-5615. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5614 renumbered as Section R6-5-5615 effective January 13, 1977 (Supp. 77-1). R6-5-5615 recodified to A.A.C. R6-8-215 effective February 13, 1996 (Supp. 96-1).

**R6-5-5616. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5615 renumbered as Section R6-5-5616 effective January 13, 1977 (Supp. 77-1). R6-5-5616 recodified to A.A.C. R6-8-216 effective February 13, 1996 (Supp. 96-1).

**R6-5-5617. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5616 renumbered as Section R6-5-5617 effective January 13, 1977 (Supp. 77-1). R6-5-5617 recodified to A.A.C. R6-8-217 effective February 13, 1996 (Supp. 96-1).

**R6-5-5618. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5617 renumbered as Section R6-5-5618 effective January 13, 1977 (Supp. 77-1). R6-5-5618 recodified to A.A.C. R6-8-218 effective February 13, 1996 (Supp. 96-1).

**R6-5-5619. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5618 renumbered as Section R6-5-5619 effective January 13, 1977 (Supp. 77-1). R6-5-5619 recodified to A.A.C. R6-8-219 effective February 13, 1996 (Supp. 96-1).

**R6-5-5620. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5619 renumbered as Section R6-5-5620 effective January 13, 1977 (Supp. 77-1). R6-5-5620 recodified to A.A.C. R6-8-220 effective February 13, 1996 (Supp. 96-1).

**R6-5-5621. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5620 renumbered as Section R6-5-5621 effective January 13, 1977 (Supp. 77-1). R6-5-5621 recodified to A.A.C. R6-8-221 effective February 13, 1996 (Supp. 96-1).

**R6-5-5622. Recodified****Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5621 renumbered as Section R6-5-5622 effective January 13, 1977 (Supp. 77-1). R6-5-5622 recodified to A.A.C. R6-8-222 effective February 13, 1996 (Supp. 96-1).

96-1).

**R6-5-5623. Recodified**

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5622 renumbered as Section R6-5-5623 effective January 13, 1977 (Supp. 77-1). R6-5-5623 recodified to A.A.C. R6-8-223 effective February 13, 1996 (Supp. 96-1).

**R6-5-5624. Recodified**

**Historical Note**

Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5623 renumbered as Section R6-5-5624 effective January 13, 1977 (Supp. 77-1). R6-5-5624 recodified to A.A.C. R6-8-224 effective February 13, 1996 (Supp. 96-1).

**ARTICLE 57. REPEALED**

**R6-5-5701. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5701 repealed, new Section R6-5-5701 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5702. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5702 repealed, new Section R6-5-5702 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5703. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5703 repealed, new Section R6-5-5703 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5704. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5704 repealed, new Section R6-5-5704 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5705. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5705 repealed, new Section R6-5-5705 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5706. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5706 repealed, new Section R6-5-5706 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5707. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5707 repealed, new Section R6-5-5707

adopted effective November 5, 1984 (Supp. 84-6).

Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5708. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5708 repealed, new Section R6-5-5708 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-5709. Repealed**

**Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Former Section R6-5-5709 repealed, new Section R6-5-5709 adopted effective November 5, 1984 (Supp. 84-6). Repealed effective April 9, 1998 (Supp. 98-2).

**ARTICLE 58. FAMILY FOSTER PARENT LICENSING REQUIREMENTS**

**R6-5-5801. Definitions**

In addition to the definitions contained in A.R.S. §§ 8-201, 8-501, and 8-531, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-546(A)(1).
2. "Abuse" means the infliction or allowing physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to section 8-223 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse shall include inflicting or allowing sexual abuse pursuant to section 13-1404, sexual conduct with a minor pursuant to section 13-1405, sexual assault pursuant to section 13-1406, molestation of a child pursuant to section 13-1410, commercial sexual exploitation of a minor pursuant to section 13-3552, sexual exploitation of a minor pursuant to section 13-3553, incest pursuant to section 13-3608 or child prostitution pursuant to section 13-3212. A.R.S. § 8-546(A)(2).
3. "Adult" means a person age 18 years or older.
4. "Applicant" means a person who submits a written application to the Licensing Authority or a licensing agency to become licensed, or to renew a license as a foster parent. An applicant means both spouses if the adult household caregivers are married, except for a person seeking licensure solely as an in-home respite foster parent.
5. "Case plan" means a written document which is a distinct part of a child's case record, and which identifies the child's permanency goal and target date, desired outcomes, tasks, time-frames, and responsible parties.
6. "Child placing agency" or "placing agency" means:
  - a. The Department, a county probation Department, or the Administrative Office of the Arizona Supreme Court, which are all statutorily authorized to place children into out-of-home care; and
  - b. Any other person or entity authorized to receive children for care, maintenance, or placement in a foster home because the Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505.
7. "Corrective action" means a plan that describes steps a foster parent must take to remedy violations of foster care requirements within a specified period of time.

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8. “CPS” means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
9. “CPSCR” means the Child Protective Services Central Registry, a computerized database, which CPS maintains pursuant to A.R.S. § 8-546.03.
10. “Department” or “DES” means the Department of Economic Security.
11. “Developmentally appropriate” means an action which takes into account:
  - a. A child’s age and family background;
  - b. The predictable changes that occur in a child’s physical, emotional, social, cultural, and cognitive development; and
  - c. A child’s individual pattern and timing of growth, personality, and learning style.
12. “De-escalation” means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupts a child’s behavior crisis and calms the child.
13. “DHS” means the Department of Health Services.
14. “Discipline” means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to generally accepted levels of social behavior.
15. “Exploitation” means the act of taking advantage of, or making use of a child selfishly, unethically, or unjustly for one’s own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
16. “Foster care requirements” mean the standards for lawful operation of a foster home as prescribed in A.R.S. § 8-501 et seq. and 6 A.A.C. 5, Article 58.
17. “Household” means a group of people who regularly occupy a single residence.
18. “Household member” means a person who resides in an applicant’s or foster parent’s household for 21 consecutive days or longer, or who resides in the household periodically throughout the year for more than a total of 21 days.
19. “In-home respite foster parent” means an individual licensed to provide respite care in a licensed family foster home that is not that individual’s own home.
20. “License” means a document issued by the Licensing Authority to a foster parent which authorizes the foster parent to operate a foster home in compliance with foster care requirements.
21. “Licensed medical practitioner” means a person who holds a current license or certification as a physician, surgeon, nurse practitioner or physician’s assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; §§ 32-2501 et seq., Physician’s Assistant; and A.R.S. §§ 32-1601 et seq. Nursing and A.A.C. R4-19-503, Registered Nurse Practitioner.
22. “Licensing agency” means a person who or an entity which performs an investigative family study of an applicant for an initial or renewal foster home license, as prescribed in R6-5-5803 and R6-5-5812, and which monitors the foster home, as prescribed in R6-5-5815. “Licensing agency” includes the Department and may include county probation departments.
23. “Licensing Authority” means a DES administrative unit which makes foster home licensing determinations, including issuance, denial, suspension, revocation, and imposition of corrective action.
24. “Maltreatment” means abuse, neglect, exploitation, or abandonment, of a child.
25. “Mechanical restraint” means:
  - a. An article, device, or garment that:
    - i. Restricts a child’s freedom of movement or a portion of a child’s body;
    - ii. Cannot be removed by the child; and
    - iii. Is used for the purpose of limiting the child’s mobility;
  - b. But does not include an orthopedic, surgical, or medical device which allows a child to heal from a medical condition or to participate in a treatment program.
26. “Neglect” has the same meaning ascribed to it in A.R.S. § 8-546(A)(7).
27. “Parent or parents” means the natural or adoptive parents of the child. A.R.S. § 8-501(A)(8).
28. “Physical restraint” means the use of bodily force to restrict a child’s freedom of movement, but does not include the firm but gentle holding of a child with no more force than necessary to protect the child or others from harm.
29. “Professional foster care” means a foster family based model of care provided by an individual who has received specialized training to provide care and services within a support system of clinical and consultative services to special care children.
30. “Professional foster home” means the licensed foster home of an individual or couple authorized to provide professional foster care.
31. “Receiving foster home” means a licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition. A.R.S. § 8-501(A)(9).
32. “Respite care” means the provision of short term care and supervision of a foster child to temporarily relieve a foster parent from the duty to care for the child.
33. “Respite foster parent” means a licensed foster parent authorized to provide respite care.
34. “Safeguard” means to take reasonable measures to eliminate the risk of harm to a foster child and to ensure that a foster child will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
  - a. Locking up a particular substance or item;
  - b. Putting a substance or item out of the reach of a child who is not mobile; or
  - c. Erecting a barrier which prevents a child from reaching a particular place, item, or substance;
  - d. Mandating the use of protective safety devices; or
  - e. Providing supervision.
35. “Service team” means the group of persons listed in R6-5-5828(A) who participate in the development and review of a child’s case plan.
36. “Significant person” means a person who is important or influential in a child’s life and may include a family member or close friend.
37. “Sleeping area” means a single bedroom or a cluster of two or more bedrooms located in an adjacent area of a dwelling.
38. “Special care child” means a foster child who has not achieved expected norms for the child’s developmental stage in one or more of the following areas: physical, medical, mental, psychological, intellectual, emotional,

and social. This includes a child who experiences difficulty in establishing or maintaining developmentally appropriate interpersonal relationships.

39. "Swimming pool" means any natural or man-made body of water used for swimming, recreational, or decorative purposes, which is greater than 12 inches in depth, and includes spas and hot tubs.
40. "Work day" means Monday through Friday between 8:00 a.m. and 5:00 p.m., excluding Arizona state holidays.

#### Historical Note

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5801 repealed, new Section R6-5-5801 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5801 repealed, new Section R6-5-5801 adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5802. Application for Initial License

- A. A person who wishes to become licensed as a foster parent shall apply to a licensing agency on a form specified by the licensing agency.
- B. An applicant shall provide the licensing agency with at least the following information on each applicant:
  1. Personally identifying information, including:
    - a. Name,
    - b. Date of birth,
    - c. Social Security number,
    - d. Ethnicity,
    - e. Telephone number,
    - f. Current address,
    - g. Length of Arizona residency, and
    - h. Current marital status and marital history;
  2. Personally identifying information on the applicant's household members, including:
    - a. Name,
    - b. Date of birth,
    - c. Social Security number, and
    - d. Relationship to applicant;
  3. Personally identifying information on the applicant's children who do not live with the applicant, including emancipated children, as follows:
    - a. Name,
    - b. Current address,
    - c. Telephone number, and
    - d. Date of birth;
  4. The applicant's monthly or yearly household budget, showing assets, obligations, debts, and income;
  5. Medical statements for the applicant and any adult household member who will regularly care for foster children, showing that the applicant and household member meet the requirements prescribed in R6-5-5823(4); the statement shall:
    - a. Include a description of the person's general health, and identify any medical problem or physical condition that will prevent or limit the person from caring for a foster child, or that may negatively impact a foster child;
    - b. Include a list of all regularly prescribed medications and the purpose of each medication; and
    - c. Be signed and dated by a licensed medical practitioner who shall have examined the person within six months prior to the date of application for licensure;
  6. Immunization records for each child household member;
  7. A current statement and history of physical and mental health and treatment on the applicant and the applicant's household members, to the extent that such information has not already been provided in response to subsections (B)(5) and (6); the statement and history may be a self-declaration of illness and treatment;
  8. Employment information, including names and addresses of prior employers and positions held during the last 10 years;
  9. Family relationship and support system information on the applicant's family and family of origin;
  10. If the applicant is employed outside the home, the applicant shall provide a statement explaining the child care arrangements the applicant would make for a foster child during the applicant's working hours;
  11. If the applicant is self employed, or conducts a business activity within the home, a statement explaining how the activities related to this business will not interfere with the care of a foster child;
  12. A description of:
    - a. The applicant's daily routine and activities; and
    - b. The applicant's hobbies, and any education or volunteer activities in which the applicant regularly participates;
  13. A description of any spiritual or religious beliefs and practices observed in the applicant's home;
  14. Information on administrative or judicial proceedings in which the applicant has been or is a party, including:
    - a. Proceedings involving allegations of child maltreatment;
    - b. Dependency actions;
    - c. Actions involving severance or termination of parental rights;
    - d. Child support enforcement proceedings;
    - e. Adoption proceedings;
    - f. Criminal proceedings other than minor traffic violations;
    - g. Bankruptcy; and
    - h. Suspension, revocation, or denial of a license or certification;
  15. The name, address, and telephone number of at least five references who can attest to the applicant's character and ability to care for children; no more than two of the references may be related to the applicant by blood or marriage; for married applicants, at least two of the five references shall know the applicants as a couple;
  16. A description of the applicant's home and neighborhood;
  17. A statement from the applicant as to:
    - a. The number of foster children the applicant would consider for placement; and
    - b. The characteristics of foster children the applicant would consider for placement; and
    - c. The characteristics of children, if any, for whom the applicant does not want to provide foster care;
  18. A description of the applicant's prior experience, if any, as a foster parent, including:
    - a. The state in which the applicant provided foster care;
    - b. Whether the applicant was licensed, certified, or approved to provide care; and
    - c. Whether any disciplinary action was taken against the applicant;
  19. A description of the applicant's prior history of adoption certification, if any, including prior applications for certification, and the location and date of any certification denials;
  20. A description of the applicant's child care experience and child rearing practices;

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21. A statement from the applicant regarding the applicant's motivation for becoming a foster parent;
  22. A statement from the applicant describing how all other household members feel about the decision to foster children;
  23. A statement authorizing the licensing agency and the Licensing Authority to:
    - a. Verify the information contained in or filed with the application;
    - b. Perform background checks on the applicant and the applicant's household members, as prescribed in R6-5-5803 and R6-5-5807; and
    - c. Arrange for DHS to conduct a health and safety inspection of the applicant's home, as prescribed in A.R.S. § 8-504 and R6-5-5804;
  24. A statement from the applicant attesting to the truth of the information contained in the application; and
  25. The applicant's signature and date of application.
- C.** The applicant and all adult household members shall also submit to fingerprinting and a criminal history check as prescribed in A.R.S. § 46-141 and this subsection.
1. On a form provided by the Department, the applicant and each adult household member shall certify whether he or she has ever committed, is awaiting trial for, or has ever been convicted of any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    - a. Sexual abuse of a minor or vulnerable adult;
    - b. Incest;
    - c. First or second degree murder;
    - d. Kidnapping;
    - e. Arson;
    - f. Sexual assault;
    - g. Sexual exploitation of a minor or vulnerable adult;
    - h. Commercial sexual exploitation of a minor or vulnerable adult;
    - i. Felony offenses within the previous 10 years involving the manufacture or distribution of marijuana or dangerous or narcotic drugs;
    - j. Robbery;
    - k. A dangerous crime against children as defined in A.R.S. § 13-604.01;
    - l. Child abuse or abuse of a vulnerable adult;
    - m. Sexual conduct with a minor;
    - n. Molestation of a child or vulnerable adult;
    - o. Voluntary manslaughter; and
    - p. Aggravated assault.
  2. On a form provided by the Department, the applicant and each adult household member shall certify whether he or she has ever been convicted of, found by a court to have committed, or has committed, any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    - a. A sex offense;
    - b. A drug-related offense;
    - c. A theft-related offense;
    - d. A violence-related offense;
    - e. Child neglect or neglect of a vulnerable adult; and
    - f. Contributing to the delinquency of a minor.
- D.** If an applicant applies to the Department as the licensing agency, the Department shall send the applicant a notice of administrative completeness or deficiencies, as prescribed by A.R.S. § 41-1074, indicating the additional information, if any, that the applicant must provide for a complete application package as described in R6-5-5806. The Department shall send the notice after receiving the application and before expiration of the administrative completeness review time-frame described in R6-5-5813(2)(a).
- E.** If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Department may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

**Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5802 repealed, new Section R6-5-5802 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5802 repealed, new Section R6-5-5802 adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5803. Investigation of the Applicant**

- A.** The licensing agency to which the applicant has applied shall investigate the applicant. Except as otherwise provided in subsection (E) for an in-home respite foster parent, the investigation shall include the measures listed in this Section.
1. A representative of the licensing agency shall personally interview the applicant and the applicant's household members; the interviews shall:
    - a. Occur on at least two separate occasions, at least one of which shall take place at the applicant's residence;
    - b. Comprise no less than four hours of face-to-face contact, at least one hour of which shall be at the applicant's residence;
    - c. Include at least one separate interview with each member of the applicant's household who is age 5 or older; and
    - d. Include at least one joint interview with both applicants if the applicants are married.
  2. During the interviews described in subsection (A)(1), the investigator shall explore any instances of family problems and how the applicant has overcome problems in the applicant's current family and family of origin.
  3. The licensing agency shall obtain written statements from at least three of the applicant's personal references listed under R6-5-5802(B)(15) and shall personally contact (either in a face-to-face meeting or a telephone call) at least one of the references.
  4. The licensing agency shall verify the applicant's financial condition through a review of one or more of the documents listed in subsection (B)(8).
  5. The licensing agency shall investigate and evaluate the applicant's past experiences, if any, serving as a foster parent.
  6. The licensing agency shall assess the applicant and the family's commitment to providing foster care, and the time available to devote to the care of a foster child.
- B.** The licensing agency shall request, and the applicant shall provide, supporting documentation the licensing agency deems necessary to determine an applicant's fitness to serve as a foster parent and ability to comply with foster care requirements. The documentation may include the following:
1. A physician's statement regarding the physical health or immunization record of the applicant's household members;
  2. A statement from a psychiatrist or psychologist regarding the mental health of the applicant or the applicant's household members;
  3. Birth certificate;
  4. Marriage license;
  5. Driver's license and automobile registration;

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6. Dissolution or divorce papers and orders, including child support documentation;
  7. Military discharge papers;
  8. Tax returns, pay stubs, W-2 statements, and existing financial statements;
  9. Bankruptcy papers;
  10. Insurance policy information;
  11. Immigration or legal residency registration papers; and
  12. Documents related to or filed in judicial or administrative proceedings listed under R6-5-5802(B)(14).
- C.** Except as otherwise provided in subsection (E), the licensing agency shall verify that the applicant and adult household members have submitted a fingerprinting and criminal background form as prescribed in R6-5-5802(C).
- D.** The licensing agency shall document all personal contacts made, and all information obtained during the investigation.
- E.** When a person is seeking licensure solely as an in-home respite foster parent, the licensing agency is not required to:
1. Interview the applicant's spouse and other household members;
  2. Conduct the applicant's interview at the applicant's home;
  3. Verify the applicant's financial condition as required by subsection (A)(4) and R6-5-5805(B)(7);
  4. Obtain supporting documentation for the applicant's spouse or other household members as required by this Section; or
  5. Document information on the applicant's spouse and household members in the investigative report or application package as required by R6-5-5805 and R6-5-5806.
- 7.** Check whether dangerous objects, materials, or conditions, have been locked, safeguarded, or removed as prescribed in this Article;
- 8.** Determine whether the home has the equipment and space prescribed in R6-5-5838 through R6-5-5846.
- C.** The DHS representative shall prepare a written report of the inspection and send a copy to the licensing agency.
- D.** To determine if a foster home and its surrounding premises are safe, sanitary, and in good repair, the licensing agency or Licensing Authority shall evaluate the DHS written report to determine whether the home has any natural or man-made conditions that pose a risk of harm to a foster child, and whether a foster parent has taken or can take reasonable measures to eliminate that risk of harm and ensure that a foster child will not be harmed by a particular object, substance, or activity.
- E.** This Section does not apply to a person seeking licensure solely as an in-home respite foster parent.

**Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5804 repealed, new Section R6-5-5804 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5804 repealed, new Section R6-5-5804 adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5805. Investigative Report and Licensing Recommendation**

- A.** The licensing agency shall summarize the results of the investigation in a written report, which shall include:
1. A recommendation to grant or deny a license;
  2. Any recommendations for terms, conditions, or limitations to be placed on the license.
- B.** In determining whether to recommend that a license be granted or denied, the licensing agency and Licensing Authority shall consider all information acquired during the investigation, and all factors bearing on the applicant's fitness to foster a child and comply with foster care requirements including:
1. Instances of family problems in the applicant's current family or family of origin, including whether the applicant was maltreated as a child, and the applicant's success in overcoming those problems;
  2. The applicant's past history of parenting or caring for children;
  3. The length and stability of the applicant's marital relationship, if applicable;
  4. The applicant's age and health;
  5. Past, significant disturbances or events in the applicant's immediate family, such as involuntary job separation, bankruptcy, divorce, or death of spouse, child, or parent;
  6. Past criminal history or record of child maltreatment for the applicant or the applicant's household members;
  7. The applicant's financial stability, exclusive of anticipated foster care maintenance payments, and ability to financially provide for a foster child;
  8. The applicant's history of providing financial support to the applicant's other children, including compliance with court ordered child support obligations; and
  9. The DHS report on the foster home and whether the applicant has corrected any deficiencies or problems noted in the report.
- C.** The investigative summary shall specifically note any instances where an applicant has been:
1. Charged with, been convicted of, pled no contest to, or is awaiting trial on charges of an offense listed in R6-5-5802(C); and

**Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2).  
Amended effective August 15, 1979 (Supp. 79-4). Former Section R6-5-5803 repealed, new Section R6-5-5803 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5803 repealed, new Section R6-5-5803 adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5804. Inspection of the Foster Home; DHS Inspection Report**

- A.** The licensing agency shall contact the Department of Health Services (DHS) to request that a DHS representative:
1. Inspect the foster home, as prescribed in A.R.S. § 8-504 and this Section; and
  2. Issue a report describing whether the foster home satisfies foster care requirements.
- B.** The applicant shall cooperate with the DHS representative by making the home available for inspection and allowing the DHS representative unrestricted access to the entire foster home and the surrounding premises to perform the following checks on the systems, equipment, and conditions:
1. Check the home's heating, cooling, ventilation and lighting systems, and major appliances;
  2. Look at furniture, fixtures, and equipment for evidence of loose hardware, rusting parts, and other damage;
  3. Check walls, ceilings, and floors for evidence of flaking paint or plaster, loose tiles, boards, and panels, and exposed or unsafe wiring that may pose a danger or health risk to a child;
  4. Check the home and surrounding premises for evidence of dirt, animal waste, and vermin;
  5. Check whether the sewage disposal system functions and is in good repair;
  6. Check the system, method, and timing for refuse and waste storage and removal;

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2. A party to an action for dependency or termination of parental rights.
- D. R6-5-5805(B)(3), (7), and (9) do not apply to a person seeking licensure solely as an in-home respite foster parent.

**Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5805 repealed, new Section R6-5-5805 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5805 repealed, new Section R6-5-5805 adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5806. Complete Application Package: Contents**

- A. The licensing agency shall send a complete application package to the Licensing Authority for consideration.
- B. A complete application package includes the following:
1. A copy of the applicant's completed application form and criminal history certification form containing the information prescribed in R6-5-5802(B) and (C);
  2. The investigative report, as prescribed in R6-5-5805;
  3. Evidence that the applicant and adult household members have been fingerprinted and their fingerprints subjected to a criminal history check;
  4. Evidence that the applicant has completed the training prescribed by A.R.S. § 8-509(B) and R6-5-5825(A), or a statement of hardship as prescribed in R6-5-5810; and
  5. Evidence that the applicant's dwelling has passed the health and safety inspection prescribed by A.R.S. § 8-504 and R6-5-5804.
- C. Upon receipt of an application package from a licensing agency other than the Department, the Licensing Authority shall:
1. Determine whether the application is complete; and
  2. Send the applicant and the licensing agency a notice of administrative completeness or deficiencies, as prescribed by A.R.S. § 41-1074, within the administrative completeness review time-frame described in R6-5-5813(1)(a).
- D. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the licensing agency may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

**Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Amended as an emergency effective May 28, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former Section R6-5-5806 repealed, new Section R6-5-5806 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5806 repealed, new Section R6-5-5806 adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5807. CPSCR Check; Additional Investigation by Licensing Authority**

- A. The Licensing Authority shall conduct a CPSCR check on the applicant and, with the exception of an in-home respite foster parent applicant, on all household members for reports of child maltreatment.
- B. Upon receipt of a complete application package, as prescribed in R6-5-5806, the Licensing Authority may do additional investigation, as prescribed in this Section, if the Licensing Authority needs additional information in order to determine the applicant's fitness to serve as a foster parent, and ability to comply with foster care requirements.
1. The Licensing Authority may directly obtain information by:

- a. Interviewing the applicant, either in-person or telephonically;
  - b. Contacting additional references;
  - c. Verifying information provided in the application package, including past history of licensure as a foster parent;
  - d. Visiting the applicant's home; and
  - e. Requesting additional supporting documentation as prescribed in R6-5-5803(B).
2. The Licensing Authority may contact the licensing agency and request that the licensing agency obtain additional information, as prescribed in subsection (B)(1).

**Historical Note**

Adopted effective March 30, 1977 (Supp. 77-2). Former Section R6-5-5807 repealed, new Section R6-5-5807 adopted effective April 1, 1981 (Supp. 81-2). Former Section R6-5-5807 repealed, new Section R6-5-5807 adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5808. License: Form; Issuance; Denial; Term; Termination**

- A. Within 30 days of receiving a complete application, the Licensing Authority shall issue a written licensing decision.
1. If the Licensing Authority grants the license, the Licensing Authority shall send the license with the notification letter. The license shall be in the name of the applicant and the foster home location as identified in the application. The license shall specify the number, age, and gender of children the foster home may accept.
  2. The Licensing Authority may place terms on the license as to the type of child the foster home may accept for placement. Such terms may include the following:
    - a. A restriction that the foster home can accept only a specifically named child or specifically named children; and
    - b. A provision that the home can provide a particular service, or accept children with particular behavior problems or physical conditions.
  3. A license for a person being licensed solely as an in-home respite foster parent shall include only the licensee's name and the type of care, but no specific location or other terms.
  4. If the Licensing Authority denies the license, the notice shall include the reasons for the denial, with a statement of the applicant's right to appeal the licensing decision, as prescribed in R6-5-5821.
- B. A license expires one year from the date of issuance. If a foster parent receives a provisional license as prescribed in R6-5-5810, and the provisional license is converted to a regular license during the licensing year, the regular license shall expire one year from the date the provisional license was issued.
- C. A foster parent shall not transfer or assign a license. A license expires if the foster parent moves to a different dwelling unless the licensing agency has first notified the Licensing Authority of the planned move or a foster parent has requested an amendment to the license as prescribed in R6-5-5814. This requirement does not apply to a person licensed solely as an in-home respite foster parent.
- D. Issuance of a license does not guarantee placement of a foster child.
- E. A license terminates when:
1. The license expires by its own terms and is not renewed;
  2. The Licensing Authority revokes the license pursuant to disciplinary proceedings as prescribed in R6-5-5819;
  3. The foster parent moves out of state; or

4. The foster parent voluntarily surrenders the license.

#### Historical Note

Adopted effective March 30, 1977 (Supp. 77-2).  
Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5808 adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5809. Provisional License

Notwithstanding any other provision of this Article, the Licensing Authority may issue a provisional license to a foster parent who has not completed training, when the Licensing Authority makes a finding of hardship as prescribed in A.R.S. § 8-509(D). The Licensing Authority may find a condition of hardship when failure to issue a provisional license would result in displacement of a child or the inability to place a particular child.

1. The term of a provisional license shall not exceed six months,
2. A provisional license is not renewable.

#### Historical Note

Adopted effective March 30, 1977 (Supp. 77-2).  
Amended subsection (G) as an emergency effective March 12, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-2). Amended effective August 15, 1979 (Supp. 79-4). Amended as an emergency effective May 28, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5809 adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5810. Application for License Renewal

- A. At least 60 days before the expiration date of a license, the licensing agency shall send a foster parent a notice of license expiration.
- B. A foster parent may apply to a licensing agency for license renewal by submitting a complete renewal application to the licensing agency at least 30 days before the expiration of the current license.
- C. A complete renewal application shall contain the following information:
  1. A description of any changes to the information provided in the original application or last renewal application, including changes in personal, family, social, medical, or financial circumstances;
  2. At least once every third year following original licensure, a licensed medical practitioner's statement on the physical health of the foster parent and any household members who regularly care for children;
  3. Evidence that the foster parent has obtained the annual training required by A.R.S. § 8-509(C); and
  4. The statements, signature, and date prescribed in R6-5-5802(B)(23) through (25).
- D. A foster parent shall submit copies of the supporting documents listed in R6-5-5803(B) if so requested by the licensing agency.
- E. The foster parent and adult household members shall comply with any investigative requirement for fingerprint clearance.

#### Historical Note

Adopted effective March 30, 1977 (Supp. 77-2).  
Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5809 adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5811. Renewal Investigation; Licensing Report and Recommendation

- A. A licensing agency that receives a renewal application shall conduct a face-to-face interview with the foster parent at the

foster parent's residence. The licensing agency is not required to conduct the interview of a person licensed solely as an in-home respite foster parent at the person's residence. During the interview, the licensing agency shall discuss the following:

1. The foster parent's experiences in serving as a foster parent during the expiring licensing year;
  2. Any changes identified in the renewal application; and
  3. Any complaints made against the foster parent during the expiring licensing year.
- B. The licensing agency shall obtain any supplemental information the agency needs to determine the foster parent's continuing fitness to serve as a foster parent.
  - C. The licensing agency shall request a statewide criminal history records information check every year for the foster parent and, with the exception of an in-home respite foster parent, all adult household members.
  - D. The licensing agency shall request that DHS perform a health and safety inspection of the foster parent's home, as prescribed in R6-5-5804, at least once every third year following original licensure. This inspection is not required of a person licensed solely as an in-home respite foster parent.
  - E. The licensing agency shall summarize the results of the renewal investigation in a report and make a licensing recommendation as prescribed in R6-5-5805. The report shall explain any complaints, as described in R6-5-5816, R6-5-5817, and R6-5-5818, made against the foster parent during the expiring license period.
  - F. No less than 15 working days before the date that the applicant's current license expires, the licensing agency shall provide the Licensing Authority with a complete renewal application as prescribed in R6-5-5810, and the agency's renewal investigation report as prescribed in R6-5-5811.

#### Historical Note

Adopted effective March 30, 1977 (Supp. 77-2).  
Repealed effective April 1, 1981 (Supp. 81-2). New Section R6-5-5811 adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5812. Renewal License

- A. The Licensing Authority shall process a renewal application package following the procedures described in R6-5-5806(C), R6-5-5807, and R6-5-5808.
- B. In determining whether to renew a license, the Licensing Authority shall consider the renewal application package, and the foster parent's past record of service, including conduct during all prior licensing periods.
- C. The Licensing Authority may renew a foster parent's license when the foster parent:
  1. Demonstrates the ability to fulfill foster care requirements,
  2. Has complied with foster care requirements during prior licensing periods, and
  3. Has cooperated with the licensing agency in providing the information required for license renewal.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5813. Licensing Time-frames

For the purpose of A.R.S. § 41-1073, the Department has adopted the licensing time-frames listed in this Section.

1. Initial applications submitted to a licensing agency other than the Department: When a person applies for foster parent licensure through a licensing agency other than the Department, and the licensing agency submits the completed application package to the Licensing Authority on behalf of the applicant, the licensing time-frames are:



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- a. Administrative completeness review time-frame: 30 days;
- b. Substantive review time-frame: 30 days; and
- c. Overall time-frame: 60 days.
2. Initial application submitted to the Department as the licensing agency: When a person applies directly to the Department for foster parent licensure, and the Department performs the activities described in R6-5-5803 through R6-5-5806, the licensing time-frames are:
  - a. Administrative completeness review time-frame: 90 days;
  - b. Substantive review time-frame: 30 days; and
  - c. Overall time-frame: 120 days.
3. Renewal applications submitted to a licensing agency other than the Department: When a person applies for renewal of a foster parent license through a licensing agency other than the Department, and the licensing agency submits the completed renewal application package to the Licensing Authority on behalf of the applicant, the licensing time-frames are:
  - a. Administrative completeness review time-frame: 21 days;
  - b. Substantive review time-frame: 21 days; and
  - c. Overall time-frame: 42 days.
4. Renewal applications submitted to the Department as the licensing agency: When a person applies directly to the Department for renewal of a foster parent license, and the Department performs the activities described in R6-5-5812, the licensing time-frames are:
  - a. Administrative completeness review time-frame: 40 days;
  - b. Substantive review time-frame: 20 days; and
  - c. Overall time-frame: 60 days.
2. Ensure that a new adult household member submits a criminal history certification and submits to fingerprinting as prescribed in R6-5-5802(C), within 10 work days of the member's arrival;
3. Ensure that a new child household member obtains any missing, routine immunizations within 30 calendar days of the member's arrival; and
4. Cooperate in additional interviews and submit additional documentation that the licensing agency or Licensing Authority may require to determine whether the addition of the new member will cause the foster parent to fall out of compliance with foster care requirements.
- F. In determining whether to approve the addition of the new household member, the licensing agency shall consider:
  1. The relationship of the new household member to the foster parent;
  2. The length of time the foster parent has known the new household member;
  3. The background of the new household member including any criminal history;
  4. The financial arrangements, if any, between the foster parent and the new household member;
  5. What, if any, child care responsibilities the new household member may have;
  6. Whether the new household member has any physical or emotional conditions that present a risk to foster children and current household members; and
  7. Whether the home will still meet the equipment and space requirements prescribed in R6-5-5838 through R6-5-5846 with the addition of the new household member.
- G. If the foster parent marries during the course of a licensing year:
  1. The foster parent's spouse shall submit an application for a license as prescribed in R6-5-5802 and R6-5-5803;
  2. The foster parent's spouse shall be investigated in accordance with R6-5-5803, R6-5-5805, R6-5-5806, R6-5-5807, R6-5-5823, and R6-5-5824; and
  3. The foster parent shall comply with subsection (E) and with subsection (C) if the foster parent moves.
- H. A person licensed solely as an in-home respite foster parent is exempt from the requirements of subsections (B)(2) and (3), (C), (E), (F), and (G).

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5814. Amended License; Change in Household Members**

- A. The following changes require a license amendment:
  1. A change in any circumstances or conditions placed on the license, as prescribed in R6-5-5808(A)(2);
  2. Expanded or reduced capacity of the foster home;
  3. A move to a different residence;
  4. The divorce of the foster parent, if the divorce changes any circumstance or condition placed on the license;
  5. Marriage of the foster parent;
  6. The death of the foster parent's spouse if the death changes any circumstance or condition placed on the license; and
  7. A change of name.
- B. The foster parent may request a license amendment or the licensing agency may initiate the amendment in response to an observed change. The Licensing Authority may issue an amended license to reflect a change in circumstances when the change does not cause the foster parent or foster home to fall out of compliance with foster care requirements.
- C. If the foster parent has moved to a different residence or remodeled an existing residence, the Licensing Authority shall not issue an amended license until the different or remodeled residence has passed a health and safety inspection as prescribed in R6-5-5804.
- D. An amended license expires at the end of the foster parent's current licensing year.
- E. If the foster parent adds a household member during the course of a licensing year, the foster parent shall:
  1. Obtain prior approval from the licensing agency;

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5815. Monitoring the Foster Home and Family**

- A. A licensing agency shall monitor its foster homes.
- B. Monitoring activities may include the following:
  1. Announced and unannounced visits to the foster home;
  2. Interviews with the foster parent and household members over age 5;
  3. Interviews with foster children placed with a foster parent, if developmentally appropriate; any interviews with a foster child may occur with the foster child separated from the foster parent; and
  4. A review of any records a foster parent is required to maintain.
- C. A foster parent shall cooperate with monitoring requirements by:
  1. Making the foster home available for inspection, and
  2. Participating in interviews and permitting interviews with household members.
- D. When a licensing agency finds a violation of a foster home requirement, the licensing agency shall orally notify the Licensing Authority of the violation, and shall follow the oral report with a written report that shall include a recommenda-

tion for any licensing action or a corrective action plan, as prescribed in R6-5-5818 and R6-5-5819.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### **R6-5-5816. Investigation of Complaints About a Foster Home**

- A.** When a licensing agency receives a complaint about a foster home or licensee, the licensing agency shall:
1. Immediately report allegations of child abuse, neglect, or maltreatment to Child Protective Services Central Intake as prescribed in A.R.S. § 13-3620; and
  2. Report all complaints to the Licensing Authority within five days and investigate all complaints, not reported to CPS, as prescribed in this Section.
- B.** An investigation may include:
1. Interviews with the complaining party and members of the foster home;
  2. Inspections of the foster parent's records and documents related to the issues raised in the complaint;
  3. Interviews of witnesses to the matters at issue; and
  4. Any other activities necessary to substantiate or refute the complaint.
- C.** The licensing agency shall complete the investigation within 60 days. If the investigation cannot be completed within 60 days, the licensing agency shall notify the Licensing Authority and provide a date for completion of the investigation.
- D.** When the investigation is completed, the licensing agency shall send the Licensing Authority a written summary of the results.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### **R6-5-5817. Licensing Authority Action On Complaints**

After the licensing agency reports the results of its investigation, the Licensing Authority shall determine what action to take against a licensee, as prescribed in this Section.

1. If the licensee did not violate foster care requirements, the Licensing Authority shall take no further action.
2. If the licensee violated a foster care requirement, but has corrected the problem giving rise to the violation, the Licensing Authority shall record the incident in the licensing file, and may take no further action.
3. If the licensee violated a foster care requirement and there is reasonable cause to believe that the licensing violation is continuing or may reoccur, the Licensing Authority shall take licensing action as prescribed in R6-5-5819, or require corrective action as prescribed in R6-5-5818.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### **R6-5-5818. Corrective Action**

- A.** If a deficiency giving rise to a substantiated complaint is correctable within a specified period of time and does not jeopardize the health or safety of a foster child, the Licensing Authority, in consultation with the licensing agency, may place the foster parent on a corrective action plan to remedy the deficiency.
- B.** In determining whether to require corrective action, the Licensing Authority shall consider the following criteria:
1. The nature of the violation;
  2. Whether the violation can be corrected;
  3. Whether the foster parent understands the violation and shows a willingness and ability to participate in corrective action;

4. The length of time required to implement corrective action;
5. Whether the same or similar violations have occurred on prior occasions;
6. Whether the foster parent has had prior corrective action plans, and, if so, the foster parent's success in achieving the goals of the plan;
7. The foster parent's history as a foster parent; and
8. Other similar or comparable factors demonstrating the foster parent's ability and willingness to follow through with a corrective action plan and avoid future violations.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### **R6-5-5819. License Denial, Suspension, and Revocation**

- A.** The Licensing Authority may deny, suspend, or revoke a license when:
1. An applicant or licensee has violated or is not in compliance with foster care requirements, Arizona state or federal statutes, or city or county ordinances or codes;
  2. An applicant or licensee refuses or fails to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
  3. An applicant or licensee misrepresents or fails to disclose material information to the Licensing Authority, the licensing agency, or a placing agency regarding qualifications, experience, or performance of duties;
  4. An applicant or licensee is unable to meet the physical, emotional, social, educational, or psychological needs of children; or
  5. A licensee fails to comply with a corrective action plan.
- B.** In determining whether to take disciplinary action against a licensee, or to grant or renew a license, the Licensing Authority may consider the applicant or licensee's past history from other licensing periods, and shall consider a repetitive pattern of violations of applicable child welfare or foster care rules or statutes, as evidence that a license applicant or licensee is unable or unwilling to meet the needs of children.
- C.** The Licensing Authority shall deny a license when an applicant, licensee, or household member has been convicted of or is awaiting trial on the criminal offenses listed in R6-5-5802(C)(1) in Arizona or the same or similar offenses in other jurisdictions.
- D.** The Licensing Authority may deny a license when an applicant, licensee, or household member has been convicted of, found by a court to have committed, or is reasonably believed to have committed any criminal offense, other than those listed in R6-5-5802(C)(1). To determine whether the criminal history of an applicant, licensee, or household member affects a person's fitness to be a licensee, the Licensing Authority shall consider all relevant factors, including the following:
1. The extent of the person's criminal record;
  2. The length of time which has elapsed since the offense was committed;
  3. The nature of the offense;
  4. The mitigating circumstances surrounding the offense;
  5. The degree of participation by the person in the offense;
  6. The extent of the person's rehabilitation, including:
    - a. Completion of probation or parole;
    - b. Whether the person has made restitution or paid compensation for the offense;
    - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling; and

- d. Personal references attesting to the person's rehabilitation.
- E. The Licensing Authority may deny, suspend, or revoke a license if the applicant, licensee, or household member is, or resides with, a person who has a record of substantiated or undetermined child maltreatment in this state or any other jurisdiction. To determine whether an applicant, licensee, or household member's history of child maltreatment affects a person's fitness to serve as a foster parent, the Licensing Authority shall consider all relevant factors, including, but not limited to, the following:
  1. Whether the person was subjected to child maltreatment in his or her family of origin;
  2. The extent of the person's child maltreatment record;
  3. The length of time which has elapsed since the maltreatment occurred;
  4. The nature of the maltreatment;
  5. The circumstances surrounding the maltreatment;
  6. The degree to which the person participated in the maltreatment;
  7. The extent of the person's rehabilitation;
  8. Whether the person is on probation or parole; and
  9. Whether legal proceedings were initiated as a result of the maltreatment.
- F. The person seeking to establish fitness to be a licensee under subsection (D) has the burden of proving mitigating circumstances, indirect involvement, and the completion of probation or parole.
- G. The Licensing Authority shall not deny, suspend, or revoke the license of an in-home respite foster parent based on the actions of the foster parent's household members as identified in (C), (D), and (E) unless such actions interfere with the foster parent's ability to comply with this Article or relate to any child for whom the foster parent provides respite care.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5820. Adverse Action; Notice; Effective Date**

- A. When the Licensing Authority denies, suspends, or revokes a license, the Licensing Authority shall send a written, dated notice of the action by certified mail to:
  1. The applicant or licensee;
  2. The licensing agency; and
  3. The placing agency for any child placed with the licensee at the time of the action.
- B. The notice shall specify:
  1. The action taken and the date the action will be effective;
  2. A citation to the legal authority, and a description of the reasons supporting the action; and
  3. The procedures by which the applicant or licensee may contest the action taken, and the time periods in which to do so.
- C. A revocation is effective:
  1. Twenty-one days after the postmark date of the revocation notice; or
  2. If the licensee appeals the revocation, on the date that an administrative hearing officer issues a written decision affirming the revocation.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5821. Appeals**

- A. An applicant or licensee may appeal the denial, suspension, or revocation of a license as prescribed in 6 A.A.C. 5, Article 75. Imposition of a provisional license or a corrective action plan is not appealable.

- B. To appeal, an applicant or licensee shall file a written notice of appeal with the Licensing Authority no later than 20 days from the date of the notice prescribed in R6-5-5820(A) and (B).
- C. The notice of appeal shall specify the action being appealed and a statement of why the Licensing Authority's action was wrong.
- D. Appeals from the decision of a hearing officer are governed by A.R.S. §§ 41-1992(D) and 41-1993 and A.A.C. R6-5-7518 through R6-5-7520.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

Amended June 4, 1998 (Supp. 98-2).

**R6-5-5822. Alternative Methods of Compliance**

- A. The Licensing Authority, in consultation with the Attorney General's office, may substitute an alternative method of compliance for a foster care requirement contained in this Article and not otherwise required by law if the following conditions are met:
  1. The Licensing Authority, in consultation with the licensing or placing agency, determines that placement in the foster home requesting an alternative method of compliance is in the best interests of a particular foster child; and
  2. The purpose of the requirement being replaced is fulfilled through the alternative method of compliance.
- B. If the Licensing Authority approves an alternative method of compliance for a foster care requirement contained in this Article, the Licensing Authority shall make written findings of fact and conclusions explaining how the requirements of subsection (A) are met.
- C. The Licensing Authority has no obligation to approve an alternative method of compliance and shall consider the particular facts and circumstances of each case when making such a determination.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5823. Foster Parent: General Qualifications**

To qualify for and maintain licensure as a foster parent, a person shall meet the criteria listed in this Section.

1. The person shall be at least 21 years old at the time of application.
2. The person shall have sufficient income, exclusive of the foster care maintenance payment, to meet the needs of the foster parent and the foster parent's own children and household members.
3. The applicant, foster parent, and adult household members shall be free of conviction or indictment for, or involvement in the criminal offenses listed in R6-5-5802(C).
4. The applicant, foster parent, and household members shall not have any physical or mental health conditions which preclude compliance with foster care requirements.
5. Each child residing in the foster home shall have all childhood immunizations appropriate to the child's age and health.
6. An applicant or foster parent shall not:
  - a. Conduct home business activities which prevent the applicant or foster parent from caring for a foster child in accordance with foster care requirements; or
  - b. Provide foster care for adults.
7. An applicant's or foster parent's household members shall agree to and support the decision to provide foster care.
8. An applicant or foster parent shall:

- a. Cooperate with the licensing agency, the placing agency, and the Licensing Authority regarding any inspections or investigative activities; and
- b. Provide information as prescribed in this Article.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5824. Foster Parent: Personal Characteristics

To qualify for and maintain licensure as a foster parent, a person shall be a responsible, stable, emotionally mature individual who can exercise sound judgment. A person meets this requirement by demonstrating the following characteristics on the person's application and during the interview and investigation process:

1. The ability to realistically determine which foster children the person can accept, work with, and successfully integrate into the person's family;
2. Knowledge of child development, nutrition, health, and the various experiences a child may have, with which the foster parent may need assistance and guidance;
3. The willingness and ability to protect children from harm;
4. Knowledge and understanding of child discipline and ways of helping a child build positive personal relationships;
5. The following personal attributes:
  - a. The capacity to give and receive affection;
  - b. Enjoyment in being a parent or foster parent;
  - c. Flexibility in expectations, attitudes, behavior, and use of help when it is needed;
  - d. The ability to deal with separation, loss, frustration, and conflict;
6. The capacity to respect persons with differing life styles and philosophies, and persons of different races, cultures, and religious beliefs;
7. The ability to accept a foster child's relationship with the child's parent and birth family; and
8. The willingness and ability to commit the time necessary to provide a foster child with supervision and guidance in accordance with foster care requirements and a foster child's individual needs.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5825. Training and Development

- A. Before receiving an initial license, an applicant shall complete at least 12 clock hours of initial foster parent training as prescribed in A.R.S. § 8-509(B). The training shall cover at least the following subjects:
  1. Characteristics and needs of children who may be placed in the foster home;
  2. The role of the foster parent as a member of the care and treatment team;
  3. The importance of birth parent and family involvement in a child's life;
  4. Methods for appropriately addressing the cultural, ethnic, and religious needs of a child in care;
  5. Attachment, separation, and loss issues for children and families;
  6. Behavior management policies and practices as prescribed in R6-5-5833;
  7. Confidentiality;
  8. Emergency procedures;
  9. Resources and supportive services available to foster children and foster parents;
  10. Foster care payment procedures;
  11. Placing agency and Licensing Authority contact persons and procedures;

12. The impact of fostering on the foster parent and the foster parent's own family;
13. Addressing and coping with the impacts described in subsection (A)(12);
14. Specialized topics related to child welfare, health, growth, or development; and
15. The Indian Child Welfare Act of 1978 (PL 95-608).

- B. Each licensing year, prior to license renewal, a foster parent shall attend and complete at least six clock hours of ongoing training as prescribed in A.R.S. § 8-509(C). Annual training may include:
  1. Advanced training in the subjects listed in subsection (A);
  2. Special subjects relating to child health, growth, or development, including:
    - a. Child management techniques based on the developmental needs of children in care;
    - b. Discipline, crisis intervention, and behavior management techniques; and
  3. Review of placing agency policies.

- C. An applicant or licensee shall also complete any additional training required by the Licensing Authority, or the foster parent's licensing agency or placing agency to develop specialized skills and to meet or maintain compliance with foster care requirements.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5826. Compliance With Licensing Limitations; Adult - Child Ratios

- A. A foster parent shall limit the number of children in the home as prescribed in subsections (A)(1) and (2). As used in this Section, "children in the home" means any child in the foster home, including children placed for respite care, child care services, or baby-sitting, the foster parent's own children, and children residing in the foster home.
  1. At all times, the total number of children in the home who are 5 years old or under shall not exceed more than four in the care of one adult.
  2. At all times, the total number of children in the home who are less than 1 year old, shall not exceed more than two in the care of one adult.
- B. A foster parent shall not care for more foster children than allowed and identified on the foster parent's license, and shall not exceed five foster children in addition to other children in the home.
- C. A foster parent shall abide by any terms or conditions placed on the foster parent's license when accepting a child for placement.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5827. Placement Agreement

- A. For each child placed with a foster parent the foster parent shall have a written placement agreement meeting the requirements of subsection (B) with the foster child's placing agency.
- B. The placement agreement shall set forth the responsibilities of both the placing agency and the foster parent regarding:
  1. Provision of services for the foster child, including medical care, dental care, mental health care, other social services or treatment, and transportation;
  2. Requirements for interaction with the foster child's birth family.
- C. If a foster parent does not receive a copy of a placement agreement at the time of placement, the foster parent shall obtain an agreement within five work days following the date of placement.

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ment. If the placing agency refuses to provide an agreement, the foster parent shall notify the Licensing Authority.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5828. Participation in Case Planning**

- A.** A foster parent is a member of the service team for a foster child in the care of the foster parent. The service team includes the case manager, the foster parent, the licensing agency representative, and persons providing services, such as attorneys, physicians, psychologists, therapists, Court Appointed Special Advocates, and school, law enforcement, and probation personnel.
- B.** A foster parent shall participate as a team member by:
  - 1. Attending team meetings when:
    - a. The foster parent receives reasonable advance notice of the date, time, and place of the meeting; and
    - b. The meetings are held at a time and place which is accessible to the foster parent, and compatible with the foster parent's work schedule and child care schedule;
  - 2. Participating in team meetings through alternative methods, which may include:
    - a. Telephonic conference calls,
    - b. Submission of oral comments, and
    - c. Expressing concerns and comments to other team members who will attend the meeting;
  - 3. Reporting to the team on the foster child's progress and problems;
  - 4. Assisting in development of the case plan; and
  - 5. Assisting in case plan reviews.
- C.** A foster parent shall implement the case plan by:
  - 1. Performing the tasks assigned to the foster parent in the case plan,
  - 2. Helping a foster child to attain any goals identified in the case plan,
  - 3. Assisting a foster child to obtain any services specified in the case plan, and
  - 4. Observing any limitations or conditions contained in the case plan.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5829. Daily Care and Treatment of a Foster Child; Foster Child Rights**

- A.** Non-exploitation and equitable treatment
  - 1. A foster parent shall not exploit a foster child or permit a child to be exploited.
  - 2. A foster parent shall permit a foster child to exercise the rights, freedoms, and responsibilities of family life in a manner that is comparable to those exercised by foster family members, subject to:
    - a. Reasonable and developmentally appropriate household rules, and
    - b. Restrictions prescribed in a foster child's case plan and foster care requirements.
  - 3. As used in this Section, "reasonable" means conduct which takes into account:
    - a. The foster family's physical environment,
    - b. The chores and responsibilities assigned to other household members,
    - c. The foster child's school schedule and educational needs, and
    - d. The foster child's social and recreational needs.
- B.** Religious and ethnic heritage

- 1. A foster parent shall recognize, encourage, and support the religious beliefs, cultural and ethnic heritage, and language of a foster child and the child's birth family.
- 2. A foster parent shall coordinate with the placing agency to provide opportunities for each foster child to participate in religious, cultural, and ethnic activities.
- 3. A foster parent shall not directly or indirectly compel a foster child to participate in religious activities or cultural and ethnic events against the child's will or the wishes of the child's birth parent.
- C.** Interaction with parents and birth family. A foster parent shall maintain a working relationship with a foster child's parent, birth family, and other significant persons, in accordance with the child's case plan and in cooperation with the placing agency staff.
- D.** Food and nutrition
  - 1. A foster parent shall provide a foster child with well-balanced daily meals and sufficient food to meet the child's nutritional needs.
  - 2. The foster parent shall provide for a foster child's special dietary needs as prescribed in the child's case plan, or the orders of a licensed medical practitioner.
- E.** Education
  - 1. A foster parent shall send a foster child to public school unless alternative educational arrangements, such as private, charter, or home schooling, have been approved in the child's case plan.
  - 2. A foster parent shall help the child in obtaining other educational services as prescribed in the child's case plan.
- F.** Clothing
  - 1. A foster parent shall provide a foster child with clean, seasonal clothing appropriate to the child's age, sex, size, and individual needs.
  - 2. A foster parent shall permit a foster child to participate in making decisions about clothing choices to the extent developmentally appropriate for the child.
- G.** Funds
  - 1. A foster parent shall use monies provided by the placing agency for designated purposes only.
  - 2. A foster parent shall retain receipts to document the use of designated monies except monies designated for room and board.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5830. Medical and Dental Care**

- A.** A foster parent shall arrange for a foster child to have routine medical and dental care which shall include an annual medical exam, semi-annual dental exams, immunizations, and standard medical tests.
- B.** When a foster child is placed with a foster parent, the foster parent shall determine whether the child has had a comprehensive medical exam within the past two months, and, for a child age 3 or older, a dental exam within the past six months.
- C.** If a foster child has not had the medical or dental exam, the foster parent shall schedule the child for an exam within two weeks after the foster child is placed with the foster parent.
- D.** As used in subsection (B), a comprehensive medical exam shall include:
  - 1. Screening for communicable disease,
  - 2. Screening for vision and hearing,
  - 3. A general physical examination by a licensed physician,
  - 4. Provision of any routine immunizations or immunization boosters, and
  - 5. Tests appropriate for the child's age and history.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5831. Child Care**

- A. A foster parent shall have a plan for supervision and care of a foster child placed with the foster parent.
- B. The plan shall be consistent with the foster child's case plan, and with the child's developmental, emotional, and physical needs, and the needs of the foster parent.
- C. A foster parent shall inform the placing agency and obtain approval for use of any person given the responsibility for care of a foster child, unless otherwise provided for in the child's case plan. The case plan may include the name of a specific child care agency or provider, and may give the foster parent discretion to allow the child to go on overnight visits with specifically named persons.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5832. Transportation**

- A. A foster parent shall provide or arrange appropriate local transportation to meet the routine educational, medical, recreational, social, spiritual, and therapeutic needs of a foster child, in accordance with the child's case plan, or, if not specified in the case plan, as provided in the placement agreement.
- B. A foster parent transporting foster children shall have a valid driver's license.
- C. A foster parent shall provide for the safety of a foster child when the child is transported in a motor vehicle by:
  - 1. Providing and using safety restraints appropriate to the age and weight of each child transported; and
  - 2. Prohibiting the number of persons in any vehicle from exceeding the number of available seats and seat belts in the vehicle.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5833. Behavior Management; Discipline; Prohibitions**

- A. A foster parent shall set limits and rules for children in care. The foster parent shall tell the children about the foster parent's expectations regarding child behavior, including forbidden conduct, and the foster parent's methods for disciplining children who violate expectations, limitations, and rules.
  - 1. A foster parent shall use discipline which is reasonable, developmentally appropriate, related to the infraction, and consistent with any guidelines in the child's case plan.
  - 2. A foster parent shall use disciplinary methods which help a foster child to build self-control, self-reliance, and self-esteem.
  - 3. A foster parent shall communicate rules, consequences, and disciplinary methods to a foster child in a manner appropriate to the child's age, developmental capacity, and ability to understand.
  - 4. A foster parent shall explain the foster parent's limits, rules, and expectations to any placing agency or person that places a child with the foster parent.
- B. A foster parent shall not delegate the responsibility for imposing discipline on a foster child to any person other than an adult assigned responsibility for the foster child, as prescribed in R6-5-5831(C), and made known to the child. If a foster parent delegates supervisory responsibility to another person, the foster parent shall instruct the person in the foster home limits, rules, and expectations, disciplinary methods specific to the foster child, and the limitations prescribed in this Article.

- C. A foster parent shall not punish or maltreat a foster child, and shall not allow any other person to do so. As used in this Section, "punishment or maltreatment" include, but are not limited to, the following actions:
  - 1. Any type or threat of physical hitting or striking inflicted in any manner upon the body;
  - 2. Verbal abuse, including arbitrary threats of removal from the foster home;
  - 3. Disparaging remarks about a foster child or a foster child's birth family members or significant persons;
  - 4. Deprivation of meals, clothing, bedding, shelter, or sleep;
  - 5. Denial of visitation or communication with a foster child's birth family members and significant persons when such denial is inconsistent with the foster child's case plan;
  - 6. Cruel, severe, depraved, or humiliating actions;
  - 7. Locking a foster child in a room or confined area inside or outside of the foster home; and
  - 8. Requiring a foster child to remain silent or be isolated for time periods that are not developmentally appropriate.

- D. A foster parent shall not use mechanical restraints.
- E. A foster parent shall not use physical restraint unless:
  - 1. Permission to use physical restraint is specified in the child's case plan; and
  - 2. The foster parent has been trained in the proper use of the physical restraint to be used with a particular foster child.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events**

- A. Within two hours after a foster child suffers any of the following events, a foster parent shall notify the child's placing agency:
  - 1. Death;
  - 2. Serious illness or injury requiring hospitalization or emergency room treatment;
  - 3. Any non-accidental injury or sign of maltreatment;
  - 4. Unexplained absence;
  - 5. Severe psychiatric episode;
  - 6. Fire or other emergency requiring evacuation of the foster home;
  - 7. Removal of a foster child from the foster home by any person or agency other than the placing agency, or attempts at such removal; and
  - 8. Any other unusual circumstance or incident which might seriously affect the health, safety, or the physical or emotional well-being of a foster child.
- B. Within 48 hours of occurrence, a foster parent shall notify the placing agency of any other events likely to affect the well-being of a foster child in the foster parent's care, including the following circumstances:
  - 1. Involvement of a foster child with law enforcement authorities;
  - 2. Serious illness or death involving a member of the foster family's household or a significant person;
  - 3. Change in foster family or household composition; and
  - 4. Absence of one foster parent from a two-parent household for more than seven continuous days.
- C. Within 24 hours of giving notice as prescribed in subsection (A) or (B), a foster parent shall send the placing agency and licensing agency a written report on the event. The report shall include the following information:
  - 1. A description of the event, with the date and time of occurrence;

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2. The names and telephone numbers of any persons involved in the event;
  3. Any measures taken to address, correct, or resolve the event, including treatment obtained, and persons notified.
- D.** Within two days of receipt of the written report prescribed in subsection (C), the licensing agency shall send the written report to the Licensing Authority.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home**

- A.** A foster parent shall notify the licensing agency of any changes in the foster family's composition including, but not limited to the following events:
1. Marriage;
  2. Divorce;
  3. Addition of a new household member, including a temporary visitor expected to stay one month or longer; and
  4. Death or departure of a current household member.
- B.** A foster parent shall notify the Licensing Authority of any substantial changes to the foster home, including:
1. Fire or emergency requiring evacuation of the foster home;
  2. Moving to a new residence; and
  3. Remodeling the foster home.
- C.** When a foster parent has advance knowledge of an event or change listed in subsection (A) or (B), the foster parent shall give reasonable advance notice of the anticipated event or change. Reasonable advance notice means notice which permits the licensing agency time to conduct an inspection, and the Licensing Authority time to issue an amended license, as prescribed in R6-5-5814, without disruption of a placement.
- D.** If the event or change is unexpected, a foster parent shall give notice as soon as the event occurs or change is known.
- E.** For events or persons not specifically listed in subsection (A) or (B), the foster parent shall give notice within five work days of the event or change.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5836. Maintenance of a Foster Child's Records**

- A.** A foster parent shall maintain records for each foster child placed with the foster parent in accordance with the placing agency's requirements and this Section.
- B.** The foster parent shall ensure that the records include at least the following:
1. Information on a foster child, the foster child's birth family, and any other significant persons in the foster child's life, if the placing agency has provided such information to the foster parent, as follows:
    - a. Name,
    - b. Address,
    - c. Telephone number, and
    - d. A description of the person's relationship to the child.
  2. A record of the foster child's contacts with birth family members and other significant persons, including the person contacted, and the date and method of contact (visit, telephone call, or written communication);
  3. Medical and health information provided by the placing agency;
  4. A consent form or notice from the foster child's guardian authorizing the foster parent to obtain routine, nonsurgical medical care, and emergency medical and surgical treatment for the foster child;

5. A record of the medical and dental care provided to the foster child during the placement, including:
    - a. Date of appointment;
    - b. Description of any illness, injury, or health problem;
    - c. Name, address, and telephone number of the medical practitioner who treated the child; and
    - d. Resulting diagnosis and treatment, any prescribed medications, and any hospitalization;
  6. Reports of any medical tests, information, or counseling received regarding routine, emergency, chronic, or handicapping conditions;
  7. A copy of the child's current case plan;
  8. Any progress notes the foster parent may record;
  9. Notations or records of significant incidents, events, and activities;
  10. Identification of any schools attended with dates of attendance, any school reports;
  11. Memorabilia to help the foster child retain a memory of placement and a life record; the memorabilia may include photographs, diaries, journals, souvenirs, scrapbooks, and art projects;
  12. Placement agreement with the placing agency;
  13. A clothing inventory (clothing brought with the foster child at the time of placement) and a record of clothing purchased for the child during placement; and
  14. At the time of the child's departure from the foster home, a description of the foster child's daily routine and personal preferences and habits such as favorite foods, fears, and bedtime routines.
- C.** A foster parent shall provide the record to the placing agency upon termination of the foster child's placement.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5837. Confidentiality**

- A.** A foster parent shall maintain the confidentiality of all personally identifiable information about a foster child and a foster child's birth family. A foster parent may release information when so authorized by a foster child's placing agency, and, in an emergency, when release is necessary to protect the health or safety of the child.
- B.** A foster parent shall safeguard a foster child's records in a manner that prevents loss, tampering, or unauthorized use.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5838. Foster Home: General Requirements**

- A.** The foster home parent shall:
1. Keep the foster home safe, in good repair, and sanitary, as described in R6-5-5804(C) through (E) and R6-5-5838 through R6-5-5846; and
  2. Keep the outside area around the foster home free from objects, materials, and conditions which constitute a danger to the occupants.
- B.** If the foster parent accepts and provides care to a child with special physical needs, the foster parent shall equip the foster home with any equipment needed to accommodate the particular child's special needs.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5839. Foster Home: General Safety Measures**

- A.** The foster home shall have a telephone or other mechanical device allowing two-way communication with the outside community.

- B. A foster parent shall safeguard all hazardous chemicals, cleaning materials, toxic substances, and hazardous materials, objects, and equipment.
- C. A foster parent shall safeguard medical equipment and lock medications, except that the foster parent shall safeguard those medications that must be immediately and readily available for a family member or foster child.
- D. When a foster home has a private source of water, the foster parent shall have evidence that a state or local health authority has approved the water as potable water.
- E. The foster parent shall maintain the warm water in the foster home at a temperature that does not exceed 120° F.
- F. A foster parent shall store firearms and ammunition in locked storage which is inaccessible to children.
  - 1. A firearm shall be trigger-locked or fully inoperable while in storage.
  - 2. Ammunition shall be stored in a location separate from firearms.
- G. A foster parent shall not maintain any animal that poses a danger to a foster child.
- H. A foster parent shall provide evidence that dogs belonging to the foster family or routinely present on the foster home premises, have current vaccinations against rabies.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5840. Exterior Environment; Play Area; Play Equipment**

- A. The foster parent shall keep the outside play areas clean and safe. The play area shall be fenced if there are conditions which may pose a danger to a child playing outside. The age and developmental abilities of the child are considerations for determining risk to the child.
- B. The foster parent shall provide a variety of safe play equipment, toys, and supplies for each child. The age and developmental abilities of the child and standards in the community are considerations for determining the variety of play equipment, toys, and supplies required.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5841. Swimming Pools and Pool Safety**

- A. A foster home's swimming pool shall meet the requirements of this Section and the "swimming pool/spa" and "swimming pool guidelines" Section in the Sanitation Inspection Guidelines published by the Department of Health Services (DHS) (January 1996), and not including any later amendments or editions, which are incorporated by reference. Copies of these sections from the guidelines are available for inspection at the Secretary of State's Office, Public Services Department, 1700 West Washington, Phoenix, Arizona 85007, and for inspection and copying at the Department of Economic Security, Authority Library, 1789 West Washington, Phoenix, Arizona 85007, and the DHS, Office of Child Care Licensure, 1647 East Morten, Suite 230, Phoenix, Arizona 85020.
- B. If the foster parent cares for a foster child who is age 5 or under, the swimming pool shall be fenced so that the pool is separated from the house, or, otherwise made physically inaccessible to a foster child.
- C. A foster parent shall supervise a child who is in the swimming pool or surrounding area, in accordance with the child's age, capabilities, and developmental level.
- D. A foster parent shall have at least one person currently certified in cardiopulmonary resuscitation (CPR) present in the foster home's swimming pool area when a foster child age 13 and under is swimming in the foster home swimming pool.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements**

A foster parent shall provide safe sleeping arrangements which accommodate the privacy needs of a foster child, as prescribed in this Section.

1. The foster family and a foster child shall sleep in bedrooms. An unfinished attic, a basement area, or a space normally and primarily used for passageways and purposes other than sleeping are not bedrooms.
2. A bedroom in the foster home shall have a finished ceiling, floor-to-ceiling permanently affixed walls, a door, finished flooring, light, ventilation, and a usable exit to the outdoors.
3. A foster parent shall provide each foster child with a bed.
  - a. The bed shall be appropriate to a child's age and needs.
  - b. For the purpose of this Section, "bed" does not include a cot, couch, convertible couch, portable bed, sleeping bag or mat, except as approved by the Licensing Authority.
  - c. No foster child shall sleep in a bunk bed of more than two tiers.
  - d. A foster child under age 8 shall not sleep in the top bunk of a two tier bunk bed.
4. A foster parent shall provide the following for each foster child:
  - a. A sanitary mattress;
  - b. A clean pillow;
  - c. Clean bed linens;
  - d. Blankets or covers, as appropriate to the weather;
  - e. A waterproof protective mattress cover, as needed; and
  - f. Furniture or shelving near the bed to store clothing and personal belongings.
5. A foster parent shall not allow a foster child to share a bedroom with an adult except as specified in this subsection.
  - a. A foster child under age 3 may share a bedroom with the foster parent.
  - b. A foster child who is age 3 or older may share a bedroom with the foster parent when:
    - i. The sleeping arrangement and the reason for it are described in a foster child's case plan; or
    - ii. The foster child temporarily requires the foster parent's attention during sleeping hours.
  - c. A foster child who has regularly shared a bedroom with another child in the foster home who has turned 18 may continue to share the bedroom with the child who has turned 18 unless the placing agency determines that the arrangement is contrary to the best interests of the foster child.
6. A foster parent shall not allow a foster child who is age 6 or over to share a bedroom with a child of the opposite gender.
7. Notwithstanding any other provision of this Section, a foster child who is a minor parent may share a room with her own child.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5843. Bathrooms**

- A. A foster home shall have at least one toilet, one wash basin, and one bathtub or shower.
- B. A foster parent shall:



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1. Maintain the foster home's toilets, washbasins, bathtubs, and showers in good working order; and
  2. Have slip resistant flooring for bathtubs and showers.
- C. A foster home bathroom shall have interior plumbing with both warm and cold water.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5844. Kitchen**

- A. A foster home shall have a kitchen that is equipped for safe and sanitary preparation, serving, and storage of food.
- B. The kitchen shall have interior plumbing with both warm and cold water.
- C. The kitchen shall have an operable refrigerator, stove, and oven.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5845. Fire Safety and Prevention**

- A. The foster parent shall install and maintain at least 1, single-station smoke detector approved by a nationally recognized testing laboratory in the following areas of the foster home:
1. On each floor in a multi-story dwelling;
  2. In each separate sleeping area.
- B. A foster parent shall install and maintain at least one ABC-type fire extinguisher on each floor of the foster home; except if the foster home is a manufactured home, the foster parent shall have at least two fire extinguishers placed at opposite ends of the home.
- C. A foster parent shall not use portable space heaters during sleeping hours.
- D. A foster home shall not rely on portable space heaters as the sole source of heat.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5846. Emergencies, Exits, and Evacuation**

- A. A foster parent shall have a plan for emergency evacuation of the foster home.
- B. All household members and persons who care for a foster child in the foster home shall be knowledgeable about the emergency and evacuation plans and procedures.
- C. Within 48 hours after a foster child is placed in a foster home, a foster parent shall give the foster child a developmentally appropriate explanation of the emergency and evacuation plan, and ensure that the foster child can follow the plan in the event of a fire or emergency.
- D. A foster home shall have the following exits:
1. On each floor used by a foster child, two exits which are remote from one another;
  2. On each floor, at least one exit with a direct, unobstructed and safe means of travel to the outdoors, and a safe method to reach street or ground level;
  3. A window serving as a second exit only if:
    - a. It is accessible to children and care-givers;
    - b. It can be readily opened; and
    - c. It is of a size and design to permit a child or care-giver to pass through it; and
  4. On windows with security bars or devices, an emergency release mechanism maintained in good repair.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5847. Special Provisions for a Receiving Foster Home**

A foster parent who operates a receiving foster home shall comply with all foster home requirements, in addition to the following:

1. A receiving foster parent shall be prepared to accept a foster child, according to the capacity and terms of the foster home license, 24 hours per day, seven days per week, unless the foster parent has made other arrangements with the placing and licensing agency.
2. A receiving foster parent may simultaneously provide receiving care, family foster care, and respite care so long as the total number of children in the foster home at any one time does not exceed the ratios prescribed in R6-5-5826 and the terms of the foster home license.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5848. Special Provisions for a Respite Foster Home**

- A. A foster parent who operates a respite foster home shall comply with all foster home requirements, except as provided in this Section.
1. A respite foster parent may simultaneously provide respite care, family foster care, and receiving care so long as the total number of children in the foster home at any one time does not exceed the ratios prescribed in R6-5-5826 and the terms of the foster home license.
  2. A respite foster parent may use sleeper sofas, rollaway beds, couches, cots, and sleeping bags or mats as acceptable sleeping accommodations for a child receiving respite care, provided the respite care does not exceed six consecutive days.
- B. A respite foster parent shall request and receive information and instruction from the regular foster home licensee on at least the following:
1. Information and instruction about the specific personal care of a child in respite care;
  2. Information and instruction about the provision of medications required by a child in respite care;
  3. Behavior management policies and practices and specific instructions for a child in respite care; and
  4. Emergency contacts and telephone numbers for a child in respite care.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**R6-5-5849. Special Provisions for an In-home Respite Foster Parent**

- A. A person applying for licensure solely as an in-home respite foster parent shall comply with all foster home requirements except as otherwise provided in this Section.
- B. An in-home respite foster parent applicant shall comply with R6-5-5802 and R6-5-5823 except the applicant is not required to provide the following:
1. Immunization records for each child in the applicant's household as required by R6-5-5802(B)(6) and R6-5-5823(5);
  2. Documentation of sufficient income as required by R6-5-5823(2);
  3. A statement explaining the child care arrangements the applicant would make for a foster child, or the applicant's own children, during the applicant's working hours as required by R-6-5802(B)(10);
  4. A statement explaining how activities related to a business activity will not interfere with the care of a foster child as required by R6-5-5802(B)(11);
  5. A description of the applicant's home and neighborhood as required by R6-5-5802(B)(16);
  6. A statement authorizing the licensing agency or the Licensing Authority to arrange for DHS to conduct a

- health and safety inspection of the applicant's home as required by R6-5-5802(B)(23)(c).
7. Household members are not required to submit to fingerprinting or a criminal history check as required by R6-5-5802(C) and R6-5-5823(3).
- C. The following rules do not apply to a person seeking licensure solely as an in-home respite foster parent:
1. R6-5-5827. Placement Agreements;
  2. R6-5-5828. Participation in Case Planning, unless requested to do so;
  3. R6-5-5830. Medical and Dental Care;
  4. R6-5-5834. Notification of Foster Child Death, Illness, Accident, Unauthorized Absence, or Other Unusual Events, subsections (B)(3) and (4), unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules;
  5. R6-5-5835. Notification of Events or Changes Involving the Foster Family or the Foster Home, subsection (A), unless the change or event directly affects the licensee's ability to provide respite care and comply with these rules, and subsection (B), except a fire or emergency requiring evacuation of the foster home;
  6. R6-5-5836. Maintenance of a Foster Child's Records, except to document any behavioral incidents, medical care, provision of medication, and any other event or service required by the case plan or which may be requested by the regular foster parent while the in-home respite foster parent has responsibility for the foster child in care;
  7. R6-5-5838. Foster Home: General Requirements;
  8. R6-5-5839. Foster Home: General Safety Measures;
  9. R6-5-5840. Exterior Environment; Play Area; Play Equipment
  10. R6-5-5841. Swimming Pools, subsections (A) and (B);
  11. R6-5-5842. Bedrooms; Bedding; Sleeping Arrangements;
  12. R6-5-5843. Bathrooms;
  13. R6-5-5844. Kitchen;
  14. R6-5-5845. Fire Safety and Prevention, subsections (A) and (B); and
  15. R6-5-5846. Emergencies, Exits, and Evacuation, subsections (A), (C), and (D).
- D. An in-home respite foster parent shall request and receive information and instruction from the regular foster home licensee on at least the following:
1. The behavior management policies and practices of the home as required by R5-5-5833 and specific instructions which apply to a child in respite care;
  2. Household policies and practices for emergency situations;
  3. Routine household management practices which will provide for continuity in operation of the foster home for the comfort and support of a foster child in care.
- E. An in-home foster parent shall not permit any unlicensed person to accompany or assist the in-home foster parent while providing respite care.
2. Verified experience working with or the ability to care for special care children.
- C. A professional foster parent shall complete the following training:
1. At least 12 clock hours of pre-service training and six clock hours of ongoing training in addition to the requirements of R6-5-5825(A) and (B);
  2. Training in cardiopulmonary resuscitation (CPR) and first aid; and
  3. Pre-service training related to the type of care and services required by a child to be placed into the professional foster parent's care, which may include the following:
    - a. Training in de-escalation;
    - b. Training in physical restraint practices, as needed; and
    - c. Training in medical and health care issues, procedures, and techniques including:
      - i. The purpose, use, and administration of medications;
      - ii. Medication interactions; and
      - iii. Potential medication reactions.
- D. Notwithstanding any other provisions of this Article, a professional foster home is subject to the licensing limitations in this subsection.
1. A professional foster home shall have no more than two special care foster children.
  2. The licensing agency may recommend an exception to allow the professional foster parent to care for up to five special care foster children when the foster parent has demonstrated the ability to provide care for more than two special care children.
  3. In deciding whether to recommend increased capacity as allowed by subsection (D)(2), the licensing agency shall assess:
    - a. The professional foster parent's motivation for fostering more than two special care children;
    - b. Any CPS reports involving the professional foster parent; and
    - c. Whether the professional foster parent has demonstrated:
      - i. Verified, successful professional foster parenting experience with two special care children;
      - ii. A minimum of one year of verified, successful work experience with special care children; or
      - iii. Verified specialized skills and training in the care of special care children.
  4. The Licensing Authority shall evaluate the recommendation and determine whether to approve the exception.
- E. Except when temporarily replaced by an approved alternative care provider, a professional foster parent shall serve as the foster child's primary caregiver and be available to provide direct physical and specialized professional services as required in the foster child's case plan.
- F. A professional foster parent shall use best efforts to participate as a member of the service team as prescribed in R6-5-5828(B), through at least one of the following methods:
1. Personal attendance at team meetings,
  2. Telephonic conference calls,
  3. Provision of a written report on a foster child's progress and problems including any recommendations for service.
- G. A professional foster parent shall maintain at least a weekly record of a special care child's progress and problems, unless more frequent documentation is required, in addition to maintaining the records required by R6-5-5836.

#### Historical Note

Adopted effective January 10, 1997 (Supp. 97-1).

#### R6-5-5850. Special Provisions for a Professional Foster Home

- A. A professional foster home shall comply with all foster home requirements except as otherwise provided in this Section.
- B. A professional foster parent applicant shall provide to the licensing agency or the Licensing Authority documentation or demonstration of:
  1. Verified, successful foster parenting experience; or

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- H. Within the license renewal application, a professional foster parent shall include evidence of current CPR and first aid certification.

**Historical Note**

Adopted effective January 10, 1997 (Supp. 97-1).

**ARTICLE 59. GROUP FOSTER HOME LICENSING STANDARDS****R6-5-5901. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5902. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5903. Definitions**

- A. "Authorized representative." A designated employee of the Department or of the contract provided.
- B. "Child." Any person under 18 years of age.
- C. "Department." The Arizona State Department of Economic Security.
- D. "Foster care." A social service which, for a planned period, provides substitute care for a child when its own family cannot care for it for a temporary or extended period of time. Foster care may be in a private family home, a group home or an institution.
- E. "Foster care." A child placed in a foster home or a child welfare agency. (A.R.S. § 8-501(3)).
- F. "Foster child." "A home maintained by an individual or individuals having the care and control of minor children other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals." (A.R.S. § 8-501(4))
- G. "Group foster home." A licensed regular or special foster home suitable for placement of more than five minor children but not more than ten minor children." (A.R.S. § 8-501(5))
  - 1. "Group family home." A licensed regular group foster home for six to ten minor children whose needs are not adequately met in their own family homes and who cannot tolerate close, intimate parent-child relationships.
  - 2. "Group community home." A licensed special group foster home for six to ten minor children who require special care, including adjudicated delinquents, and those with physical, mental or emotional handicap problems. Caretakers of these homes are skilled in caring for such problems.
  - 3. "Group receiving home." A licensed group foster home appropriate for the immediate placement of children when taken into custody or pending medical examination and court disposition, suitable for placement of more than five minor children but not more than ten minor children.
- H. "License." Includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law.
- I. "Licensed medical practitioner." "Any physician or surgeon licensed under the laws of this state to practice medicine pursuant to Title 32, Chapters 13 and 17." (A.R.S. § 36-501(4))
- J. "Licensing." Includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

- K. "Parent or parents." "The natural or adoptive parent or parents of the child." (A.R.S. § 8-501(6))

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

**R6-5-5904. Responsibilities of the Department**

- A. The Department shall establish rules, regulations and standards for:
  - 1. Recruiting, licensing, re-licensing, classification and supervision of group foster homes.
  - 2. Uniform amounts of payment for all group foster homes according to type of license.
  - 3. Form and content of investigations, reports and studies concerning licensing.
  - 4. Denying, revoking or suspending foster home licenses.
- B. The Department shall provide training, consultation and technical assistance to group foster parents.
- C. The Department shall investigate and take action to prevent continued operation of group foster homes being conducted or maintained without a license.
- D. The Department will ensure that standards represent current child welfare practices which are considered necessary to promote a safe environment for children, and which will contribute toward the normal growth and development of foster children, and which will encourage the development of meaningful relationships with peers, adults and the community.
- E. The Department shall not be obligated to make referrals or payments to a licensed group foster home.

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

**R6-5-5905. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5906. Licensing Requirements**

- A. Consultation. Individuals, associations, institutions or corporations considering the establishment of a group foster home shall consult the Social Services Bureau of the Department about such plans before a specific program is developed, before action is taken to establish such a home, and before an application is filed.
- B. Application. Individuals, associations, institutions or corporations, whether operating for profit or without profit, which desire to conduct or manage a group foster home shall make written application to the department on the prescribed forms.
- C. Fingerprints
  - 1. Foster parents and members of the household, 18 years of age or older, must be fingerprinted and the fingerprints submitted to the Department for a criminal records check.
  - 2. Where group foster care is provided by a firm, corporation, association or organization, all members of the staff having contact with the foster children must be fingerprinted and the fingerprints submitted to the Department for a criminal records check.
  - 3. A license for a group foster home will not be issued, or will be revoked, if any member of the household, 18 years of age or older, or any staff member, has ever been convicted of a sex offense, or involved in child abuse, child neglect, trafficking in narcotics, a criminal offense pattern, or contributing to the delinquency of a minor.
- D. Demonstration of health

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1. The potential foster care applicant, or any staff member, prior to licensing shall furnish the Department, on the prescribed form, with a physical examination report.
  2. Physical examinations must demonstrate that the person has good health and is free from any communicable disease.
  3. A licensed medical practitioner must certify on the form prescribed by the Department that the health of the foster parents is adequate to undertake the tasks expected.
  4. The foster parents, or group foster home Director, shall notify the Department when an individual residing or working in the group foster home contracts a disease or illness which may present a threat to the health of the foster child.
  5. Prior to licensing, children of the foster care applicant shall have current immunizations as prescribed by the Arizona Department of Health Services.
- E. References**
1. Applicants for the original license only shall provide the Department with at least three references as to their character and their ability to provide foster care.
  2. The references may not be relatives of any degree of blood or marriage.
- F. Home study**
1. A study will be made by an authorized representative of the Department to evaluate the potential and actual ability of the foster parents in this specific building and neighborhood to give care and protection to children placed in the home according to the standards prescribed in this Article.
  2. To obtain this information, the authorized representative must make at least one home visit to inspect the house and yard and evaluate the neighborhood, interview all persons living in the home including children old enough to interview, and observe relationships.
  3. In addition, the authorized representative shall interview the foster parents, the group home Director and staff to obtain information regarding the services to be provided.
  4. The Department may request staff of other governmental agencies to make inspections or investigations to determine if the applicant meets standards of the Department. These will include, but not be limited to, inspections for fire, safety, and health.
- G. Agreements**
1. Prior to being licensed, group foster parents or the group foster home Director must sign the Foster Home Agreement form as prescribed by the Department.
  2. Subsequent to being licensed, if the group foster home is going to be used by the Department, there must be a Contract Provider Agreement signed.

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

**R6-5-5907. Denial, Suspension, or Revocation of a License**

- A.** The Department shall deny, suspend, or revoke any license when:
1. The foster home is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes;
  2. The physical or emotional needs of foster children are not met;
  3. Needed medical care is not arranged, or when a foster child's medical or psychiatric plan of treatment is not followed; or
  4. There is misrepresentation or the violation of public confidence.

- B.** When the applicant for the licensing or re-licensing of a foster home does not meet, or is in violation of, Department standards, the applicant shall be notified by certified mail, return receipt requested, that the application is being denied.
1. The written notice shall state the reason why the application is denied, with references to applicable statutes, regulations and standards.
  2. When a license has been denied, suspended or revoked, the Department shall notify the foster parents of the right to a fair hearing.
  3. When a hearing is requested, the denial, suspension, or revocation of the license is not final until after the hearing officer issues a decision.
  4. The Department shall conduct appeals as prescribed in 6 A.A.C. 5, Article 75.

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

Amended effective June 4, 1998 (Supp. 98-2).

**R6-5-5908. Re-licensing Requirements**

- A.** Every license shall expire one year from the date of issuance and may be renewed annually on application of the group foster home.
1. License renewal is not automatic.
  2. License renewal requires:
    - a. A consultation;
    - b. An application;
    - c. Physical examinations;
    - d. A home study;
    - e. The foster home agreement; and
    - f. The contract provider agreement.
- B.** An application for the renewal of a license for a foster home shall be made in the same manner as the original application. A licensee should reapply when:
1. The present license will expire within 30 to 60 days.
  2. The marital status of the licensee has changed;
  3. There is a change in the original program and/or purpose of the home.

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

**R6-5-5909. Standards for Licensing and Operating Group Foster Homes**

- A.** Requirements for family group home foster parents
1. Attitude and ability
    - a. Applicants for licensing and licensed group foster parents shall:
      - i. Have previous training or experience with the type of children for which the foster home is certified;
      - ii. Be able to identify with the Department's programs and goals, work within its policies and follow the recommendations of the authorized representatives of the Department;
      - iii. Participate in training designated by the Department;
      - iv. Have a wholesome attitude toward, and understanding of child development, discipline, health, nutrition, sex education, and the various experiences which a child may have and with which a child may need assistance and guidance; and
      - v. Be capable of accepting the child's relationship with his/her parents.
    - b. Children under the age of 18 years, of applicants for licensing and licensed foster parents must demon-

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strate a willingness to share their parents and home with foster children.

## 2. Age

- a. Foster parent applicants must be over the age of 18 years and under the age of 65 years.
- b. Persons over the age of 65 years may be licensed if recommended by an authorized representative of the Department and if a licensed medical practitioner attests that the health of the foster parents is adequate to undertake the tasks expected.

## 3. Marital status

- a. The presence of both a foster father and a foster mother is considered desirable. However, this requirement may be waived at the discretion of the Department.
- b. If the foster parents consist of a husband and wife, they shall have been married to each other for at least 12 months prior to the original application for license.
- c. Single parents may apply for licensing if they can demonstrate the ability to care for children adequately.
- d. A single parent whose marriage has been dissolved by divorce or death, or who has had a legal separation, must wait 12 months before applying for a license to provide foster care. This does not apply to group foster parents who are currently licensed.

## 4. Employment

- a. Foster parents will not be licensed for the care of children under six years of age if both parents work.
- b. Working parents who apply for licensing or relicensing must demonstrate to the authorized representative of the Department the ability to give adequate care and supervision to foster children.

**B. Requirements for community group home staff**

1. The administrator of a community group home shall have:
  - a. A bachelor's degree plus two years of verifiable experience in the field of residential child care, education or other allied profession and shall be responsible for the management of the business and program of the community group home; or
  - b. A high school diploma and shall have had four years of verifiable work experience in the fields indicated above, including administrative responsibility.
2. Each child care staff member shall have prior successful experience in child care or related areas or have an academic background relating to this field.

**C. Requirements for the organization of a community group home**

1. Every community group foster home, whether it is operated on a profit or a nonprofit basis, shall be incorporated under the laws of the state of Arizona.
2. There shall be a board of directors composed of members of the community, none of whom are members of the staff of the community group foster home.
3. The board of directors shall be responsible for appointing an administrator to assume the full responsibility of directing the business and program of the community group foster home.

**D. Financial resources**

1. Family group home. Foster parents shall have sufficient income to meet the needs of the family unit without dependence upon the payments made in behalf of the foster children.
2. Community group home

- a. A community group home shall have a sound plan of financing to assure sufficient funds to enable it to carry out the planned program for children.
- b. The community group home shall operate on a budget which has been approved by its governing board before the beginning of the fiscal year. The current budget of a community group home shall reflect sufficiency of funds to pay the costs associated with the home's functions.

**E. Supervision and care of foster children. The following requirements apply to both the family group home and the community group home.**

## 1. General guidelines

- a. The group foster home shall provide care, training, guidance and controls.
- b. The group foster home shall see that each child attends school as required by law. Each child shall be given the opportunity to complete high school or vocational training in accordance with the youngster's aptitude.
- c. The group foster home shall at no time leave children overnight unless attended by a responsible adult.
- d. The group foster home shall never leave unattended children under 12 years of age or an older child who needs special care for physical, mental or emotional reasons.
- e. The group foster home shall not accept for care a foster child who has any evidence of a communicable disease or accept for care any foster child when there is evidence of communicable disease in the group foster home.
- f. The group foster home shall not release a foster child to anyone for care other than the agency from whom the child was received or a person specifically designated by the child placing agency.
- g. The group foster home shall provide training in good health practices, including proper habits in eating, bathing, personal grooming and hygiene suitable to the child's age and needs.
- h. The group foster home shall plan activities that stimulate and provide for social relationships, creative activities and hobbies.
- i. The group foster home shall give children opportunities to participate in neighborhood, school and other community groups appropriate to the age and needs of the youngster.
- j. The group foster home shall give children opportunity to invite friends to the foster home and to visit in the homes of friends.

## 2. Maintenance of appropriate family ties

- a. The group foster home, unless otherwise indicated by the authorized representative of the child placing agency, shall make every reasonable effort to maintain meaningful ties between the child and his/her family. This would include provision for letter writing between parent and child, planning with the placing agent for parental visits to the child, and home visits by the child when appropriate.
- b. The group foster home shall provide and encourage reasonable opportunities for the child to maintain contact with all family members and with other individuals important to the child's welfare, consistent with case planning.
- c. The group foster home shall not deny children opportunities to visit with the parent(s) or guardian

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- unless such visits have been restricted by court action or when the representative of the child placing agency has advised that the visit would be detrimental to the welfare of the child.
3. Religious training. The group foster home shall permit children to attend the church of their choice and have religious training opportunities.
  4. Discipline and controls
    - a. Discipline shall be handled with kindness and understanding.
    - b. Correction must be fair, reasonable and consistent, and must be related to the offense.
    - c. Well-defined rules that set the limits of behavior shall be established.
    - d. When appropriate, children shall participate in establishing the rules.
    - e. No child within the group foster home shall be subjected to cruel, severe, unusual or corporal punishment inflicted in any manner upon the body.
    - f. No youngster shall be subjected to verbal abuse or derogatory remarks about himself/herself or family.
    - g. The child shall not be deprived of visits from significant others in the child's life as a form of punishment when the authorized representative of the child placing agency has identified the visitation as appropriate.
    - h. Punishment connected with functions of living, such as sleeping or eating, shall not be used.
    - i. Discipline should be administered in such a way as to help this child develop self-control, and to assume responsibility for behavior.
    - j. Appropriate remedial action shall be taken when children in care commit delinquent acts.
  5. Exploitation of children
    - a. The group foster home shall assign tasks and work assignments which are appropriate to the age and abilities of the child and which do not interfere with school, health or necessary recreation.
    - b. The group foster home shall not identify children by name or by clear description and must not allow them to be photographed in any publication or other printed or broadcast media. Only the Department may approve exceptions to this rule.
    - c. The group foster home shall not permit children in care to commit illegal acts.
    - d. The group foster home shall not provide or permit the use of alcohol or drugs unless prescribed by a licensed medical practitioner.
    - e. The group foster home shall not use children for money making endeavors or for soliciting on behalf of the facility.
  6. Clothing and personal items
    - a. Each child shall have his/her own clothing and personal possessions as well as storage space for them.
    - b. Clothing shall be of the proper size, of correct weight for climatic conditions and shall be kept clean and in good repair.
  7. Health care of foster children
    - a. The group foster home shall make arrangements for and/or with health care and treatment facilities to minimize and prevent health problems and illness, to give proper attention to those who are ill, and to correct treatable physical and emotional problems.
    - b. The group foster home shall closely observe children for signs of illnesses such as skin rashes, inflamed eyes, running noses, coughs and elevated temperatures, and obtain prompt medical attention.
  - c. The group foster home shall not ignore a child's complaint of pain or illness.
  - d. The group foster home shall obtain the services of specialists to provide care, treatment and consultation when recommended by the licensed medical practitioner used by the group foster home.
  - e. The group foster home shall not place any child in isolation unless recommended by a licensed medical practitioner.
  8. Nutrition. Diets shall be well balanced and adequate to meet the nutritional needs of the children. When ordered by a licensed medical practitioner, special diets shall be provided. No dented or bloated canned foods shall be used. There should be a minimum of three meals per day with one being a cooked full-course meal. Only pasteurized milk shall be used. Appropriate snacks will be provided.
- F. Number of children**
1. The number of children in a group foster home shall not exceed the number for which it has been licensed by the Department.
  2. A sufficient number of staff must be on duty at all times in order to assure proper care for all children. The minimum ration of group foster home child caring staff, not including clerical, housekeeping and maintenance staff, shall be as follows:
    - a. For children from infancy through six years of age, no more than eight children to one staff member on duty at all times.
    - b. For children from 7 to 18 years of age, no more than ten children to one staff member on duty at all times.
    - c. A staff member shall be present in each building where children sleep during sleeping hours, and at least one staff member must be on duty in a family setting if children are present.
    - d. Where there are pre-school, handicapped, bedridden, or other non-ambulatory children present, the ratio shall be no more than five children to one child care staff member for all hours, including sleeping hours.
- G. One category of care**
1. The group foster home shall not be used for categories of care other than group foster care for children. For example, no home shall offer, at the same time, full-time care and care for part of the day.
  2. The group foster home shall not combine care of adults and children except in the care of an unmarried mother and her child, or in the case of persons under 21 years of age who voluntarily remain in foster care and who are currently enrolled in and regularly attending any high school.
  3. The group foster home shall not house adult roomers and/or boarders; the only exception would be if the roomer or boarder has been with the family for a long period of time and is considered a member of the family. In this case, all the requirements for the family must also be met by the roomers and/or boarders.
  4. Foster children reaching the age of 18 years may remain in the group foster home as roomers or boarders, if this plan is approved by the Department.
- H. Records and reports**
1. Children's records. The group foster home shall maintain a confidential record for each child in care. The information in the child's record shall be made available only to

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staff of the group foster home and to authorized representatives of the Department and/or the child placing agency. The record of each child shall contain basic identification, and historical, educational, social, medical and psychological information, along with service plans and progress reports.

2. Financial records

- a. The community group home must maintain complete financial records of all receipts, disbursements, assets and liabilities.
- b. The community group home, as requested by the Department, must provide budgetary information. The facility must provide for an annual audit of all accounts by an auditor who is not an employee of the facility or a member of its Board of Directors. The person or firm preparing the audit must be certified or registered with the Arizona State Board of Accountancy.
- c. The group foster home shall maintain a written record of expenditures for clothing and personal allowances for each child.

3. Reports

- a. The group foster home shall report immediately to the child placing agency whenever a child is injured, runs away, or when there is any other significant change in the child's situation.
- b. The group foster home shall report all new placements and discharges within five working days.
- c. The group foster home shall report to the Department any planned change of address, change in program, or other change which significantly affects the care provided. The Department shall be notified 30 days prior to any planned changes.
- d. Family group home foster parents shall report any change of marital status, and any new roomers or boards in the house.
- e. The community group home shall report to the Department any change in staff within five days of employment or discharge.

I. Requirements of home and equipment

1. Location. The group foster home must be in a district where schools and medical care are accessible, and where children can associate with other children and participate in community activities. The group foster home shall be on, or accessible to, a road passable 12 months of the year. The foster parent(s) or staff shall be able to provide private transportation or public transportation shall be near and available. The group foster home must comply with local zoning requirements.
2. Financial records
  - a. The group foster home shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located. Health inspections will be requested and inspections or clearances may be requested from fire, building, and zoning officials when necessary to verify conformity.
  - b. A mobile home may not be licensed as a group home.
  - c. The house shall be in good repair and large enough to prevent crowding.
  - d. Every habitable room shall be heated so that a 70 degree temperature can be maintained when measured at a height of 3 feet from the floor. Every habitable room shall have adequate cooling in those areas of the state with a warm desert climate. House and garden insecticides, medicines, and all corrosive

materials shall be kept in locked storage out of the reach of the children. Such storage shall not be in or near kitchen or food storage areas.

3. Windows and doors

- a. Every sleeping room shall have at least one window and one door. The window must open to the outside. The window in every livable room shall be a minimum of 22 inches in width with 5 square feet in area to provide clear access to the outside without grills or other obstructions, and to provide adequate lighting and ventilation. The sill shall be a maximum of 48 inches from the floor.
- b. In sleeping rooms where there is no mechanical ventilation which draws a portion of its air from the outside, there must be one window to the outside of at least ten square feet, half of which can be opened.

4. Room dimensions and areas

- a. Rooms shall have a minimum ceiling height of 7 feet, 6 inches. Hallways, corridors, and bathrooms shall have ceiling height of at least 7 feet to the lowest projection from the ceiling.
- b. If any room has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the room except that no portion of the room where the ceiling height is less than 5 feet will be counted as available space.
- c. All rooms must contain 70 square feet minimum area except bathrooms and kitchens. No rooms may have any dimension less than 70 feet except kitchens and bathrooms.

5. Sleeping rooms

- a. General requirements. Each child shall have a bed equipped with springs, a clean, comfortable covered mattress, spread, a suitable pillow with case, two sheets, and suitable blankets for warmth. Sheets and pillow cases shall be cleaned at least weekly. Use of bedrooms should not be restricted to sleeping only.
- b. Each child shall have a place to store his clothing and personal belongings and have easy access to the possessions. Individual dressers or drawer space and closet space is essential for each child.

6. Space requirements. There shall be 50 square feet of floor space (excluding closet space) per child in sleeping rooms. The capacity of each sleeping room will be determined individually.

7. Sleeping arrangements

- a. A child shall not sleep in a bed with an adult.
- b. No child over three years of age shall share a bedroom with an adult.
- c. Children over five years of age shall not sleep in the same room with children of the opposite sex.
- d. Every child shall have his own bed.
- e. Children shall sleep within calling distance of an adult member of the family. No foster child shall sleep in a detached building, unfinished attic, basement, stairway, hall, or room commonly used for other than bedroom purposes. No caretaker's child or other child in the household shall be displaced and made to occupy such sleeping quarters because of a foster child.
- f. Bunkbeds of more than two tiers shall not be used. Two-tier bunkbeds shall not be used, however, for children under eight. The beds must be constructed so as to offer comfort and safety and provide sufficient head room.

8. Bathing and toilet facilities

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- a. General requirements
    - i. Lavatories, bathrooms, and toilets shall be adjacent and easily accessible to sleeping rooms. Rooms shall be adequately ventilated to the outside air and shall not open directly onto any pantry, kitchen, serving-room, or dining room.
    - ii. Tubs and/or showers shall have safety strips applied, rubber bath-mats, or other provisions made to prevent slipping.
    - iii. Adequate provision shall be made for keeping individual toilet articles.
  - b. Number of facilities. Each group foster home shall have at least two complete bathrooms that are accessible to the children. (A bathroom with only one exit door into the bedroom of the caretaker(s) will not be considered accessible to children.) There shall be at least one bathtub and/or shower, one toilet, and one waste basin for each six to ten children residing in the home.
9. Kitchen. Approval of the Arizona State Department of Health Services is required for all food services and equipment in accordance with the provisions of A.R.S. § 8-504.
  10. Dining area
    - a. The dining area shall be furnished with the necessary furniture to accommodate those living in the group foster home.
    - b. Location of the dining area shall be convenient to the kitchen.
  11. Living room. There shall be an adequately furnished living room or living area.
  12. Medicine cabinets. Medicines shall be stored in a clean, locked cabinet that is designated for this use only. All medications which have been prescribed for past illnesses or for children discharged from the foster home shall be destroyed.
  13. Laundry. Adequate provisions shall be made to care for the laundry.
  14. Space and water heaters. Space and water heaters must be vented to the outside, adequately grounded, and installed to comply with building, plumbing, electric and fire codes.
  15. Water supply. Where a municipal water system does not supply water to the home, the water must be tested once a year by the General Sanitation Section of Arizona State Department of Health Services.
  16. Swimming and wading pools
    - a. Swimming pools shall meet the requirements of the Arizona State Department of Health Services.
    - b. The pool shall be made inaccessible to children under the age of six; they shall be supervised at all times.
    - c. During the swimming season, the swimming pool shall be tested and logged daily for free chlorine and to determine the pH of the water. Water safety courses are required.
    - d. Tests shall comply with the requirements of the Arizona State Department of Health Services.
  17. Play area
    - a. There shall be adequate space for both indoor and outdoor play.
    - b. The premises, inside and out, shall be equipped and maintained in a manner which is not hazardous to children.
  18. Fire protection
    - a. All group foster homes shall have a written fire evacuation plan posted and should conduct fire drills at least once every two months.
    - b. Portable fire extinguishers of a type approved for the intended use are strongly urged.
  19. Telephone. There shall be telephone service in the group foster home.
  20. Vehicle(s). The vehicle(s) for transporting children shall be in a safe operating condition and all drivers shall have a current driver's license.
  21. Insurance
    - a. The group foster home shall provide for insurance coverage for adequate protection against accidents.
    - b. Insurance coverage must include liability insurance to cover acts of children or staff, and protection against damages to, or loss of, buildings and other valuable properties.
    - c. There shall be liability insurance on all vehicles transporting children.

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

Amended effective February 21, 1980 (Supp. 80-1).

**R6-5-5910. Confidentiality**

The rules and regulations of the Department for securing and using confidential information concerning the client will be followed. Refer to Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information."

**Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).

**R6-5-5911. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**R6-5-5912. Expired****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective October 31, 2001 (Supp. 01-4).

**ARTICLE 60. COMPREHENSIVE MEDICAL/DENTAL PROGRAM FOR FOSTER CHILDREN****R6-5-6001. Objective**

The goal of the Comprehensive Medical/Dental Program for Foster Children is to provide, in the most cost effective manner, full coverage for those medical and dental services which are necessary to the achievement and maintenance of an optimal level of physical and mental health for children in foster care.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

Amended effective March 28, 1978 (Supp. 78-2).

**R6-5-6002. Authority**

Article 60 is adopted pursuant to the power vested in the Director of the Department of Economic Security by A.R.S. §§ 8-511(A)(2), (A)(3), (B) and (C) and 8-512.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

**R6-5-6003. Definitions**



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- A. "Adjudicated child." A child adjudicated by the court as dependent, neglected or delinquent residing in a licensed foster family home or child welfare agency.
- B. "Ambulatory care institution." A health care institution licensed by the Arizona Department of Health Services with inpatient beds providing limited hospital services on an outpatient basis including an outpatient surgical center and an outpatient treatment center.
- C. "Ancillary services." Special services and items furnished to an institutional recipient, which are separately payable in addition to the daily room and board charge.
- D. "Authorization." An approval given by the designated Departmental representative or representative of the fiscal intermediary to a specific medical/dental provider to render services or items to a specific recipient.
- E. "Claim." The invoice submitted by the medical/dental provider for reimbursement for covered services.
- F. "Comprehensive Medical/Dental Program for Foster Children." The name for the program authorized by legislation and regulated as shown herein by the Department.
- G. "Covered services." As defined in R6-5-6005.
- H. "Dentist." An individual licensed to practice dentistry and/or oral surgery by the appropriate regulatory board of the state of Arizona. The term shall include such individual only when practicing within the scope of the license.
- I. "Department." The Department of Economic Security.
- J. "Director." The Director of the Department of Economic Security.
- K. "Emergency dental services."
  1. Those services necessary to control bleeding, relieve pain, eliminate acute infections.
  2. Operative procedures which are required to prevent pulpal death and the imminent loss of teeth.
  3. Treatment of injuries to the teeth or supporting structures.
  4. Palliative therapy for pericoronitis associated with impacted teeth.
  5. Reduction of maxillary and mandibular fractures.
- L. "Emergency services." Those services required for alleviation of severe pain or for immediate diagnosis or treatment of an unforeseen medical condition which, if not immediately diagnosed and treated, would lead to rapid deterioration of the health status.
- M. "Eye care services." Diagnostic eye examinations to detect the presence or absence of ocular abnormality or visual disability, treatment related thereto, and the dispensing of eye glasses or other optical devices, when necessary, to improve visual performance.
- N. "Eye glasses." Frames with lenses prescribed by an ophthalmologist, other licensed medical practitioner or optometrist to aid or significantly improve visual performance.
- O. "Foster care provided." A home or child-caring agency licensed by the state as a foster home, group home or child welfare agency, which provides care and maintenance for foster children.
- P. "Foster child." A child adjudicated by the court as dependent, neglected or delinquent or on whom the parent(s) have signed the necessary paperwork for voluntary foster care and who are residing in a licensed foster home or child welfare agency.
- Q. "Hearing aid." Any wearable instrument or device designed for or represented as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of such instrument or device, including earmolds.
- R. "Hearing aid evaluation." The application and interpretation of a battery of tests by an otolaryngologist, otologist, other licensed medical practitioner or audiologist to determine if amplification may be advantageous to an individual's hearing and what parameters of amplification are required to obtain a satisfactory result.
- S. "Identification card." A plastic card for each foster child issued by the Department to establish the identity of the child eligible for the covered services.
- T. "Inpatient." A person who has been admitted to a hospital or skilled nursing facility for bed occupancy for purposes of receiving inpatient services. A person will be considered an inpatient when formally admitted as an inpatient, i.e., when admitted for a period of more than 12 hours or through the census hour.
- U. "Inpatient hospital services." Those services and items furnished by the hospital for the care and treatment of inpatients under the direction of a physician or dentist.
- V. "Inpatient hospital services." Those services and items furnished by the hospital for the care and treatment of inpatients under the direction of a physician or dentist.
- W. "Legend drugs." Those drugs which, under federal or state law or regulations, may be dispensed only by prescription.
- X. "Medical/dental provider." Any person, institution or entity which provides covered services to an eligible foster child recipient under the program.
- Y. "Medical equipment." Durable items and appliances that can withstand repeated use, are designed primarily to serve a medical purpose and are not generally useful to a person in the absence of a condition, illness or injury.
- Z. "Nursing services." Those services that are performed by or under the supervision of a registered nurse at the direction of a licensed practitioner.
- AA. "Ophthalmologist." A licensed medical practitioner who specializes in the diagnosis and treatment of the eye and its related structures.
- BB. "Optometrist." A person registered with the state medical board to practice optometry.
- CC. "Orthodontic condition." A clinically obvious physical abnormality of tooth and/or jaw relationships.
- DD. "Orthopedic devices." Supportive or corrective devices used for treatment of a musculoskeletal abnormality or injury.
- EE. "Otolaryngologist." A licensed medical practitioner whose practice is limited to the specialty of conditions or disease of the ear, nose and throat and who qualifies as a specialist in those areas.
- FF. "Otologist." A physician who limits his practice to the specialty of conditions and diseases of the ear and who qualifies as a specialist in this area.
- GG. "Outpatient." Not an inpatient.
- HH. "Palliative services." Those services required to reduce the severity or relieve the symptoms of a condition, illness or injury.
- II. "Physical therapist." A person registered to practice physical therapy.
- JJ. "Physical therapy services." Those services provided by or under the supervision of a physical therapist.
- KK. "Physician." An individual licensed to practice medicine or medicine and surgery (including an osteopathic practitioner), a podiatrist or an optometrist. The term shall include such individuals who have been granted a license to practice by the appropriate regulatory board of the state of Arizona and shall include them only when they are practicing within the scope of such license. The term shall also include a Christian Science practitioner recognized by the Mother Church and listed as such in the "Christian Science Journal."
- LL. "Prescription." An order to a provider for covered services issued, signed and transmitted by an individual authorized to prescribe such services.

- MM.** “Preventive services.” Those health services designed to forestall a condition, illness or injury.
- NN.** “Prior authorization.” This term shall have the definition given it by the terms and procedures of R6-5-6007.
- OO.** “Prosthesis.” An artificial substitute for a missing body part including but not limited to an arm, leg, eye, tooth, etc.
- PP.** “Psychologist.” An individual certified by the State Board of Psychologist Examiners.
- QQ.** “Radiological services.” Professional and technical X-ray and radioisotope services ordered by a licensed medical practitioner or dentist for diagnosis, prevention, treatment or assessment of a medical condition. Radiological services includes portable X-ray, radioisotope, medical imaging and radiation oncology.
- RR.** “Rehabilitation services.” Physical, occupational, speech and respiratory therapy, audiology services and other restorative services and items ordered by a physician to attain maximum reduction of physical or mental disability and restoration of the individual to an optimum functional level.
- SS.** “Routine physical examinations.” Medical examinations performed without relationship to treatment or diagnosis of a specific condition, illness or injury. This includes physical examinations for employment.
- TT.** “Skilled nursing facility.” A health care institution which is licensed by the Department of Health Services as a skilled nursing facility.
- UU.** “Speech therapist.” A person who has been granted the Certificate of Clinical Competence in the American Speech and Hearing Association or who has completed the equivalent educational requirements and work experience required for such a certificate.
- VV.** “Therapeutic services.” Those curative services required for treatment of a condition, illness or injury and includes acute, chronic and emergency care.
- WW.** “Treatment plan.” That portion of the authorization process which requires that the attending physician and other professional allied health personnel involved in the care of a recipient establish and review periodically a plan of treatment and care for each recipient.
- XX.** “Fee schedule.” Allowable amounts established by the Department for medical, dental, and psychological care for foster children.

#### Historical Note

Adopted effective March 11, 1977 (Supp. 77-2).  
Amended effective March 28, 1978 (Supp. 78-2).

#### R6-5-6004. Eligibility

- A.** The Department shall pay or cause to be paid the cost of necessary covered services, up to the maximum allowed by the fee schedule, rendered to children who are:
- Placed in a licensed foster home or licensed child welfare agency by:
    - The Department of Economic Security; or
    - The Department of Corrections; or
    - The Juvenile Probation Office.
  - Placed in a licensed receiving foster care facility (shelter care).
  - Or for whom temporary custody has been awarded to the Department, and who are placed in a hospital for care and treatment.
- B.** Children born to an eligible foster child (as defined in subsection (A) of this Section) shall be eligible for payment of routine newborn care and treatment up to and including the third day of life. This period may be extended where the need is established by such persons as the Director shall designate.
- C.** Persons under the age of 21 who were placed in a foster family home or institution prior to the age of 18, and who voluntarily remain in such care and who are currently enrolled in and regularly attending any high school.

#### Historical Note

Adopted effective March 11, 1977 (Supp. 77-2).  
Amended effective March 28, 1978 (Supp. 78-2).  
Amended effective May 25, 1979 (Supp. 79-3).

#### R6-5-6005. Definition of Covered Services

Comprehensive medical/dental services shall include but not be limited to the following covered services:

- A complete preplacement medical examination prior to the initial foster placement in a regular or special foster home. Such examination shall include as a minimum:
  - Vaccinations to prevent mumps, rubella, smallpox and polio if not previously provided to the foster child.
  - Tests for anemia, coccidioidomycosis and tuberculosis.
  - Urinalysis, blood count and hemoglobin tests.
  - Standard medical procedures used for determining the recipient's general health, hearing and vision, including prescribing corrective devices when needed.
  - Further evaluation and diagnosis as is medically necessary.
- Periodic medical examinations, not less than once each year, subsequent to initial placement for a child placed in a setting other than his parents' home.
- Inpatient care. Benefits shall be paid for necessary inpatient hospital or skilled nursing facility care, including diagnosis and treatment, for physical or mental illness, for injury or for pregnancy, and shall include items and services which are ordered pursuant thereto by a physician, dentist or psychologist and which are ordinarily furnished by the hospital or skilled nursing facility for care and treatment of inpatients. Included shall be:
  - Bed and board, including dietary services and general nursing care, in a semi-private room (i.e., room with two or more beds) or a private room if medically necessary.
  - Professional services furnished through or by the hospital, including the services of a physician, dentist or psychologist; physical therapy; rehabilitation services; and medical social services.
  - Ancillary services as follows:
    - Laboratory, therapeutic and diagnostic services including radiological services.
    - Use of operating room, recovery room emergency room and intensive care.
    - Drugs, blood, oxygen, medical supplies, equipment and appliances related to care and treatment in the hospital.
    - Prosthetic and orthopedic devices.
- Inpatient professional care. To include surgery, assistance at surgery, administration of anesthesia, hospital visits and consultations, professional administration and interpretation of laboratory and radiological procedures and test results, and other necessary care and procedures and rendered by a physician, dentist or psychologist in accordance with all rules and regulations of the hospital.
- Outpatient professional evaluation, care and treatment. To include preventive, palliative, diagnostic, therapeutic, rehabilitative, surgical, or other such items and services which are administered or provided on an outpatient basis

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- for the necessary diagnosis or treatment of injury, pregnancy, physical or mental illness.
6. Laboratory and x-ray services ordered by a physician, dentist or psychologist for diagnosis and treatment.
  7. Dental care provided by or under the direct supervision of a dentist. To include oral examinations, diagnostic radiography, oral prophylaxis, topical fluoride applications, restoration of permanent and primary teeth, pulp therapy, extraction when necessary, fixed space maintainers where needed, oral hygiene instruction, orthodontia and other service procedures necessary for relief of pain and infection.
  8. Prescription and non-legend drugs prescribed by a physician or dentist.
  9. Ambulance services.
  10. Private duty nursing.
  11. Injections, immunizations, allergy testing and treatment.
  12. Physical therapy, speech therapy, respiratory therapy, radiation therapy, etc.
  13. Electrocardiograms, electroencephalograms and other similar diagnostic procedures.
  14. Medical equipment, corrective medical appliances and orthopedic devices or prostheses.
  15. Services of an ambulatory care institution.
  16. Eye care services and eyeglasses.
  17. Hearing evaluations, hearing aid evaluations and hearing aids.
  8. Non-legend drugs which are not prescribed by a physician or dentist.
  9. Care and services rendered to an individual who is not an eligible foster child.
  10. Any covered service for which no charge would have been rendered in the absence of this program.
  11. Any admission, service, item, or otherwise covered service requiring prior authorization where such authorization has not been obtained or has been denied.
  12. Services of naturopaths and chiropractors.
  13. Psychological services or other diagnostic or treatment services for a foster child in a child welfare agency which provides such care as part of its contractual services which are already paid for by the Department, including services provided by the agency's staff.
  14. Care and services rendered to a foster child under the Bureau of Indian Affairs foster care program.
  15. Care and services rendered a foster child placed in Arizona by another state whether voluntarily or under jurisdiction of the court of another state.
  16. Non-medical items such as, but not limited to, slippers, hair cuts, snack bar merchandise, shampoos and writing paper.
  17. The following dental care services:
    - a. Any care which requires prior authorization and for which prior authorization was not sought or was sought but was not granted, unless ordered by the Court.
    - b. Oral hygiene instruction which exceeds \$6.00 per fiscal year.
    - c. Porcelain-fused-to-metal crowns.
    - d. Acrylic veneered gold crowns whose position in the mouth is posterior to the second bicuspid.
    - e. Full crowns except when teeth cannot be restored by a pin-reinforced restoration.
    - f. Gold inlays.
    - g. Temporary restorations, except to the extent they are considered part of and paid for as a part of the finished restoration.
    - h. Building up any tooth, except to the extent it is considered part of and paid for as a part of the finished restoration.
    - i. Building up a tooth beneath a crown.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

**R6-5-6006. Exceptions, Limitations and Exclusions**

The Department shall not pay for:

1. The cost of any covered service which is not medically necessary for prevention, diagnosis or treatment of a condition, illness or injury.
2. That portion of the cost of any covered service which exceeds the charges set by the fee schedule. The medical/dental provided is hereby prohibited from rendering a bill for additional amounts to the Department, its representatives, any fiscal intermediary the Department may contract with to administer this program, the foster child, his guardian, his estate, the foster child's foster parents, his natural parents or any other party.
3. The cost of care and services payable through any federal, state, county or municipal program to which an eligible foster child may be entitled except for the cost of care and services in excess of any such program.
4. The cost of care and services payable through an insurance carrier which provides coverage for the eligible foster child except for the cost of care and services in excess of any such insurance benefits.
5. Psychiatric or psychological evaluations and treatment unless performed or ordered by a licensed medical practitioner or psychologist certified by the State Board of Psychologist Examiners.
6. Any expenses submitted for reimbursement after 180 days following provision or delivery or otherwise covered services.
7. Any service or item furnished primarily for cosmetic purposes rather than for the correction of defects resulting from a condition, illness or injury. In determining whether a service is furnished primarily for cosmetic purposes, consideration will be given to the eligible foster child's psychological welfare and future occupational opportunities. Orthodontic services are included in this category.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

Amended effective March 28, 1978 (Supp. 78-2).

**R6-5-6007. Prior Authorization**

- A. As hereafter more fully described, authorization is required before certain covered services are rendered in order for those services to be paid for under this Article and A.R.S. §§ 8-511 and 8-512.
- B. Payment will not be made for any covered service which requires prior authorization and either
  1. Was not submitted for such prior authorization or
  2. Was submitted but such prior authorization was not granted.
- C. Any medical/dental provider is hereby prohibited from rendering a bill for charges subject to prior authorization which are not granted prior authorization, such prohibition extending to charges rendered to the Department, its representatives, any fiscal intermediaries the Department may contract with to administer this program, the foster child, his guardian, his estate, the foster child's foster parents, his natural parents or any other party.

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**D.** Prior authorization shall not be required for the following covered services as actually provided or proposed to be provided:

1. Services necessary to care for acute physical illness, chronic physical illness, acute injury or pregnancy insofar as treatment is consistent with the diagnosis.
2. Emergency services in all instances, including emergency dental services.
3. Complete preplacement examination as required by A.R.S. § 8-511(A)(2).
4. First- and second-year well-baby care not to exceed a total of \$200 for both years.
5. Initial dental examination and treatment indicated thereby but not to exceed \$50 per fiscal year.
6. Emergency inpatient psychiatric care not to exceed ten inpatient days.
7. Rental or purchase of medical equipment when accompanied by physician prescription where cost does not exceed or could reasonably be expected not to exceed \$25 per fiscal year in the aggregate for all such costs in one fiscal year.
8. Prescription and non-legend drugs which are necessary to the foster child's medical care and appropriate to his treatment regimen.
9. Eyeglasses for which the cost does not exceed \$60 per pair, including lenses and frames, or which are replacement lenses and/or frames obtained more than 12 months following the preceding pair.
10. Psychiatric or psychological diagnostic evaluation not to exceed \$200.
11. Initial psychiatric or psychological interview not to exceed \$50.

**E.** Prior authorization shall be required for the following covered services:

1. Psychiatric or psychological therapy, whether proposed on an individual or group.
2. Continuation of therapy shown in (1) above past ten outpatient sessions, and thereafter in accordance with appropriate judgment as to what constitutes necessary care as determined from the treatment plan and/or medical record.
3. Inpatient psychiatric care beyond ten consecutive inpatient days, and thereafter in accordance with appropriate judgment as to what constitutes necessary care as determined from the treatment plan and/or hospital record.
4. Elective (non-emergency) surgery and expenses associated with such surgery.
5. First- and second-year well-baby care which exceeds or is expected to exceed a total of \$00 for both years.
6. Eyeglasses costing more than \$60, including lenses and frames, or which are replacement lenses and/or frames obtained less than 12 months following the preceding pair.
7. The following specific types of dental care:
  - a. Any service or combination of services which exceeds \$50 in any fiscal year.
  - b. Any treatment plan which proposes a full crown or crowns.
  - c. Any treatment plan which involves replacement of any tooth or teeth, by either removable or fixed appliances.
  - d. Any treatment plan which proposes a fixed bridge.
  - e. Any treatment plan which proposes a partial denture.
  - f. Any treatment plan which proposes treatment of a dentofacial abnormality (orthodontic services).

8. Rental or purchase of medical equipment (unless necessary due to a medical emergency) when accompanied by physician prescription.
9. Outpatient therapy services and treatment modalities such as, but not limited to, speech therapy, physical therapy, respiratory therapy, and radiation therapy.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

Amended effective March 28, 1978 (Supp. 78-2).

**R6-5-6008. Coordination of Benefits**

- A.** The Department shall determine the possible existence of any primary insurance coverage for all eligible foster children at the time the need for foster care is established. The possible existence of such coverage shall be redetermined at least every six months.
- B.** The Department shall request the court to include a statement in its court order requiring parent(s) or guardian of adjudicated children to cooperate with Department of Economic Security in coordinating benefits with any existing health insurance carrier and to maintain any health insurance coverage presently existing which covers the child(ren).
- C.** The Department shall advise the court when parent(s) or guardian of adjudicated children refuse to cooperate with Comprehensive Medical/Dental Program (CMDP) in providing and/or signing appropriate documents required in order to coordinate insurance benefits, or fail to maintain any existing insurance coverage for the child.
- D.** In voluntary placements, the parent(s) or guardian must cooperate with Comprehensive Medical/Dental Program (CMDP) in providing and/or signing appropriate documents required to coordinate health insurance benefits.
- E.** In the absence of health insurance coverage, the Department shall determine what additional resources are available to cover medical and dental costs.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

Amended effective March 28, 1978 (Supp. 78-2).

**R6-5-6009. Identification Card**

- A.** The Department shall issue, or cause to be issued, an identification card for each eligible foster child.
- B.** The caseworker shall apply for an identification card for the eligible foster child.
- C.** The Department shall immediately upon placement inform the foster care provider in writing that the identification card is not transferable and that the card is to be used only for medical/dental covered services for the foster child whose name appears on the card only so long as said foster child shall remain eligible under this Program.
- D.** The foster care provider shall be given oral and written instructions regarding the use of the identification card when procuring medical and dental care for the eligible foster child.
- E.** When an eligible foster child is terminated from foster care, the foster care provider shall immediately return the identification card to the Department.
- F.** The foster care provider shall return the identification card to the Department seven days from the date an eligible foster child runs away from the foster care provider.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

**R6-5-6010. Payment and Review of Claims**

- A.** Claims for payment shall be submitted by medical/dental providers in the manner prescribed by the Department.

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- B. Claims for payment for covered expenses shall not be paid if an appointment is not kept and/or if covered services were not rendered or provided.
- C. Claims for payment shall not be accepted or paid prior to the delivery of covered services.
- D. Claims for covered services shall be accepted from medical/dental providers both in and outside the state of Arizona.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

**R6-5-6011. Abuse and Misuse of the Program**

- A. The Department shall establish a procedure to investigate any alleged abuse of the Comprehensive Medical/Dental Program. If abuse is substantiated, administrative or legal action shall be taken.
- B. The Department shall monitor the activity of the Comprehensive Medical/Dental Program to ensure compliance with the program requirements.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).

**R6-5-6012. Consent for Treatment**

- A. For an eligible foster child adjudicated by the court, the Department shall secure a court order and, if possible, the consent of the parent or guardian for surgery, general anesthesia, blood transfusion, or pelvic examination of a child.
- B. For a foster child in voluntary placement, consent of the parent or guardian shall be necessary only for medical treatment involving surgery, general anesthesia, blood transfusion, or pelvic examination of a child, except for emergency situations described in subsection (C).
- C. In cases of emergency, in which a foster child is in need of immediate hospitalization, medical attention or surgery, and when the parents cannot readily be located, the foster care provider or caseworker may give consent pursuant to A.R.S. § 44-133 for hospital care, medical attention or surgery.
- D. Persons under the age of 21 who were placed in a foster family home or institution prior to the age of 18, and who voluntarily remain in such care, and who are currently enrolled in and regularly attending any high school may give consent for their own treatment.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).  
Amended effective May 25, 1979 (Supp. 79-3).

**R6-5-6013. Administration of the Program**

- A. The Department shall have the ability to contract with any insurer, insurance plan, hospital ability plan, or any health service plan authorized to do business in this state, or with any fiscal intermediary or with any combination of such plans or methods. Such contract will be entered into for purposes of administering this Comprehensive Medical/Dental Program for foster children in a manner consistent with its authorizing legislation and these regulations.
- B. Such contract, if entered into by the Department, shall be specific as to the responsibilities of each party to the contract and shall provide for reasonable payment to the contractor for his administrative services as required by the contract.
- C. The terms of such contract, if entered into by the Department, shall reflect these regulations. If the Department and the contractor, in the future, determine that certain additions, deletions, corrections or alterations in the contract are required so as to cause the administration of the program to be consistent with the authorizing legislation, these regulations and the intents thereof, such additions, deletions, corrections or alter-

ations shall be made in the contract by mutual written consent, signed by authorized representatives of the Department and the contractor, without first having to alter these regulations.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-1).

**R6-5-6014. Case Management**

- A. Determining financial need. Financial eligibility for the CMDP is limited to foster children who reside in licensed facilities.
- B. Case management
  - 1. Confidentiality. The rules and regulations of the Department regarding the disclosure and use of confidential information concerning the client, as set forth in A.A.C. Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information" shall apply to all services provided under this Article.
  - 2. Appeals. The rules and regulations of the Department set forth in A.A.C. Title 6, Chapter 5, Article 25, "Complaints and Appeals" shall apply to all services provided under this Article.
  - 3. The rules and regulations of the Department set forth in A.A.C. Title 6, Chapter 5, Article 26, "Civil Rights" shall apply to all services provided under this Article.
- C. Closing the service. Service shall be closed when the child is no longer in foster care.

**Historical Note**

Adopted effective March 11, 1977 (Supp. 77-2).  
Amended effective March 28, 1978 (Supp. 78-2).

**R6-5-6015. Fee Schedule**

- A. The Comprehensive Medical and Dental Program shall pay providers in accordance with the established fee schedule unless otherwise specified by contract or required by this Article.
- B. A current fee schedule shall be maintained in the central office of the CMDP for reference use during customary business hours. Relevant information or portions of the fee schedule shall be made available to service providers and other interested persons on request.

**Historical Note**

Adopted effective May 15, 1990 (Supp. 90-2).

**EXHIBIT 1. REPEALED****Historical Note**

Exhibit as filed is incomplete. Exhibit adopted effective March 28, 1978 (Supp. 78-2). Amended by adding Maximum Allowable Anesthesia Fee Schedule effective April 17, 1980 (Supp. 80-2). Amended Medicine - Psychiatric Services; Radiology - Urinary Tract; Dental - Restorative, Endodontics, and Fixed Prosthodontics effective September 17, 1980; Maximum Allowable Anesthesia Fee Schedule not included (Supp. 80-5). Repealed effective May 15, 1990 (Supp. 90-2).

**ARTICLE 61. REPEALED****R6-5-6101. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6101 repealed, new Section R6-5-6101 adopted effective August 29, 1984 (Supp. 84-4).  
Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6102. Repealed**

**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6102 repealed, new Section R6-5-6102 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6103. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6104 repealed, new Section R6-5-6103 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6104. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Section R6-5-6104 repealed, new Section R6-5-6104 adopted effective August 29, 1984 (Supp. 84-4). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6105. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**R6-5-6106. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**R6-5-6107. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**R6-5-6108. Repealed****Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4). Former Sections R6-5-6105 through R6-5-6108 repealed effective August 29, 1984 (Supp. 84-4).

**ARTICLE 62. REPEALED**

*Former Article 62 consisting of Sections R6-5-6201 through R6-5-6209 repealed effective August 29, 1984.*

**ARTICLE 63. REPEALED**

*Former Article 63 consisting of Sections R6-5-6301 through R6-5-6304 repealed effective November 8, 1982.*

**ARTICLE 64. REPEALED**

*Former Article 64 consisting of Sections R6-5-6401 through R6-5-6408 repealed effective February 1, 1979.*

**ARTICLE 65. EXPIRED****R6-5-6501. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6502. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6503. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1722, effective July 29, 2011 (Supp. 11-3).

**R6-5-6503.01. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1722, effective July 29, 2011 (Supp. 11-3).

**R6-5-6504. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Amended effective November 22, 1978 (Supp. 78-6). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 5267, effective March 31, 2016 (Supp. 16-3).

**R6-5-6505. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Amended effective November 22, 1978 (Supp. 78-6). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6506. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6507. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6508. Expired****Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6509. Expired**

**Historical Note**

Adopted effective July 6, 1977 (Supp. 77-4). Amended effective November 22, 1978 (Supp. 78-6). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6510. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6511. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 66. EXPIRED****R6-5-6601. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6602. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6603. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Repealed effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6604. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6605. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended subsection (C) effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6606. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6607. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6608. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6609. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Amended effective August 15, 1980 (Supp. 80-4). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6610. Expired****Historical Note**

Adopted effective January 18, 1978 (Supp. 78-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6611. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6612. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6613. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6614. Expired**

**Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6615. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6617. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1722, effective July 29, 2011 (Supp. 11-3).

**R6-5-6618. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6620. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6621. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6622. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6623. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6624. Expired****Historical Note**

Adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 67. EXPIRED****R6-5-6701. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section

expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6702. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6703. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6704. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6705. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6706. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Amended by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6707. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Amended by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6708. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6709. Expired**



**Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6709 repealed, former Section R6-5-6710 renumbered and amended as Section R6-5-6709 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6710. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6710 renumbered and amended as Section R6-5-6709, former Section R6-5-6711 renumbered and amended as Section R6-5-6710 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6711. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6711 renumbered and amended as Section R6-5-6710, former Section R6-5-6713 renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6712. Expired****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Repealed effective June 19, 1979 (Supp. 79-3). New Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-6713. Renumbered****Historical Note**

Adopted effective May 17, 1976 (Supp. 76-3). Renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3).

**ARTICLE 68. REPEALED****R6-5-6801. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6802. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6803. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6804. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6805. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6806. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6807. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**R6-5-6808. Repealed****Historical Note**

Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

**ARTICLE 69. CHILD PLACING AGENCY LICENSING STANDARDS****R6-5-6901. Objectives**

The objective of this Article is to establish licensing and operating standards to promote quality services for children and unmarried mothers whose needs are not adequately met in their family homes.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6902. Authority**

A.R.S. §§ 8-501 through 8-520 and 46-134.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6903. Definitions**

- A. "Adult." Any person 18 years of age or older.
- B. "Authorized representative." A designated employee of the Department.
- C. "Casework supervisor." A person who holds a Bachelor's degree from a university or college and has at least three years of casework experience in a certified or licensed family/child welfare agency.
- D. "Caseworker." A person who holds a Bachelor's degree from a university or college and who has training and/or experience in the field of behavioral science.
- E. "Child." Any person under 18 years of age.
- F. "Child placing agency." A child welfare agency which is authorized in its license to place children.
- G. "Department." The Arizona State Department of Economic Security.
- H. "Division." The Arizona State Department of Economic Security.
- I. "Executive Director." The person responsible for overall administration of the child placing agency; also referred to as Administrator, or Director.
- J. "Foster care." A social service which, for a planned period, provides substitute care for a child when its own family cannot care for it for a temporary or extended period of time. Foster care may be in a private family home or a group home.
- K. "Foster child." A child placed in a foster home or child welfare agency.

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- L. "Foster home." A home maintained by an individual or individuals having the care or control of children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals (A.R.S. § 8-501(4)).
  - M. "License." The legal authorization to operate a child placing agency issued by the Arizona Department of Economic Security.
  - N. "Licensed medical practitioner." Any physician or surgeon licensed under the laws of this State to practice medicine pursuant to Title 32, Chapter 13 and 17 (A.R.S. § 36-501(4)).
  - O. "Licensing." Includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
  - P. "Parent or parents." The natural or adoptive parent or parents of the child.
  - Q. "Provisional license." A temporary license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security for a period not to exceed six months; a provisional license is issued to an agency that is temporarily unable to conform to all licensing standards and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of a child and the agency agrees to correct the deficiency or deficiencies, and where there is a demonstrated need for the services. A provisional license is not renewable.
  - R. "Receiving foster home." A licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition which is designated as a receiving foster home and it is licensed.
  - S. "Regular foster home." A licensed foster home suitable for placement of not more than five minor children.
  - T. "Regular license." A license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security; a regular license which may be issued following a provisional license is valid for one year from the date of issuance and must be renewed annually.
  - U. "Social worker." A person who holds a Master of Social Work degree from an accredited school of social work.
  - V. "Special foster home." A licensed foster home capable of handling not more than five minor children who require special care for physical, mental or emotional reasons or have been adjudicated a delinquent (A.R.S. § 8-501(10)).
- selling narcotics, or contributing to the delinquency of a minor, or has a substantial criminal record.
- D. Demonstration of need for services in the community. Evidence of need shall consist of:
    1. Communication from community leaders in the field of child welfare indicating a need for the services proposed by the applicant or
    2. Recent research data establishing a need for the services being proposed by the applicant.
  - E. Licensing study
    1. A study will be made as required by A.R.S. § 8-505(C) by an authorized representative of the Department to evaluate the potential and actual ability of the Child Placing Agency to provide services to children according to the Standards prescribed in this Article.
    2. To obtain this information, the authorized representative of the Department must make at least one visit to evaluate the agency setting and interview the Director and staff.
    3. In addition, the authorized representative of the Department shall review documentary evidence provided by the Executive Director of the Child Placing Agency regarding agency operation and services to be provided.
  - F. Provisional license
    1. A provisional license shall be issued to any Child Placing Agency that is temporarily unable to conform to all licensing standards, and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of the children served, and where the agency agrees to correct the deficiencies, and where there is a demonstrated need for the services.
    2. A provisional license is valid for up to six months and may not be renewed.
    3. Prior to the expiration of the provisional license, a review of Standards will be conducted by the Department to determine eligibility for regular licensing. The Child Placing Agency must meet all licensing standards for the issuance of a regular license.
  - G. Regular license
    1. The license is valid for one year from the date of issuance and must be renewed annually.
    2. Each license shall state in general terms the kind of child welfare services the licensee is authorized to undertake; and the number of children that can be received or placed and supervised in foster homes, their ages and sex, and the geographical area the agency is equipped to serve (A.R.S. § 8-505(D)).
  - H. Supervision by the Department. The Department shall provide training, consultation and technical assistance to Child Placing Agencies.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6904. Licensing Requirements**

- A. Consultation. Individuals, association, institutions or corporations considering the establishment of a Child Placing Agency shall consult the Social Services Bureau of the department about such plans:
  1. Before a specific program is developed;
  2. Before filing a petition for incorporation; and
  3. Before an application is filed.
- B. Application. Individuals, associations, institutions or corporations shall make written application to the Department for a Child Placing Agency license.
- C. Fingerprints
  1. All members of the Child Placing Agency staff having contact with the foster children must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
  2. A license for a Child Placing Agency will not be issued, or will be revoked, if any staff member, having contact with foster children has ever been convicted of a sex offense, has been involved in child abuse, child neglect,

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6905. Denial, Suspension, or Revocation of a License**

- A. The Department shall deny, suspend or revoke any license when:
  1. The Child Placing Agency is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes; or
  2. The care and/or services needed by children are not provided.
- B. A license that has been suspended can be reinstated by the correction of the deficiency.
- C. When a license is revoked, it is necessary to correct the deficiency and make a new application.
- D. When an initial application, or an application for a renewal of a license is denied, or a license is revoked or suspended, a

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written notification of the action shall be forwarded by certified mail to the applicant or licensee.

1. The written notice shall state the reasons for the denial, revocation or suspension with references to applicable statutes, regulations and standards.
2. The Department shall notify the Child Placing Agency of the right to request a hearing within 20 days after receipt of the written notice.
3. The hearing shall be held within ten days of the request, and at that time the applicant or holder shall have the right to present testimony and confront witnesses.
4. When a hearing is requested, the denial, suspension or revocation of the license shall not become final until after the hearing decision is published.
5. The fair hearing process shall be in accordance with A.A.C. Title 6, Chapter 5, Article 24.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6906. License Renewal Requirements**

- A. Every regular license shall expire one year from the date of issuance and may be renewed annually upon application of the Child Placing Agency.
  1. License renewal is not automatic.
  2. License renewal requires:
    - a. A consultation;
    - b. An application;
    - c. A written description of services provided; and
    - d. Licensing study (see R6-5-6904(E)).
  3. For license renewal, each Child Placing Agency must meet all standards for licensing as specified in this Article.
- B. An application for the renewal for a Child Placing Agency shall be made in the same manner as the original application. A licensee shall reapply when:
  1. The present license will expire within 30 days to 60 days; or
  2. There is a plan to move within 30 days from the address on the current license; or
  3. There is substantial material change in the program and/or purpose of the Child Placing Agency.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6907. Standards for Licensing and Operating a Child Placing Agency**

- A. Requirements for the staff of a Child Placing Agency
  1. Executive Director. The Agency Board shall select an Executive Director.
    - a. If the Executive Director is not directly involved in supervising child placing activities, the Director shall at least have a Bachelor's degree in a field related to social work such as administration, psychology, education or other allied profession, as well as demonstrated satisfactory experience in the area of service provided by the agency.
    - b. If the Executive Director directly supervises child placing activities, he shall have a Master's degree in Social Work or at least a Bachelor's degree and a minimum of three years of experience in child welfare services in a certified or licensed family or child welfare agency.
  2. Casework supervisor. The casework supervisor shall possess above average ability in casework practice and have knowledge of and skills applicable to casework supervision. The supervisor shall have a Bachelor's degree and at

least three years of casework experience in a licensed family or child welfare agency.

3. Social worker. A person shall have a Master of Social Work degree from an accredited school of social work.
  4. Caseworker. A caseworker shall have a Bachelor's degree from a university or college and have training and/or experience in the field of behavioral science.
  5. Office staff. The agency shall have sufficient clerical services to keep correspondence, records, bookkeeping, and files current and in good order.
  6. Consultants
    - a. The agency shall have a consulting Licensed Medical Practitioner who makes recommendations as to the medical aspects of the agency program, coordinates medical care for selected children, and advises staff regarding the health problems of specific children.
    - b. Psychiatric, psychological and legal consultation and/or services shall be available to the agency.
- B. Requirements for the organization of a Child Placing Agency
    1. Type of organization. A Child Placing Agency shall be maintained by the state, or a political subdivision thereof, a person, firm, corporation, association, or organization.
    2. Incorporation
      - a. Incorporated Child Placing Agencies shall provide the Department with a copy of the Articles of Incorporation and Bylaws and the Certificate of Incorporation issued by the Arizona Corporation Commission.
      - b. The purpose for which the agency is incorporated shall be stated in its Articles of Incorporation and the agency shall not enter any other fields of service than those provided in its Articles of Incorporation.
    3. Board of Directors
      - a. All Child Placing agencies shall have a Board of Directors. The Department shall be provided a current list of all Board members, their address and office held.
      - b. Persons employed by or who receive compensation from a group care agency (see Title 6, Chapter 5, Article 74) may not be Board members of a Child Placing Agency due to a possible conflict of interest.
      - c. The Board of Directors shall:
        - i. Assume responsibility, jointly with the Executive Director, for formulating the plans and policies of the Child Placing Agency.
        - ii. Keep sufficiently informed through Board meetings and through the reports of its Executive Director and committees to ensure that the agency fulfills all of its functions in the best interest of the children.
        - iii. Meet at least quarterly. Its executive committee shall meet as needed.
        - iv. Keep minutes of each meeting which shall be made a permanent part of the records of the Child Placing Agency.
        - v. Refrain from direct administration or operation of the Child Placing Agency, either through individual members or committees, except in emergencies.
        - vi. Select and employ an Executive Director to whom the responsibility for administration of the agency shall be delegated and, when necessary, terminate such employment.
        - vii. Require and approve the Child Placing Agency's annual program and financial reports.

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- d. The Board of Directors should be composed of adult residents who have a genuine interest in child welfare, concern for social conditions in the community, and reflect equitably the ethnic and economic standing of the population served. The Board members should have sufficient time to discharge their obligations and have a variety of interests, talents and points of view so that no single group or profession will have a controlling voice.
  - e. The names, addresses and offices held of all members of the Board of Directors shall be currently filed with the Department. All changes in composition of the Board of Directors or Officers of the Child Placing Agency must be reported to the Department in writing within 30 days of a change.
  - f. Provision should be made for replacement of members who become inactive for six months. Terms for Board members shall be overlapping and election of one-third of the Board membership annually is recommended to ensure continuity of policy, as well as the introduction of new and changing points of view. Administrators and staff of the Child Placing Agencies shall not be members of the Board of Directors. Agencies which do not have overlapping terms or which currently have administrators or staff members on their Board of Directors will have one year from the date of issuance of these standards to bring their Board of Directors into compliance.
4. Financing
- a. Requirement for sufficient funding. The agency must furnish evidence that it has sufficient funds to pay all start-up and operating costs through the year of operation for which a license may be issued.
  - b. Budget and financial records
    - i. Child Placing Agency shall operate on a budget which has been approved by its governing board before the beginning of the fiscal year.
    - ii. A Child Placing Agency must maintain financial records of all receipts, disbursements, assets, and liabilities for at least three years. These records should be available for inspection by the Department upon request.
  - c. Solicitation of funds from the public. Each Child Placing Agency shall comply with all local and state laws relating to the solicitation of funds.
5. Operations manual. Each agency shall compile an operations manual. It shall be available to all agency staff members, and all staff members shall be familiar with the contents. It shall contain:
- a. The overall philosophy, which guides the agency's services.
  - b. A statement of the primary purpose, services, and goals of the agency.
  - c. A chart of organizational structure.
  - d. The agency's intake policies and procedures.
  - e. The manual of the agency's governing board.
  - f. The operational procedures, which guide the delivery of the agency's services.
  - g. Copies of the agency's forms.
6. Records and reports
- a. Files. Case records and financial records shall be kept in a locked, fire-resistant file. Access to records shall be limited to the staff who have need for the data, and to authorized representatives of the Department.
  - b. Case records
    - i. The agency shall maintain up-to-date, confidential and well-organized case records. Each child's record should indicate, from the point of admission to discharge, the service plan and the progress of the child.
    - ii. Records shall include the current information needed to provide services, make service plans, and evaluate each child.
    - iii. The case record should be divided into sections for easy reference, with the material filed under the following headings, as appropriate:
      - (1) Intake -- intake study, including referral material from other agencies, court, or referral sources;
      - (2) Legal -- specific verified information relative to the status of the child's legal guardianship and custody. Statements, agreements, and consents signed by parent(s) or guardian(s) pertaining to the child's placement, financial responsibility, and other data required for protection of the child;
      - (3) Medical -- medical history, including immunizations, physical defects, significant developmental history, illnesses, and hospital care and/or operations. Medical releases and/or authorizations for treatment or medical care, including the names of medical personnel involved. Records of all prescription medications consumed;
      - (4) Dental -- date of examinations, etc.;
      - (5) Psychological -- reports of psychological and/or psychiatric evaluations and examinations;
      - (6) Progress -- periodic (not less than every three months) evaluation of the child's progress, adjustment, development and future plans and goals.
      - (7) School -- school records indicating attendance and scholastic achievement;
      - (8) Correspondence -- letters received or sent concerning the child;
      - (9) Each record shall have a face sheet listing the following information which shall be kept up-to-date:
        - (a) Full name of child, including aliases;
        - (b) Date and place of birth (verified);
        - (c) Sex;
        - (d) Religion and race;
        - (e) Names, addresses of parents and siblings;
        - (f) Names, addresses and relationships of other responsible persons;
        - (g) Date referred to the agency;
        - (h) Date service was terminated;
        - (i) Other pertinent identifying information.
  - c. Reports
    - i. Each agency shall maintain and report accurate statistics on children receiving services, and staff employed, on forms provided for that purpose by the Department. These reports shall include:
      - (1) Form FC-005, "Foster Child Placement, Replacement and Discharge Central Registry Form," which must be submitted

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- within five working days of the date action is taken.
- (2) Form LC-008, "Child Welfare Agency Employee Central Registry," which must be submitted within five days of employment or discharge.
  - ii. The Child Placing Agency shall report to the Department any planned change of address, change in program, or other change which significantly affects the services provided. The Department shall be notified 30 days prior to any planned changes.
- C. Requirements for the personnel of a Child Placing Agency**
1. Personnel practices. An agency shall employ an individual only after careful evaluation of the applicant which will include references as to character, skills, knowledge, and experience.
  2. Personnel policies. The agency shall maintain a manual of all personnel policies and procedures including job descriptions and all personnel forms. The written statement of personnel policies outlining personnel practices as they affect both employer and employee should include:
    - a. The conditions of employment and the conditions under which employment may be terminated.
    - b. Salary scales.
    - c. Provision for sick leave, time off, and paid vacation.
    - d. Information regarding employment benefits, such as retirement and insurance plans.
    - e. Provision for periodic assessment of work performance.
    - f. Provision for staff development through in-service training.
  3. Personnel records
    - a. A personnel record shall be maintained for each employee. This shall include identifying and qualifying information; such as, references, previous work history and education, date of employment and evaluation.
    - b. When employees resign, retire, or are discharged, the date and reason for termination shall be recorded.
- D. Placement services**
1. Foster care
    - a. Types of homes
      - i. Boarding Home. A Boarding Home provides temporary or permanent care and compensation to the foster parents for room and board. These Boarding Homes may be either Regular or Special Foster Homes.
      - ii. Free home. A free home provides temporary or permanent care without compensation other than special needs.
      - iii. Work and Wage Home
        - (1) Work and Wage Homes are those in which the child's duties within the home constitute reimbursement for room and board and for which the child may be paid an additional wage. These homes shall be used only as a resource for mature and well adjusted children from 16 to 18 years with good work skills. The Child Placing Agency shall prepare a written statement to be signed by the agency, foster parents and child which will clearly define:
          - (a) The amount of work required; and
          - (b) The remuneration the child is to receive and by whom; and
          - (c) The work schedule which shall permit the child time for school attendance, study, recreation, and other normal activities for a child in this age group.
        - (2) The Department shall not place adjudicated dependent children in Work and Wage Homes.
    - b. Foster care placement procedures
      - i. The agency shall follow the preplacement procedures set forth in A.R.S. § 8-511.
      - ii. Following the preplacement procedures outlined in A.R.S. § 8-511, if it is determined that the child should be placed in foster care, the agency shall provide appropriate counseling services to the child and his parents to prepare them for the placement.
        - (1) If the family does not explain the reason for placement and prepare the child for this experience, the representative of the Child Placing Agency should do so.
        - (2) The representative of the Child Placing Agency should explain the foster home program to the parents.
      - iii. When a child is placed in foster care, the Child Placing Agency shall comply with the requirements and procedures set forth in A.R.S. § 8-514(B) and (C).
  2. Adoption. If authorized in its license to place children for adoption, the agency shall comply with all laws (including but not limited to A.R.S. Title 8, Chapter 1, Article 1) regarding the investigation of potential adoptive parent and the adoption of children. The agency shall comply with the requirements of the following rules of the Department:
    - a. Title 6, Chapter 5, Article 65, Adoption Placement;
    - b. Title 6, Chapter 5, Article 66, Adoption Study;
    - c. Title 6, Chapter 5, Article 67, Adoption Subsidy; and
    - d. Title 6, Chapter 6, Article 68, Relinquishment and Severance Services.
  3. Parents
    - a. When there are social and/or emotional problems regarding the pregnancy, social services shall be given in accordance with the needs of mother during pregnancy and to help her with plans for her rehabilitation after delivery.
    - b. Unless inappropriate, the father shall be involved in planning for the mother and child.
    - c. Services to unmarried parents may also include establishing paternity and shall include making suitable plans for the child.
- E. Supervision**
1. The licensed Child Placing Agency shall supervise:
    - a. All children placed by the agency in foster homes; and
    - b. All foster homes where children are placed by the agency.
  2. The licensed Child Placing Agency's representative shall:
    - a. Visit Receiving Foster Homes at least once per month;
    - b. Visit Regular and Special Foster Homes at least once every three months; and
    - c. Prepare written reports of the visits.

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3. A Child Placing Agency may allow a child to participate in activities and functions generally accepted as usual or normal for his/her age group. Permission for a child to participate in activities shall be given in accordance with A.R.S. § 8-513.
  4. Following the initial placement, the child placed in a setting other than that of his parent's home shall have medical examinations at periodic intervals, and not less than once every year.
- F. Foster home studies**
1. The study. Child Placing Agencies that wish to submit foster homes for licensing shall conduct an investigation of the foster home, meeting the standards established by the Department in Title 6, Chapter 5, Article 58, Family Foster Home Licensing Standards.
  2. Fingerprints. Foster parent applicants and members of the household, 18 years of age or older, must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
  3. Demonstration of health
    - a. The potential foster care application, prior to licensing, shall furnish a report of a physical examination, done within the last six months, demonstrating that the person has good health and is free from any communicable disease.
    - b. Prior to licensing, children of the foster care applicant shall have current immunizations as prescribed by the Arizona Department of Health Services.
  4. Sanitation inspection. The Child Placing Agency shall request the local or state health department to conduct a sanitation inspection of the prospective foster home prior to licensing.
  5. Licensing. If the foster home meets all requirements set by the Department, the Child Placing Agency shall submit an application stating the foster home's qualifications to the Department. The Child Placing Agency may also recommend the types of licensing and certification to be granted to the foster home. The Department shall review the foster home study, and issue a license for the foster home if all licensing standards have been met.
  6. License renewal. Foster home license renewal is required annually by the Department.
  7. Homes exempt from licensing by the Department. When a child is placed in a home by a means other than by a court order, and when the home receives no compensation from the state or any political subdivision of the state, licensing by the Department is not required.
- G. Requirements of physical plant and equipment**
1. Offices
    - a. There should be sufficient office space for interviewing children and families and for supervisory conferences.
    - b. The Child Placing Agency shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located.
  2. Fire protection. All Child Placing Agencies shall have a written fire evacuation plan posted and should conduct fire drills at least every six months.
  3. Telephone. There shall be telephone service in the Child Placing Agency.
  4. Vehicle(s). The vehicle(s) for transporting children shall be in a safe operating condition and all drivers shall have a current driver's license. Persons who frequently transport children as a part of their employment shall have a chauffeur's license.
  5. Insurance
    - a. The Child Placing Agency shall provide for insurance coverage for adequate protection against accidents.
    - b. Insurance coverage must include liability insurance to cover acts of children or staff, and protection against damages to, or loss of, buildings and other valuable properties.
    - c. There shall be liability insurance on all vehicles transporting children.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6908. Confidentiality**

The rules and regulations of the Department for securing and using confidential information concerning the client shall be followed. Refer to Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information."

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6909. Civil Rights**

The rules of the Department regarding civil rights shall be followed. Refer to Title 6, Chapter 5, Article 26, Civil Rights.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**R6-5-6910. Fair Labor Standards Act**

The hiring and compensation policies of the Child Placing Agency shall comply with the Fair Labor Standards Act.

**Historical Note**

Adopted effective August 31, 1978 (Supp. 78-4).

**ARTICLE 70. EXPIRED****R6-5-7001. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7002. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J)

at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7003. Expired****Historical Note**

Adopted as an emergency effective January 21, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed and amended effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7004. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed and amended effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7005. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7006. Expired****Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J)

at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7007. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7008. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7009. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7010. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Amended and adopted as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7011. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7012. Expired****Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired







under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7037. Expired**

**Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.P.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7038. Expired**

**Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7039. Expired**

**Historical Note**

Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Amended effective June 4, 1998 (Supp. 98-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-7040. Expired**

**Historical Note**

Adopted as an emergency effective October 17, 1996, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 71. REPEALED**

**R6-5-7101. Repealed**

**Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-7102. Repealed**

**Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp.

86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-7103. Repealed**

**Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**R6-5-7104. Repealed**

**Historical Note**

Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. Permanent rule adopted effective July 11, 1986 (Supp. 86-4). Repealed effective April 9, 1998 (Supp. 98-2).

**ARTICLE 72. REPEALED**

*Former Article 72 consisting of Sections R6-5-7201 through R6-5-7214 repealed effective July 12, 1984.*

**ARTICLE 73. REPEALED & RENUMBERED**

*Editor's Note: Article 73 was repealed except for Sections R6-5-7307 and R6-5-7308 which were both renumbered, effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).*

**R6-5-7301. Repealed**

**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7302. Repealed**

**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7303. Repealed**

**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7304. Repealed**

**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7305. Repealed**

**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7306. Repealed**

**Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7307. Renumbered****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7307 renumbered to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7308. Renumbered****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7308 renumbered to R6-5-7471 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7309. Repealed****Historical Note**

Adopted effective January 21, 1985 (Supp. 85-1).  
Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR CHILD WELFARE AGENCIES OPERATING RESIDENTIAL GROUP CARE FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS**

**R6-5-7401. Definitions**

In addition to the definitions contained in A.R.S. § 8-501, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-531(1).
2. "Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to § 8-821 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse includes:
  - (a) Inflicting or allowing sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553, incest pursuant to § 13-3608 or child prostitution pursuant to § 13-3212.
  - (b) Physical injury to a child that results from abuse as described in § 13-3623, subsection C. A.R.S. § 8-201(2).
3. "Accredited" means the approval and recognition of an institution of learning as maintaining those standards requisite for its graduates to gain admission to other institutions of higher learning or to achieve credentials for professional practice. An example of an accrediting body is the North Central Association of Colleges and Universities.
4. "Administrative completeness review time frame" means the number of days from [the Licensing Authority's] receipt of an application for a license until [the Licensing Authority] determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application. A.R.S. § 41-1072(1).
5. "Adverse action" means suspension or revocation of a license, denial of a renewal license, or making a material change in licensing status.
6. "After-care" means services provided to a child after the child is discharged from a licensee's care and may also include services for the child's family.
7. "Applicant" means a person who submits a written application to the Licensing Authority to become licensed or to renew a license to operate a child welfare agency or a residential group care facility.
8. "Barracks" means a building that:
  - a. Is designed and constructed or remodeled for the specific purpose of housing large numbers of children of the same gender;
  - b. Has wide, open sleeping areas for children, under one roof;
  - c. Is identified and described as a barracks or dormitory in the agency's promotional and organizational materials; and
  - d. Is made known as a barracks or dormitory to placing agencies and persons considering placement of a child.
9. "Behavior management" means the policies, procedures, and techniques a licensee uses to control conduct as prescribed in R6-5-7456.
10. "Child placing agency" means a person or entity that is licensed or authorized to receive children for care, maintenance, or placement in a foster home, because:
  - a. The Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505; or
  - b. It is an entity with statutory authorization to place children.
11. "Child welfare agency" or "agency"
  - a. Means:
    - i. Any agency or institution maintained by a person, firm, corporation, association, or organization to receive children for care and maintenance or for 24-hour social, emotional, or educational supervised care or who have been adjudicated as a delinquent or dependent child.
    - ii. Any institution that provides care for unmarried mothers and their children.
    - iii. Any agency maintained by the state, or a political subdivision thereof, person, firm, corporation, association, or organization to place children or unmarried mothers in a foster home.
  - b. Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to Title 36, Chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques. A.R.S. § 8-501(A)(1).
12. "Corrective action" means a specific course of conduct an agency will follow to remedy violations of the licensing

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- requirements prescribed in this Article, within a specified period of time.
13. “Corrective action plan” means a written document describing an agency’s corrective action, as prescribed in R6-5-7418.
  14. “CPS” means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
  15. “CPSCR” means the Child Protective Services Central Registry, a computerized database, which CPS maintains according to A.R.S. § 8-804.
  16. “De-escalation” means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupt a child’s behavior crisis and calm the child.
  17. “Department” or “DES” means the Department of Economic Security.
  18. “Developmentally appropriate” means an action that takes into account:
    - a. A child’s age and family background;
    - b. The predictable changes that occur in a child’s physical, emotional, social, cultural, and cognitive development; and
    - c. A child’s individual pattern and timing of growth, personality, and learning style.
  19. “DHS” means the Department of Health Services.
  20. “Direct care staff” means the facility staff who provide primary personal care, guidance, and supervision to children in care.
  21. “Discharge plan” means:
    - a. A written description of:
      - i. A program of action to prepare a child for release from a facility; and
      - ii. After-care;
    - b. That is developed by a licensee in cooperation with a child’s service team.
  22. “Discipline” means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to accepted levels of social behavior.
  23. “Document” means to make and retain a permanent written or electronic record of a fact, event, circumstance, observation, contact, or communication.
  24. “Exploitation” means the act of taking advantage of, or to make use of a child selfishly, unethically, or unjustly, for one’s own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
  25. “Facility” or “residential group care facility” means a living environment operated by a child welfare agency, where children are in the care of adults unrelated to the children, 24 hours per day.
    - a. “Facility” does not include a program licensed as a behavioral health service agency by the Department of Health Services under A.R.S. § 36-405 and 9 A.A.C. 20.
    - b. “Facility” does include an outdoor experience program.
    - c. When used in reference to an outdoor experience program, “facility” means the campsite at which or the mobile equipment in which children are housed.
  26. “File” means a place where information is stored through written, electronic, or computerized means.
  27. “Foot candles” means a unit of luminous intensity that can be measured with a light meter.
  28. “Governing body” means an individual or group of individuals responsible for the policies, activities, and operations of a facility, as prescribed in R6-5-7424.
  29. “Individual education plan” or “IEP” means a written document that describes educational goals for a particular child and the services the child needs to attain those goals.
  30. “Institution” as used in A.R.S. § 8-501(A)(1) means an entity meeting two or more of the following criteria:
    - a. Solicits charitable contributions;
    - b. Is organized as a profit or non-profit corporation with a board of directors and officers;
    - c. Publishes and distributes information or promotional materials about its program or operations;
    - d. Requires residents to formally apply for residency through use of application forms or other similar paperwork;
    - e. Operates a structured program of care pursuant to written policies, procedures, guidelines, or rules; or
    - f. Advertises itself or holds itself out in the community as an institution that provides care or social services.
  31. “Institution for Unwed Mothers and Children” means a child welfare agency, as described in A.R.S. § 8-501(A)(1)(a)(ii), that is licensed to care for unmarried mothers who are under age 18 at the time of admission to the agency and the children of those mothers.
  32. “License” means a document issued by the Licensing Authority to an individual or non-governmental business, which authorizes the individual or business to operate a child welfare agency in compliance with this Article.
  33. “Licensee” means the person or entity holding a license. When used in reference to a duty, task, or obligation, the term “licensee” includes the staff who work at an agency or facility and who are responsible for doing the acts necessary to fulfill the requirements of this Article.
  34. “Licensed medical practitioner” means a person who holds a current license as a physician, surgeon, nurse practitioner, or physician’s assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; A.R.S. §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; A.R.S. §§ 32-2501 et seq., Physician Assistants; and A.R.S. §§ 32-1601 et seq., Nursing and R4-19-501(A)(1), Registered Nurse Practitioner, respectively.
  35. “Licensing Authority” means the Department administrative unit that monitors and makes licensing determinations for agencies and facilities, including issuance, denial, suspension, and revocation of a license or operating certificate, and imposition of corrective action.
  36. “Licensing representative” means a person employed by the Licensing Authority to investigate and monitor applicants and licensees.
  37. “Licensing year” means a one-year time period that begins on the date an agency obtains its initial license to operate, and ends one year later.
  38. “Living unit” means a specific grouping of children who are assigned to and share a distinct and common physical space within a facility.
  39. “Maltreatment” means abuse, neglect, abandonment, or exploitation, of a child.
  40. “Material change in licensing status” means, for the purpose of A.R.S. § 8-506.01,
    - a. Any of the following actions:
      - i. Denial, suspension, or revocation of an operating certificate;
      - ii. At any time following issuance of an initial license, imposition of provisional license sta-

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- tus, in lieu of a regular license as prescribed in R6-5-7419; or
- iii. A change in a term appearing on the face of a license or operating certificate, including: a.) Geographic area served; b.) Age, number, or gender of children served; or c.) Type of services offered;
  - b. But does not include the act of placing an agency on a corrective action plan to bring the agency into compliance with licensing requirements as prescribed in R6-5-7418.
41. “Mechanical restraint” means:
    - a. An article, device, or garment that:
      - i. Restricts a child’s freedom of movement or a portion of a child’s body;
      - ii. Cannot be removed by the child; and
      - iii. Is used for the purpose of limiting the child’s mobility;
    - b. But does not include an orthopedic, surgical, or medical device that allows a child to heal from a medical condition or to participate in a treatment program.
  42. “Medication” means an agent, such as a drug or remedy, used to prevent or treat disease, illness or injury, including both prescribed and over-the-counter agents.
  43. “Mobile dwelling” means a structure, such as a trailer or recreational vehicle as defined in A.R.S. § 41-2142(30). Mobile dwelling does not mean a mobile, manufactured, prefabricated, or modular home as defined in A.R.S. § 41-2142(14), (24), or (26).
  44. “Neglect” has the same meaning as A.R.S. § 8-201(21).
  45. “Non-ambulatory child” means a child who cannot walk due to a physical disability or impairment, rather than as a result of the child’s normal age and developmental level.
  46. “Onsite” means located on the physical property operated by the licensee for the purpose of the licensee’s residential program and includes the contiguous area within:
    - a. A single structure;
    - b. A cluster of structures;
    - c. A complex containing single or multiple family dwelling units with or without separate entrances for each unit;
    - d. A campus containing any combination of the residences listed in subsections (a)-(c), as approved by the Licensing Authority.
  47. “Operating certificate” means a document that the Licensing Authority issues to a particular facility that is run by an agency holding a license, as prescribed in R6-5-7409.
  48. “Outdoor experience program” means a child welfare agency that is located in a cabin or portable structure such as a tent or covered wagon and primarily uses the outdoors to provide recreational and educational experiences in group living, either in a fixed campsite or in a program with an unfixed site, such as a wagon train or wilderness hike.
  49. “Out-of-home placement” means the placing of a child in the custody of an individual or agency other than with the child’s parent or legal guardian and includes placement in temporary custody pursuant to § 8-821, subsection A or B, voluntary placement pursuant to 8-806 or placement due to dependency actions. A.R.S. § 8-501(A)(7).
  50. “Overall time frame” means the number of days after receipt of an application for a license during which [the licensing authority] determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame. A.R.S. § 41-1072(2).
  51. Paid staff means:
    - a. A licensee’s paid employees who work at a facility;
    - b. Any temporary worker or independent contractor the licensee uses as a temporary replacement for an employee who is sick, on leave, or unavailable; and
    - c. Any independent contractor that the licensee retains to provide children in care with direct services at the facility.
  52. “Parent or parents” means the natural or adoptive mother or father of a child. A.R.S. § 8-501(A)(8).
  53. “Person” means an individual, partnership, joint stock company, business trust, voluntary association, corporation, or other form of business enterprise, including non-profit or governmental organizations.
  54. “Personally identifiable information” means any information which, when considered alone, or in combination with other information, identifies, or permits another person to readily identify the person who is the subject of the information, and includes:
    - a. Name, address, and telephone number;
    - b. Date of birth;
    - c. Photograph;
    - d. Fingerprints;
    - e. Physical description;
    - f. School;
    - g. Place of employment; and
    - h. Unique identifying number, including:
      - i. Social Security number;
      - ii. Driver’s license number;
      - iii. License number; and
      - iv. Court case number.
  55. “Physical restraint” means the use of bodily force to restrict a child’s freedom of movement, but does not include holding a child firmly enough to prevent the child from harming himself or herself, or others, but gently enough so that the child is not harmed by being held.
  56. “Placing agency or person” means the child placing agency, parent, or guardian, having legal custody of a child and who makes the decision to send the child to reside at a particular agency.
  57. “Potentially hazardous food” means a food that is:
    - a. Natural or synthetic and capable of rapid and progressive growth of infectious or toxigenic microorganisms or the growth and production of *Clostridium botulinum*;
    - b. Of animal origin and is raw or has been heated;
    - c. Of plant origin and is heated or consists of raw seed sprouts;
    - d. A cut melon; or
    - e. A garlic and oil mixture.
  58. “Program director” means a person who meets the qualifications listed in R6-5-7432(B).
  59. “Relative” means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle, or first cousin. A.R.S. § 8-501(A)(12).
  60. “Residential environment” means a facility building or any portion of a facility building that is used for living, sleeping, counseling, dining, or academic purposes.
  61. “Restrictive behavior management” means a form of behavior control that is subject to limitations as prescribed in R6-5-7456(D)-(F).
  62. “Safeguard” means to use reasonable and developmentally appropriate measures to minimize the risk of harm to a child in care and to ensure that a child in care will not

be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:

- a. Locking up a particular substance or item;
  - b. Putting a substance or item beyond the reach of a child who is not mobile;
  - c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
  - d. Mandating the use of protective safety devices;
  - e. Providing staff supervision; or
  - f. Providing a young adult with safety information and generalized instruction necessary to promote the safe and appropriate use of potentially dangerous objects.
63. "Seclusion" means placing a child alone in a room with closed, locked doors that cannot be opened from the inside as prohibited by R6-5-7456(C)(6).
64. "Service plan," which is sometimes described as a "case plan," means a goal-oriented, time-limited individualized program of action that:
- a. Describes the plans for treating and providing services to a child and the child's family, and
  - b. Is developed by a licensee in cooperation with a child's service team.
65. "Service team" means the group of persons listed in R6-5-7441(D)(1) who participate in development and review of a child's service plan and discharge plan.
66. "Shelter care facility" means an agency facility that receives children for temporary out-of-home care, 24 hours per day, when children request care, or are placed in care by a placing agency, a law enforcement agency, a parent, a guardian, or a court.
67. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
68. "Sleeping area" means a single bedroom, or a cluster of two or more bedrooms, located in an adjacent area of a dwelling.
69. "Social worker" means a person with a bachelor's, master's, or doctoral degree in a field of organized work called social work, which is intended to advance the social conditions of a community through provision of counseling, guidance, and assistance, especially in the form of social services to individuals.
70. "Staff" means a licensee's paid staff and unpaid staff.
71. *"Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which [the licensing authority] determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.* A.R.S. § 41-1072(3).
72. "Swimming pool" means any on-grounds, natural or man-made body of water that is used for the purposes of swimming, recreation, or physical therapy, and includes spas and hot tubs.
73. "Threat" means an expression of intent to hurt, destroy, or take action prohibited by this Article or the licensee's policies, but does not include an expression of intent to impose a planned consequence for misbehavior if the consequence is not prohibited by this Article or the licensee's policies.
74. "Transitional program" means services provided to a child who is being emancipated as an adult, or a person who has reached the age of 18 and is considered an adult

as a matter of law, in order to assist the child or person in becoming independent.

75. "Unpaid staff" means a licensee's volunteers, students, and interns who work, train, or assist at a facility.
76. "Unusual incident" means one or more of the events listed in R6-5-7434(C), (D), (E), or (G).
77. "Work day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.
78. "Young adult" means an individual, age 16 to 21, who has been assessed and determined to be appropriate for preparation for adult self-sufficiency. The assessment or determination shall be made by:
  - a. The placing agency, if the young adult is in the care, custody, and control of the state of Arizona;
  - b. A parent or legal guardian of the young adult, if subsection (a) does not apply;
  - c. The licensee, if subsections (a) and (b) do not apply.

#### Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7401 repealed; new Section R6-5-7401 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

#### R6-5-7402. Request for Initial Application - New Applicant

- A. A person who wants to operate a residential group care facility shall initiate the licensing process by contacting the Licensing Authority to request an application for a child welfare agency license.
- B. Upon request, the Licensing Authority shall send the prospective applicant an application package containing:
  1. A cover letter outlining the licensing process and requesting a responsive letter of intent,
  2. An application form,
  3. A statement of requirements for licensure, and
  4. A form the applicant can use to obtain city or county zoning clearance.

#### Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7402 repealed; new Section R6-5-7402 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

#### R6-5-7403. Letter of Intent - New Applicant

- A. The prospective applicant shall prepare a responsive letter of intent to proceed with licensure, and return it to the Licensing Authority. The letter of intent shall include the following information:
  1. The applicant's name, address, and telephone and telefacsimile numbers;
  2. The name of the applicant's chief executive officer or administrator, with a description of that person's qualifications to operate the agency;
  3. A description of community or statewide need for the service or program the applicant intends to provide;
  4. A plan for financing the proposed agency during the first year of operation;
  5. A statement that the applicant has conferred with the school district where the facility will be located to advise the district of any special needs that children likely to be in care at the facility may have; and

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6. A description of the proposed agency's program and services, which shall address the following areas, if applicable:
  - a. Any organization from which the applicant will seek accreditation;
  - b. The form of on-campus educational programs the applicant will offer;
  - c. The characteristics of the children the applicant plans to serve;
  - d. The applicant's primary source of referrals;
  - e. The frequency and method by which the applicant will provide or offer psychiatric, psychological, or counseling services;
  - f. Whether the applicant will employ behavioral health practitioners, or contract for behavioral health services; and
  - g. A general description of the number and qualifications of the applicant's professional staff.
- B. Within 10 work days of receiving a letter of intent, a licensing representative shall contact the applicant.
  1. If the Licensing Authority determines that an applicant may require licensure as a behavioral health service agency under A.R.S. § 36-405 and 9 A.A.C. 20, the Licensing Authority shall refer the applicant to the Department of Health Services for evaluation. In determining whether to refer an applicant to DHS, the Licensing Authority shall consider the factors set forth on Appendix 1.
  2. For all other applicants, the representative shall schedule an appointment for a licensing consultation. The appointment shall occur within 45 calendar days of the date the Licensing Authority receives the letter of intent, unless the applicant requests a later consultation.
  3. If DHS declines to license an applicant as a behavioral health service agency, and refers an applicant to the Department for licensure as a child welfare agency, the applicant shall contact the Licensing Authority to request a licensing consultation. The Licensing Authority shall schedule the consultation within 45 calendar days of the date of the request, unless the applicant requests a later consultation.
5. The need to confer with the local school district to discuss any special educational needs that the children to be served may present;
6. The timelines for submission of application information; and
7. The need for the Licensing Authority to conduct a site inspection as prescribed in R6-5-7406.
- B. No later than 60 days after the licensing consultation, the applicant shall provide the Licensing Authority with a complete application package, as prescribed in R6-5-7405(A).
- C. If the applicant cannot provide the information within 60 days, the applicant shall contact the Licensing Authority to request an extension of time. The Licensing Authority shall allow an extension for a fixed period of time, which shall not exceed 120 days past the original 60 days.
- D. If the applicant fails to provide the information within the time periods specified in subsections (B) and (C), the Licensing Authority shall close the applicant's file and send the applicant a written notice of closure. An applicant whose file has been closed shall reapply.
- E. For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits the application form and the required documentation listed in R6-5-7405(A).

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7404 repealed; new Section R6-5-7404 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7405. Complete Application; Initial License - New Applicant**

- A. A complete application package for an initial license of a new agency shall contain the information and supporting documentation listed in this subsection.
  1. Identification and background information: agency, facility, administrators.
    - a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
    - b. Name, title, business address, and telephone and telefacsimile numbers of:
      - i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
      - ii. The person who serves as the program director as prescribed in R6-5-7432(B);
      - iii. The person with delegated authority to act when the CEO is absent;
      - iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
      - v. Persons holding at least a 10% ownership interest in the applicant; and
      - vi. The agency and facility medical directors, if applicable;
    - c. The educational qualifications and work history for each person identified in subsection (A)(1)(b), with that person's attached resume, employment application, or curriculum vitae;
    - d. A list of the members of the agency's governing body described in R6-5-7424, including: name, address, position in the agency, term of membership, and any relationship to the applicant;
    - e. A list of licenses or certificates for provision of medical or social services, currently or previously held by the applicant or persons listed in subsection

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Amended subsection (O), paragraph (1) effective January 21, 1985 (Supp. 85-1). Former Section R6-5-7403 repealed; new Section R6-5-7403 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7404. The Licensing Consultation; Time for Completion of Application**

- A. At the licensing consultation, a licensing representative shall review the licensing application form with the applicant. The licensing representative shall explain the requirements for licensure and shall advise the applicant about:
  1. The information and documentation the applicant must provide to complete the application or licensing process, as set forth in R6-5-7405;
  2. The fingerprinting and background checks required by A.R.S. § 46-141 and R6-5-7431;
  3. The need for a DHS health and safety inspection of the agency and each facility, and the process for scheduling the inspection;
  4. The need to obtain a fire inspection and zoning clearance for the each facility;

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- (A)(1)(b), including those held in this state or another state or country;
  - f. A written description of any proceedings for denial, suspension or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (A)(1)(b), including those held in this state or another state or country; and
  - g. A written description of any litigation in which the applicant or a person listed in subsection (A)(1)(b) has been a party, including, without limitation, collection matters and bankruptcy proceedings during the 10 years preceding the date of application.
2. Business organization.
    - a. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority;
    - b. Business organization documents appropriate to the applicant, including:
      - i. Articles of incorporation, by-laws, annual reports for the preceding three years; or
      - ii. Partnership or joint venture agreement;
    - c. For corporations, a certificate of good standing from the Arizona Corporation Commission or comparable entity from a foreign state; and
    - d. A statement as to whether the applicant is for-profit or not-for-profit if not explained in other documents already provided.
  3. Staff.
    - a. A list of the applicant's paid staff, including:
      - i. Name;
      - ii. Position or title;
      - iii. Degrees, certificates, or licenses held;
      - iii. Business address;
      - iv. Date of hire;
      - v. Date of last physical; and
      - vi. Date of submission for fingerprinting and background clearance;
    - b. Evidence that staff have submitted fingerprints and criminal background information, as prescribed in A.R.S. § 46-141 and R6-5-7431 and obtained a physical exam as prescribed in R6-5-7431(F); and
    - c. For any staff whose primary residence is the facility,
      - i. The name and date of birth of any persons residing with the staff member;
      - ii. Evidence that any adult residing with the staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
      - iii. Evidence that the staff member's children who reside at the facility have current immunizations.
  4. Financial Stability.
    - a. A written, proposed operating budget for start up and the first year of operation;
    - b. Verifiable documentation of funds available to pay start-up costs; the funds shall be in the form of cash or written authorization for a line of credit;
    - c. Verifiable documentation of funds available to pay operating expenses for the first three months of operations; the funds shall be in the form of cash or written authorization for a line of credit;
  - d. Verifiable documentation of financial resources to operate in accordance with the proposed operating budget for the remaining nine months of the licensing year; the resources may include:
    - i. Cash;
    - ii. Contracts for placement;
    - iii. Donations;
    - iv. Grants; and
    - v. Authorization for a line of credit;
  - e. If the applicant or one of the persons listed in subsection (A)(1)(b) has operated any child welfare agency in this state or any other state during the past 10 years, the most recent financial statement and financial audit for that agency, unless the most recent statement or audit is more than 10 years old; and
  - f. A certificate of insurance, or letter of commitment from an insurer, showing that the applicant has insurance coverage as prescribed in R6-5-7426.
5. Program.
    - a. Informational or advertising material about the agency and its facility;
    - b. For each facility, a written description of:
      - i. All services the applicant intends to provide;
      - ii. The number and type of children the applicant will serve, including: age, gender, special needs, or particular behavior problems;
      - iii. The anticipated sources of placement and referral;
      - iv. Number and qualifications of paid staff who will provide services, including the staff-child ratio, per living unit, during a 24-hour day, for a seven-day week; and
    - c. Program description, including:
      - i. Goals and objectives;
      - ii. Educational activities, with attached copy of Arizona Department of Education approval, if applicable;
      - iii. Recreational activities;
      - iv. Food and nutrition, with sample menus;
      - v. Behavior management practices;
      - vi. Religious practices, if any; and
      - vii. Medical services.
  6. Documentation, Forms, and Notices. Samples of all documents, forms, and notices which the applicant will use with or provide to children placed with the agency, the parents and guardians of those children, and the persons and entities who place children, including:
    - a. Agency application for services;
    - b. Agency placement agreement;
    - c. Intake form;
    - d. Child's case file and medical record;
    - e. Forms for reports to courts and placing agencies;
    - f. Statement of client rights;
    - g. Unusual incident reports; and
    - h. Sample medication logs.
  7. Policies and Procedures. The applicant's internal policies, procedures, and operations manual.
  8. Physical site and environment.
    - a. The floor plan for each facility;
    - b. A DHS health and safety inspection report for each facility;
    - c. Documentation showing that the local zoning authority verifies that each agency facility complies with all applicable zoning requirements;



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- d. Fire safety inspection report from the state fire marshal or a local fire department inspector for each facility;
  - e. Any water supply report as prescribed in R6-5-7458(D);
  - f. Gas equipment inspection report as prescribed in R6-5-7465(D)(1); and
  - g. Any other inspection certificates or reports prescribed in this Article, and any building occupancy certificates.
9. Miscellaneous.
- a. A statement authorizing the Department to investigate the applicant;
  - b. The signature, under penalty of perjury, of the agency administrator or person submitting the application, attesting to the truthfulness of the information contained in the application; and
  - c. The date of application.
- B. If an applicant has attached a copy of a policy or procedure which describes the applicant's practice or procedure on a particular issue, the applicant need not separately describe the policy or procedure on the application form, but shall indicate that the description is contained in a particular identified and attached policy.
- C. If the Licensing Authority needs additional information to determine the applicant's fitness to hold a license or an operating certificate, ability to perform the duties of a licensee as prescribed in this Article, or ability to fulfill the requirements prescribed in the applicant's policies, procedures, and program description, the Licensing Authority may require the applicant to provide additional information, including a signed form permitting a specifically named person or entity to release information to the Licensing Authority.
- D. An agency which does not have or is unable to obtain all or part of the information or supporting documentation listed in subsection (A) shall so indicate in a written statement filed with the application. The written statement shall explain why the information or documentation is unavailable.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7405 repealed; new Section R6-5-7405 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7406. Site Inspection**

- A. After receiving a complete application package, the Licensing Authority shall notify the applicant that the application is complete, and shall schedule the applicant for a site inspection, which may require more than one visit to a site.
- B. The site inspection shall begin no later than 45 days after the Licensing Authority receives the applicant's completed application package.
- C. During the site inspection, the licensing representative shall:
  - 1. Inspect the facility to ensure that any deficiencies identified in the DHS inspection report have been remedied;
  - 2. Verify that the facility meets the requirements of this Article;
  - 3. Review the applicant's policies and procedures;
  - 4. Review model client files;
  - 5. Review personnel files;
  - 6. Inspect the applicant's books, records, and proposed forms;
  - 7. Interview one or more of the applicant's governing board members, incorporators or organizers, and a representative sampling of staff who have been hired; and

- 8. Inspect the applicant's computer security system and review the applicant's confidentiality safeguards.
- D. For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 75 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).
- E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7406 repealed; new Section R6-5-7406 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7407. Licensing Study**

- A. The licensing representative shall summarize the results of the site visit, and other information gathered during the licensing process in a written licensing study, which shall be the basis for the licensing decision.
- B. The licensing study shall describe whether the applicant has:
  - 1. Complied with all application and inspection requirements; and
  - 2. Demonstrated that it has:
    - a. The capital to pay all start-up costs and the financial ability to meet one year's operating expenses, as prescribed in R6-5-7405(A)(4);
    - b. The staff, expertise, facilities, and equipment to provide the services it plans to offer; and
    - c. The ability and intent to comply with the standards and requirements of this Article.
- C. The applicant may obtain a copy of the licensing study, upon request.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7407 repealed; new Section R6-5-7407 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7408. Licensing Decision: Issuance; Denial; Time-Frames**

- A. The Licensing Authority shall issue a written licensing decision within 30 days of concluding the applicant's final site visit. This 30 day period is the substantive review time-frame required by A.R.S. § 41-1072(3).
- B. The licensing decision shall explain whether the Licensing Authority will grant or deny a license, and the terms of the license.
  - 1. If the Licensing Authority grants a license, the Licensing Authority shall send the license and any operating certificates with the notification letter.
  - 2. If the Licensing Authority issues a provisional license as prescribed in R6-5-7419 or denies a license, the Licensing Authority shall send the notice by certified mail. The notice shall contain the information listed in R6-5-7421(B) for a notice of adverse action.
- C. The overall time-frame for an initial license is 105 days.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7408 repealed; new Section R6-5-7408

filed with the Secretary of State's Office May 15, 1997;  
adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7409. Licenses and Operating Certificates: Form; Term; Nontransferability**

- A.** If an agency's administrative office is located separately from an agency facility, the Licensing Authority shall issue a license to the agency and an operating certificate to each facility the agency operates. If the agency and facility occupy the same location, the Licensing Authority shall issue only a license, with the information required for an operating certificate.
1. A license shall:
    - a. Identify the agency name, and the geographic area in which the agency is licensed to operate;
    - b. List each facility the agency operates, and the total number of children the agency is authorized to serve; and
    - c. Require the agency to operate each facility in accordance with the operating certificate issued to the particular facility.
  2. An operating certificate shall:
    - a. Identify the agency operating the facility;
    - b. Identify the facility name, if different from the agency name, and the geographical area in which the facility is authorized to operate;
    - c. List the type of service or program to be offered at the facility; and
    - d. Specify the number, gender, and ages of children the facility may receive for care.
- B.** An operating certificate is not valid unless it has been issued in the name of an agency holding a license. Except as otherwise prescribed in subsection (A) for an agency and facility at the same location, a facility cannot operate without a current operating certificate.
- C.** A license and an operating certificate expire one year from the date of issuance, except as otherwise provided in R6-5-7410 for satellite facilities and in R6-5-7419 for provisional licenses.
- D.** An agency shall post its current license in the agency, in a conspicuous location, visible to the public. The agency shall post a facility's current operating certificate in a conspicuous location within the facility.
- E.** A license and an operating certificate cannot be transferred or assigned, and shall expire upon a change in ownership. For the purpose of this Section, a "change in ownership" includes any of the following events:
1. Sale or transfer of the agency or facility;
  2. Bulk sale or transfer of the agency's or facility's assets or liabilities;
  3. Placement of the agency or facility in the control of a court appointed receiver or trustee;
  4. Bankruptcy of the agency or facility;
  5. Change in the composition of the partners or joint venturers of an agency or facility organized as a partnership;
  6. Sale or transfer of a controlling interest in the stock of a corporate agency or facility; or
  7. Loss of an agency's or facility's nonprofit status.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Amended effective May 25, 1979 (Supp. 79-3). Amended subsection (H) effective January 2, 1981 (Supp. 81-1). Former Section R6-5-7409 repealed; new Section R6-5-7409 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7410. Licensed Agency: Application for an Operating Certificate for an Additional Satellite Facility**

- A.** A currently licensed agency that wishes to obtain an operating certificate for an additional satellite facility shall send the Licensing Authority a letter of intent. The letter of intent shall include the following information:
1. The applicant's name, address, and telephone and telefacsimile numbers;
  2. The name of the applicant's chief executive officer or administrator;
  3. The name, address, and telephone and telefacsimile numbers of the additional facility;
  4. A request that the Licensing Authority schedule the additional facility for a DHS health and safety inspection;
  5. The name of the person who will be in charge of the additional facility, with a description of that person's qualifications;
  6. A description of program and services to be offered at the proposed facility, including any policy or procedures unique to the facility;
  7. A statement as prescribed in R6-5-7403(A)(5) for the applicable school district; and
  8. All of the information listed in R6-5-7405(A) that differs from the information already on file for the agency, including:
    - a. Floor plan,
    - b. Fire inspection,
    - c. Zoning clearance letter,
    - d. Certificate of insurance,
    - e. Evidence of financial stability,
    - f. List of paid staff with the information required by R6-5-7405(A)(3), and
    - g. Facility staffing schedule.
- B.** Upon receipt of all information listed in subsection (A), and a report of the DHS health and safety inspection, the Licensing Authority shall schedule the facility for a site inspection, as provided in R6-5-7406.
- C.** The Licensing Authority shall prepare a licensing study and issue a licensing decision on the application for the additional operating certificate as prescribed in R6-5-7407 through R6-5-7408. In determining whether to grant an additional operating certificate to an agency operating under a provisional license, the Licensing Authority shall also consider:
1. The nature and extent of the problems giving rise to the deficiency that caused the agency to be placed on provisional license status; and
  2. The agency's progress on its corrective action to resolve the problems.
- D.** An operating certificate for an additional satellite facility expires at the end of an agency's regular licensing year.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7410 repealed; new Section R6-5-7410 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

**R6-5-7411. Application for Renewal of License and Operating Certificates**

- A.** No earlier than 90 and no later than 60 days prior to the expiration date of a license, an agency may apply to the Licensing Authority for renewal of its license and any operating certificates. The Licensing Authority does not have a duty to notify the agency of license expiration. The agency shall contact the Licensing Authority to request a renewal application and to schedule a DHS health and safety inspection. The agency shall schedule its own fire inspection. Failure to timely apply or obtain inspections may result in suspension of the agency's license until the renewal process is completed.

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- B. An agency shall apply for renewal on a Department application form containing the information required in this Section.
- C. An agency shall submit copies of the completed renewal application and supporting documents to the Licensing Authority. If the agency has not amended, changed or updated the information or documentation since the agency last applied for or renewed its license, the agency shall indicate “no change” on the documents submitted with the renewal application.
- D. With a renewal application, the agency shall also submit the following documentation:
  - 1. A current financial statement prepared by an independent certified public accountant who is not employed by the agency;
  - 2. A certificate of current insurance coverage as prescribed in R6-5-7426;
  - 3. A copy of the agency’s current budget and the agency’s audit report for its preceding fiscal year;
  - 4. Identification of and the following background information on the agency, facility, and administrators:
    - a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
    - b. Name, title, business address, and telephone and telefacsimile number of:
      - i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
      - ii. The person who serves as the program director as prescribed in R6-5-7432(B);
      - iii. The person with delegated authority to act when the CEO is absent;
      - iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
      - v. Persons holding at least 10% ownership interest in the applicant; and
      - vi. The agency and facility medical directors, if applicable;
    - c. The educational qualifications and work history for each person listed in subsection (D)(4)(b), with that person’s attached resume, employment application, or curriculum vitae;
    - d. A list of the members of the agency’s governing body described in R6-5-7424, including name, address, position in the agency, term of membership, and any relationship to the applicant;
    - e. A list of licenses or certificates for provision of medical or social services currently or previously held by the applicant or persons listed in subsection (D)(4)(b), including those held in this state or another state or country; the list shall include the dates the person held the license or certificate;
    - f. A written description of any proceedings for denial, suspension, or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (D)(4)(b), including those held in this state or another state or country; and
    - g. A written description of any litigation in which the applicant or a person listed in subsection (D)(4)(b) has been a party during the 10 years preceding the date of application, including, collection matters and bankruptcy proceedings.
  - 5. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority.
  - 6. The following information on staff:
    - a. A list of applicant’s paid staff, including:
      - i. Name;
      - ii. Position or titles;
      - iii. Degrees, certificates, or licenses held;
      - iv. Business address;
      - v. Date of hire;
      - vi. Date of last physical; and
      - vii. Date of submission for fingerprinting and background clearance;
    - b. For any staff whose primary residence is the facility:
      - i. The name and date of birth of any persons residing with a staff member;
      - ii. Evidence that any adult residing with a staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
      - iii. Evidence that the staff member’s children who reside at the facility have current immunizations.
  - 7. Copies of any written complaints the agency has received about its performance at its facilities during the expiring license year and the agency’s response to the complaints; and
  - 8. A written description of any changes in program services or locations, or the children served by the agency.
- E. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits a renewal application form and the required documentation listed in this Section.

**Historical Note**

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7411 repealed; new Section R6-5-7411 filed with the Secretary of State’s Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7412. Renewal of License and Operating Certificates: Site Inspection; Time-frames; Standard for Issuance**

- A. Upon receipt of a complete renewal application, the Licensing Authority shall schedule the renewal applicant for a DHS health and safety inspection.
- B. Upon receipt of the DHS inspection report and a complete renewal application package, the Licensing Authority shall schedule the applicant for a site inspection of the agency and each agency facility.
- C. At the renewal site inspection, the licensing representative shall investigate the agency and facilities as prescribed in R6-5-7406, and may also:
  - 1. Interview staff,
  - 2. Interview clients and references,
  - 3. Observe staffings,
  - 4. Review a random sample of client and staff files,
  - 5. Conduct field visits to agency branch offices and facilities.
- D. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 45 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).
- E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose

file has been closed, who later wishes to become licensed, may reapply.

- F. The Licensing Authority shall issue a licensing decision within 25 calendar days of concluding the applicant's final site visit. This 25-day period is the substantive review time-frame under A.R.S. § 41-1072(3). The overall time-frame for a issuance of a renewal license is 70 days.
- G. The Licensing Authority may renew an agency's license and any operating certificate for its facility when the agency and facility:
  1. Demonstrate compliance with the standards set forth in applicable statutes and this Article;
  2. Have complied with applicable statutes and the requirements of this Article during the expiring period of license; and
  3. Have corrected any problems that resulted in imposition of a provisional license.
- H. The Licensing Authority shall issue a renewal licensing decision as prescribed in R6-5-7408(B).

#### Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7412 repealed; new Section R6-5-7412 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

#### R6-5-7413. Notification to Licensing Authority of Changes Affecting License; Staff Changes

- A. A licensee shall send the Licensing Authority written notification of any planned change in the licensee's name, ownership, agency location, facility location, governing board member, chief executive officer, or program director, at least one month before the change. If the change occurs without sufficient time for prior written notice, the licensee shall orally notify the Licensing Authority as soon as the change is known, and shall send the Licensing Authority written confirmation within 48 hours of giving oral notice.
- B. If a licensee wishes to make a substantial change as described in subsection (C), the licensee shall:
  1. Provide the Licensing Authority with prior written notice of the change at least one month before the effective date of the change; and
  2. Apply for an amended license as prescribed in R6-5-7414.
- C. As used in subsection (B), "substantial change" means any of the following:
  1. An event that will cause the licensee to be out of compliance with:
    - a. The terms stated on the face of the license or an operating certificate; or
    - b. A standard prescribed in this Article;
  2. A change in a building or a physical site at the agency or facility if that change will alter the level or nature of care provided to children; or
  3. Substantive revision of the policies and procedures required by this Article.
- D. Within five work days of a paid staff member's hiring or separation, the licensee shall complete and send the Licensing Authority a Department form LC-008, "Child Welfare Agency Employee Central Registry," with the following information on the paid staff member:
  1. Name,
  2. Date of birth,
  3. Social security number,
  4. Date fingerprinted and fingerprinting results,
  5. Position held,
  6. Date of and reason for separation from employment, and

- 7. Opportunity for rehire.

#### Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7413 repealed; new Section R6-5-7413 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

#### R6-5-7414. Amended License or Operating Certificate

- A. The Licensing Authority may issue an amended license or operating certificate to reflect a change in an agency or facility name or the terms of a license or an operating certificate if the change does not cause the agency or facility to fall out of compliance with applicable statutes and this Article.
- B. The Licensing Authority shall not issue a license for an agency or an operating certificate for a facility that has moved to a new location until the agency or facility has:
  1. Provided the information listed in R6-5-7405(A)(8),
  2. Passed a DHS health and safety inspection,
  3. Passed a fire inspection,
  4. Passed a Licensing Authority site inspection, and
  5. Submitted any new staff and household members for fingerprinting and criminal background checks as prescribed in A.R.S. § 46-141 and R6-5-7431.
- C. An amended license or operating certificate expires at the end of the agency or facility's regular licensing year.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7415. Alternative Method of Compliance

- A. The Licensing Authority, with the approval of the Attorney General's Office, may permit a licensee to substitute an alternative method of compliance for a licensing requirement or objective prescribed in this Article and not otherwise required by law, if the following conditions are met:
  1. The licensee seeking to achieve compliance through an alternative methodology proposes, to the satisfaction of the Licensing Authority, that the licensee can satisfy the objective of the requirement through the alternative methodology; and
  2. Allowing the licensee to achieve compliance through an alternative method will not jeopardize the health, safety, or well-being of children who are or may be placed in the licensee's care.
- B. Approval of an alternative methodology expires as prescribed in the written letter authorizing the alternative, or at the end of the licensing year, and must be annually renewed.
- C. The Licensing Authority is not obligated to permit an alternative method of compliance or to renew approval of the alternative methodology.
- D. The Licensing Authority shall document the alternative and the findings required by subsection (A) in the licensing file.
- E. The Licensing Authority may revoke the licensee's permission to comply through an alternative method if the Licensing Authority finds that a condition listed in subsection (A)(1) or (2) is not met.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7416. Monitoring

- A. The Licensing Authority shall monitor the ongoing operations of agencies and facilities.
- B. Monitoring activities may include the following:
  1. Announced and unannounced inspections of an agency or a facility, including both physical premises and internal

operations, books, records, policies, procedures, logs, manuals, files, inspection reports, certificates, and any other document prescribed by this Article;

2. Interviews with clients, staff, or other persons with information about the agency; and
  3. Observation of program activities.
- C. A licensee shall cooperate with the Licensing Authority's monitoring functions. Cooperation includes:
1. Making the agency, facility, and program activities available to licensing representatives for inspection and observation;
  2. Providing the Licensing Authority with information or documentation requested;
  3. Making staff available for interview; and
  4. Allowing children in care to be interviewed.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7417. Complaints; Investigations

- A. If the Licensing Authority receives an oral complaint about a licensee, agency, or facility, the Licensing Authority shall ask the complaining party to submit the complaint in writing, but shall investigate complaints as prescribed in this Section even if the complaining party does not put the complaint in writing.
- B. The Licensing Authority shall refer all complaints involving allegations of child maltreatment to CPS as required by A.R.S. § 13-3620 for investigation as prescribed in A.R.S. § 8-546.01(C).
- C. The Licensing Authority shall investigate complaints about a licensee through one or more of the following methods:
  1. Telephone contact with the licensee,
  2. Interviews with the complaining party,
  3. Interviews with the licensee's staff,
  4. Interviews with the licensee's clients,
  5. Interviews of witnesses to the matters at issue,
  6. Inspections of records and documents related to the issues raised in the complaint,
  7. Announced and unannounced inspections of the agency or a facility,
  8. Evaluation of a law enforcement or CPS report for evidence of a licensing violation, and
  9. Any other activity necessary to validate or refute the allegations.
- D. A licensee shall cooperate in any Department investigation as prescribed in R6-5-7416(C).
- E. Upon completion of an investigation as described in subsection (C), the Licensing Authority shall:
  1. Find that the complaint is invalid, document the findings in the agency's licensing file, and close the investigation;
  2. Find that the complaint is valid and take disciplinary action against the licensee as prescribed in R6-5-7419 and R6-5-7420, or require corrective action as prescribed in R6-5-7418; or
  3. Find that the complaint cannot be validated or refuted based on the available evidence and document the finding in the licensing file.
- F. The Licensing Authority shall provide the licensee with an oral report of any findings made under subsection (E) and, upon the licensee's request, a copy of the written findings placed in the licensee's file. At the time of giving the oral report, the licensing representative shall advise the licensee of the opportunity to obtain a copy of the written findings.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7418. Corrective Action

- A. If a deficiency is correctable within a specified period of time and does not jeopardize the health or safety of a child, the Licensing Authority may place the agency on a corrective action plan to cure the deficiency in lieu of the disciplinary measures prescribed in R6-5-7419 and R6-5-7420.
- B. In determining whether to require corrective action in lieu of other disciplinary action, the Licensing Authority shall consider the following criteria:
  1. The nature of the deficiency;
  2. Whether the deficiency can be corrected;
  3. Whether the licensee and its affected staff understand the deficiency and show a willingness and ability to participate in corrective action;
  4. The length of time required to implement corrective action;
  5. Whether the same or similar deficiencies have occurred on prior occasions;
  6. Whether the licensee has had prior corrective action plans, and, if so, the licensee's success in achieving the required goals of the plan;
  7. The licensee's history in providing care; and
  8. Other similar or comparable factors demonstrating the licensee's ability and willingness to follow through with a corrective action plan and avoid future deficiencies.
- C. The agency shall prepare a corrective action plan for the review and approval of the Licensing Authority.
  1. The plan shall explain:
    - a. How the agency will remedy the non-compliance;
    - b. The time periods for completing all corrective action; and
    - c. The agency staff responsible for carrying out the corrective action plan.
  2. The plan shall provide for the agency to send the Licensing Authority periodic reports on the agency's progress, and a final report when all corrective action is completed.
  3. An authorized representative of the agency shall sign and date the corrective action plan.
- D. In deciding whether to approve a plan, the Licensing Authority shall ensure that the plan:
  1. Will correct the identified deficiency within a specified period of time;
  2. Identifies persons responsible for executing the steps listed in the plan; and
  3. Permits the Licensing Authority to monitor the Licensee's progress in completing the plan.
- E. The Licensing Authority may conduct announced and unannounced inspections of the agency or facility to monitor implementation of a corrective action plan. The licensee shall cooperate in any monitoring inspection as prescribed in R6-5-7416(C).

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7419. Provisional License

- A. If an agency or a facility is temporarily unable to conform to the standards prescribed in this Article, the Licensing Authority may issue a provisional license to the agency, or convert a regular license to provisional status, as prescribed in A.R.S. § 8-505(C). For the purpose of this Section, "temporarily unable" means a time period of six months or less.

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- B. The Licensing Authority may impose provisional license status on an agency operating multiple facilities even though less than all facilities are out of compliance.
  - C. The Licensing Authority may issue a provisional license only when:
    1. The non-compliance is correctable; and
    2. The non-compliance does not jeopardize the health, safety, or well-being of children in care.
  - D. If the Licensing Authority issues a provisional license, the agency shall cooperate with the Licensing Authority to develop a written corrective action plan that meets the requirements of R6-5-7418(C) and (D) and shall comply with the terms of the plan.
  - E. If an agency receives a provisional license at the time of annual renewal and the license is later converted to a regular license during the agency's licensing year, the regular license expires one year from the date the provisional license was issued.
  - F. If an agency receives a regular license at the time of annual renewal, and the license is converted to a provisional license during the agency's licensing year, the agency's license expires one year from the date the regular license was issued.
- 3. Allows any staff or other adult at the facility, who has committed an offense listed in A.R.S. § 46-141(D), to have contact with children in care.
  - E. The Licensing Authority may deny, suspend, or revoke a license when an applicant or licensee, any staff member, or any other adult who resides at the facility, has been convicted of or found by a court to have committed, or is awaiting trial on any criminal offense, other than those listed in A.R.S. § 46-141. In determining whether a person's criminal history affects an applicant's or licensee's fitness to hold a license, the Licensing Authority shall consider all relevant factors, including the following:
    1. The extent of the person's criminal record, if any;
    2. The length of time which has elapsed since the offense was committed;
    3. The nature of the offense and whether the offense was originally classified as a felony or a misdemeanor;
    4. The circumstances surrounding the offense;
    5. The degree to which the person participated in committing the offense;
    6. The extent of the person's rehabilitation; and
    7. The person's role within the agency or facility.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7420. Denial, Suspension, and Revocation of a License or Operating Certificate**

- A. The Licensing Authority may deny, suspend, or revoke a license or operating certificate when:
  1. An applicant or licensee has violated or is not in compliance with licensing rules and standards, Arizona state or federal statutes, or city or county ordinances or codes;
  2. An applicant or licensee refuses to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
  3. An applicant or licensee misrepresents or fails to disclose information to the Department regarding qualifications, experience, or performance of duties;
  4. A licensee fails to cooperate in developing a corrective action plan after a request by the Licensing Authority, or fails to comply with a corrective action plan; or
  5. An applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children in care.
- B. In determining whether to deny a license, to take disciplinary action against a licensee, or to renew a license, the Licensing Authority may consider the licensee's past history from other licensing periods, both in Arizona and in other jurisdictions, and shall consider a pattern of violations of applicable child welfare statutes or rules, as evidence that an applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.
- C. The Licensing Authority shall deny, suspend, or revoke a license when an individual applicant or licensee has been convicted of or is awaiting trial on the criminal offenses listed in A.R.S. § 46-141.
- D. The Licensing Authority shall deny, suspend, or revoke a license when an agency or facility:
  1. Retains staff who have been convicted of or are awaiting trial on the criminal offenses listed in A.R.S. § 46-141;
  2. Allows an adult other than those described in subsection (D)(1), who has been convicted of or is awaiting trial on the offenses listed in A.R.S. § 46-141, to reside at a facility; or

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7421. Adverse Action; Procedures; Effective Date**

- A. When the Licensing Authority plans to take adverse action against a licensee, the Licensing Authority shall give the licensee written notice of the adverse action by certified mail.
- B. The notice shall specify:
  1. The action taken;
  2. All reasons supporting the action;
  3. The sections of law justifying the action;
  4. The procedures by which an applicant or licensee may contest the action taken, and the time periods for doing so;
  5. An explanation of the applicant or licensee's right to request an informal settlement conference as prescribed in A.R.S. § 41-1092.03(A); and
  6. If the Licensing Authority summarily suspends a license as provided in A.R.S. § 41-1064(C), the required finding of emergency.
- C. The following actions are not appealable adverse actions:
  1. Imposition of a corrective action plan to bring the licensee into compliance with licensing requirements, absent any material change in licensing status;
  2. Denial or revocation of permission for an alternate method of compliance or operation of a barracks facility as prescribed in R6-5-7461(B) and R6-5-7462(B); and
  3. A staff member's failure to clear the criminal history check prescribed in R6-5-7431(B).
- D. Except as otherwise provided in A.R.S. § 41-1064 for emergency suspensions, adverse action is effective:
  1. If a licensee does not appeal the adverse action, 31 days after the postmark date of the notice prescribed in subsection (A); or
  2. If the licensee appeals the adverse action, when there is a final administrative decision, as prescribed in A.R.S. § 41-1092.08(D), affirming the adverse action.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7422. Appeals**

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- A. An applicant may appeal the denial of a license and a licensee may appeal adverse action under A.R.S. § 8-506.01 and A.R.S. Title 41, Chapter 6, Article 10.
- B. The applicant or licensee shall file a notice of appeal with the Licensing Authority. The notice shall contain the information required by A.R.S. § 41-1092.03(B).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7423. Statement of Purpose; Program Description and Evaluation; Compliance With Adopted Policies; Client Rights; Single Category of Care**

- A. A licensee shall have a written statement which describes its philosophy, purpose, and program for children in care, and the nature and extent of any family involvement in the program.
- B. A licensee shall have a written description of all services each facility provides to children in care and their families and the methods of service delivery.
- C. A licensee shall follow all plans, policies, and procedures the licensee adopts in accordance with this Article.
- D. A licensee shall annually evaluate whether a facility is achieving the objectives described in R6-5-7405(A)(5)(c)(i). The licensee shall make a written report of the evaluation and provide a copy to the Licensing Authority at the time of license renewal.
- E. A licensee shall have a statement of client rights.
- F. A licensee shall not combine its child welfare program, as defined pursuant to subsection (A), with other forms of care or programming such as child care, nursing or convalescent care for adults, or adult developmental care unless the licensee:
  - 1. Physically separates children in the child welfare program from persons in other programs, and
  - 2. Prevents interaction between children in the child welfare program and persons in other programs.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7424. Governing Body**

- A. A licensee shall have a governing body to oversee the operations, policies, and practices of the agency and its facilities. The governing body shall be:
  - 1. The board of directors for an agency that is a non-profit corporation, or
  - 2. The board of directors or individual owner of an agency that is a for-profit organization.
- B. The governing body shall:
  - 1. Ensure that the licensee provides the services described in the licensee's statement of purpose;
  - 2. Adopt an annual budget of anticipated income and expenditures necessary to provide the services described in the licensee's statement of purpose;
  - 3. Approve the licensee's annual financial audit report;
  - 4. Establish a policy and procedure for selection and retention of staff sufficient to operate the agency and its facilities in accordance with this Article;
  - 5. Unless the licensee is a sole proprietorship, meet at least four times each year, and maintain records of attendance and minutes of the meetings;
  - 6. Develop criteria and written procedures for selection of the governing body members, and the chief executive officer as required by R6-5-7432(A);
  - 7. Employ a chief executive officer who meets the qualifications prescribed in R6-5-7432(A), to whom the governing

body shall delegate responsibility for the daily administration and operation of the agency;

- 8. Regularly evaluate the chief executive officer's performance; and
  - 9. Review and approve the agency's policies and procedures, and any amendments to them.
- C. A licensee shall maintain a list of the governing body's members; the list shall include each member's the name, address, term of membership, and relationship to the licensee, if any.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7425. Business and Fiscal Management; Annual Audit**

- A. A licensee shall maintain complete and accurate accounts, books, and records as prescribed in this Article, and in accordance with generally accepted accounting practice.
- B. A licensee shall operate on the annual budget approved by its governing board.
- C. A licensee shall regularly record its financial transactions and maintain, for five years, its financial records including receipts, disbursements, assets, and liabilities.
- D. A licensee shall have an annual, fiscal year-end, financial audit by an independent certified public accountant who shall conduct the audit in accordance with generally accepted auditing standards. The audit report shall include the following financial information:
  - 1. Income statement,
  - 2. Balance sheet,
  - 3. Statement of cash flow,
  - 4. A statement showing monies or other benefits the licensee has paid or transferred to any of the following:
    - a. Business entities affiliated with the licensee,
    - b. The licensee's directors or officers,
    - c. The licensee's chief executive officer or program director,
    - d. The family member of a person listed in subsections (D)(2)(e)(ii) or (iii), or
    - e. Another agency.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7426. Insurance Coverage**

A licensee shall have insurance coverage that provides protection against financial loss as prescribed in this Section.

- 1. The licensee shall carry liability insurance covering accidents, injuries, errors and omissions in the minimum amount of \$100,000 per person, and \$300,000 per accident or event.
- 2. The licensee shall ensure that any vehicle the licensee owns or uses to transport children in care has the following insurance coverage:
  - a. Injury per person: \$100,000,
  - b. Injury per accident: \$300,000, and
  - c. Property damage: \$25,000.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7427. Confidentiality**

- A. Except as otherwise allowed by law, a licensee's records concerning children in care and their families are confidential, and the licensee shall not disclose or knowingly permit the disclosure of confidential information.

- B.** A licensee shall have written policies and procedures for keeping records secure, in a manner that preserves confidentiality and prevents loss, tampering, or unauthorized use. The policies and procedures shall:
1. Be consistent with any laws applicable to the specific records at issue; and
  2. Cover the following:
    - a. The form in which children's records are maintained and stored;
    - b. Identification of the staff who:
      - i. Supervise the maintenance of records,
      - ii. Have custody of records, and
      - iii. Have access to records;
    - c. The persons to whom records may be released and under what circumstances records may be released, including release of information to custodial and non-custodial parents and guardians;
    - d. Photography, audio or audio-visual recording, and public identification of children; and
    - e. Participation of children or use of children's records in data research.
- C.** Before using personally identifiable information for publicity, fundraising, or research, a licensee shall obtain:
1. A written consent to release, as prescribed in subsection (E), from the child who is the subject of the information, if developmentally appropriate; and
  2. A written consent to release, as prescribed in subsection (E), from the child's placing agency or person; or
  3. Written authorization from the court, if the child is a ward of the court.
- D.** A licensee may release personally identifiable information about a child or family to persons who require the information to treat or provide services to the child unless the release is prohibited by law.
- E.** A consent to release shall include the following information:
1. The name of the person or agency to whom the information is to be released;
  2. A description of the information to be disclosed;
  3. The reason for disclosure;
  4. The expiration date of the consent, not to exceed six months from date of signature; and
  5. The dated signature of the person authorizing the release.
- F.** Notwithstanding any other provision of this Article, in a medical emergency, the licensee shall promptly release information from a child's record to persons who require the information to treat the child.
- G.** A licensee may withhold information if, in the judgment of the professional person treating the child, or the agency's program director, the release of information would be contrary to the child's best interests, unless the release is:
1. Ordered by a court,
  2. Mandated by federal or state law,
  3. Required by the licensee's agreement with the placing agency or person, or
  4. Required by the Department to assess the licensee's compliance with the law.
- H.** If a licensee withholds information pursuant to subsection (G), the licensee shall:
1. Document, in the child's record, the reason for withholding the information;
  2. Advise the person who requested the information that the person may grieve the withholding pursuant to the licensee's internal grievance process adopted in accordance with R6-5-7429.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7428. Children's Records: Contents, Maintenance, Destruction**

- A.** A licensee shall maintain a current, separate case record for each child in care. The record shall be readily accessible to persons providing services to the child and shall include at least the following information:
1. The name, gender, race, religion, birthdate, and birthplace of the child;
  2. The name, address, telephone number, and marital status of the child's parents;
  3. The date of admission and source of referral;
  4. The name, address, telephone number, and relationship to the child of the person with whom the child was living prior to admission, if other than the child's parent;
  5. All documents related to the child's referral and admission of the child to the facility;
  6. Documentation of the current custody and legal guardianship of the child;
  7. The child's court status, if applicable;
  8. Consent forms signed by the placing agency or person at the time of placement, allowing the licensee to authorize necessary medical care, medications, routine tests, and immunizations;
  9. Service plans and all reviews, revisions, notes, and updates reflecting the child's and family's goals, and progress towards achievement of goals;
  10. A plan for permanent placement of the child;
  11. Education records and reports;
  12. Vocational training and employment records, if applicable;
  13. Treatment and clinical records and reports; and
  14. The discharge summary required by R6-5-7442(B).
- B.** A licensee shall have the medical records required by R6-5-7455. While the child is in care, the licensee may keep the child's medical records in a location separate from the records described in this Section. If the licensee keeps medical records in a separate location, the child's main record shall identify the location of the medical record.
- C.** All record entries shall be made in permanent ink or electronically. The licensee shall require personnel to date and legibly sign entries in a child's records.
- D.** If a licensee maintains a child's records in more than one place, the licensee shall:
1. Identify, in one location that is readily accessible to inspection by the Licensing Authority, the location of all parts of the record; and
  2. Consolidate all records and notes into one case file, at one location, within 15 days following either:
    - a. A request for consolidation from the Licensing Authority; or
    - b. The date of the child's discharge from the facility.
- E.** A licensee shall maintain a child's record for the longest of the following time periods:
1. At least five years after the child's last discharge from the licensee's care;
  2. At least three years after the child's 18th birthday; or
  3. Another time period specified by applicable law or contract.
- F.** A licensee shall dispose of expired records in a manner that maintains confidentiality.



**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7429. Grievances**

- A.** A licensee shall have a written policy and written procedures governing the receipt, consideration, and resolution of grievances brought to the licensee by children in care and their parents, regarding the licensee's program and care of children. The procedures shall:
1. Be written in a clear and simple manner that is developmentally appropriate for children in care;
  2. Prohibit reprisal or retaliation against an individual who brings a grievance for the act of bringing the grievance;
  3. Describe a process for fair and expeditious resolution of a grievance; and
  4. Provide a means to tell the grievant about the action taken in response to the grievance.
- B.** A licensee shall maintain written records of grievance decisions for at least 12 months after the resolution.
- C.** The licensee shall maintain a log of grievances filed against the licensee. The licensee may keep a centralized agency log, or can maintain a separate log for each facility. The log shall include the following information:
1. Name of grievant;
  2. Date grievance filed;
  3. Description of the substance of the grievance;
  4. Summary of the grievance resolution;
  5. A copy of the grievance decision required by subsection (B), or a description of where the Licensing Authority can find the decision.
- D.** Copies of the grievance decisions may serve as the grievance log if:
1. The copies are kept in one central location that is readily accessible to the Licensing Authority,
  2. The grievance decisions contain all the information listed in subsection (C), and
  3. The licensee retains the decisions for at least three years following the date of grievance resolution.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Numbering for subsections (C) and (D) amended to correct typographical errors (Supp. 00-3).

**R6-5-7430. Staff Management and Staff Records**

- A.** A licensee shall have written staff policies and procedures which shall describe:
1. How the licensee recruits, screens, hires, supervises, trains, retains, develops, evaluates, disciplines, and terminates staff;
  2. How the licensee handles staff resignations;
  3. A job title, description and minimum qualifications for each position within the agency and all facilities;
  4. The duties assigned to each position;
  5. How the licensee handles staff grievances;
  6. An organizational chart for the agency and all facilities; and
  7. A method to assure privacy of staff records.
- B.** The licensee shall give all staff a copy of the person's own job description and allow staff access to the licensee's staff policies and procedures.
- C.** A licensee shall maintain a personnel record for all paid staff. The record shall include the following information, if applicable:

1. Application for employment including previous employment history and educational background;
  2. Reference letters and documentation of phone notes on references that are dated and signed;
  3. Documentation of the highest level of education achieved; the documentation may include a copy of a diploma, equivalence certificate, or record of notes of calls to educational institutions;
  4. Medical examination reports on paid staff as required by R6-5-7431(F);
  5. Medical examination reports on any other adult residing at the facility showing that the adult is free from communicable diseases as required by R6-5-7431(H);
  6. Medical and immunization records on children who reside at the facility but are not in care, as required by R6-5-7431(H);
  7. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
  8. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
  9. Record of all orientation and training received during employment;
  10. Documentation showing that the paid staff member has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the paid staff member and a witness;
  11. Documentation showing that the paid staff member has a valid driver's license if the paid staff member transports children;
  12. Reports of all performance evaluations;
  13. Documentation of any personnel actions or investigations that result in a written report;
  14. Dates the paid staff member started and separated from employment; and
  15. Reason for separation from employment.
- D.** A licensee shall maintain a personnel record on unpaid staff. The record shall include the following information, if applicable:
1. Application for work or study, including previous employment history and educational background;
  2. Reference letters and documentation of phone notes on references that are dated and signed;
  3. Medical examination reports, as required by R6-5-7431(F);
  4. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
  5. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
  6. Record of all orientation and training received while affiliated with the licensee;
  7. Documentation showing that the person has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the person and a witness;
  8. Documentation showing that the person has a valid driver's license if the person transports children;
  9. Reports of all performance evaluations;
  10. Documentation of any personnel actions or investigations that result in a written report;
  11. Dates the person began and ended affiliation with the licensee; and
  12. Reason for ending affiliation with the licensee.
- E.** The licensee shall keep personnel records for at least three years after the staff member's separation from the licensee.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7431. General Qualifications for Staff**

- A.** A licensee shall ensure that all staff providing services to children and their families under the licensee's program are currently certified, registered, or licensed as required by state law.
- B.** As prescribed in A.R.S. § 46-141, all staff having direct contact with children, and any persons age 18 or older who live at a facility, excluding children in care, shall be fingerprinted and shall certify on notarized forms provided by the Department whether they:
  - 1. Are awaiting trial on or have ever been convicted of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
    - a. Sexual abuse of a minor;
    - b. Incest;
    - c. First or second degree murder;
    - d. Kidnapping;
    - e. Arson;
    - f. Sexual assault;
    - g. Sexual exploitation of a minor;
    - h. Contributing to the delinquency of a minor;
    - i. Commercial sexual exploitation of a minor;
    - j. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs;
    - k. Burglary;
    - l. Robbery;
    - m. A dangerous crime against children as defined in A.R.S. § 13-604.01;
    - n. Child abuse;
    - o. Sexual conduct with a minor;
    - p. Molestation of a child;
    - q. Manslaughter;
    - r. Aggravated assault; and
  - 2. Have ever committed any of the acts listed in subsections (B)(1)(a), (g), (i), (m), (n), (o), and (p).
- C.** A licensee shall not knowingly employ, retain, or allow to reside at a facility, any staff, or person age 18 or above, who is awaiting trial on or has been convicted of any of the criminal offenses listed in subsection (B), or the same or similar offenses in another state or jurisdiction. A licensee shall not knowingly allow a person who has committed any of the offenses listed in subsection (B)(2) to have contact with children in care.
- D.** For all staff, a licensee shall:
  - 1. Verify at least two years immediate, or most recent, past employment through reference checks;
  - 2. Obtain at least three references from persons not related to the staff member by blood or marriage, who can attest to the staff member's character, knowledge, and skill.
- E.** The licensee shall document verification of the reference information required in subsection (D).
- F.** A licensee shall have staff providing direct care to children obtain a physical examination by a licensed medical practitioner before beginning assigned duties and at least every two years while working.
- G.** All staff shall be free from any communicable disease that poses a danger to children in care and shall have the capacity to perform the essential functions of that person's job.
- H.** Other adults who reside at the facility shall be free from communicable disease that poses a danger to children in care. Children who reside at the facility but are not in care shall have current immunizations and be free from communicable disease that poses a danger to children in care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7432. Qualifications for Specific Positions or Tasks; Exclusions**

- A.** Chief Executive Officer "CEO": A licensee shall have a chief executive officer for the agency. The CEO:
  - 1. Is responsible for general management, administration, and operation of the agency in accordance with this Article;
  - 2. Ensures that:
    - a. Each child in care receives necessary professional services;
    - b. Appropriately qualified staff render services to children in care; and
    - c. The services are coordinated;
  - 3. Shall have management experience and meet any other qualifications prescribed by the Governing Body;
  - 4. Shall reside in Arizona;
  - 5. Shall be accessible to staff, representatives of the Licensing Authority, and other governmental agencies; as used in this subsection, "accessible" means readily available to answer questions and to handle problems or emergencies that arise, either personally or through a chain of command; and
  - 6. Shall designate a qualified person to perform administrative responsibilities whenever the CEO is inaccessible.
- B.** Program Director: A licensee shall have at least one person who is responsible for development, implementation, and supervision of an agency's programs and services. This person shall have at least:
  - 1. A master's degree in social work or a related area of study from an accredited school and at least one year experience in the child welfare or child care services field; or
  - 2. A bachelor's degree in social work or a related area of study from an accredited school and two years of experience in the child welfare or child care services field.
- C.** Facility Supervisor: If a licensee operates more than one facility, the licensee shall designate a person to supervise the operations of each facility.
- D.** Supervisors: Any staff member who supervises, evaluates, or monitors the work of the direct care staff shall have at least six months paid child care experience and at least 3 1/2 years of any combination of the following:
  - 1. Paid child care or related experience; or
  - 2. Post-high school education in social work or a related field.
- E.** Direct Care Staff: A person who supervises, nurtures, or cares for a child in care shall have at least:
  - 1. A high school diploma or equivalency degree and one year experience in working with children; or
  - 2. One year post-high school education in a program leading to a degree in the field of child welfare or human services.
- F.** Program Instructors: A person who supervises, trains, or teaches children in the performance of a physical activity that poses an unusually high risk of harm, such as archery, river rafting, rock climbing, caving, rappelling, and hang gliding, shall:
  - 1. Be currently certified to perform the activity, if applicable;
  - 2. Have at least three years of experience related to the activity; or
  - 3. Have at least three letters of reference attesting to skill and experience in the activity.

- G. CPR and First Aid Certification:** A licensee shall ensure that:
1. Direct care staff are certified in pediatric cardiopulmonary resuscitation (CPR) and in first aid by the American Red Cross, the American Heart Association, or the Arizona Chapter of the National Safety Council within three months of being hired and before caring alone for children in care.
  2. At least one staff member per shift, per facility is currently certified in CPR and first aid.
- H. Multiple Functions:** A licensee may allow one person to perform multiple functions or fill more than one position so long as:
1. The person performing multiple functions is qualified for the jobs held; and
  2. The licensee does not violate the requirements of this Article, including R6-5-7437 governing staff-child ratios.
- I. Exclusions:** The educational requirements set forth in this Section do not apply to persons employed with a licensee on the effective date of this Article. These requirements do apply to:
1. Persons hired as employees after the effective date of this Article; and
  2. Persons who:
    - a. Are employed with a licensee on the effective date of this Article;
    - b. Subsequently separate from that employment; and
    - c. Later seek employment with the same or a different licensee.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

#### R6-5-7433. Orientation and Training for Staff

- A.** A licensee shall have a written plan for orientation and training of all staff. The plan shall include a method for the licensee to evaluate whether the person has actually learned the information that was the subject of orientation or training.
- B.** All staff shall receive initial orientation and training before assignment to solo supervision of children. The initial orientation and training shall include:
1. Acquainting staff with the licensee's philosophy, organization, program, practices, and goals;
  2. Familiarizing staff with the licensee's policies and procedures, including those on confidentiality, client and family rights, grievances, emergencies and evacuations, behavior management, preventing and reporting child maltreatment, recordkeeping, medications, infection control, and treatment philosophy;
  3. Training staff in cardiopulmonary resuscitation (CPR) and first aid according to American Red Cross guidelines as prescribed in R6-5-7432(G);
  4. Training staff to do the initial health screening prescribed in R6-5-7438(E)(9); the licensee shall have a licensed medical practitioner provide this training;
  5. Training staff in de-escalation and any physical restraint practices used at the facility by an instructor qualified under this subsection. An instructor is qualified to train staff in de-escalation and physical restraint practices if:
    - a. The instructor has a written curriculum that conforms to the requirements of this Article and state law.
    - b. The classroom instruction provided conforms to the requirements of this Article and state law.
  6. Familiarizing staff with the specific child care responsibilities outlined in the person's job description;

7. Training staff to recognize expected responses to and side effects of medications commonly prescribed for children in care; and
  8. Training staff in the licensee's emergency admissions process if applicable to the licensee's services.
- C.** The licensee's training plan for ongoing training shall satisfy the requirements of this subsection.
1. A full-time support staff member shall receive at least four hours of annual training.
  2. A full-time direct care staff member shall receive at least 24 hours of annual training.
  3. The training shall cover matters related to the person's job responsibilities, and at least the following subjects, as appropriate to the characteristics of the children in care at the facility:
    - a. Child management techniques;
    - b. Discipline, crisis intervention, and behavior management techniques;
    - c. A review of the licensee's policies;
    - d. Health care issues and procedures;
    - e. Maintenance of current certification in CPR and first aid;
    - f. Attachment and separation issues for children and families;
    - g. Sensitivity towards and skills related to cultural and ethnic differences;
    - h. Self-awareness, values, and professional ethics; and
    - i. Children's need for permanency and how the agency works to fulfill this need.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

#### R6-5-7434. Notification of Unusual Incidents and Other Occurrences

- A.** A licensee shall make a record of any unusual incident on an incident reporting form which shall include the following information:
1. Location of the unusual incident;
  2. Name and address of any child involved in or observing the incident;
  3. Name of the agency if different from the facility;
  4. Name, title, and address of any staff involved in or observing the incident;
  5. Name and address of any other person involved in or observing the incident;
  6. Date of the incident;
  7. Time of the incident;
  8. Description of the incident; and
  9. Licensee's response to the incident.
- B.** The licensee shall maintain a record of all unusual incidents occurring at the facility in a separate log or place, which shall permit the Licensing Authority to easily locate the incident reporting form if the licensee maintains the form in a location separate from the log.
- C.** When a child in care dies, the licensee shall notify the child's placing agency or person, and the Licensing Authority within two hours of knowledge of the death.
- D.** When a child in care suffers a serious illness, serious injury, or a severe psychiatric episode requiring hospitalization, the licensee shall notify the child's placing agency or person within 24 hours of knowledge of the occurrence.
- E.** A licensee shall comply with the statutory obligation to report child maltreatment, as prescribed in A.R.S. § 13-3620.

- F.** A licensee shall comply with any reporting requirements set forth in the licensee's contracts with placing agencies or persons.
- G.** No later than 5:00 p.m. on the next business day, the licensee shall notify the Licensing Authority when any of the following occurs:
1. Fire or a natural disaster affecting the licensee;
  2. Law enforcement involvement in which a formal complaint is filed by or against the licensee, but excluding incidents of children cited solely for absence without leave from the facility;
  3. Any incident of alleged child maltreatment of a child in care;
  4. When a child in care or any other person suffers any injury from use of restrictive behavior management, and which requires treatment by a licensed medical practitioner;
  5. When a child in care suffers any physical injury from an incident involving another child in care and requires treatment by a licensed medical practitioner;
  6. When a child in care suffers an injury or psychiatric episode that is severe enough to require hospitalization or external medical intervention for the child; and
  7. When a child in care requires external emergency services including a suicide watch.
- H.** Within five calendar days, a licensee shall give the Licensing Authority written documentation of an event listed in subsection (G) above. The documentation shall contain at least the information required by subsection (A), and may be a copy of the licensee's unusual incident reporting form.
- I.** If a child in care dies, a licensee shall notify the local law enforcement authority and cooperate in any arrangements for examination, autopsy, and burial.
1. Procedures for making staff who provide services to a child with a history of or potential for running away, aware of that child's history or potential;
  2. Procedures for immediately notifying the designated administrator of the child's facility or that person's designee when a child is discovered to be missing;
  3. Procedures for notifying the local law enforcement agency, the child's placing agency or person, and others as necessary;
  4. Procedures to prevent runaways; and
  5. Procedures for submitting a written report to the child's placing agency or person within five days or the time specified in the placement agreement.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7437. Staff Coverage; Staff-child Ratios

- A.** A licensee shall have a written plan to minimize the risk of harm to children. The written plan shall describe the staffing for each facility, for 24 hours per day, seven days per week. The staffing plan shall explain:
1. How staff coverage is assured:
    - a. When assigned staff are absent due to illness, vacation, or other leaves of absence; and
    - b. During emergencies when only one staff member is on duty; and
  2. The methods the licensee uses to assure adequate communication and support among staff to provide continuity of services to children.
- B.** A licensee shall also have a written staffing schedule for each facility shift; the schedule shall document the staff actually on duty during each shift. The licensee shall retain the schedules in one designated location for at least two years.
- C.** A licensee shall have at least the paid staff to child ratios prescribed in this subsection.
1. Age 12 and above:
    - a. At least one paid staff member for each 10 children when children are under the licensee's direct supervision and awake.
    - b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
  2. Age 6 through 11:
    - a. At least one paid staff member for each eight children when children are under the licensee's direct supervision and awake.
    - b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
  3. Age 3 through 5:
    - a. At least one paid staff member for each six children when children are under the licensee's direct supervision and awake.
    - b. At least one paid staff member in each building where children in care are sleeping.
  4. Under age 3:
    - a. At least one paid staff member for each five children when children are under the licensee's direct supervision and awake.
    - b. At least one paid staff member for each six children when children are sleeping.
  5. Nonambulatory children, under age 6: At least one paid staff member for each four children at all times.
  6. Young adults:
    - a. At least one paid staff member onsite for each 10 young adults when young adults are under the licensee's direct supervision and awake.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7435. Investigations of Child Maltreatment

- A.** A licensee shall have written procedures for handling alleged and suspected incidents of child maltreatment, including at least the following provisions:
1. Reporting suspected incidents of maltreatment to law enforcement or Child Protective Services as required by A.R.S. § 13-3620;
  2. Notifying the Licensing Authority, and notifying the child's placing agency or person if so requested;
  3. Taking precautions to prevent further risk to the child who allegedly suffered the maltreatment and potential risk to other children in care;
  4. Evaluating the retention of any staff who commit or allow child maltreatment; and
  5. If the licensee internally investigates incidents, conducting the internal investigation.
- B.** A licensee shall require all staff to read and sign a statement describing the duty to report child maltreatment as prescribed in A.R.S. § 13-3620.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7436. Runaways and Missing Children

A licensee shall have a written policy and procedures for handling runaways and missing children. The policy shall include at least the following:

- b. During sleep hours, at least one paid staff member onsite for each 20 young adults.
  - D. For the purpose of the paid staff-child ratios in subsection (C):
    - 1. Students and volunteers do not count as staff;
    - 2. A child who lives at the facility is counted as a child, unless the child is not in the care, custody, and control of the state of Arizona, and the child's parent is:
      - a. In care, residing in the same facility; and
      - b. Determined to be the child's primary caregiver by:
        - i. The placing agency;
        - ii. A court; or
        - iii. The licensee, when subsections (i) and (ii) do not apply;
    - 3. When a child resides with a parent in a facility licensed under this Article, the licensee shall provide, at the Department's request, documentation of:
      - a. The custodial relationship between parent and child; and
      - b. If applicable, the determination that the parent is an acceptable primary caregiver for the child.
    - 4. Any paid staff member counted in the ratio shall be someone who is qualified to provide direct child care as prescribed in R6-5-7432(E).
  - E. A licensee shall not fall below the minimum paid staff-child ratios specified in subsection (C), and shall, notwithstanding those ratios, have paid staff:
    - 1. Sufficient to care for children as prescribed in this Article and in the licensee's own program description, statement of purpose, and policies;
    - 2. That take into account the following factors:
      - a. The ages, capabilities, developmental levels, and service plans of the children in care;
      - b. The time of day and the size and nature of the facility; and
      - c. The facility's history and the frequency and severity of unusual incidents, including runaways, sexual acting-out behavior, disciplinary problems, and injuries.
  - F. A licensee shall have sufficient numbers of qualified staff to perform the fiscal, clerical, food service, housekeeping, and maintenance functions prescribed in this Article and in the licensee's own policies.
  - G. A licensee shall make a good faith effort to employ staff who reflect the cultural and ethnic characteristics of the children in care.
- c. The needs, problems, and child-related issues best served at the licensee's facility; and
  - d. The method used to assign a child to a particular living unit;
- 2. Contain an acknowledgment that the licensee abides by the Interstate Compact on the Placement of Children, the Indian Child Welfare Act, and the Interstate Compact on Juveniles; and
  - 3. Provide that the licensee shall not refuse admission to any child on the grounds of race, religion, or ethnic origin.
- B. Age Limit; Continuing Care for Persons in High School:** A licensee shall not admit a person who is age 18 or older, except a licensee may continue to care for an individual under age 22 who was a child in care and turned age 18 while in care, as long as the individual is currently enrolled in and regularly attending a high school program or vocational training program. A licensee shall not allow an individual to remain in care after the individual receives a high school degree or certificate of equivalency, or completes the vocational training program.
- C. Admissions Outside of Criteria:** A licensee shall not accept a child who is not within the licensee's admission criteria unless:
- 1. The placing agency or person specifically authorizes the admission after reviewing the agency's program description;
  - 2. The admission is consistent with the terms of the agency's license and will not result in a violation of this Article; and
  - 3. The child's individual service plan explains:
    - a. The reasons for acceptance, and
    - b. How the facility will meet the child's needs.
- D. Intake Assessment:**
- 1. A licensee shall not accept a child into care unless:
    - a. The child has a current intake assessment covering the child's social, health, educational, legal, family, behavioral, psychological, and developmental history; or
    - b. The licensee completes such an assessment within seven days following the child's admission.
  - 2. In this subsection, "current" means within the six months prior to admission.
- E. Admission and Intake Process and Requirements:** The licensee shall have a written policy and procedures describing the process and requirements for both regular and emergency admissions and intake. The policy shall include the provisions listed in this subsection.
- 1. The licensee shall have a method to allow a child to participate in admission and intake decisions, including selection of a living unit, if developmentally appropriate and consistent with the licensee's program.
  - 2. The licensee shall provide the placing agency or person with a reasonable opportunity to participate in admission and intake decisions.
  - 3. Except for emergency admissions as prescribed in subsection (F), the licensee shall not admit a child unless the licensee has, at the time of or prior to admission:
    - a. A written agreement with the child's placing agency;
    - b. A court order; or
    - c. The written consent of the child's custodial parent or guardian.
  - 4. The licensee shall obtain any available medical information about the child before or at the time of the child's admission. The information may include:
    - a. A report of a medical examination of the child performed within 45 days prior to admission;

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

#### **R6-5-7438. Admission and Intake; Criteria; Process; Restrictions**

- A. Admissions: A licensee shall have a written admissions policy, which shall:
  - 1. Describe the licensee's admission criteria, including:
    - a. Population to be served, including age range, gender, physical development, social behavior, and custody and guardianship status;
    - b. Geographic area of service;

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- b. A report of a dental examination of the child performed within six months prior to admission; and
  - c. The child's and family's medical history.
  5. If the information described in subsection (D)(4) is not available, the licensee shall comply with the requirements of R6-5-7452 to obtain an examination.
  6. At the time of or prior to admission, the licensee shall obtain written consent from the child's placing agency or person for the licensee to authorize routine medical and dental procedures for the child.
  7. If a child is taking medication at the time of admission, the licensee shall:
    - a. If the medication is in its original container, labeled by the dispensing pharmacist with a fill date, prescribing physician, and instructions for administration, document the receipt of the medication as prescribed in subsection (E)(7)(c); or
    - b. If the medication is not in its original container, or if the container is not labeled as described in subsection (E)(7)(a), contact the prescribing physician to verify the medication administration schedule and reason for the medication; and
    - c. Document the contact in the child's medical record required by R6-5-7455 and the medication administration schedule as prescribed in R6-5-7453(B).
  8. A licensee shall not refill a prescription that a child brings at admission without having a licensed medical practitioner determine the child's need for the medication and documenting the need as prescribed in subsection (E)(7)(c).
  9. Within 24 hours of a child's admission, a direct care staff member who has the training prescribed in R6-5-7433(B)(4), or a licensed medical practitioner, shall assess the child's general health, by:
    - a. Looking at the child for signs of obvious physical injury and symptoms of disease or illness;
    - b. Assessing the child for evidence of apparent vision and hearing problems; and
    - c. Documenting any conditions or problems and referring the child for immediate or further assessment or treatment, if indicated.
  - F. **Emergency Admissions:** In an emergency situation requiring immediate placement, a licensee shall:
    1. Gather as much information as possible about the child and the circumstances requiring placement;
    2. Record this information in the child's record, within two days of admission, as an emergency admission notation; and
    3. Keep an emergency admission record, which shall include at least the following information about the child:
      - a. Physical health,
      - b. Family history,
      - c. Educational background,
      - d. Legal status, and
      - e. A statement explaining the need for care.
1. The licensee's statement of purpose and program description prescribed in R6-5-7423(A) and (B);
  2. Daily routines at the facility where the child is or will be placed;
  3. The behavior management policies and procedures prescribed in R6-5-7456;
  4. Services and treatment strategies provided or used at the facility;
  5. The visitation and communications policy prescribed by R6-5-7448;
  6. The education program or method for providing a child with education;
  7. Any religious practices observed by the licensee or religious observances required of children.
- B. The licensee may provide the information in summary form or orally, but shall:
    1. Convey the information in a language or form that the placing agency or person can understand;
    2. Advise the placing agency or person that the licensee will provide a copy of the licensee's policies or procedures, upon request.
    3. Provide the name and telephone number of a staff person that the placing agency or person may contact to obtain information about the program, facility, or child.
  - C. The licensee shall provide the placing agency or person with a copy of the licensee's grievance procedures required by R6-5-7429 and the statement of client rights required by R6-5-7423(C).
  - D. The licensee shall obtain the dated signature of the placing agency or person indicating receipt of the information listed in subsections (A) through (C).
  - E. Before obtaining the signature of a child's parent or guardian on a contract, consent, or release, the licensee shall explain the contents of the documents.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7440. Orientation Process for a Child In Care**

- A. A licensee shall provide a child admitted into care with the orientation described in this Section in a language and manner that the child can understand and to the extent developmentally appropriate to the child.
- B. During the first full day of a child's placement, a licensee shall:
  1. Explain the facility's emergency procedures,
  2. Show the child where emergency exits are located,
  3. Take the child on a tour of the facility, and
  4. Introduce the child to staff and other residents.
- C. During the first week following a child's admission and as part of each child's orientation, a licensee shall:
  1. Familiarize the child with the licensee's program;
  2. Explain the licensee's expectations and requirements for behavior;
  3. Explain the criteria for successful participation in and completion of or emancipation from the program;
  4. Make available a copy of the behavioral rules prescribed by R6-5-7456(A)(3)(a), (b), (c), (d), and (h);
  5. Make available a copy of the visitation and communication policy prescribed by R6-5-7448; and
  6. Describe and, upon request, make available a copy of the grievance procedures prescribed by R6-5-7429 and the statement of client rights prescribed by R6-5-7423(E).
- D. The licensee shall document the orientation and other information given to a child in the child's case record.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7439. Information and Services Provided to the Placing Agency or Person**

- A. No later than the date of a child's admission, a licensee shall provide information about the following subjects to the placing agency or person.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7441. Child's Service Plan: Preparation; Review; Planning Participants**

- A. Service Plan Contents:** A child in care shall have a personalized service plan tailored to the child's unique background, needs, strengths, weaknesses, and problems. The plan shall include at least the following information:
1. A description of services the child is to receive while in care, including services to ready the child for discharge or emancipation from the program;
  2. Goals and objectives for the child;
  3. Timelines for achieving each goal and objective;
  4. Recommendations for any after-care;
  5. Identification of persons invited to participate in service planning;
  6. The names and, if available, signatures of the persons who participated in service planning;
  7. Identification of persons responsible for implementing the service plan, with an explanation of each person's role; and
- B. Timing for Plan Development and Review:**
1. If a child has an existing service plan at the time of admission, the licensee shall:
    - a. Review the plan before or at the time of the child's admission, and
    - b. Assess the existing plan and make any necessary changes to conform to the requirements of this Section.
  2. If a child does not have a service plan at the time of admission, the licensee shall initiate service planning at the time of admission.
  3. Within seven days of a child's admission, a licensee shall document all interim planning efforts identifying the child's needs and initial plans for service.
  4. No later than 30 days after the child's admission to a facility, the licensee shall complete the child's initial service plan and any initial modifications to an existing plan.
- C. Plan Review:** The licensee shall review and update a child's service plan at least every 90 days following completion of the child's service plan described in subsection (B)(4).
- D. Planning Participants:**
1. The licensee shall invite, or delegate the responsibility for inviting, at least the following persons to participate in development of the service plan and periodic review:
    - a. A representative of the facility;
    - b. A representative of the placing agency, if applicable;
    - c. The child, if the child's presence is developmentally appropriate; and
    - d. The child's parent or guardian.
  2. At least one participant on the service team shall have the qualifications listed in R6-5-7432(B)(1) or (2).
- E. Methods of Participation:** The licensee shall allow service team members to participate in service planning through the following methods:
1. Attendance at a planning meeting,
  2. Submission of a written report or documentation,
  3. Review and approval of the plan through signing and dating, or
  4. Audio or audio-visual teleconference.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7442. Discharge; Discharge Summary**

- A. Policy and Procedure:** A licensee shall have written policy and procedures for planned and unplanned discharges of children.
1. Before a child's planned discharge, the licensee shall explain the discharge plan to the child and help the child understand the plan.
  2. The licensee shall also explain the discharge plan to the person removing the child.
  3. Before discharging a child to another out-of-home placement, the licensee shall make a reasonable effort to:
    - a. Arrange for the service team to meet or communicate with a representative from the new placement to share information about the child; and
    - b. Arrange for the child to visit the new placement.
- B. Discharge Summary:** Within 15 days of the date a child is discharged, the licensee shall complete a written discharge summary which shall include the following information:
1. The name, address, telephone number, and relationship of the person to whom the child was discharged;
  2. The planned and actual discharge dates;
  3. A summary of the contacts between the licensee and the facility or person to whom the child was discharged about the child's pending discharge;
  4. A summary of services provided during care;
  5. A list of medication provided during care, with a summary of the reasons for prescribing the medication and any outcomes of the medication;
  6. A summary of progress toward service plan goals;
  7. An assessment of the child's unmet needs and alternative services which might meet those needs;
  8. Any after-care plan and identification of any person or agency responsible for follow-up services and after-care; and
  9. For an unplanned discharge, a description of the circumstances surrounding the unplanned discharge, including the licensee's actions.
- C. Notice of Unplanned Discharge:** When a child's placing agency or person has not participated in the decision to discharge the child, the licensee shall notify the placing agency or person within one hour of discharge, or document attempts at notification.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7443. Personal Care of Children**

- A.** A licensee shall provide children in care with:
1. Developmentally appropriate supervision, assistance, and instruction in, good habits of personal care and hygiene and culturally appropriate grooming;
  2. Necessary toiletry items; and
  3. The opportunity to have a daily shower or tub bath in private, as developmentally appropriate, or as otherwise prescribed in program policy.
- B.** A licensee shall not allow community use of grooming and hygiene articles such as towels, toothbrushes, soap, hairbrushes, and deodorants.
- C.** If a licensee restricts personal care or grooming practices, the licensee shall have a policy describing the restrictions and the reasons for the restrictions.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7444. Children's Clothing and Personal Belongings**

- A. A child may bring clothing and personal belongings to the facility and acquire belongings while in care, in accordance with the child's service plan and the facility's policy.
- B. If a licensee limits a child's right to have, wear, or display certain clothes or personal belongings, the licensee shall:
  - 1. Have a written policy explaining the limitations and the reasons for the limitations; and
  - 2. Explain the limitations to the child in a form and manner that the child can understand.
- C. When a child is admitted, the licensee shall inventory the child's clothing and personal belongings; the licensee shall provide a copy of the inventory to the placing agency or person and keep a copy in the child's file.
- D. The licensee shall either store any restricted possessions or return the possessions to the child's placing agency or person.
- E. The licensee shall ensure that each child has a personal supply of clean and seasonable clothing as required for health, comfort, and physical well-being and as appropriate to the child's age, gender, size, and individual needs.
- F. The licensee shall allow a child to help select his or her own clothing when developmentally appropriate and allowed by programmatic requirements.
- G. The licensee shall have a policy governing retention, return, and disposal of the clothes and personal belongings of a child who has had an unplanned discharge. At the time of a child's planned discharge, the licensee shall allow the child to take clothing and personal belongings.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7445. Children's Money; Restitution**

The licensee shall provide opportunities for children to develop a sense of the value of money through allowances, earnings, spending, giving, and saving. Any practices regarding children's money shall comply with this Section.

- 1. The licensee shall have a written policy regarding allowances.
- 2. The licensee shall treat a child's money as that child's personal property.
- 3. The licensee may limit the amount of money to which a child may have access when the limitations are:
  - a. In the child's best interest and explained in the child's service plan; or
  - b. In accordance with the facility's program description.
- 4. The licensee shall not deduct sums from a child's allowance as restitution for damages caused by the child unless:
  - a. The licensee has discussed restitution with the child; and
  - b. The deduction is:
    - i. Reasonable in amount,
    - ii. Consistent with the child's ability to pay,
    - iii. In accordance with the licensee's policy, and
    - iv. Explained in the child's service plan.
- 5. The licensee shall maintain individual accounting records for the money of each child.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7446. Nutrition, Menus, and Food Service**

- A. A licensee shall have a written, dated menu of planned meals. The menu shall be available at the facility at least one week before meals are served. The licensee shall post the weekly

menu in the dining area or in a location where children may review it. The licensee shall keep a copy of the menu and any menu substitutions on file for one year.

- B. The licensee shall prepare and serve meals in compliance with the written, dated menus.
- C. A registered nutritionist or dietitian shall either prepare or approve the licensee's menus. The licensee shall maintain a record of any approvals for one year, and keep the record in a central location at the agency or facility.
- D. A licensee shall develop and follow a specialized menu for a child with special nutritional needs. The licensee shall make special menus available to nutritional staff, but shall not post special menus in an area that is readily seen by other children in care.
- E. Menus shall reflect the religious, ethnic, and cultural differences of children in care.
- F. When developmentally appropriate, a licensee shall allow children to make menu suggestions.
- G. A licensee shall provide each child with at least three meals daily, with no more than 14 hours between the evening and morning meals. Between meal snacks shall not replace regular meals.
- H. A licensee shall provide meal portions that are consistent with each child's caloric needs.
- I. A licensee shall serve children meals that are substantially the same as those served to staff unless special dietary needs require differences in diet.
- J. A licensee shall allow children to eat at a reasonable rate; unless otherwise prescribed in agency policy, staff shall encourage social interaction and conversation during meals.
- K. A licensee shall have potable water available at all times.
- L. Staff shall directly supervise children involved in food preparation.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7447. Sleeping Arrangements**

A licensee shall comply with the sleeping arrangement provisions in this Section.

- 1. A child age 6 or older shall not share a bedroom with a child of the opposite gender.
- 2. A child shall not share a bedroom with an adult unless one of the conditions listed in this subsection is met.
  - a. The child is younger than age 3.
  - b. The child's service plan contains specific reasons and authorization from the placing agency or person for a shared bedroom.
  - c. The child has a temporary need for special adult care during sleeping hours and the need is documented in the child's service plan.
  - d. The child has regularly shared a bedroom with another child in the licensee's care; the other child has reached age 18; and the placing agency and licensee agree that continuing the shared arrangement is in the best interests of both the child and the adult.
  - e. The child is sharing a room with his or her parent.
  - f. The sleeping area at the facility is a barracks that has been approved as described in R6-5-7461(B) and R6-5-7462(B), and a paid staff member sleeps in the same room to supervise the children in care.
- 3. Only children age 8 or older may sleep on the upper bed of a bunk bed.



4. If a child has a documented record of behavior that poses a risk to other children in care, the licensee, in consultation with the placing agency or person, shall develop special sleeping arrangements for that child, to minimize the risk of harm to other children. The licensee shall document the arrangements in the child's service plan.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

#### R6-5-7448. Visitation, Outings, Mail, and Telephones

- A. The licensee shall have a written policy and procedures regarding visitation, mail, telephone calls, and other forms of communication between children and family, friends, and other persons. The policy and procedures shall conform to the requirements of this Section.
  1. The licensee shall allow a child reasonable privacy during a visit unless the child's service plan requires supervised visitation.
  2. A licensee shall have facility visiting hours which meet the needs of the children and their parents.
  3. A licensee shall not deny, monitor, or restrict a child's communication with the child's social worker, attorney, Court Appointed Special Advocate, guardian ad litem, or clergy. The licensee may establish a schedule and rules for communication to prohibit undue interference with programming.
  4. A licensee shall not deny, monitor, or restrict communications between a child and the child's parent, guardian, or friends except as prescribed:
    - a. By court order;
    - b. In the child's service plan, which shall contain specific treatment reasons for the restriction which shall be time limited; or
    - c. In the facility's policy and statement of purpose required by R6-5-7423.
  5. The licensee may require a child to open mail in the presence of staff in order to inspect the mail for contraband.
  6. When a licensee is monitoring a communication as allowed in subsection (A)(4) above, the licensee shall tell the parties to the communication about the monitoring.
- B. The licensee shall have written policy and procedures to govern situations when a child temporarily leaves the facility on a visit or outing with a person other than a staff member. The procedures shall include:
  1. A method for recording the child's location, the duration of the activity, and the anticipated and actual time of the child's return;
  2. The name, address, and telephone number of the person responsible for the child while the child is absent from the facility; and
  3. A procedure for action if a child fails to return.
- C. Subsection (B) does not apply to regularly scheduled trips to school.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7449. Educational and Vocational Services; Work Assignments

- A. The licensee shall have a written policy regarding its educational program or a plan for ensuring that each child attends an educational program in accordance with state and local laws.
- B. Within 10 local school days of a child's admission to a facility, the licensee shall arrange for the educational needs of the child. The arrangements shall:
  1. Meet the child's individual needs;
  2. Be consistent with the child's Individual Education Plan (I.E.P.) if applicable; and
  3. Comply with federal and state education laws.
- C. The licensee shall communicate with staff at an educational program in which a child in care is enrolled to discuss the child's progress. At a minimum, the licensee shall attend scheduled parent-teacher conferences.
- D. If a child's service plan provides for the child to receive vocational services, the licensee shall comply with the plan requirements.
- E. The licensee shall provide children in care with:
  1. Space for quiet study;
  2. Developmentally appropriate supervision and assistance with homework; and
  3. Access to necessary reference materials.
- F. The licensee may use work assignments to provide an instructional experience for children in care, but shall not use a child as an unpaid substitute for staff.
- G. A work assignment shall be developmentally appropriate for a child, and scheduled at a time that does not interfere with other routine activities such as school, homework, sleep, and meals.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7450. Recreation, Leisure, Cultural Activities, and Community Interaction

- A. A licensee shall have a written plan for making a variety of cultural, religious, indoor and outdoor recreational and leisure opportunities available for children in care. The plan shall:
  1. Reflect the interests and needs of the children in care, including an allotment of time for children to pursue individual interests, and time to address the special needs of the children in the living unit;
  2. Provide for use of community resources such as schools, museums, libraries, parks, recreational facilities, and places of worship; and
  3. Specify procedures for children's participation in community activities and use of community resources.
- B. A licensee shall help children in care learn about the community in which the facility is located and use community resources, as developmentally appropriate.
- C. A licensee shall arrange transportation and supervision so that children in care can attend community activities and maximize use of community resources.
- D. The licensee shall make available recreational equipment that is suitable to the size, age, and developmental level of children in care.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7451. Religion, Culture, and Ethnic Heritage

- A. A licensee shall have a written description of:
  1. Its religious orientation, if any;
  2. Any religious practices observed at a facility;
  3. Any restrictions on admission based on religion; and

4. How the licensee provides opportunities for each child to participate in religious activities in accordance with the faith of the child or the child's parent or guardian.
- B. A licensee's program and the service plans of children in care shall reflect consideration of and sensitivity to the racial, cultural, ethnic, and religious backgrounds of children in care.
- C. A licensee may encourage children to participate in religious, cultural, and ethnic activities but shall not require children to participate unless otherwise provided in the licensee's statement of purpose and program description.
- D. If a child asks to change religious affiliation while in care, the licensee shall obtain the written permission of the child's parent or guardian before assisting the child in making the change. A licensee is not required to obtain this permission if a child changes religious affiliation without the licensee's assistance.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

### R6-5-7452. Medical and Health Care

- A. General health care.
  1. A licensee shall have a written plan for meeting the preventive, routine, and emergency physical and mental health needs of children in care. The plan shall identify where and from whom children at a facility may obtain qualified health care, 24-hours per day, seven days per week.
  2. A licensee shall ensure that children in care receive:
    - a. Preventive health services, including routine medical examinations and dental cleanings and examinations; and
    - b. The following health services, if necessary:
      - i. Evaluation and diagnosis,
      - ii. Treatment, and
      - iii. Consultation.
  3. A licensee shall ensure that a child in care receives a developmentally appropriate explanation of any health treatment the child receives, in a language and manner the child can understand.
  4. A licensee shall not ignore a child's complaints of pain or illness and shall document persistent complaints and any actions taken in response to the complaints.
- B. Medical care.
  1. A licensee shall arrange for a physician, physician's assistant, or nurse practitioner to give a child a medical examination within one week of the child's admission unless:
    - a. A licensed medical practitioner examined the child within the 45 days preceding the child's admission; and
    - b. The licensee has a report of the examination as prescribed in R6-5-7438(E)(4)(a).
  2. A licensee shall also arrange for a child in care to receive an annual medical exam from a physician, physician's assistant, or nurse practitioner.
  3. The initial and annual medical examinations shall include:
    - a. Screening for communicable disease unless restricted by law;
    - b. Vision and hearing screening; and
    - c. For children who wish to participate in sports or physically strenuous activities such as backpacking, an evaluation of the child's capacity to participate.
  4. A licensee shall obtain a report of the examination, and, if applicable, a statement signed by the medical practitioner

conducting the examination, or the practitioner's designee, regarding the child's capacity, fitness, and clearance to participate in sports or physically strenuous activities.

5. After attempting to determine a child's immunization history, a licensee shall arrange for the child to receive any routine immunizations and booster shots within 30 days of admission.
- C. Dental care.
  1. A licensee shall arrange for each child to have a dental examination within 60 days of admission unless the licensee is provided the written results of a dental examination conducted within six months prior to admission.
  2. A licensee shall arrange for each child age 3 and older to receive a dental examination every six months.
  3. In cooperation with the placing agency or person, a licensee shall arrange for a child to receive any prescribed dental care.
- D. First aid. A licensee shall equip the residence of each living unit with at least the following first aid supplies:
  1. Adhesive strip bandages;
  2. Sterile, individually wrapped gauze squares;
  3. Roller gauze;
  4. Adhesive tape;
  5. Individually wrapped non-stick sterile pads;
  6. A triangular bandage to be used for a sling;
  7. Disposable latex gloves;
  8. A pair of scissors;
  9. A pair of tweezers; and
  10. A cardiopulmonary resuscitation mouth guard or mouth shield.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

### R6-5-7453. Medications

- A. A licensee shall have written policies and procedures governing medications. The policies and procedures shall specify:
  1. The conditions under which medications can be prescribed and administered which shall be in accordance with any applicable laws;
  2. The qualifications of the persons allowed to administer medications;
  3. The qualifications of persons allowed to supervise self-administration of medication;
  4. How a facility will document the prescription and administration of medication, medication errors, and drug reactions; and
  5. How staff will notify a child's attending physician in cases of medication errors and drug reactions.
- B. The licensee shall have a written medication schedule for each child who receives medication. The schedule shall include the following information:
  1. Child's name;
  2. Name of the prescribing physician;
  3. Telephone number at which the prescribing physician can be reached in case of medical emergency;
  4. Reason for prescribing the medication;
  5. Date on which the medication was prescribed;
  6. Generic or commercial name of the medication;
  7. Dosage level and time of day when medication is to be administered, including any special administration instructions;
  8. The date, time, and dosage administered; and
  9. The signature of the person administering each dosage. If the medication is self-administered, the chart shall

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include the signature of the child and the person supervising the child's self-administration.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7454. Storage of Medications**

A licensee shall store medications as prescribed in this Section.

1. Medications shall be kept in securely locked spaces that are not used for any other purpose and to which children do not have access.
2. All medications requiring refrigeration shall be stored separately from food items, in a locked container, in a refrigerator and under temperature ranges recommended by the manufacturer.
3. All prescription medication shall be kept in its original container which shall have a label with the following information:
  - a. Child's name;
  - b. Name of the medication;
  - c. Prescribing physician;
  - d. Date of purchase and, if known, expiration date; and
  - e. Directions for administering.
4. All over-the-counter medication shall be kept in its original container with the manufacturer's label.
5. At least once every 90 days, the licensee shall dispose of all:
  - a. Outdated medications;
  - b. Medications for children no longer at the facility; and
  - c. Medications specifically prescribed for an illness from which a child has recovered.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7455. Children's Medical and Dental Records**

A licensee shall maintain health records for each child. The records shall include the information listed in this Section if available to the licensee.

1. The child's past medical history of:
  - a. Immunizations,
  - b. Serious illness or injuries,
  - c. Surgeries,
  - d. Known allergies, and
  - e. Adverse drug reactions.
2. Developmental history.
3. Medication history.
4. History of any alcohol or substance abuse and treatment.
5. Immunizations provided while in care.
6. Medications received while in care and a record of any medication errors.
7. Copies of consents for treatment or care.
8. Authorization to participate in sports or physically strenuous activities, if applicable.
9. Reports of vision and hearing screening and physical and dental examinations.
10. Record of any treatment provided for specific illness or medical emergencies, including the name and location of medical personnel who provided treatment.
11. The name of the person or agency bearing financial responsibility for the child's health care.
12. Documentation showing the licensee's efforts, consistent with the terms of the placing agreement, to obtain glasses, hearing aids, prosthetic devices, corrective physical or

dental devices, or any other health equipment recommended by a child's attending physician.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7456. Behavior Management**

A. A licensee shall have written behavior management policies and procedures which shall:

1. Be developmentally appropriate for the children in care;
2. Be designed to encourage and support the development of self-control;
3. Describe the following:
  - a. Behavior expectations of children;
  - b. Consequences for violations of the licensee's policies and rules which shall be:
    - i. Reasonably related to the violation; and
    - ii. Administered without prolonged and unreasonable delay;
  - c. Physical restraint and restrictive behavior management techniques used by the licensee;
  - d. The kinds of behaviors warranting use of physical restraints or restrictive behavior management techniques;
  - e. The licensee's methods of documenting use of physical restraints or restrictive behavior management techniques;
  - f. Behavior management techniques which require supervisory authorization or written documentation before being used;
  - g. The licensee's process for supervisory review to evaluate whether staff properly applied the restraints or techniques in a particular case; and
  - h. Behavior management techniques prohibited by the licensee.

B. The licensee's staff are responsible for control and discipline of children in care. The licensee shall not allow children to discipline other children.

C. The licensee shall not threaten a child or allow any child to be subjected to maltreatment, abuse, neglect, or cruel, unusual, or corporal punishment, including the following practices:

1. Spanking or paddling a child;
2. All forms of physical violence inflicted in any manner upon the body;
3. Verbal abuse, ridicule, or humiliation;
4. Deprivation of shelter, bedding, food, water, clothing, sufficient sleep, or opportunity for toileting;
5. Force-feeding, except as prescribed by a licensed medical practitioner;
6. Placing a child in seclusion;
7. Requiring a child to take a painfully uncomfortable position, such as squatting or bending for extended periods of time; and
8. Administration of prescribed medication or medication dosage without specific physician authorization.

D. To determine whether a licensee has violated subsection (C)(7), the Licensing Authority shall consider all the circumstances at the time of the action, including the following:

1. The child's physical condition;
2. Whether the child was taking any medications that may have affected the child's ability to perform the action, such as psychotropic medications or antibiotics;
3. The climatic conditions under which the child was performing the action, such as intense heat or cold, rain, or snow;

4. The level of force, if any, the licensee used to require the child to perform the activity and whether any use of force resulted in injury to the child; and
  5. Whether the activity was consistent with the licensee's program description and procedures.
- E.** The behavior management practices listed in this subsection are restricted. A licensee may use a restricted practice only when the licensee satisfies the conditions listed in subsection (F) and any additional conditions listed in this subsection.
1. Required physical exercises such as running laps or performing push-ups, and assignment of physically strenuous activities, except:
    - a. As expressly prescribed in a child's service plan and as part of a regular physical conditioning program, or as part of a work experience that meets the requirements of R6-5-7449(F) and (G);
    - b. With documented clearance by a physician who is knowledgeable about the physical activities in which the child will participate; and
    - c. Within sight supervision of staff.
  2. Disciplinary measures taken against a group because of the individual behavior of a member of the group.
  3. Denial of visitation or communication with significant persons outside the facility solely as a consequence for inappropriate behavior.
  4. Use of a mechanical restraint unless:
    - a. The licensee's policy lists the qualifications of staff allowed to use the restraint;
    - b. Staff allowed to use the restraint have received training in the proper use of the restraint;
    - c. The licensee has documentation of the restraint training in the personnel file of the staff member;
    - d. Use of the restraint is authorized in a child's individual service plan; and
    - e. Staff have tried less restrictive measures which have failed.
  5. Physical restraint, except:
    - a. When the child needs restraint to prevent danger to the child or danger to another; and
    - b. After staff have tried less restrictive measures which have failed.
- F.** A licensee may use a restricted practice only when the practice and the circumstances warranting its use are:
1. Consistent with the licensee's program description and purpose;
  2. Described in the licensee's behavior management policy;
  3. Used as prescribed in this Section; and
  4. Not otherwise prohibited by these rules.
- G.** If a licensee cannot use a specific physical restraint or behavior management technique on a particular child, the child's service plan shall describe the restriction.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7457. Body Searches

If a licensee permits a body search of children in care, the licensee shall have a written policy describing the conditions warranting a body search and the procedures for conducting the search.

1. When searching a child, staff shall use the minimum amount of physical contact required to determine if the child has contraband.
2. The licensee shall not conduct an internal body cavity search on a child.
3. The licensee shall not use any instruments to search a child.

4. The licensee shall not conduct a strip search beyond underwear.
5. Unless a licensed medical practitioner is searching a child, a person of the same gender as the child shall do the search.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7458. Buildings; Grounds; and Water Supply

- A.** Structures and Improvements: A licensee shall maintain a facility's structures and improvements in good repair, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
1. Repair doors, windows and other building features that protect a building from weather damage or pest infestation, within 48 hours of finding that the building part is in disrepair;
  2. Document efforts to make or obtain repairs if repairs cannot be completed in 48 hours;
  3. Keep buildings free of vermin infestation;
  4. Keep exits free of obstruction or impediments to immediate use; and
  5. Have barriers appropriate to the developmental needs of children in care to prevent falls from porches and elevated areas, walkways, and stairs.
- B.** Exits: The licensee shall equip each building used by children with exits as prescribed in this subsection.
1. Each building shall have at least two exterior means of egress on each floor.
  2. Exits above ground level shall have an outside fire escape or a fire-resistant stairwell that has been approved by the state or a local fire inspector.
  3. Exit doors shall have only locks that allow the doors to be opened from the inside without use of a key or knowledge of special or restrictive operating procedures.
- C.** Grounds: A licensee shall maintain a facility's grounds in good condition, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
1. Store garbage and rubbish in non-combustible, covered containers, separate from play areas;
  2. Remove refuse and recyclables from the building at least once a day;
  3. Remove refuse and recyclables from the facility grounds at least once a week.
  4. Use safeguarding measures to separate children in care from potentially hazardous areas on or near the facility grounds;
  5. Maintain fences and other barriers in good repair; and
  6. Locate and install playground or recreational equipment at the facility in accordance with the manufacturer's instructions and recommendations, and maintain the equipment in good repair and in accordance with the manufacturer's instructions and recommendations.
- D.** Water supply: If a facility's water is from any source other than an approved public water supply, the licensee shall obtain a written water analysis report, showing that the water is potable and meets the applicable requirements for safe drinking water in 18 A.A.C. 4. The licensee shall get the analysis and report from a laboratory certified by the Department of Health Services before initial operation and each annual renewal.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7459. Building Interior

- A. A licensee shall ensure that a facility's physical plant can structurally accommodate the physical and program needs of all children in care according to the standards prescribed in this Article and the licensee's own program description.
- B. The licensee shall keep a facility clean and sanitary.
- C. The licensee shall have and maintain furnishings as prescribed in this subsection.
  - 1. All living areas shall have furniture designed to suit the size and capabilities of the children in care.
  - 2. A licensee shall replace or repair broken, dilapidated, or defective furnishings and equipment.
  - 3. A licensee shall have mirrors in the facility to permit children in care to examine their personal appearance.
  - 4. A licensee shall secure the mirrors to walls at heights convenient to the children in care.
- D. A licensee shall ensure that all spaces used by children have outside ventilation from a window, louvers, air conditioning, or other mechanical equipment. A window or door used for outside ventilation shall have a screen.
- E. A licensee shall maintain a facility's residential environment at temperatures that do not:
  - 1. Exceed 85° F,
  - 2. Fall below 65° F during daylight hours, or
  - 3. Fall below 60° F during sleeping hours.
- F. A licensee shall use thermometers scaled at no more than 2 degree increments to determine temperature.
- G. A licensee shall not use free-standing stoves that use wood, sawdust, coal, or pellets, or portable heaters as the primary source of heat for a residential area.
- H. A licensee shall safeguard hot water radiators or steam radiators and pipes or any other heating device capable of causing a burn.
- I. A licensee shall maintain and use all electrical equipment, wiring, cords, switches, sockets, and outlets in good working order, under safe conditions, in accordance with the manufacturer's recommendations, and as prescribed in this subsection.
  - 1. Electrical outlets in areas accessible to children younger than 6 shall have safety plugs or plates.
  - 2. The licensee shall not:
    - a. Use extension cords exceeding 7 feet in length,
    - b. Allow extension cords to be connected together to extend their length, or
    - c. Allow extension cords to run across or through a room or to pass from one room into another.
- J. A licensee shall provide illumination for a facility's rooms, corridors, and stairways so that children and personnel can perform activities and tasks safely and without eye strain.
- K. A licensee shall illuminate a facility's outdoor walkways and premises so that children and personnel using areas at night can perform activities and tasks safely.
- L. A licensee housing more than 10 children shall install and maintain emergency lighting systems in children's living quarters.
  - 1. In this subsection, "emergency lighting system" means a battery or generator operated system that:
    - a. Automatically activates if electrical power fails; and
    - b. Provides sufficient light for persons to exit safely in an emergency.
  - 2. If a licensee provides written documentation showing that a facility's emergency lighting system meets applicable city or county building codes for such systems, the system is presumed adequate to satisfy this subsection.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended

by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7460. Kitchens; Food Preparation; and Dining Areas**

- A. A licensee shall maintain a facility's kitchen and dining areas, and shall handle food, as prescribed in this Section.
- B. The licensee shall:
  - 1. Equip a facility kitchen used for meal preparation with the fixtures, appliances, equipment, tools, and utensils ("kitchen equipment") necessary for the safe and sanitary preparation, storage, service, and cleanup of food;
  - 2. Keep kitchen equipment clean and in good working order;
  - 3. Not use defective, damaged, tin, or aluminum dishes or utensils;
  - 4. Not use disposable dinnerware or flatware on a daily basis unless the licensee provides evidence, at the time of initial licensure and at each renewal, that disposable items are necessary to protect the health or safety of children in care;
  - 5. Maintain the temperature of potentially hazardous food at or below 45° F or above 140° F, except when the food is being handled or served;
  - 6. Cover all food that is to be transported outside of the kitchen and dining areas of the facility; and
  - 7. Not use home canned foods.
- C. If a facility has more than 20 children, the licensee shall comply with the requirements in A.A.C. R9-8-132 through R9-8-137.
- D. If a facility has less than 21 children, the licensee shall comply with A.A.C. R9-8-113, R9-8-115, R9-8-116, R9-8-117, and R9-8-121 through R9-8-127, and shall have:
  - 1. One refrigerator for each 10 children at a facility; and
  - 2. A three-compartment sink; or
  - 3. A National Sanitation Foundation (NSF)-listed dishwasher; or
  - 4. A domestic dishwasher with a sanitizer cycle.
- E. A facility shall have clean dining areas and tables which allow children, staff, and guests to eat together.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7461. Sleeping Areas and Furnishings**

- A. A licensee shall provide each child in care with a designated area for rest and sleep as prescribed in this Section.
  - 1. A licensee shall not use mobile dwellings, trailers, or vehicles as sleeping quarters.
  - 2. The licensee shall provide children in care with bedroom space that:
    - a. Has a direct source of natural light;
    - b. Has a window that:
      - i. Opens to the outside without a grill or other impediment to immediate, emergency exit;
      - ii. Can be easily opened from the inside;
      - iii. Measures at least 22 inches on each side; and
      - iv. Has a bottom sill that is no more than 48 inches from the floor; and
    - c. Is at least:
      - i. A 74 square foot floor area for a single occupant;
      - ii. A 50 square foot floor area for each occupant in a multiple sleeping area; or
      - iii. A 40 square foot floor area for each crib.
  - 3. The licensee shall provide each child in care with a bed that:
    - a. Is proportional to the child's height,

- b. Is at least 30 inches wide,
  - c. Has a solidly constructed bed frame, and
  - d. Has safety railings if developmentally appropriate for the child using the bed.
- 4. If a licensee uses a bunk bed, the bed shall be limited to a double bunk, and shall have sufficient head room to allow the upper occupant to sit up.
- 5. A licensee shall use only cribs that have:
  - a. Bars or slats no more than 2 3/8 inches apart;
  - b. A mattress that fits snugly into the crib frame so that there is no space between the mattress and frame; and
  - c. No openings through which a child could place his or her head.
- 6. A licensee shall provide sheets, pillow cases, and blankets for each child and shall maintain bedding in good repair, without tears or stains.
  - a. The licensee shall ensure that sheets and pillowcases are washed at least weekly and more frequently if necessary.
  - b. The licensee shall use water resistant bedding when necessary.
- 7. A licensee shall provide each child with a dresser or other storage space adequate to contain the child's belongings and a designated space for hanging clothing in or near the child's bedroom.
- B.** The square footage area prescribed in subsection (A)(2)(c) is presumed adequate. If a licensee operates a barracks type facility that does not meet these square footage requirements, the licensee shall present a written plan showing how the licensee's square footage provides enough space for sleeping, rest, study, recreation, ingress, and egress in an emergency. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.
- C.** A licensee shall not have bedroom doors that can be locked.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

**R6-5-7462. Bathrooms**

- A.** A licensee shall maintain bathrooms and bathroom fixtures in good operating and sanitary condition, and as prescribed in this Section.
  - 1. The licensee shall have facility bathrooms equipped with:
    - a. At least one wash basin and one toilet for every six children in care;
    - b. At least one bathtub or shower for every eight children in care;
    - c. Cold and hot running water, with enough hot water to allow each child a daily bath or shower;
    - d. Bathtubs and showers that are slip-resistant; and
    - e. Toilets and bathtubs or showers which allow a child to have privacy, as developmentally appropriate, or as otherwise prescribed in written program policy.
  - 2. The licensee shall not permit children age 5 or older who are of different genders to share a bathroom at the same time.
  - 3. The licensee shall equip bathrooms to facilitate maximum self-help by children through one or more of the following methods:
    - a. Providing children with step-stools to reach a sink,
    - b. Providing smaller sized bathroom fixtures,
    - c. Providing training toilets,
    - d. Placing towel racks and dispensers at lower heights, or
    - e. Other similar or comparable methods.
- 4. A licensee shall have bathrooms large enough to permit staff to help children who require it.
- 5. A licensee shall provide bathrooms with sufficient toilet paper, towels, soap, and other items required to maintain good personal hygiene, or shall provide children with personal supplies of these items.

- B.** The bathroom fixture requirements prescribed in subsections (A)(1)(a) and (b) are presumed adequate. If a licensee operates a barracks type facility which does not meet these requirements, the licensee shall present a written plan showing how the licensee's bathroom facilities permit children in care to maintain adequate hygiene. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7463. Other Facility Space; Staff Quarters**

- A.** A licensee shall ensure that a facility has:
  - 1. A place other than children's living areas to serve as an administrative office for records, secretarial work, and bookkeeping; and
  - 2. Space for private discussions and counseling sessions between individual children and staff.
- B.** If a licensee has staff who reside at the facility, the licensee shall provide those staff with living and sleeping space that is separate from children's areas, including a separate bathroom. The licensee shall provide the children of these staff, who also reside at the facility, with a residential environment that meets the requirements of this Article for children in care.
- C.** A licensee operating a barracks type facility that has been approved as described in R6-5-7461(B) and R6-5-7462(B) is not required to provide separate space as described in subsection (B).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7464. Fire, Emergency, and Fire Prevention**

- A.** Emergency Procedures: A licensee shall have written procedures for staff and children to follow in case of emergency or disaster (natural, medical, or human-caused). The procedures shall include the following:
  - 1. Provisions for the evacuation of buildings, including the evacuation of children with physical disabilities;
  - 2. Assignment of staff to specific tasks and responsibilities;
  - 3. Instructions on the use of alarm systems and signals;
  - 4. Specification of evacuation routes and procedures, with clearly marked diagrams; and
  - 5. Notification as prescribed in R6-5-7434.
- B.** Emergency Practices and Drills: A licensee shall prepare staff and children to respond to emergencies as prescribed in this subsection.
  - 1. The licensee shall train all staff to perform assigned tasks during emergencies, including the location and use of fire fighting equipment.
  - 2. The licensee shall train staff and children to report fires and other emergencies in accordance with written emergency procedures.
  - 3. The licensee shall post evacuation procedures in conspicuous locations throughout all buildings.

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4. The licensee shall train staff and children in evacuation procedures and conduct emergency drills at least once a month as prescribed in this subsection.
    - a. Practice drills shall include actual evacuation of children to safe areas.
    - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
    - c. All persons in the building at the time of a drill shall participate in the drill.
  5. A licensee shall maintain a record of all emergency drills. The record shall include:
    - a. Date and time of drill,
    - b. Total evacuation time,
    - c. Exits used,
    - d. Problems noted, and
    - e. Measures taken to ensure that children understand the purpose of a drill and their responsibilities during a drill.
- C. Fire Prevention and Control:** A licensee shall have and maintain fire prevention and safety equipment as prescribed in this subsection.
1. In a facility's residential environment, the licensee shall install and maintain smoke detectors according to the manufacturer's instructions, recommendations, and test specifications and shall maintain smoke detectors in good working order. Each smoke detector shall have a signal to indicate that batteries are low or are not working properly.
  2. The licensee shall put a smoke detector in each separate sleeping area.
  3. The licensee shall clean and test smoke detectors at least every three months. The licensee shall keep a written record of the cleaning and testing at the facility.
  4. A licensee shall install and maintain portable fire extinguishers appropriate in number and size to the area to be protected.
  5. A licensee shall have a qualified person inspect and, if necessary, recharge fire extinguishers at least once a year and immediately after use.
  6. A licensee shall:
    - a. Document the dates that a fire extinguisher is charged and the person or agency responsible for charging it; and
    - b. Attach the documentation to the extinguisher.
- Historical Note**
- Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).
- R6-5-7465. General Safety**
- A. Ground Floor:** A licensee shall house non-ambulatory children and children younger than 6 only on the ground floor.
- B. Licensees that provide services to young adults:**
1. A licensee that provides services to young adults shall provide adequate safety information and individualized instruction to promote the safe use of a substance or item that is:
    - a. Required to be safeguarded under this Section; and
    - b. Necessary for the young adult's self-sufficiency, such as laundry and cleaning supplies, tools, and kitchen knives.
  2. A licensee that provides services to young adults placed in care with their own children shall safeguard substances and items in a manner appropriate to protect the youngest child in residence.
- C. Dangerous objects:** A licensee shall safeguard all potentially dangerous objects, including:
1. Firearms and ammunition;
  2. Recreation and hunting equipment;
  3. Household and automotive tools;
  4. Sharp objects such as knives, glass objects, and pieces of metal;
  5. Fireplace tools, matches, and other types of lighters;
  6. Machinery;
  7. Electrical wires, boxes, and outlets;
  8. Gas appliances;
  9. Chemicals, cleaners, and toxic or flammable substances;
  10. Swimming pools, ponds, spas, and other natural or artificial bodies of water; and
  11. Motorized vehicles.
- D. Water Temperature:** A licensee shall maintain water that is accessible to children for personal use at a temperature at or below 120° F.
- E. Gas appliances:**
1. A licensee shall have a licensed and bonded heating and cooling technician annually inspect all gas-fired devices at a facility. The licensee shall get a written report of the inspection for submission to the Licensing Authority at the time of license renewal.
  2. A licensee shall equip all gas-fired devices with an automatic pilot gas shut-off control.
  3. A licensee shall remove the valves from unused gas outlets and cap the disconnected gas line with a standard pipe cap.
  4. A licensee shall not use unvented water heaters.
  5. A licensee shall not use kerosene or gasoline for lighting, cooking, or heating.
  6. If a licensee uses a natural or propane gas burning device inside a facility, the licensee shall:
    - a. Install, test, and check carbon monoxide monitoring equipment in a facility's residential environment according to the manufacturer's instructions;
    - b. Maintain the monitoring equipment in good working condition; and
    - c. At the facility, keep a copy of the manufacturer's instructions, and, for one year, a record of the tests.
- F. Finishes and surfaces:**
1. A licensee shall not surface walls or ceilings with materials that contain lead except as allowed by law for protection from wood, pellet, or peat burning stoves.
  2. A licensee shall not have any walls, equipment, furnishings, toys, or decorations surfaced with lead paint.
  3. A licensee that accepts children who are under age 6, developmentally disabled, or severely emotionally disturbed, shall maintain the facility free of lead paint hazards, including permanent removal of any paint that a child may ingest.
- G. Toxic and Flammable Substances:**
1. A licensee shall ensure that any poisons and toxic or flammable substances used at a facility are used in a manner and under conditions that will not contaminate food or be hazardous to children.
  2. A licensee shall ensure that containers of poisons and toxic or flammable substances are prominently and distinctly marked or labeled for easy identification of contents.
  3. A licensee may burn trash only when:
    - a. Local authorities and ordinances allow burning;
    - b. The fire is at least 50 feet from any building used for children's residences; and

- c. An adult supervises any child involved in the burning.
- 4. A licensee shall not use charcoal or gas grills indoors or on covered porches.
- H. Firearms, Weapons, and Recreational and Hunting Equipment:**
  - 1. A licensee shall ban firearms, explosives, and ammunition from a facility and grounds, except a licensee may allow the following:
    - a. Firearms maintained and used exclusively by trained security guards; and
    - b. Non-functional, permanently disabled firearms used for ceremonial purposes if such use is documented in the licensee's policy and procedures.
  - 2. A licensee shall keep bows and arrows, knives, and other potentially hazardous hunting and recreational equipment in locked secure storage that is not accessible to children.
- I. Tools and Equipment:** A licensee shall maintain lawn and garden equipment and maintenance tools and equipment safe and in good repair, and shall allow children to use them only under the supervision of staff. Depending on the developmental level of the child, the supervision need not be direct supervision.
- J. Telephone service:**
  - 1. A licensee shall equip each living unit that does not house young adults with 24-hour telephone service or an intercom system linked to an outside telephone service, or
  - 2. A licensee that provides services to young adults shall provide a device in each living unit that allows a young adult to immediately summon on-duty staff or emergency services. In addition, the licensee shall provide a telephone onsite. The licensee shall provide written and verbal information to each young adult explaining how to summon assistance in the event of an emergency.
  - 3. A licensee shall conspicuously post, adjacent to the telephone:
    - a. The address and telephone number of the facility; and
    - b. Emergency telephone numbers, including fire, police, physician, poison control, Child Protective Services, and ambulance.
- K. Smoking:**
  - 1. A licensee shall not expose a child in care to tobacco products or smoke.
  - 2. A licensee shall not allow any person to use tobacco products inside buildings.
  - 3. A licensee shall not allow a child in care to use or possess tobacco products.
- L. Animals:**
  - 1. The licensee shall not maintain, at a facility, any animal that poses a danger to children in care.
  - 2. The licensee shall have written evidence that dogs kept at a facility have current vaccinations against rabies.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

#### R6-5-7466. Swimming Areas

- A.** A licensee shall fence an outdoor swimming pool to separate it from all buildings, with a fence that:
  - 1. Is at least 5 feet high, as measured on the exterior side of the fence; and
- 2. Has a self-closing, self-latching gate that opens away from the swimming pool. The licensee shall maintain the latching equipment in good working order.
- B.** If the licensee accepts children younger than 6, the fence shall:
  - 1. Have no opening through which a spherical object of 4 inches in diameter can pass;
  - 2. Have horizontal components which:
    - a. Are spaced at least 45 inches apart, measured vertically; or
    - b. Do not have any openings greater than 1 3/4 inches, measured horizontally; or
  - 3. Not have any openings for handholds or footholds, or any horizontal components, that can be used to climb the fence from the outside.
- C.** Subsections (A) and (B) do not apply to outdoor swimming pools that are entirely surrounded by permanent walls or buildings with doors that can be locked, so long as the walls or building meet the requirements for fencing set forth in subsections (A) and (B).
- D.** A licensee shall lock all entrances to a swimming pool when the pool is not in use.
- E.** A licensee shall maintain the following life-saving equipment in good repair and readily accessible to the swimming pool:
  - 1. A ring buoy with 1/2-inch width rope that is at least half the distance of the pool measured at its longest point, plus 10 feet; and
  - 2. A shepherd's crook attached to its own pole.
- F.** At least one of the staff members supervising children in a pool, shall remain out of the water.
- G.** When a pool is in use, a licensee shall keep a daily log to record water quality test results of an on-grounds swimming pool and shall maintain the pool free from contamination in accordance with 9 A.A.C. 8, Article 8.
- H.** The licensee shall, when chlorination is used, maintain a free chlorine residual of between 0.1 and 4.0 parts per million, and a pH range of 7.0 to 8.0. A licensee may add dry or liquid chemical sources directly to pool water only when enough time exists for dispersal before use.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7467. Access; Transportation; Outings

- A. Access.**
  - 1. A facility shall be accessible by public or private motor vehicle.
  - 2. If the facility cannot be accessed by a road that is passable by motor vehicle 12 months of the year the licensee shall have alternative transportation arrangements to provide access to the facility.
- B. Transportation.**
  - 1. A licensee shall provide, arrange, or negotiate responsibility for arranging, with the placing agency or person, transportation required to implement a child's service plan.
  - 2. A licensee shall provide staff supervision in any vehicle the licensee uses to transport a child in care.
- C. Outings.**
  - 1. For every facility sponsored outing which is not part of the daily routine, such as a recreational trip of four hours or more, or an outing where emergency medical services cannot respond within 12 minutes, a licensee shall maintain, at the facility, a record of the following information:
    - a. A list of children participating in the outing;
    - b. Departure time and anticipated return time;



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- c. License plate numbers of every vehicle used for the outing; and
    - d. Name, location, and, if known, telephone number of the destination.
  - 2. The licensee shall give the driver of a vehicle written emergency information on each child who is participating in the outing and riding with that particular driver.
  - 3. The person supervising the child shall keep the information during the outing. The information shall include:
    - a. Each child's medication requirements, if any;
    - b. Common and known potential adverse reactions a child may have to a medication;
    - c. Adverse reactions a child may have as the result of delay in administration of medication; and
    - d. Any other adverse reaction a child is likely to have due to the child's special needs, including allergic reactions to particular substances or insects.
  - 4. The licensee shall tell the driver about a child's particular needs or problems which may reasonably cause difficulties during transportation, including seizures, tendency toward motion sickness, disability, anxiety, or other phobias.
- D. Extended outings:** If a licensee takes children in care on an outing that lasts more than 30 consecutive days, the licensee shall:
- 1. Obtain court permission for any children who are court wards;
  - 2. Comply with the requirements in R6-5-7469 through R6-5-7471 governing outdoor experience programs.
- E. Vehicles.**
- 1. A licensee shall ensure that all vehicles used for the transportation of children in care:
    - a. Are mechanically sound and in good repair,
    - b. Conform to applicable motor vehicle laws, and
    - c. Have equipment appropriate to the terrain and the weather.
  - 2. The licensee shall not allow the number of individuals in a vehicle used to transport children in care to exceed the number of available seats and seat belts in a vehicle other than a bus. If the vehicle is a bus, the licensee shall not exceed the maximum stated occupancy on the bus inspection certificate.
  - 3. A licensee serving nonambulatory children or children with disabilities shall provide access to transportation that accommodates the children's special needs and disabilities.

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7468. Special Provisions for Shelter Care Facilities**

- A. General Requirements:** A licensee operating a shelter care facility shall comply with all requirements prescribed in this Article, unless otherwise provided in this Section.
- B. Admission Policy and Practice:**
  - 1. If a child has already been in shelter care for more than 42 days, a licensee shall not admit the child into shelter care at the licensee's facility, or permit the child to continue residing at the licensee's facility, unless the licensee has:
    - a. Asked the child's placing agency or person to have a multidisciplinary team:
      - i. Assess the child through a review of the child's records or in person; and
      - ii. Develop a service plan for the child; and
    - b. Documented the request in the child's record.

- 2. When a child self-refers to a shelter care facility, the licensee shall, within 24 hours of the child's arrival:
    - a. Notify the Department or the child's guardian; and
    - b. Document the placing agency or person's consent for the child's continued placement in a written agreement with the placing agency or person, or by obtaining a court order.
  - 3. A licensee does not have to obtain medical information and consents before or at the time of a child's admission to a shelter care facility as prescribed in R6-5-7438(E)(4) and (5), but shall document attempts to obtain the medical consents from the placing agency or person within two days of the child's admission.
  - 4. At the time of a child's admission, the licensee is not required to obtain the comprehensive intake assessment required by R6-5-7438(D), but shall work with the placing agency or person to compile information on and assess the child's current social, behavioral, psychological, developmental, health, legal, family, and educational status, as applicable to the child.
- C. Staff-child ratio:** A shelter care facility shall comply with the staff-child ratios prescribed in R6-5-7437, except that a licensee who accepts six or more children in care at a shelter facility shall have at least one awake staff member on duty during sleeping hours.
- D. Staff development:** In addition to the training requirements prescribed in R6-5-7433, a licensee shall train staff members who work at a shelter care facility to recognize the signs and effects of:
- 1. Substance use and abuse,
  - 2. Common childhood illness, and
  - 3. Communicable disease.
- E. Medical care:** A shelter care facility does not have to provide or arrange a medical examination as required by R6-5-7452(B)(1) unless the general health assessment required by R6-5-7438(E)(9) indicates a need for further medical attention.
- F. Service planning:** Unless a child remains in continuous shelter care for more than 42 consecutive days, a licensee operating a shelter care facility is not required to comply with the R6-5-7441 regarding service planning.
- G. Children's records:** A licensee shall maintain a record for each child in a shelter care facility as prescribed in R6-5-7428 except the licensee need not:
- 1. Comply with R6-5-7441, except as otherwise provided in subsection (F) above; or
  - 2. Maintain treatment or clinical records and reports or progress monitoring notes as required by R6-5-7428(9) and (13).

**Historical Note**

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**R6-5-7469. Special Provisions and Exemptions for Outdoor Experience Programs**

- A.** A licensee operating an outdoor experience program shall comply with the requirements in 6 A.A.C. 5, Article 74, except as otherwise provided in this Section.
- B.** An outdoor experience program shall not accept children younger than age 8.
- C.** An outdoor experience program is exempt from the requirements set forth in the following rules:
  - 1. R6-5-7458. Buildings; Grounds; Water Supply;
  - 2. R6-5-7459. Building Interior;
  - 3. R6-5-7460. Kitchens; Food Preparation; and Dining Areas;

4. R6-5-7461. Sleeping Areas and Furnishings;
  5. R6-5-7462. Bathrooms;
  6. R6-5-7463. Other Facility Space; Staff Quarters;
  7. R6-5-7464. Fire, Emergency, and Fire Prevention;
  8. R6-5-7465. General Safety;
  9. R6-5-7466. Swimming Areas;
  10. R6-5-7467. Access; Transportation; Outings; and
  11. R6-5-7468. Special Provisions for Shelter Care Facilities.
- D.** An outdoor experience program shall comply with the requirements in R6-5-7470 and R6-5-7471.
- E.** If there is a conflict between the requirements set forth in R6-5-7401 through R6-5-7468 and the requirements set forth in R6-5-7469 through R6-5-7471, the latter requirements govern.

#### Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7470. Planning Requirements for Outdoor Experience Programs

- A.** Definitions. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.
- B.** Trip itinerary. The agency shall develop a tentative day-to-day itinerary and a trip map for each trip prior to departure. One copy each of the itinerary and map shall be distributed as follows: to the agency for its office files; to the mobile program staff; when appropriate, to local authorities at each point on the itinerary before departure; to the child placing agency representative for each child who will be departing on the trip, and to the Department licensing representative. When major amendments to the itinerary are necessary due to unforeseen circumstances on the trip, written notification to the designated individuals shall be made. The itinerary shall reflect the following:
1. The travel schedule shall allow for daily periodic rest stops, relaxation, exercise, and personal time.
  2. The travel schedule shall not exceed five consecutive days without at least two full intervening non-traveling days, unless emergency conditions such as storms force travel to safer sites.
  3. The travel schedule shall specify the number of days of the trip, including departure and return dates and times, and mileage to be covered each day.
  4. The travel schedule shall specify the route, specific tentatively planned locations of overnight stops, and activities in which children will participate.
  5. The travel schedule shall specify the mode of transportation.
- C.** Trip plans. The agency shall develop written plans prior to the departure of each trip. These plans shall include:
1. The name, age, sex, address, and emergency phone number of each staff participant and of each child's parent or guardian and placing agency;
  2. The exact location and access route for emergency rescue, search, fire, and medical assistance and law enforcement authorities at each program stop or location including the names, addresses, telephone numbers of other alternative means of communication with such authorities in case of an emergency. This information shall be included and identified on the trip map;
  3. Contingency plans to deal with medical problems, fire, natural disasters, lost children, and other emergencies;
  4. Plans for the care of any person who, for any reason, must be excluded from the program for a period of time;
  5. Provision for and storage within ready access of the program staff, documents which fully identify the group, its leadership, ownership of equipment, purpose, insurance

coverage, home base, and which contain completed health history forms and emergency treatment release forms;

6. Identification of appropriate sources or locations for water, food, doing laundry, bathing, liquid and solid waste, and garbage disposal;
  7. A scheduled progress and condition report system between the mobile program and the agency administrator;
  8. The maintenance by staff of a trip log which details each day's operation including travel time, mileage covered, and occurrences of the day;
  9. The safe storage for all supplies and equipment while in transit as well as at the campsites.
- D.** Pre-departure procedures
1. The appropriate permissions shall be secured, if possible prior to departure, for traveling on roads and properties, using sites, and building fires.
  2. Prior to departure, each child shall receive medical clearance from a physician in order to participate in the mobile portion of the program.
  3. Prior to departure, all children and staff shall receive instruction in the safe and proper use of all equipment to be used on the trip.
  4. Prior to departure, all children and staff shall be oriented as to safety regulations, emergency procedures, and transportation to emergency facilities or personnel, or both.
  5. Prior to departure, the route, activities and logistics shall be approved in writing by the agency administrator.
  6. An emergency liaison coordinator shall be appointed prior to departure. This coordinator or the coordinator's designee shall be available on a 24-hour basis. This person shall be located at the agency administrative office, and shall be at least 21 years of age and shall possess the following information about the program:
    - a. Names of individuals on the trip, including the staff member in charge;
    - b. Exact trip itinerary;
    - c. Number of days, including departure and return dates and times;
    - d. Rescue and evacuation plans and locations;
    - e. Pertinent medical information about program participants.

#### Historical Note

Renumbered from R6-5-7307 to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

#### R6-5-7471. Special Physical Environment and Safety Requirements for Outdoor Experience Programs

- A.** Definition. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.
- B.** Campsite location
1. General. The agency shall conduct activities on sites appropriate for the children in terms of individual needs, program goals, and access to service facilities.
  2. Hazards
    - a. When selecting a campsite, the agency shall consider supervision of children, security, evacuation routes, animal hazards, and weather conditions, including the possibilities of lightning or flood.
    - b. A campsite shall be located on land that provides good drainage. A campsite shall not be located in a river bed or desert wash.
    - c. A campsite shall be free of debris, poisonous vegetation, and uncontrolled weeds or brush.

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- d. Children shall be warned and protected from hazardous areas such as traffic, cliffs, sinkholes, pits, falling rock or debris, abandoned excavations and poisonous vegetation. Hazardous areas shall be guarded or posted to reduce the possibility of accidents.
- C. Physical environment
- 1. Sleeping shelters
    - a. All tents, teepees, or other sleeping shelters made of cloth shall be fire retardant or, if purchased after January 1985, shall be of the fiber-impregnated flame-retardant variety. Plastic sleeping enclosures of any type are prohibited.
    - b. Tents or other shelters used for sleeping areas shall be easily cleanable and in good repair, shall be structured and maintained in safe condition and shall afford adequate protection against inclement weather.
    - c. Tents or other types of temporary shelters shall provide sleeping space of not less than 15 square feet per person.
    - d. Campfires and open flames of any type are prohibited within 21 feet of any tent, teepee, or other sleeping shelter.
    - e. Smoking is prohibited within any sleeping shelter.
    - f. All sleeping shelters shall be posted with a permanent warning "No open flame in or near this shelter." This warning shall be on a sign or stenciled directly on the shelter.
    - g. Sleeping areas shall have direct exit access to the outside which is free of all obstruction or impediments to immediate use in the case of fire or other emergency.
  - 2. Sleeping equipment
    - a. Sleeping equipment shall be provided by the agency and shall be clean, comfortable, non-toxic and fire-retardant.
    - b. Sleeping equipment shall provide reasonable insulation from cold and dampness. In addition to sleeping bag or blankets, insulation from the ground such as with a waterproof ground cloth or air or foam mattress shall be provided. A waterproof sleeping bag is not satisfactory.
    - c. All sleeping equipment shall be laundered, dry cleaned, and otherwise sanitized between assignment to different children or staff. Bedding shall be aired at least once every five days and laundered, dry cleaned, and sanitized once every 30 days.
    - d. Each child shall have a place for personal own sleeping equipment, clothes, and personal belongings. Such items shall be labeled or marked as to which child is using or owns such items.
  - 3. Outdoor toilet areas
    - a. The agency with outdoor toilet areas shall provide facilities which allow for individual privacy.
    - b. Toilet areas shall be constructed, located and maintained so as to prevent any nuisance or public health hazard. Facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner as prescribed by the Department of Health Services in A.A.C. R9-8-301 through R9-3-308, and the Department of Environmental Quality in 18 A.A.C. 8, Article 6.
    - c. Toilet areas which do not have plumbing shall be located at least 75 feet from but within 300 feet of any living or sleeping area, or both, and shall be located at least 100 feet from any lake, stream, or water supply.
  - d. Toilets, outhouses, or portable shacks shall be adequate in number based on one seat for every 10 children in care.
    - i. There shall be a minimum of two seats if there are more than five children.
    - ii. If the agency serves physically disabled children, toilet facilities shall provide one seat for every eight persons.
  - e. Toilet facilities shall be well ventilated, allow for air circulation, be screened and periodically treated to deter insects, and be in good repair. An adequate supply of toilet paper shall be provided.
  - f. Toilets, outhouses, and portable shacks shall be cleaned and disinfected at least daily. Portable shacks shall be dumped daily in an approved dump station.
  - g. Toilet seats shall be constructed of nonporous materials. Wood is not acceptable.
  - h. Handwashing facilities shall be adjacent to the toilet area and shall be separate and apart from sinks and areas used for food preparation or washing pots, pans, kitchen, and eating utensils. Individual soaps and hand-drying devices shall be available.
4. Food preparation and serving
- a. Menus. Menus shall be planned at least one week in advance and shall then be dated, posted, and kept on file for one year.
  - b. Food
    - i. All food and drink shall be stored to prevent spoilage. Only the foods which can be maintained in a wholesome condition with the equipment available shall be used.
    - ii. All milk and milk products utilized by the agency shall be obtained from sources approved by the State Department of Health Services.
    - iii. Only pasteurized milk and U.S. Government-inspected meat shall be served to the children. Powdered milk may only be used for cooking or when no refrigeration is available on a wilderness trip.
    - iv. Spoiled or contaminated foods shall not be used.
    - v. Raw fruits and vegetables shall be washed before use.
  - c. Preparation
    - i. All persons handling food shall wear clean outer garments and keep their hands and fingernails clean at all times while handling food, drink, utensils, or equipment.
    - ii. Smoking in the food preparation area is prohibited.
    - iii. Handwashing areas, including water, soap, and approved sanitary towels or other approved hand-drying devices, shall be provided adjacent to food preparation areas.
    - iv. Areas in which food and drink are stored, prepared or served, or in which utensils are washed, shall be rodent proof, rodent free, and rubbish free. They shall be cleaned after the serving of each meal. Any floors, walls, shelves, tables, utensils, and equipment in these areas shall be of such construction as to be eas-

- ily cleaned, and shall be well lighted and ventilated.
- v. All food preparation and service shall comply with applicable Department of Health Services food service rules in 9 A.A.C. 8, Article 1.
  - vi. No dish, receptacle, or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, or broken.
  - vii. Prepared food shall be maintained at temperatures below 45° F or above 140° F; leftovers shall be reheated to 165° F.
- d. Serving
- i. Meal time shall be structured to make it a pleasant experience with sufficient time allowed for the children to eat at a reasonable, leisurely rate.
  - ii. Normal conversation shall be allowed and encouraged during meals.
- e. Dish and utensil washing
- i. Disposable or single-use dishes, utensils, receptacles or towels used in handling or preparing food shall be discarded after one use.
  - ii. Non-disposable food service dishes and utensils shall be cleaned and disinfected after each use in accordance with the following:
    - (1) A three-compartment sink or vat shall be used. Dishes and utensils shall be thoroughly scraped, washed with soap or detergent in hot water, kept clean, then rinsed free of detergents in clear water and then immersed for a period of at least two minutes in a warm or hot chlorine solution containing at no time less than 50 parts per million of available chlorine or such other solution as may be approved by the state or local health authority.
    - (2) Sinks shall be large enough to thoroughly immerse pots and pans.
    - (3) Dish towels shall not be used.
    - (4) Dishes and utensils shall be air dried. Drain boards shall be provided for draining dishes and utensils.
- D. Equipment**
1. Tools. Power tools, garden tools, and repair equipment shall be kept in a locked area and used by children only under adult supervision.
  2. Protective clothing/equipment. Appropriate protective clothing/equipment shall be provided to children by the agency, when children are participating in potentially hazardous activities.
  3. Program equipment
    - a. The agency shall use program equipment that is maintained in good repair, stored in such a manner as to safeguard the effectiveness of the equipment, and is given a complete safety check periodically and immediately prior to each use. Equipment shall be discarded after a period of time designated by the manufacturer.
    - b. The agency shall use program equipment appropriate to the age, size, and ability of each child in the activity.
- E. Storage.** The agency shall provide sufficient and appropriate storage facilities.
1. Toxic substances
    - a. The agency shall have securely locked storage spaces for all harmful materials. The keys to such storage spaces shall be available only to authorized staff members.
  - b. House and garden insecticides and other poisonous materials and all corrosive materials shall be kept in locked storage out of reach of children. Such storage shall not be in or near kitchen or food preparation or storage areas.
  - c. The agency shall have only those poisonous or toxic materials needed to maintain the program.
- 2. Drugs**
- a. A special cabinet shall be designated for medicine only. The medicine cabinet shall be kept locked and periodically cleaned. All outdated medications and those prescribed for past illnesses or for children discharged from the agency shall be destroyed.
  - b. All prescription medicines, drugs, etc., requiring refrigeration shall be marked with the required temperature range and stored in a refrigerator with a thermometer separate from food items and maintained under temperature ranges recommended by the manufacturer.
- 3. Flammable materials.** Flammable liquids and gases shall be stored in metal containers only. The storage area must be separated from the rest of the living/program area.
- 4. Food**
- a. All food and drink shall be stored so as to be protected from dust, flies, vermin, rodents, and other contamination. No live animals shall be allowed in any area in which food or drink is stored.
  - b. Food and nontoxic cleaning supplies must be stored separately. Clean dishes and utensils shall be stored on properly covered shelves or in containers which are cleaned once a week with a chlorine solution (1 tablespoon of bleach to one gallon of water or an acceptable equivalent).
  - c. All perishable food items shall be kept refrigerated except during the time of preparation and service.
  - d. The temperature of refrigerated food must be maintained within a range from 38°F to 45°F.
  - e. A thermometer shall be located in each refrigerator, including ice boxes and ice chests, as well as electric or gas refrigerators. Where ice and ice boxes or chests are used, adequate ice shall be provided, meats and other highly perishable foods shall not be stored over 24 hours and ice chests shall be drained to prevent accumulation of water from melted ice.
- F. Water**
1. Approved source. The agency must have a sufficient water supply which is potable and from an approved source or purified for drinking, brushing teeth, and cooking.
  2. Water purification. Water purification tablets or other means of disinfecting water shall be available at all times. The agency shall have a written policy on effective purification methods to be employed according to the water sources utilized and possible types of contamination.
  3. Bathing. Warm water facilities shall be planned for and available for each child to bathe at least once a week.
  4. Washing and laundering. Personal washing and laundering is not permitted in any body of water. Water used for these purposes shall be taken in a container from the lake, river or pond, and after use, shall be dumped on land at least 50 yards from the water source.
  5. Drinking water
    - a. Cool, potable drinking water shall be available for all children at all times.

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- b. The use of a common drinking utensil is prohibited.
- G. Sanitation
  - 1. Health and Environmental requirements
    - a. The disposal of sewage, garbage, and other wastes shall be done in accordance with local health and applicable state requirements, as provided in 18 A.A.C. 8, Article 6 and 18 A.A.C. 9, Article 8.
    - b. The agency shall obtain sanitation inspections of mobile kitchens or mobile toilet facilities, or both, prior to each trip by state or county authorities. Written reports of the sanitary inspections shall be kept on file at the agency. The agency shall meet all local, state, and federal health rules and regulations.
  - 2. Garbage and rubbish
    - a. Garbage and rubbish shall be stored securely in durable, noncombustible, leakproof, non-absorbent containers covered with tight-fitting lids. Such containers shall be provided with a waterproof liner or thoroughly cleaned after each emptying.
    - b. Garbage and rubbish storage shall be separate from living/sleeping areas.
    - c. Garbage, rubbish and other solid wastes shall be disposed of twice weekly at an approved sanitary landfill or similar disposal facility. In areas where no facilities are immediately available, solid wastes shall be packed out or disposed of in a manner in accordance with the regulations governing the area.
  - 3. Sewage and wastes
    - a. Sewage and other liquid wastes shall be disposed of in a public sewage system or, in the absence thereof, in a manner approved by the local health authority.
    - b. Where possible, adequate and safe sewage facilities with flush toilets shall be provided.
  - 4. Insects and rodents. Methods utilized in control of insects and rodents shall be used in a safe, cautious manner to avoid poisonous or toxic contamination to human beings.
- H. Safety
  - 1. Emergency procedures
    - a. The agency shall have and follow written procedures for staff and children in case of emergency. These procedures shall be developed with the assistance of qualified fire, safety, and rescue personnel and shall include provisions for the evacuation of all program areas and assignment of staff.
    - b. The agency shall train staff and children to report fires and other emergencies appropriately. Children and staff shall be trained in fire prevention.
    - c. The agency shall conduct emergency drills which shall include actual evacuation of children to safe areas at least monthly. The agency shall provide training for personnel on all shifts in performing assigned tasks during emergencies and making personnel familiar with the use of agency fire-fighting equipment.
      - i. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions of fire or other disasters.
      - ii. All persons in the program area shall participate in emergency drills.
      - iii. A record of such emergency drills shall be maintained.
      - iv. The agency shall make special provisions for the evacuation of any physically handicapped children in the program.
  - v. The agency shall help emotionally disturbed or perceptually handicapped children understand the nature of such drills.
  - 2. General program safety
    - a. The agency shall have written operating procedures, safety regulations, and emergency procedures for special program activities in which children participate, including aquatics, diving, lifesaving, instructional swimming, recreational swimming, water skiing, skin diving, scuba diving, boating, canoeing, rowing, sailing, crafts, bicycling, farming, horse-back riding, mountaineering, rock climbing, rappelling, caving, outdoor living skills, physical fitness, snow and ice activities, archery, gymnastics, riflery, contact sports, backpacking, expedition travel, and animal handling.
    - b. The agency shall provide the written operating procedures, safety regulations, and emergency procedures to the Department licensing staff for review and approval.
    - c. All children and staff shall receive instruction in the safe and proper use of all equipment and animals to be used by the program.
    - d. All children and staff shall be oriented as to safety regulations, emergency procedures and transportation to emergency facilities and/or personnel.
  - 3. Electrical
    - a. Electrical wiring and electrical appliances shall be installed in accordance with the Arizona State Fire Code at A.A.C. R4-36-201.
    - b. Electrical wires extending over activity areas shall be fully insulated and located at least 12 feet above the activity area.
    - c. All exposed wiring shall be fully insulated.
  - 4. Gas appliances
    - a. The installation of gas appliances for lighting, cooking, space heating, and water heating shall conform to state and local codes. Where no code applies, the provisions of A.R.S. §§ 36-1621 through 36-1626, together with the standards for the installation of gas appliances and gas piping, shall be followed.
    - b. All unused gas outlets shall have the valves removed and shall be capped off with a standard pipe cap.
    - c. Gasoline shall not be used for lighting, cooking, or heating.
  - 5. Fire safety equipment
    - a. Portable fire extinguishers shall be available and maintained for emergency fire protection. The number and type shall depend on the area to be protected.
    - b. All fire extinguishers shall be inspected at least monthly by staff members for proper location and to determine whether they are accessible, fully charged, and operable.
    - c. All fire extinguishers shall be inspected by an authorized fire extinguisher company at least once a year from the date of last charge and recharged immediately after use, or as otherwise necessary, showing the date of charging and the agency or company performing the work.
    - d. A dependable method of sounding a fire alarm shall be maintained in every agency area where children are located.
    - e. A written fire evacuation plan shall be posted.
- I. Water safety
  - 1. Water activities supervision

- a. A water activities program operated by the agency shall at all times be under the immediate supervision of a person holding current certification as a Red Cross Water Safety Instructor, a YMCA Instructor in swimming and life saving, or an Aquatic Instructor Boy Scouts of America. A water-activities program includes recreational and instructional swimming in a pool, on a beach, or other approved water areas, rowing, canoeing, sailing, boating, water skiing, snorkeling and scuba diving.
- b. The water activities supervisor shall provide pre-service training programs for participating children, supervise qualified lifeguards for water activities and maintain water activities equipment in safe working order.
- c. There shall be a minimum of one guard currently certified in Red Cross Advanced Lifesaving, YMCA Lifesaving, or a Lifeguard Boy Scouts of America on duty for each 25 persons in or on the water, and in addition one staff member directly watching every 10 or less persons in or on the water.
2. Swimming procedures
  - a. American Red Cross, YMCA, or Boy Scouts of America tests shall be used to determine each child's swimming ability. Children shall be confined to an area equal to the limits of their swimming skills or an area requiring lesser skills for which they have been classified.
  - b. A method of supervising and checking bathers shall be established and enforced. The system used shall be supervised during swimming periods by a member of the aquatics staff and checks shall be conducted not less than every 10 minutes. A written "lost swimmer" plan shall be established and all staff shall know exactly what their duties are in case of an emergency.
  - c. Children shall swim only in areas designated by the water activities supervisor as safe.
  - d. Swimming is prohibited during the hours of darkness except in lighted pools.
3. Swimming areas
  - a. A swimming area shall be maintained in a clean and safe condition, free from holes, sharp edges, and hidden dangers. The agency shall post notice of any known hazard in the vicinity and shall properly safeguard children.
  - b. The swimming area shall have a delineation of areas for non-swimmers, intermediates, and swimmers in accordance with the standards of the American Red Cross, YMCA, Boy Scouts of America.
  - c. Lifesaving equipment shall be provided at a swimming area and placed so it is immediately available in case of an emergency. The equipment shall be kept in good working order and include a bell or whistle, two assist poles, and a ring buoy.
  - d. The water of a natural swimming area shall be free from contamination by garbage, refuse, sewage pollution, or foreign material.
4. Watercraft and water-skiing
  - a. Any watercraft activities shall be conducted during daylight hours and supervised by the aquatics program instructor. A U.S. Coast Guard-approved life preserver shall be provided for each occupant of a watercraft. A non-swimmer shall wear a vest-type Coast Guard-approved life preserver and not be permitted in a watercraft unless accompanied by a staff member. A child shall wear a vest-type Coast Guard-approved life preserver before entering and while in white water or on a lake when the water is rough or while water-skiing.
  - b. During a watercraft activity period, a lifeguard shall patrol the watercraft area in a lifeboat. A watercraft docking area shall not be in the swimming area.
  - c. The swimming area shall not be used for the launching or stopping of water-skiers.
  - d. The agency which requires or permits children to use watercraft shall have special coverage for such activities included in the agency's liability insurance.
- J. Communications. The agency shall have a plan for emergency communication and communication equipment available with each mobile program unit, which may include:
  1. Telephone in camp units and outposts;
  2. Two-way radio or walkie-talkie;
  3. Knowledge of phone or radio locations on backpack, horseback, canoe or car trips, such as Ranger stations in remote areas;
  4. Simple code by flag, smoke, or mirror or other means if planned in advance.
- K. Transportation
  1. Vehicles
    - a. The agency shall provide or arrange transportation necessary for implementing the child's service plan.
    - b. Vehicles used in transporting children in care of the agency shall be licensed and inspected in accordance with Arizona state law.
    - c. Vehicles used for the transportation of children shall be maintained in a safe condition and be equipped in a fashion appropriate for the season.
    - d. The agency shall maintain written evidence that all vehicles owned, leased, borrowed, or rented by the agency to transport children are serviced regularly and maintained safely.
    - e. Vehicles used for the transportation of children shall be equipped with a first-aid kit and emergency accessories including tools, a fire extinguisher and flares or reflectors.
    - f. The agency shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle.
    - g. The agency shall not transport children in open truck beds or in trailers.
    - h. The agency shall ensure that any vehicle used to transport children has the following minimum amounts of liability insurance:
      - Injury per person: \$300,000
      - Injury per accident: \$1,000,000
  2. Drivers
    - a. Any person transporting children in care of the agency shall be licensed to operate that class of vehicle according to Arizona state law.
    - b. The agency shall provide adequate supervision in any vehicle used by the agency to transport children in care.
    - c. The agency shall ascertain the nature of any need or problem of a child which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness, or a disability. The agency shall communicate such information to the operator of any vehicle transporting children in care.

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3. Transportation of nonambulatory children. The following additional arrangements are required for agencies serving handicapped, nonambulatory children.
    - a. A ramp device to permit entry and exit of a child from the vehicle must be provided for all vehicles except automobiles used to transport physically handicapped children. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.
    - b. In all land vehicles except automobiles, wheelchairs shall be securely fastened to the floor.
    - c. In all land vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.
  4. Emergency transportation
    - a. The agency shall have means of transporting children in cases of emergency.
    - b. The agency shall have a written plan for transportation of injured persons to emergency medical services.
- L. Animals**
1. Safety. The agency shall be responsible for the care and behavior of pets or any animals allowed or used in the program. Animals shall have had necessary rabies shots.
  2. Insurance. The agency which requires or permits children to ride horses or other domesticated animals shall have specific coverage for such activities included in the agency's liability insurance.
  3. Sanitation. A temporary, shelter, corral, tie-rail, or hitching post shall be located beyond 50 feet of an area where food is prepared, cooked, or served. Fly repellents and daily removal of manure shall be used to prevent such a location from becoming an attraction for or breeding place for flies.

**Historical Note**

Renumbered from R6-5-7308 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**Appendix 1.****FACTOR****INDICIA OF A  
BEHAVIORAL HEALTH  
AGENCY****INDICIA OF A  
CHILD WELFARE  
AGENCY**

1. Primary purpose	To provide mental health treatment	To provide a safe & healthy living environment
2. Accreditation	JCAHO; COA; CARF	COA; Never JCAHO for this specific facility seeking licensure
3. Nursing Services	Integrated into services	Occasional use
4. On-campus educational services	Primarily seriously emotionally disturbed (SED); occasional regular education	Primarily regular education & learning disabilities; occasional SED
5. Population served	Described as psychiatrically disordered; seriously emotionally disturbed; psychologically disturbed	Described as behavior disordered, delinquent, dependent, neglected, undersocialized
6. Self-description	Behavioral Health Program Psychiatric Facility Psychosocial orientation	Child Welfare Agency; Social Services Agency;
Educational		orientation; Re-education
7. Primary source of referrals	Psychologists; psychiatrists; Insurance companies; CHAMPUS; RBHA's	DES; Juvenile courts; Juvenile Corrections; RBHA's as transition or with wrap-around
8. Counseling, psychological, psychiatric services	Routinely provided to all clients	Provided only on an "as-needed" basis
9. Location of behavioral health services	Within the program	Usually in office of contracted practitioner
10. Behavioral health	Employees or contractors	Usually contracted

practitioners		services; may be contractor from another program or agency
11. Case work services	Social workers, if any, are only part of professional staff	Social workers are primary part of professional staff
12. Staff titles; direct care workers	Behavioral health technicians; psychiatric technicians; psychiatric nurses	House parents; child care workers; teaching parents

**Historical Note**

Appendix 1 adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

**ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM**

**R6-5-7501. Definitions**

The following definitions apply in this Article.

1. "Adverse action" means:
  - a. Denial, suspension, or revocation of a child care provider's certification, an adoption agency license, or a foster home license; and
  - b. Exclusion from the child care resource and referral system described in A.R.S. § 41-1967.
2. "Administration" means the Department organizational unit responsible for taking adverse action which is the subject of an appeal. "Administration" includes the Division of Children, Youth, and Families and the Child Care Administration.
3. "Adoption agency" has the meaning ascribed to "agency" in A.R.S. § 8-101(2).
4. "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established under A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).
5. "Appellant" means a person who seeks a hearing with the Office of Appeals to challenge adverse action taken by the Department.
6. "Child Care Administration" means the administrative unit within the Department which is responsible for certification and supervision of family child care home providers and administration of the Child Care Resource and Referral System.
7. "Child Care Resource and Referral System," which is sometimes referred to as "CCR&R," means the child care provider information system which the Department administers under A.R.S. § 41-1967.
8. "Department" means the Arizona Department of Economic Security.
9. "Division of Children, Youth, and Families" means the administrative unit in the Department responsible for licensing foster homes and adoption agencies.
10. "Family child care home provider" has the meaning prescribed in R6-5-5201(29).
11. "Foster parent" has the meaning prescribed in A.R.S. § 8-501(A)(5).
12. "Hearing officer" means an individual appointed by the Department Director under A.R.S. § 41-1992(A) to conduct hearings when an appellant challenges adverse action.

13. "Licensee" means a person:
  - a. Applying for a license as, or currently licensed as, a foster parent or an adoption agency;
  - b. Applying for certification as, or certified as, a family child care home provider; or
  - c. Listed on the Child Care Resource and Referral System.
14. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body which includes hearing officers appointed under A.R.S. § 41-1992(A).
15. "Person" means a natural person, partnership, joint venture, company, corporation, firm, association, society, or institution.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7502. Entitlement to a Hearing; Appealable Action**

- A. A licensee who disputes adverse action may obtain an administrative hearing to challenge the action as provided in this Article.
- B. The following actions are not appealable:
  1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
  2. Failure to clear a fingerprint check or criminal history check;
  3. Imposition of noncompliance status as prescribed in R6-5-7035;
  4. Imposition of a corrective action plan as prescribed in R6-5-5818;
  5. Removal of a child from a placement;
  6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
  7. Imposition of a provisional license as prescribed in A.R.S. § 8-509(D).
- C. Findings made in a Child Protective Services ("CPS") investigation are not appealable under this Article. A person may appeal findings made in a CPS investigation of a licensee as prescribed in A.R.S. § 8-546.12.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7503. Computation of Time**

- A. In computing any time period,
  1. The term "day" means a calendar day;
  2. The term "work day" means Monday through Friday, excluding Arizona state holidays;



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3. The date of the act, event, notice, or default from which a designated time period begins to run is not counted as part of the time period; and
  4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.
- B.** A document mailed by the Department is deemed given to the addressee on the date mailed to the addressee's last known address. The mailing date is presumed to be the date shown on the document, unless the facts show otherwise.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7504. Request for Hearing: Form; Time Limits; Presumptions**

- A.** Except as otherwise provided in R6-5-5010(A) and R6-5-5227, a person who wishes to appeal an adverse action shall file a written request for hearing with the Administration within 20 days of the date on the notice or letter advising the person of the adverse action. The Administration shall provide a form for this purpose, and, upon request, shall help an appellant fill out the form.
- B.** An appellant shall include the following information in the request for hearing:
1. Name, address, and telephone number, and, if applicable, telefacsimile number of the person subject to the adverse action;
  2. Identification of the Administration initiating the adverse action;
  3. A description of the adverse action which is the subject of the appeal;
  4. The date of the notice of adverse action; and
  5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.
- C.** The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (B), so long as the request contains sufficient information for the Department to determine the identity of the appellant and the issue on appeal.
- D.** A request for hearing is deemed filed:
1. On the mailing date, as shown by the postmark, if sent first-class mail, postage prepaid, through the United States Postal Service to the Department; or
  2. On the date actually received by the Department, if not mailed as provided in subsection (D)(1).
- E.** The Department may determine that a document was timely filed if the sender of the document can demonstrate that the delay in submission was due to any of the following reasons:
1. Department error or misinformation,
  2. Delay or other action by the United States Postal Service, or
  3. Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.
- F.** When the Office of Appeals receives a request for hearing that was not timely filed, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excused as provided in subsection (E).
- G.** An appellant whose appeal is denied as untimely may petition for review as provided in R6-5-7518.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7505. Administration: Transmittal of Appeal**

An Administration that receives a request for appeal shall send the Office of Appeals a copy of the request and the adverse action notice within two work days of receipt of the request.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7506. Stay of Adverse Action Pending Appeal**

- A.** The Department shall not carry out the adverse action until the time for appeal has run, except as otherwise provided in subsection (C), and in the following circumstances:
1. The appellant expressly waives the delay of action; or
  2. The appellant
    - a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice, and
    - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice.
- B.** If an appellant timely appeals an adverse action as provided in R6-5-7504, the Department shall not carry out the adverse action until a hearing officer issues a decision affirming the adverse action, except as otherwise provided in subsection (C), and in the following circumstances:
1. The appellant expressly waives the delay of action;
  2. The appellant
    - a. Is subject to the same adverse action for reasons other than those that are the subject of the current adverse action notice; and
    - b. Received notice of and failed to timely appeal the adverse action being imposed for reasons other than those that are the subject of the current notice;
  3. The appeal challenges an action that is not appealable according to R6-5-7502(B);
  4. The appellant withdraws the request for hearing; or
  5. The appellant fails to appear for the hearing.
- C.** The Department may summarily suspend a license, a certificate, or registration on the CCR & R, as provided in A.R.S. § 41-1064(C).

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7507. Hearings: Location; Notice; Time**

- A.** The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing or permit a witness to appear telephonically.
- B.** Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing as follows:
1. For appeals of adverse action against a foster parent, within 10 days of the date the Department receives the appellant's request for hearing, as required by A.R.S. § 8-506; and
  2. For all other appeals, no earlier than 20 days from the date the Department receives the appellant's request for hearing.
- C.** The Office of Appeals shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is scheduled within the 10-day period specified in subsection (B)(1). For hearings scheduled within the 10-day period, the Office of Appeals shall notify the parties telephonically and send written notice at the earliest date practicable.
- D.** The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
  2. The name of the hearing officer;
  3. A general statement of the issues involved in the case;
  4. A statement listing the parties' rights, as specified in R6-5-7511; and
  5. A general statement of the hearing procedures.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7508. Rescheduling the Hearing**

- A. An appellant may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed. Good cause exists where circumstances beyond the appellant's reasonable control make it difficult or burdensome for the appellant to attend the hearing on the scheduled date.
- B. Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least five work days before the scheduled hearing date. The Office of Appeals may deny an untimely request. Emergency circumstances mean circumstances
  1. Beyond the reasonable control of the party;
  2. Which did not arise until after the five-day period; and
  3. Which could not reasonably have been anticipated.
- C. When the Office of Appeals reschedules a hearing under this Section or R6-5-7514, the Office of Appeals shall notify all interested parties, in writing, prior to the hearing. The 20-day notice requirement in R6-5-7507(C) does not apply to rescheduled hearings.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7509. Hearing Officer: Duties and Qualifications**

- A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.
- B. The hearing officer shall:
  1. Administer oaths and affirmations;
  2. Regulate and conduct hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all participants;
  3. Ensure that all relevant issues are considered;
  4. Exclude irrelevant evidence from the record;
  5. Request, receive, and incorporate into the record, relevant evidence;
  6. Upon compliance with the requirements of R6-5-7511, subpoena witnesses or documents needed for the hearing;
  7. Open, conduct, and close the hearing;
  8. Rule on the admissibility of evidence offered at the hearing;
  9. Direct the order of proof at the hearing;
  10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:
    - a. Disqualify himself or herself from the case;
    - b. Continue the hearing to a future date or time;
    - c. Prior to the entry of a final decision, reopen the hearing to take additional evidence;
    - d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article; and
    - e. Exclude non-party witnesses from the hearing room; and
  11. Issue a written decision resolving the appeal.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7510. Change of Hearing Officer; Challenges for Cause**

- A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit which shall include:
  1. The case name and number;
  2. The hearing officer assigned to the case; and

3. The name and signature of the party requesting the change.
- B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the scheduled hearing date.
- C. Unless a party is challenging a hearing officer for cause as provided in subsection (D), a party may request only one change of hearing officer.
- D. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.
- E. A party who brings a challenge for cause shall file a request as provided in subsection (A) and send a copy of the request to all other parties. The request shall explain the reason why the assigned hearing officer is not impartial or disinterested.
- F. The hearing officer being challenged for cause may hear and decide the challenge unless:
  1. A party specifically requests that another hearing officer make the determination, or
  2. The assigned hearing officer disqualifies himself or herself from the decision.
- G. The Office of Appeals shall transfer the case to another hearing officer when:
  1. A party requests a change as provided in subsections (A) through (C), or
  2. A hearing officer is removed for cause as provided in subsections (D) through (F).
- H. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7511. Subpoenas**

- A. A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall first attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-5-7512(2).
- B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence.
- C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:
  1. The case name and number;
  2. The name of the party requesting the subpoena;
  3. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
  4. A description of any documents or physical evidence to be subpoenaed, including the title, appearance, and location of the item, and the name and address of the person in possession of the item; and
  5. A description of the party's efforts to obtain the witness or evidence by voluntary means.
- D. A party who wants a subpoena shall ask for the subpoena at least five days before the scheduled hearing date.
- E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is cumulative.
- F. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their state employment, by regular mail, hand-delivery, or state courier service.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7512. Parties' Rights**

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in this Article;
2. The right to copy, before or during the hearing, any documents in the Department's file on the appellant, and documents the Department may use at the hearing, except documents shielded by the attorney-client or work-product privilege, or as otherwise prohibited by federal or state confidentiality laws;
3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-5-7510;
4. The right to request subpoenas for witnesses and evidence as provided in R6-5-7511;
5. The right to present the case in person or through an authorized representative, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31(a);
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, as provided in R6-5-7518 and R6-5-7520, if dissatisfied with an Office of Appeals' decision.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7513. Withdrawal of an Appeal**

- A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose. An appellant may also orally withdraw an appeal on the open record.
- B. Upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or a statement of withdrawal made on the record, the Office of Appeals shall dismiss the appeal.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7514. Failure to Appear; Default; Reopening**

- A. If an appellant fails to appear at the scheduled hearing, the hearing officer shall:
  1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
  2. Rule summarily on the available record; or
  3. Adjourn the hearing to a later date and time.
- B. The hearing officer shall not enter a default if the appellant notifies the Office of Appeals, before the scheduled time of hearing, that the appellant cannot attend the hearing, due to good cause, and still desires a hearing or wishes to have the matter considered on the available record.
- C. No later than 10 days after a scheduled hearing date at which a party failed to appear, the non-appearing party may file a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.
- D. The hearing officer may decide the issue of good cause on the available record or may set the matter for briefing or for hearing.
- E. If the hearing officer finds that the party had good cause for non-appearance, the hearing officer shall reopen the proceedings and schedule a de novo hearing with notice to all interested parties as prescribed in R6-5-7508(C).

- F. Good cause exists where the non-appearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the meaning applied to "excusable neglect" as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7515. Hearing Proceedings**

- A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.
- B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.
- C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(D).
- D. The Office of Appeals shall tape record all hearings or record the hearing by other stenographic means. The Department need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.
- E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.
- F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing.
- G. The hearing officer shall call the hearing to order and dispose of any pre-hearing motions or issues.
- H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
- I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence. Unless the hearing officer allows a longer period of time, a statement shall not exceed three minutes.
- J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.
- K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal and shall exclude any irrelevant evidence.
- L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7516. Hearing Decision**

- A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing, and the applicable law. The 60-day time limit is extended for any delay caused by the appellant.
- B. The hearing decision shall include:
  1. Findings of fact concerning the issue on appeal;
  2. Citations to the law and authority applicable to the issue on appeal;
  3. A statement of the conclusions derived from the controlling facts and law, and the reasons for the conclusions;
  4. The name of the hearing officer;

- 5. The date of the decision; and
  - 6. A statement of further appeal rights and the time period for exercising those rights.
- C. The Office of Appeals shall mail a copy of the decision to each party's representative, or to the party if the party is unrepresented.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7517. Effect of the Decision**

- A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective on the mailing date of the hearing officer's decision. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
- B. If the hearing officer reverses the Administration's decision to take adverse action, the Administration shall not take the action unless and until the Appeals Board or Arizona Court of Appeals issues a decision affirming the adverse action.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7518. Further Administrative Appeal**

- A. A party may appeal an adverse decision issued by a hearing officer to the Department's Appeals Board, as prescribed in A.R.S. § 41-1992(C) and (D), by filing a written petition for review with the Office of Appeals within 15 days of the mailing date of the hearing officer's decision.
- B. The petition for review shall:
  - 1. Be in writing,
  - 2. Describe why the party disagrees with the hearing officer's decision, and
  - 3. Be signed and dated by the party or the party's representative.
- C. The party petitioning for review shall mail a copy of the petition to all other parties.
- D. The Office of Appeals shall have the proceedings of the hearing below transcribed for the Appeals Board.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7519. Appeals Board**

- A. The Appeals Board shall conduct proceedings in accordance with A.R.S. § 41-1992(D) and A.R.S. § 23-672.
- B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information would help in deciding the appeal. The Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required, or any further issues to be considered.
- C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer and any further evidence or testimony presented to the Board.
- D. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The Board's decision shall specify the parties' rights to further review and the time for filing a request for review.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**R6-5-7520. Judicial Review**

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

**Historical Note**

Adopted effective June 4, 1998 (Supp. 98-2).

**ARTICLE 76. REPEALED****R6-5-7601. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7602. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7603. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7604. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).

**R6-5-7605. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7606. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7607. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7608. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7609. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7610. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7611. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-7612. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).



**R6-5-7639. Repealed****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 77. REPEALED**

*Former Article 77 consisting of Sections R6-5-7701 through R6-5-7704 repealed effective November 8, 1982.*

**ARTICLE 78. REPEALED**

*Former Article 78 consisting of Sections R6-5-7801 through R6-5-7804 repealed effective November 8, 1982.*

**ARTICLE 79. REPEALED**

*Former Article 79 consisting of Sections R6-5-7901 through R6-5-7913 repealed effective November 8, 1982.*

**ARTICLE 80. EXPIRED****R6-5-8001. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8002. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8003. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8004. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8005. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8006. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8007. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8008. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8009. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**R6-5-8010. Expired****Historical Note**

Adopted effective September 16, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

**ARTICLE 81. REPEALED**

*Former Article 81 consisting of Sections R6-5-8101 through R6-5-8104 repealed effective November 8, 1982.*

**ARTICLE 82. REPEALED**

*Former Article 82 consisting of Sections R6-5-8201 through R6-5-8204 repealed effective November 8, 1982.*

**ARTICLE 83. REPEALED****R6-5-8301. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8302. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8303. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8304. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8305. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8306. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-35-8307. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8308. Repealed****Historical Note**

Adopted effective January 18, 1977 (Supp. 77-1).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 84. REPEALED**

*Former Article 84 consisting of Sections R6-5-8401 through R6-5-8404 repealed effective November 8, 1982.*

**ARTICLE 85. REPEALED**

*Former Article 85 consisting of Sections R6-5-8501 through R6-5-8508 repealed effective November 8, 1982.*

**ARTICLE 86. REPEALED****R6-5-8601. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8601 repealed, new Section R6-5-8601 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8602. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8602 repealed, new Section R6-5-8602 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8603. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8603 repealed, new Section R6-5-8603 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8604. Repealed****Historical Note**

Adopted effective February 24, 1977 (Supp. 77-1). Former Section R6-5-8604 repealed, new Section R6-5-8604 adopted effective March 8, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 87. REPEALED****R6-5-8701. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8702. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8703. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-8704. Repealed****Historical Note**

Adopted effective March 9, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 88. REPEALED**

*Former Article 88 consisting of Sections R6-5-8801 through R6-5-8804 repealed effective November 8, 1982.*

**ARTICLE 89. RESERVED****ARTICLE 90. RESERVED****ARTICLE 91. REPEALED****R6-5-9101. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9102. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9103. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9104. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 92. REPEALED****R6-5-9201. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9202. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9203. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-9204. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2). Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 93. REPEALED**

*Former Article 93 consisting of Sections R6-5-9301 through R6-5-9304 repealed effective November 8, 1982.*

**ARTICLE 94. REPEALED**

*Former Article 94 consisting of Sections R6-5-9401 through R6-5-9404 repealed effective November 8, 1982.*

**ARTICLE 95. REPEALED**

*Former Article 95 consisting of Sections R6-5-9501 through R6-5-9504 repealed effective November 8, 1982.*

**ARTICLE 96. REPEALED**

*Former Article 96 consisting of Sections R6-5-9601 through R6-5-9604 repealed effective November 8, 1982.*

**ARTICLE 97. REPEALED**

*Former Article 97 consisting of Sections R6-5-9701 through R6-5-9704 repealed effective November 8, 1982.*

**ARTICLE 98. REPEALED**

*Former Article 98 consisting of Sections R6-5-9801 through R6-5-9804 repealed effective November 8, 1982.*

**ARTICLE 99. REPEALED**

*Former Article 99 consisting of Sections R6-5-9901 through R6-5-9904 repealed effective November 8, 1982.*

**ARTICLE 100. REPEALED**

*Former Article 100 consisting of Sections R6-5-10001 through R6-5-10004 repealed effective November 8, 1982.*

**ARTICLE 101. REPEALED**

*Former Article 101 consisting of Sections R6-5-10101 through R6-5-10104 repealed effective November 8, 1982.*

**ARTICLE 102. REPEALED**

*Former Article 102 consisting of Sections R6-5-10201 through R6-5-10204 repealed effective November 8, 1982.*

**ARTICLE 103. REPEALED**

*Former Article 103 consisting of Sections R6-5-10301 through R6-5-10304 repealed effective November 8, 1982.*

**ARTICLE 104. REPEALED****R6-5-10401. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10402. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10403. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10404. Repealed****Historical Note**

Adopted effective March 19, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 105. REPEALED****R6-5-10501. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10502. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10503. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**R6-5-10504. Repealed****Historical Note**

Adopted effective March 12, 1979 (Supp. 79-2).  
Repealed effective December 17, 1993 (Supp. 93-4).

**ARTICLE 106. REPEALED**

*Former Article 106 consisting of Sections R6-5-10601 through R6-5-10604 repealed effective November 8, 1982.*

**ARTICLE 107. REPEALED**

*Former Article 107 consisting of Sections R6-5-10701 through R6-5-10704 repealed effective November 8, 1982.*

**ARTICLE 108. REPEALED**

*Former Article 108 consisting of Sections R6-5-10801 through R6-5-10804 repealed effective November 8, 1982.*

**ARTICLE 109. REPEALED**

*Former Article 109 consisting of Sections R6-5-10901 through R6-5-10904 repealed effective November 8, 1982.*

**ARTICLE 110. REPEALED**

*Former Article 110 consisting of Sections R6-5-11001 through R6-5-11004 repealed effective November 8, 1982.*





## **Replacement Check List**

For rules filed within the  
4th Quarter  
October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

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

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## **Title 7. Education**

### **Chapter 2. State Board of Education**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R7-2-603, R7-2-317, R7-2-612.01 and R7-2-614, R7-2-615, R7-2-616, R7-2-621

REMOVE Supp. 16-3  
Pages: 1 - 149

REPLACE with Supp. 16-4  
Pages: 1 - 152

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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Name: Dr. Karol Schmidt, Executive Director  
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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State  
Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

## State Board of Education

## TITLE 7. EDUCATION

## CHAPTER 2. STATE BOARD OF EDUCATION

Authority: A.R.S. § 15-201 et seq.

*Editor's Note: This Chapter contains rules that were filed out of sequence by adoption date. The Office has made every effort to codify the previous filings with the current Chapter and update the historical references where necessary. Refer to the historical notes for more information (Supp. 16-2).*

*Editor's Note: Supp. 16-1 contains rules that were submitted as final exempt rules and approved by the Board February 25, 2008. Although approved by the Board in 2008, the rulemaking was not filed in the Secretary of State's Office for publication in this Chapter until 2016. The final exempt rulemaking was filed by the Board on January 6, 2016 (Supp. 16-1).*

*Editor's Note: Supp. 15-3 contains rules that were submitted as final exempt rules. Pursuant to the Board's rulemaking procedures a public hearing was held on the rules after they were proposed at a Board meeting. Even though the proposed rules were not published in the Register, the Office of the Secretary of State makes a distinction between exempt rulemakings and final exempt rulemakings. Final exempt rulemakings are those filed with conditional exemptions to the Arizona Administrative Procedures Act such as requirements to conduct a public hearing or accept public comments on a proposed exempt rulemaking. Although approved by the Board, these final exempt rulemakings were not filed with the Secretary of State's Office at the time of approval. Therefore these rules were in effect prior to the release of Supp. 15-3. Refer to the historical notes for effective dates.*

*Editor's Note: This Chapter contains rules made, amended, repealed, renumbered and approved by the State Board of Education that were exempt from the rulemaking process. Although approved by the Board, certain rulemakings were not filed with the Secretary of State's Office at the time of approval. These rulemakings were filed in 2009 and 2010 and printed as Exempt Rulemakings in the Arizona Administrative Register. The Office has expedited the publishing of these Sections in the Arizona Administrative Code because these rules were in effect prior to Supp. 09-1, Supp. 09-2, Supp. 09-3, Supp. 09-4, Supp. 10-1, Supp. 10-2, Supp. 10-3, Supp. 10-4, Supp. 11-1, and Supp. 12-2 releases. Refer to the historical notes for more information.*

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**ARTICLE 6. CERTIFICATION**

*Article 6, consisting of Sections R7-2-601 through R7-2-617, adopted effective December 4, 1998 (Supp. 98-4).*

*Article 6, consisting of Sections R7-2-601 through R7-2-608, repealed effective December 4, 1998 (Supp. 98-4).*

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*Article 12, consisting of Section R7-2-1201, repealed effective February 20, 1997 (Supp. 97-1).*

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**ARTICLE 13. CONDUCT**

*Article 13, consisting of Sections R7-2-1301 through R7-2-1307, adopted effective December 3, 1998 (Supp. 98-4).*

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**ARTICLE 14. CHARTER SCHOOLS**

*Article 14, consisting of Sections R7-2-1401 through R7-2-1408, adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4).*

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**ARTICLE 1. STATE BOARD OF EDUCATION MEETINGS****R7-2-101. Governance****A. Officers**

1. The elective officers of the State Board of Education ("Board") shall be a President and a Vice President.
2. The State Superintendent of Public Instruction shall serve as the Secretary and as the Executive Officer of the Board.
3. The President shall preside over all meetings of the Board, call meetings as herein provided and perform such other special duties as may be vested in him or her by the Board.
4. In the absence of the President, the Vice President shall preside over all meetings and shall perform such other special duties as may be vested in him or her by the Board.
5. The President shall appoint a nominating committee that will prepare a slate of candidates for presentation to the Board at the first regular meeting following January 1 of each year. Other candidates may be nominated from the floor. The two elected officers shall be elected by written ballot and shall serve for one year, or until their successors are elected.
6. If a vacancy occurs in the office of President, the Vice President shall immediately become the President. As soon as practicable, the Board shall elect a new Vice President.

**B. Regular and special meetings**

1. Unless otherwise agreed upon by a majority of the Board, meetings shall be held on the fourth Monday of each month.
2. The place of the meeting shall be designated by the President. In the absence of the President, the place of meeting shall be designated by the Vice President.

**C. Public input to the Board**

1. Requests for matters to be placed on the agenda.
  - a. When any person wishes to have a matter placed on the agenda, that person shall submit a written request to the President of the Board not less than 21 days prior to the Board meeting.
  - b. The President of the Board may choose not to place an item submitted by a person other than a Board member on the agenda.
2. Public comment on agenda items.
  - a. Any member of the public who wishes to address the Board regarding a matter on the agenda for Board action may submit a written request to be heard on forms provided by the Board.
  - b. The President of the Board or a majority of the Board may allot a reasonable time for members of the public to address the Board with respect to agenda items.

**Historical Note**

Former Section R7-2-101 repealed, new Section R7-2-101 adopted effective December 4, 1978 (Supp. 78-6). Amended effective February 27, 1980 (Supp. 80-1). Former Section R7-2-101 repealed, new Section R7-2-101 adopted effective June 17, 1985 (Supp. 85-3).

**R7-2-102. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-103. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**ARTICLE 2. STATE BOARD OF EDUCATION COMMITTEES****R7-2-201. Advisory Committees**

- A.** The State Board of Education ("Board") may create an advisory committee for the purpose of providing advice and recommendations as assigned by the Board. In this rule, unless the context otherwise requires, the following definitions shall apply:
1. "Ad Hoc Advisory Committee" means a committee, established by the Board, for a limited time and scope, for the purpose of providing advice and recommendations to the Board.
  2. "Executive Committee" means a committee, whose members consist of the President and Vice-President of the Board, established for the purpose of appointing ad hoc advisory committee members.
  3. "Standing Advisory Committee" means the Certification Advisory Committee, the Certification Appeals Advisory Committee, and the Professional Practices Advisory Committee, or any other designated permanent committee, established by the Board, for the specific purpose of providing ongoing advice and recommendations as assigned by the Board.
- B.** Any advisory committee or similar body that has been created by either the Board or statute shall be appointed and conduct its business in accordance with this rule except as otherwise required by law.
- C.** The Board shall determine the structure, membership, and tasks of any standing advisory committee the Board has created.
- D.** The Board's Appointments Subcommittee, whose members are appointed by the President of the Board, shall review nominations submitted by the Board members for appointment to a standing advisory committee and shall provide a recommendation to the Board for consideration. A vacancy on a standing advisory committee shall be filled in the manner described in this Section.
- E.** The Board shall determine the structure and task of an ad hoc advisory committee it has created and may make suggestions as to members. The Executive Committee shall appoint the members of an ad hoc advisory committee. An ad hoc advisory committee shall exist for the time necessary to accomplish its assigned task or for one year from the date it is created, whichever is less. An ad hoc advisory committee may continue to function beyond a one-year period only with the express approval of the Executive Committee. A vacancy on an ad hoc advisory committee shall be filled in the manner prescribed by the Executive Committee.
- F.** The Board may in its discretion remove any member from and dissolve any standing advisory committee that the Board has created. The Executive Committee may in its discretion remove any member from and dissolve any ad hoc advisory committee that the Executive Committee has created.
- G.** An advisory committee shall not conduct a meeting of its members without prior acknowledgment from the Executive Director of the Board that the notice and agenda for the meeting have been approved by the President of the Board and posted and that there are sufficient funds to meet all expenses that would be incurred in connection with such meeting. An advisory committee member shall not obligate the payment of Board funds.



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- H. The meetings of a committee shall be held at the offices of the Board or any other facility for which no charges would be incurred for use of the facility.
- I. Activities of an advisory committee are limited to preparation of advice and recommendations to be presented to the Board for issues which relate directly to the task assigned by the Board.
- J. Advisory committees are not authorized the use of Board letterhead stationery without the express approval of the President of the Board and are not authorized the use of Department of Education letterhead stationery without the express approval of the Superintendent of Public Instruction.
- K. An advisory committee shall:
  1. Annually select from its members a chair and vice chair;
  2. Request information, assistance, or opinions from the Department of Education necessary to accomplish its task. An advisory committee shall convey any such request through the Department liaison designated pursuant to this rule.
- L. A quorum of an advisory committee shall be a majority of the voting members of the advisory committee. Voting members shall be only those members specifically appointed by the Board or Executive Committee. A quorum of an advisory committee is necessary to conduct its business. An affirmative vote of the majority of voting members present is necessary for an advisory committee to take action.
- M. The Superintendent shall designate an employee of the Department of Education to serve as a liaison to each advisory committee. The President of the Board may appoint a member of the Board to serve as an additional liaison to each advisory committee as the President deems appropriate.

**Historical Note**

Amended effective July 1, 1977 (Supp. 77-4). Former Section R7-2-201 repealed, new Section R7-2-201 adopted effective December 4, 1978 (Supp. 78-6).  
 Amended effective February 25, 1987 (Supp. 87-1). Section repealed, new Section adopted effective March 18, 1994 (Supp. 94-1). Amended by final exempt rulemaking at 22 A.A.R. 2239, effective August 1, 2016 (Supp. 16-3).

**R7-2-202. Repealed****Historical Note**

Former Section R7-2-202 repealed, new Section R7-2-202 adopted effective December 4, 1978 (Supp. 78-6).  
 Former Section R7-2-202 repealed, new Section R7-2-202 adopted effective June 21, 1979 (Supp. 79-3).  
 Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 12, 1990 (90-4). Amended effective August 28, 1992 (Supp. 92-3). Repealed effective March 18, 1994 (Supp. 94-1).

**R7-2-203. Repealed****Historical Note**

Former Section R7-2-203 repealed, new Section R7-2-203 adopted effective April 9, 1984 (Supp. 84-2).  
 Amended subsections (A) and (B) effective December 30, 1988 (Supp. 88-4). Repealed effective February 20, 1997 (Supp. 97-1).

**R7-2-204. Repealed****Historical Note**

Adopted effective December 4, 1978 (Supp. 78-6). Former Section R7-2-204 repealed, new Section R7-2-204 adopted effective December 31, 1984 (Supp. 84-6).  
 Amended effective August 28, 1992 (Supp. 92-3).

Repealed effective February 20, 1997 (Supp. 97-1).

**R7-2-205. Certification Review, Suspension, and Revocation**

- A. Professional Practices Advisory Committees ("Committees") shall act in an advisory capacity to the State Board of Education ("Board") in regard to certification or recertification unfitness to teach, and revocation, suspension, or surrender of certificates.
- B. Committees shall each consist of seven members comprised of the following:
  1. One elementary classroom teacher,
  2. One secondary classroom teacher,
  3. One principal,
  4. One superintendent or assistant/associate superintendent,
  5. Two lay members, one lay member who shall be a parent of a student currently attending public school in Arizona, and
  6. One local Governing Board member.
- C. Members appointed pursuant to subsections (B)(1), (2), (3) and (4) shall meet at least the following requirements:
  1. Certified to teach in Arizona.
  2. Currently employed in or retired from the education profession in the specific category of their appointment.
  3. If currently employed, shall have been employed in this category for the three years immediately preceding their appointment.
- D. Terms
  1. All regular terms shall be for four years except as set forth in subsection (E).
  2. A member may be reappointed with Board approval.
- E. The Board may remove any member from the Committee. All vacancies shall be filled as prescribed in subsection (C), and those persons appointed to fill vacancies shall serve to complete the term of the person replaced.
- F. The Committee shall:
  1. Select from its members a Chairman and Vice-Chairman,
  2. Establish procedures for conducting business according to Robert's Rules of Order Revised. A quorum shall be a majority of members of the Committee. A quorum is necessary to conduct business. An affirmative vote of the majority of the members present is needed to take action.
  3. Hold meetings as needed to conduct hearings or other Committee business by call of the Chairman of the Committee. If the Chairman neglects or declines to call a meeting, then a majority of the Committee may call a meeting. The Board may call a meeting as required to conduct necessary business. Notice of any meeting shall be given to Committee members seven days prior to the meeting.
  4. Recommend the removal of any member who is absent from three consecutive meetings.
  5. Refer to R7-2-1308 to assist in determining whether the acts complained of constitute unprofessional conduct.
  6. Conduct its business pursuant to R7-2-1301 et seq. and hearings pursuant to R7-2-701 et seq.

**Historical Note**

Adopted effective December 4, 1978 (Supp. 78-6). Former Section R7-2-205 repealed, new Section R7-2-205 adopted effective February 24, 1982 (Supp. 82-1).  
 Former Section R7-2-205 repealed, new Section R7-2-205 adopted effective August 30, 1984 (Supp. 84-4).  
 Amended effective February 21, 1986 (Supp. 86-1).  
 Amended subsections (H), (I), and (J) effective February 3, 1987 (Supp. 87-1). Amended effective December 15, 1989 (Supp. 89-4). Amended effective May 31, 1991

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(Supp. 91-2). Amended effective April 9, 1993 (Supp. 93-2). Amended effective December 3, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by final exempt rulemaking at 21 A.A.R. 1775, effective May 20, 2013 (Supp. 15-3).

**R7-2-206. Certification Denial Appeals Process for Applications for Certification that Do Not Involve Allegations of Immoral or Unprofessional Conduct**

- A. The Certification Appeals Advisory Committee ("Committee" or "CAAC") shall act in an advisory capacity to the State Board of Education ("Board") and shall serve as the hearing body for the Board in regard to appeals of certification denials pursuant to A.R.S. § 15-534.01 that do not involve allegations of immoral or unprofessional conduct. Applications for certification that involve allegations of immoral or unprofessional conduct shall be reviewed by the Professional Practices Advisory Committee as established by R7-2-205.
- B. The Committee shall be appointed by the Board and shall consist of five members comprised of the following:
  1. One certificated elementary classroom teacher,
  2. One certificated secondary classroom teacher,
  3. One certificated administrator,
  4. One lay member, and
  5. One local Governing Board member.
- C. Terms of the members
  1. All regular terms shall be for two years except as set forth in subsection (D).
  2. A member may be reappointed with Board approval.
- D. The Board may remove any member from the Committee. All vacancies shall be filled in a timely fashion and those persons appointed to fill vacancies shall serve to complete the term of the person replaced.
- E. The Committee shall:
  1. Select from its members a Chairman and Vice-Chairman.
  2. A quorum shall be a majority of members of the Committee. A quorum is necessary to conduct business. An affirmative vote of the majority of the members present is needed to take action.
  3. Hold meetings once a month or as often as necessary to conduct hearings or other Committee business.
  4. Recommend the removal of any member who is absent from three consecutive meetings.
  5. Conduct appeals pursuant to A.R.S. Title 41, Chapter 6, Article 6 and this Section.
- F. Request for hearing. A person who has had an application for certification denied by the Board or the Department of Education pursuant to A.R.S. § 15-534.01(B) may file a written request for a hearing with the Board within 15 days after receiving the notice of denial. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation of the 15 days. If the final day of the 15 day deadline falls on a Saturday, Sunday or legal holiday, the next business day is the final day of the deadline.
- G. Notice of hearing
  1. If an applicant requests a hearing to appeal the denial of an application for certification, a notice of hearing shall be given at least 20 days prior to the date set for the hearing.
  2. The notice shall include:
    - a. A statement of the time, place and nature of the hearing.
    - b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
    - c. A reference to the particular sections of the statutes and rules involved.
  - d. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.
3. Opportunity shall be afforded all parties to respond and present evidence and argument on the issues involved.
4. The Board may dispose of any certification appeal by decision or approved stipulation, agreed settlement, consent agreement or by default.
5. A hearing before the hearing body or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Board.
6. The hearing body may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.
7. The record in an appeal of a certification denial shall include:
  - a. All pleadings, motions and interlocutory rulings.
  - b. Evidence received or considered.
  - c. A statement of matters officially noticed.
  - d. Objections and offers of proof and rulings thereon.
  - e. Proposed findings of fact and conclusions of law and exceptions thereto.
  - f. Any decision, opinion, recommendation or report of the hearing body.
  - g. All staff memoranda, other than privileged communications, or data submitted to the hearing body in connection with its consideration of the case.
8. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- H. Service of documents; change of address notice requirement
  1. Every notice or decision issued by the Board pertaining to the denial of an application for initial certification or renewal of a certificate shall be served by personal delivery or certified mail, return receipt requested, to the applicant or certificated person's last address of record with the Department of Education or by any other method that is reasonably calculated to give actual notice to the applicant or the certificated person.
  2. Each applicant or certificated person shall inform the Department of Education of any change of address within 30 days of the change of address.
- I. Hearing process
  1. Parties may participate in the hearing in person or through an attorney.
  2. Upon request of either party, the presiding officer may schedule a prehearing conference. The purpose of a prehearing conference shall be to narrow issues, attempt settlement, address evidentiary issues or for any other purpose deemed necessary by the presiding officer.
  3. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the

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right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the Committee. At such hearing such applicant shall be the moving party and have the burden of proof.

4. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
5. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the hearing body. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing body's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**J. Subpoenas**

1. The Department of Education may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence on its own volition or at the request of a party.
2. A request for a hearing subpoena shall be in writing and served on each party at least seven days prior to the date set for hearing and shall state:
  - a. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
  - b. The name and address of the witness subpoenaed; and
  - c. The documents, if any, sought to be provided.
3. On application of a party or the agency and for use as evidence, the hearing body may permit a deposition to be taken, in the manner and upon the terms designated by the hearing body, of a witness who cannot be subpoenaed or is unable to attend the hearing.
4. The individual to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for appearance, the hearing body grants a written request to quash or modify the subpoena. The request shall state the reasons why it should be granted. The hearing body shall grant or deny such request by order.
5. The party requesting the subpoena shall prepare it and cause it to be served upon the individual to whom it is directed in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the hearing body.

**K. Conduct of hearing**

1. The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
2. Except for those hearings which may involve presentation of evidence protected by law as confidential, or which are otherwise closed pursuant to an express provision of law, all hearings are open to public observation.
3. Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

**L. Evidence**

1. All witnesses shall testify under oath or affirmation.

2. The hearing body shall have the power to administer oaths and affirmations.
3. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and fair disclosure of the facts.
4. The hearing body shall receive evidence, rule upon offers of proof, and exclude evidence the hearing body has determined to be irrelevant, immaterial, or unduly repetitious.
5. Unless otherwise ordered by the hearing body, documentary evidence shall be limited in size when folded to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the hearing body unless the hearing body otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is so voluminous as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

**M. Stipulations.** Parties to an appeal of a certification denial may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the presiding officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. The hearing body may require presentation of evidence for proof of stipulated facts for the hearing body's consideration. No substantive matter agreed to by the parties shall be binding upon the Board unless incorporated into the decision of the Board.

**N. Recommendations**

1. A recommended decision shall be prepared for the Board by the CAAC.
2. A recommended decision shall be delivered to the Board within 30 days after the close of the hearing unless the Board extends the period for good cause.

**O. Decisions and orders**

1. Any final decision or order adverse to a party shall be in writing or stated in the record.
2. When the Board is the hearing body, the decision shall be rendered within 60 days following the final day of the hearing.
3. Within 30 days after receipt of any recommended decision from the CAAC, the Board shall render a decision to affirm, reverse, adopt, modify, supplement, amend or reject the recommendation and may remand the matter to the hearing body with instructions, or may convene itself as the hearing body.

**P. Rehearing and review of decisions**

1. After a hearing is held, a party in an appeal of a certification denial who is aggrieved by a decision rendered by the Board may file with the Board, not later than 30 days after such decision has been made, a written motion for rehearing specifying the particular grounds therefor. A motion for rehearing under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of such motion by any other party. The Board may require the filing of written briefs on the issues raised in the motion or response and may provide for oral argument.

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2. A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
  - a. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  - b. Misconduct of the hearing body or the prevailing party.
  - c. Accident or surprise which could not have been prevented by ordinary prudence.
  - d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing.
  - e. Excessive or insufficient penalties.
  - f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
  - g. That the decision is not justified by the evidence or is contrary to the law.
3. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties, on all or part of the issues, for any of the reasons set forth in subsection (B) herein. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
4. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. The order granting such a rehearing shall specify the grounds therefor.
5. Not later than 20 days after a decision is rendered, the Board may, on its own initiative, order a rehearing of its decision for any reasons for which it might have granted a rehearing on motion of a party. The order granting such a rehearing shall specify the grounds therefor.
6. When a motion for rehearing is based upon affidavits they shall be served with the motion. An opposing party may, within 10 days after service of such motion, serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
7. After a hearing has been held and a final administrative decision has been entered, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
8. Any party in an appeal of a certification denial who is aggrieved by a decision rendered by the Board may file with the Board, not later than 20 days after such decision has been made, a written request for review of the decision. If a review of the decision is granted, the Board may affirm or modify the previous decision.

**Historical Note**

Former Section R7-2-206 adopted effective December 4, 1978 (Supp. 78-6). Repealed effective February 24, 1982. See R7-2-205 adopted effective February 24, 1982 (Supp. 82-1). New Section R7-2-206 adopted effective August 9, 1989 (Supp. 89-3). Repealed effective March 18, 1994 (Supp. 94-1). New Section made by exempt rulemaking at 16 A.A.R. 156, effective December 7, 2009 (Supp. 09-4).

**R7-2-207. Repealed****Historical Note**

Adopted effective August 9, 1989 (Supp. 89-3). Repealed

effective March 18, 1994 (Supp. 94-1).

**ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS****R7-2-300. Adoption of Assessments**

As required in A.R.S. §15-741, the Board shall adopt assessments as Arizona instruments to measure standards in order to measure pupil achievement of the state board adopted academic standards in at least grades 3 through 10.

**Historical Note**

New Section made by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-301. Minimum Course of Study and Competency Goals for Students in the Common Schools**

- A. Students shall demonstrate competency as defined by the State Board-adopted Essential Skills, at the grade levels specified, in the following required subject areas. District instructional programs shall include an ongoing assessment of student progress toward meeting the competency requirements.
  1. Language arts
  2. Literature
  3. Mathematics
  4. Science
  5. Social Studies
  6. Music
  7. Visual Arts
  8. Health/Physical Education
  9. Foreign or native American Language (includes modern and classical)
- B. Additional subjects may be offered by the local governing board as options and may include, but are not limited to:
  1. Performing Arts
  2. Practical Arts
- C. Prior to the issuance of a standard certificate of promotion from the 8th grade, each student shall demonstrate competency, as defined by the local governing board, of the State Board-adopted Essential Skills for grade 8 in the subject areas listed in subsection (A).
- D. Special education and promotion from the 8th grade.
  1. The local governing board of each school district shall be responsible for developing a course of study and graduation requirements for all students placed in special education programs in accordance with R7-2-401 et seq.
  2. Students placed in special education classes in grades K-8 are eligible to receive the standard certificate of promotion without meeting State Board competency requirements, but reference to special education shall be placed on the student's transcript or in the permanent file.
- E. Online and distance education courses may be offered by the local governing board or charter school if the course is provided through an Arizona Online Instruction Program established pursuant to A.R.S. §15-808.
- F. Alternative Demonstration of Competency. Upon request of the student, the local school district governing board or charter school shall provide the opportunity for a student in grades seven and eight to demonstrate competency in the subject areas listed in subsection (A) in lieu of classroom time.

**Historical Note**

Former Section R7-2-301 repealed, new Section R7-2-301 adopted effective December 4, 1978 (Supp. 78-6). Amended subsections (A) and (B) effective May 4, 1982 (Supp. 82-3). Amended subsection (B) by adding subsection (10) effective July 26, 1982 (Supp. 82-4). Section repealed, new Section adopted effective April 12, 1993

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(Supp. 93-2). Amended effective May 3, 1993 (Supp. 93-2). Amended by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013 (the making of subsection (F)); filed in the Office January 15, 2016, with historical note added for clarification as the Board adopted the same amendment June 23, 2014 (Supp. 16-2). Amended by final exempt rulemaking at 21 A.A.R. 1778, effective June 23, 2014; filed in the Office August 4, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-301.01. Repealed****Historical Note**

R7-2-301(A), (B), and (C) repeated and numbered as R7-2-301.01(A), (B), and (C); R7-2-301(D) and (E) repeated and numbered as R7-2-301.01(D) and (E) and amended; the text of R7-2-301.01 as amended is effective January 1, 1989 (Supp. 86-2). Complete text printed and historical note added (Supp. 89-3). Repealed effective April 12, 1993 (Supp. 93-2).

**R7-2-301.02. Repealed****Historical Note**

Adopted effective March 26, 1990 (Supp. 90-1). Amended effective December 18, 1991; amended effective December 20, 1991 (Supp. 91-4). Repealed effective March 18, 1994 (Supp. 94-1).

**R7-2-302. Minimum Course of Study and Competency Requirements for Graduation from High School**

The Board prescribes the minimum course of study and competency requirements as outlined in subsections (1) through (5) and, beginning with the graduating class of 2017, receipt of a passing score of sixty correct answers out of one hundred questions on a civics test identical to the civics portion of the naturalization test used by the United States Citizenship and Immigration Services as prescribed in A.R.S. § 15-701.01(A)(2).

1. Subject area course requirements. The Board establishes 22 credits as the minimum number of credits necessary for high school graduation. Students shall obtain credits for required subject areas as specified in subsections (1)(a) through (e) based on completion of subject area course requirements or competency requirements. At the discretion of the local school district governing board or charter school, credits may be awarded for completion of elective subjects specified in subsection (1)(f) based on completion of subject area course requirements or competency requirements. The awarding of a credit toward the completion of high school graduation requirements shall be based on successful completion of the subject area requirements prescribed by the State Board and local school district governing board or charter school as follows:
  - a. Four credits of English or English as a Second Language, which shall include but not be limited to the following: grammar, writing, and reading skills, advanced grammar, composition, American literature, advanced composition, research methods and skills and literature. One-half credit of the English requirement shall include the principles of speech and debate but not be limited to those principles.
  - b. Three credits in social studies to include the following:
    - i. One credit of American history, including Arizona history;

- ii. One credit of world history/geography;
- iii. One-half credit of American government, including Arizona government; and
- iv. One-half credit in economics.
- c. Four credits of mathematics to minimally include:
  - i. Two credits containing course content covering the following areas in preparation for proficiency at the high school level on the statewide assessment: Number Sense and Operations; Data Analysis, Probability and Discrete Mathematics; Patterns, Algebra and Functions; Geometry and Measurement; and Structure and Logic. These credits shall be taken consecutively beginning with the ninth grade unless a student meets these requirements prior to the ninth grade pursuant to subsection (1)(c)(iv).
  - ii. One credit covering Algebra II or course content equivalent to Algebra II. Courses meeting this requirement may include, but are not limited to, career and technical education and vocational education, economics, science, and arts courses as determined by the local school district governing board or charter school.
  - iii. One credit that includes significant mathematics content as determined by the local school district governing board or charter school.
  - iv. Courses successfully completed prior to the ninth grade that meet the high school mathematics credit requirements may be applied toward satisfying those requirements.
  - v. The mathematics requirements may be modified for students using a personal curriculum pursuant to R7-2-302.03.
- d. Three credits of science in preparation for proficiency at the high school level on the statewide assessment.
- e. One credit of fine arts or career and technical education and vocational education.
- f. Seven credits of additional courses prescribed by the local school district governing board or charter school.
- g. A credit or partial credit may apply toward more than one subject area but shall count only as one credit or partial credit toward satisfying the 22 required credits.
2. Credits earned through correspondence courses to meet graduation requirements shall be taken from an accredited institution as defined in R7-2-601. Credits earned thereby shall be limited to four, and only one credit may be earned in each of the following subject areas:
  - a. English as described in subsection (1)(a) of this Section,
  - b. Social Studies,
  - c. Mathematics, and
  - d. Science.
3. Online and distance education courses may be offered by the local governing board or charter school if the course is provided through an Arizona Online Instruction Program established pursuant to A.R.S. § 15-808.
4. Local school district governing boards or charter schools may grant to career and technical education and vocational education program completers a maximum of 5 1/2 credits to be used toward the Board English, mathematics, science, and economics credit requirements for graduation, subject to the following restrictions:

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- a. The Board has approved the career and technical education and vocational education program for equivalent credit to be used toward the Board English, mathematics, science, and economics credit requirements for graduation.
  - b. A credit or partial credit may apply toward more than one subject area but shall count only as one credit or partial credit toward satisfying the 22 required credits.
  - c. A student who satisfies any part of the Board English, mathematics, science, and economics requirements through the completion of a career and technical education and vocational education program shall still be required to earn 22 total credits to meet the graduation requirements prescribed in this Section.
5. Competency requirements.
- a. The awarding of a credit toward the completion of high school graduation requirements shall be based on the successful completion of State Board-adopted academic standards for subject areas listed in subsections (1)(a) through (1) (e) and the successful completion of the competency requirements for the elective subjects specified in subsection (1)(f). Competency requirements for elective subjects as specified in subsection (1) (f) shall be the academic standards adopted by the State Board. If there are no adopted academic standards for an elective subject, the local school district governing board or charter school shall be responsible for developing and adopting competency requirements for the successful completion of the elective subject. The school district governing board or charter school shall be responsible for developing and adopting the method and manner in which to administer a test that is identical to the civics portion of the naturalization test used by the united states citizenship and immigration services, and a pupil who does not obtain a passing score on the test may retake the test until the pupil obtains a passing score.
  - b. The determination and verification of student accomplishment and performance shall be the responsibility of the subject area teacher.
  - c. Upon request of the student, the local school district governing board or charter school shall provide the opportunity for the student to demonstrate competency in the subject areas listed in subsections (1)(a) through (1)(f) of this Section above in lieu of classroom time. In appropriate courses, a school district governing board or charter school shall include as a mechanism to demonstrate competency a score determined by the State Board as college and career ready on the competency test adopted by the State Board.
6. The local school district governing board or charter school shall be responsible for developing a course of study and graduation requirements for all students placed in special education programs in accordance with A.R.S. Title 15, Chapter 7, Article 4 and A.A.C. R7-2-401 et seq. Students placed in special education classes, grades 9-12, are eligible to receive a high school diploma upon completion of graduation requirements, but reference to special education placement may be placed on the student's transcript or permanent file.

**Historical Note**

Former Section R7-2-302 repealed, new Section R7-2-

302 adopted effective December 4, 1978 (Supp. 78-6). Amended effective July 8, 1983 (Supp. 83-4). Amended subsections (1) and (5) effective January 1, 1987 (Supp. 84-3). See R7-2-302.01 and R7-2-302.02 for minimum credits for graduating classes of 1987 forward (Supp. 86-5). Repealed effective August 28, 1992; Inadvertently omitted from Supp. 92-3; corrected Supp. 93-4. Amended effective November 17, 1994 (Supp. 94-4). Repealed effective February 20, 1997 (Supp. 97-1). New Section adopted by final rulemaking at 7 A.A.R. 1255, effective February 20, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3893, effective August 21, 2002 (Supp. 02-3). Amended by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; since the Board did not file the amendments until January 15, 2016, subsection (3)(a) through (b) was already repealed at the time of publishing the Section in Supp. 15-3; therefore, there is no record of the amendments in the Administrative Code; these amendments can be viewed at 21 A.A.R. 1778 (Supp. 16-2). Amended by final exempt rulemaking at 21 A.A.R. 1778, effective June 23, 2014; filed in the Office August 4, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 197, effective October 26, 2015; filed in the Office January 15, 2016 (Supp. 16-3).

**R7-2-302.01. Repealed****Historical Note**

Section R7-2-302 repeated and amended effective January 1, 1987, filed September 24, 1986 (Supp. 86-5). Amended as an emergency by adding a new subsection (B) effective May 3, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Filing date for January 1, 1987, amendments corrected to September 24, 1986 (Supp. 89-3). Emergency expired. Adopted as a permanent rule effective February 7, 1990 (Supp 90-1). Repealed effective August 28, 1992; Inadvertently omitted from Supp. 92-3; corrected Supp. 93-4. New Section made by exempt rulemaking at 14 A.A.R. 195, effective December 10, 2007 (Supp. 08-1). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-302.02. Repealed****Historical Note**

Adopted effective January 1, 1991, filed September 24, 1986 (Supp. 86-5). Amended effective May 9, 1988 (Supp. 88-2). Amended effective June 12, 1989 (Supp. 89-2). Amended effective March 26, 1990 (Supp.90-1). Repealed effective March 18, 1994 (Supp. 94-1). New Section made by exempt rulemaking at 14 A.A.R. 195, effective December 10, 2007 (Supp. 08-1). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-302.03. Personal Curriculum****A. Definitions.**

1. "Personal Curriculum" means a documented process that may be used to modify the high school graduation requirements for mathematics delineated in R7-2-302.02(1)(c). A student may use a personal curriculum to modify the Algebra II requirement delineated in R7-2-302.02(1)(c)(ii) and reduce the credit requirements for mathematics from four to three credits. A student who

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- successfully completes the student's personal curriculum meets the requirements for high school graduation.
2. "Development Team" means a team that develops a personal curriculum for a student and consists of the student, the parent or legal guardian of the student, and a school counselor or principal or their designee. A school principal may add additional members to the development team as the principal deems appropriate.
- B.** A student is eligible for a personal curriculum if the student meets the following criteria:
1. The student has successfully completed the mathematics requirements delineated in R7-2-302.02(1)(c)(i); and
  2. Despite the student's successful completion of the mathematics requirements delineated in R7-2-302.02(1)(c)(i), the development team determines that the student demonstrates a need to modify the requirement delineated in R7-2-302.02(1)(c)(ii) for Algebra II or its equivalent course content.
- C.** The requirements for a personal curriculum are as follows:
1. An eligible student may only modify the mathematics requirement delineated in R7-2-302.02(1)(c)(ii) for Algebra II or its equivalent course content;
  2. In lieu of successfully completing Algebra II or its equivalent course content, an eligible student shall successfully complete at least one credit in mathematics that shall include significant mathematics content as determined by the local school district governing board or charter school; and
  3. An eligible student shall successfully complete a course in mathematics in the student's senior year.
- D.** The procedures for developing and implementing a personal curriculum are as follows:
1. The parent or legal guardian of a student, an emancipated student, or a student with permission from the student's parent or legal guardian may request a personal curriculum in a manner prescribed by the local school district governing board or charter school.
  2. Upon receipt of a request for a personal curriculum made pursuant to subsection (D)(1), the local school district or charter school shall verify that the student successfully completed the mathematics requirements delineated in R7-2-302.02(1)(c)(i) and, upon verification, shall convene a development team.
  3. The development team shall:
    - a. Verify that the student demonstrates a need to modify the requirement delineated in R7-2-302.02(1)(c)(ii) for Algebra II or its equivalent course content,
    - b. Identify an appropriate alternative mathematics course or courses to modify the requirement for Algebra II or its equivalent course content,
    - c. Develop a written personal curriculum plan that includes the alternative mathematics course or courses identified in subsection (D)(3)(b) and a plan for monitoring student progress toward successfully completing the alternative mathematics course or courses. In developing the personal curriculum plan the development team shall consider how the proposed modifications maintain the integrity of the high school diploma and enable the student to achieve the student's post-secondary education and career goals.
  4. The development team may modify the personal curriculum plan based upon the development team's evaluation of the student's progress.
- E.** The Superintendent of Public Instruction shall monitor a school district or charter school if there is reason to believe that the school district or charter school is allowing modifications inconsistent with the requirements delineated in this Section.
- Historical Note**  
 Adopted effective November 1, 1989 (Supp. 89-4).  
 Amended effective December 12, 1990 (Supp. 90-4).  
 Repealed effective February 20, 1997 (Supp. 97-1). New Section made by exempt rulemaking at 14 A.A.R. 195, effective December 10, 2007 (Supp. 08-1).
- R7-2-302.04. Repealed**
- Historical Note**  
 Adopted effective July 10, 1992 (Supp. 92-3). Amended effective May 3, 1993 (Supp. 93-2). Amended effective December 17, 1998 (Supp. 98-4). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).
- R7-2-302.05. Arizona Education and Career Action Plan for Students in Grades 9-12**
- A.** Effective for the graduation class of 2013, schools shall complete for every student in grades 9-12 an Arizona Education and Career Action Plan ("ECAP") prior to graduation. Schools shall develop an Education and Career Action Plan in consultation with the student, the student's parent or guardian and the appropriate school personnel as designated by the school principal or chief administrative officer. Schools shall monitor, review and update each Education and Career Action Plan at least annually. Completion of an Education and Career Action Plan shall be verified by appropriate school personnel.
- B.** An Arizona Education and Career Action Plan shall at a minimum allow students to enter, track and update the following information:
1. Academic Goals that include identifying and planning the coursework necessary to achieve the high school graduation requirements and pursue postsecondary education and career options; analyzing assessment results to determine progress and identify needs for intervention and advisement; and documenting academic achievement;
  2. Career Goals that include identifying career plans, options, interests and skills; exploring entry level opportunities; and evaluating educational requirements;
  3. Postsecondary Education Goals that include identifying progress toward meeting admission requirements, completing application forms and creating financial assistance plans; and
  4. Extracurricular Activity Goals that include documenting participation in clubs, organizations, athletics, fine arts, community service, recreational activities, volunteer activities, work-related activities, leadership opportunities, and other activities.
- Historical Note**  
 New Section made by exempt rulemaking at 12 A.A.R. 876, effective August 22, 2005 (Supp. 06-1). Section R7-2-302.05 renumbered to R7-2-302.06; new Section R7-2-302.05 made by final exempt rulemaking at 22 A.A.R. 111, effective February 25, 2008; filed in the Office January 6, 2016 (Supp. 16-1).
- R7-2-302.06. Repealed**
- Historical Note**  
 New Section made by exempt rulemaking at 12 A.A.R.

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876, effective August 22, 2005 (Supp. 06-1). Amended by exempt rulemaking at 15 A.A.R. 1570, effective September 25, 2006 (Supp. 09-1). Amended by exempt rulemaking at 16 A.A.R. 2031, effective August 25, 2008 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1602, effective August 24, 2009 (Supp. 09-3). Section R7-2-302.06 renumbered to R7-2-302.07; new Section R7-2-302.06 renumbered from Section R7-2-302.05 by final exempt rulemaking at 22 A.A.R. 111, effective February 25, 2008; filed in the Office January 6, 2016 (Supp. 16-1). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-302.07. Repealed****Historical Note**

New Section made by exempt rulemaking at 15 A.A.R. 1602, effective August 24, 2009 (Supp. 09-3). Section R7-2-302.07 renumbered to R7-2-302.08; new Section R7-2-302.07 renumbered from Section R7-2-302.06 by final exempt rulemaking at 22 A.A.R. 111, effective February 25, 2008; filed in the Office January 6, 2016 (Supp. 16-1). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-302.08 Repealed****Historical Note**

New Section made by exempt rulemaking at 15 A.A.R. 1602, effective August 24, 2009 (Supp. 09-3). Section R7-2-302.08 renumbered to R7-2-302.09; new Section R7-2-302.08 renumbered from Section R7-2-302.07 by final exempt rulemaking at 22 A.A.R. 111, effective February 25, 2008; filed in the Office January 6, 2016 (Supp. 16-1). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-302.09 Repealed****Historical Note**

New Section made by exempt rulemaking at 15 A.A.R. 1602, effective August 24, 2009 (Supp. 09-3). R7-2-302.09 renumbered to R7-2-302.10; new Section R7-2-302.09 renumbered from Section R7-2-302.08 by final exempt rulemaking at 22 A.A.R. 111, effective February 25, 2008; filed in the Office January 6, 2016 (Supp. 16-1). Section repealed by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2).

**R7-2-302.10. Repealed****Historical Note**

New Section R7-2-302.10 renumbered from Section R7-2-302.09 by final exempt rulemaking at 22 A.A.R. 111, effective February 25, 2008; filed in the Office January 6, 2016 (Supp. 16-1). Section amended by final exempt rulemaking at 22 A.A.R. 143, effective August 26, 2013; filed in the Office on January 15, 2016 (Supp. 16-2). Repealed by final exempt rulemaking at 22 A.A.R. 197, effective October 26, 2015; filed in the Office January 15, 2016 (Supp. 16-3).

**R7-2-303. Sex education**

- A. Instruction in sex education in the public schools of Arizona shall be offered only in conformity with the following requirements.

1. Common schools: Nature of instruction; approval; format.
  - a. Supplemental/elective nature of instruction. The common schools of Arizona may provide a specific elective lesson or lessons concerning sex education as a supplement to the health course of study.
    - i. This supplement may only be taken by the student at the written request of the student's parent or guardian.
    - ii. Alternative elective lessons from the state-adopted optional subjects shall be provided for students who do not enroll in elective sex education.
    - iii. Elective sex education lessons shall not exceed the equivalent of one class period per day for 1/8 of the school year for grades K-4.
    - iv. Elective sex education lessons shall not exceed the equivalent of one class period per day for 1/4 of the school year for grades 5-8.
  - b. Local governing board approval. All elective sex education lessons to be offered shall first be approved by the local governing board.
    - i. Each local governing board contemplating the offering of elective sex education shall establish an advisory committee with membership representative of district size and the racial and ethnic composition of the community to assist in the development of lessons and advise the local governing board on an ongoing basis.
    - ii. The local governing board shall review the total instructional materials for lessons presented for approval.
    - iii. The local governing board shall publicize and hold at least two public hearings for the purpose of receiving public input at least one week prior to the local governing board meeting at which the elective sex education lessons will be considered for approval.
    - iv. The local governing board shall maintain for viewing by the public the total instructional materials to be used in approved elective sex education lessons within the district.
  - c. Format of instruction.
    - i. Lessons shall be taught to boys and girls separately.
    - ii. Lessons shall be ungraded, require no homework, and any evaluation administered for the purpose of self-analysis shall not be retained or recorded by the school or the teacher in any form.
    - iii. Lessons shall not include tests, psychological inventories, surveys, or examinations containing any questions about the student's or his parents' personal beliefs or practices in sex, family life, morality, values or religion.
2. High schools: Course offering; approval; format.
  - a. A course in sex education may be provided in the high schools of Arizona.
  - b. The local governing board shall review the total instructional materials and approve all lessons in the course of study to be offered in sex education.
  - c. Lessons shall not include tests, psychological inventories, surveys, or examinations containing any questions about the student's or his parents' personal beliefs or practices in sex, family life, morality, values or religion.



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- d. Local governing boards shall maintain for viewing by the public the total instructional materials to be used in all sex education courses to be offered in high schools within the district.
3. Content of instruction: Common schools and high schools.
  - a. All sex education materials and instruction shall be age appropriate, recognize the needs of exceptional students, meet the needs of the district, recognize local community standards and sensitivities, shall not include the teaching of abnormal, deviate, or unusual sexual acts and practices, and shall include the following:
    - i. Emphasis upon the power of individuals to control their own personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control and ethical considerations such as respect for self and others; and
    - ii. Instruction on how to say "no" to unwanted sexual advances and to resist negative peer pressure. Pupils shall be taught that it is wrong to take advantage of, or to exploit, another person.
  - b. All sex education materials and instruction which discuss sexual intercourse shall:
    - i. Stress that pupils should abstain from sexual intercourse until they are mature adults;
    - ii. Emphasize that abstinence from sexual intercourse is the only method for avoiding pregnancy that is 100% effective;
    - iii. Stress that sexually transmitted diseases have severe consequences and constitute a serious and widespread public health problem;
    - iv. Include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse and the consequences of preadolescent and adolescent pregnancy;
    - v. Promote honor and respect for monogamous heterosexual marriage; and
    - vi. Advise pupils of Arizona law pertaining to the financial responsibilities of parenting, and legal liabilities related to sexual intercourse with a minor.

- B. Certification of compliance. All districts offering a local governing board-approved sex education course or lesson shall certify, under the notarized signature of both the president of the local governing board and the chief administrator of the school district, compliance with this rule except as specified in subsection (C). Acknowledgment of receipt of the compliance certification from the State Board of Education is required as a prerequisite to the initiation of instruction. Certification of compliance shall be in a format and with such particulars as shall be specified by the Department of Education.
- C. All districts offering State Board approved sex education lessons or courses prior to the effective date of this rule shall comply with this rule on or before June 30, 1990.

**Historical Note**

Former Section R7-2-303 repealed, new Section R7-2-303 adopted effective December 4, 1978 (Supp. 78-6).

Former Section R7-2-303 repealed, new Section R7-2-303 adopted effective June 12, 1989 (Supp. 89-2).

**R7-2-304. Extended school year**

The governing board of a common high school considering the adoption of an extended school year shall:

1. Prepare a comparative cost analysis of the extended school year program versus the cost of new facilities and sites.
2. Hold at least one public hearing, publicized a week in advance, to present the alternatives, including the results of the comparative cost analysis.
3. Determine faculty, community, and parental support prior to making a final determination.

**Historical Note**

Former Section R7-2-304 repealed, new Section R7-2-304 adopted effective December 4, 1978 (Supp. 78-6).

**R7-2-305. Declaration of Independence**

The governing board of each common school district shall adopt policies that:

1. Require pupils to recite the following passage from the Declaration of Independence for pupils in grades 4 through 6 at the commencement of the first class of the day in the schools: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."; and
2. Enable the pupil or the parent or legal guardian of the pupil to object to reciting the passage of the Declaration of Independence, and that specify that a pupil shall not be required to participate if the pupil or the pupil's parent or guardian objects.

**Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

Adopted effective February 15, 1979 (Supp. 79-1).

Repealed effective February 20, 1997 (Supp. 97-1). New Section made by final rulemaking at 7 A.A.R. 5363, effective November 7, 2001 (Supp. 01-4).

**R7-2-306. English Language Learner Programs**

A. Definitions. All terms defined in A.R.S. § 15-751 are applicable, with the following additions:

1. "AIMS test" means the Arizona Instrument to Measure Standards test prescribed by A.R.S. § 15-741.
2. "Arizona Academic Standards" means the standards adopted by the State Board of Education pursuant to A.R.S. §§ 15-203, 15-701, and 15-701.01.
3. "Board" means the State Board of Education.
4. "Compensatory instruction" means instruction given in addition to regular classroom instruction, such as individual or small group instruction, extended day classes, summer school or intersession school.
5. "Department" means the Department of Education.
6. "ELL" means English language learner.
7. "FEP" means fluent English language proficient, a student who has met the requirements for exit from an English language learner program.
8. "Federal ELL grant monies" means federal grants or funds awarded to an LEA to educate ELLs or to improve the LEA's capacity to educate ELLs, including but not limited to grants awarded under Title III of the No Child Left Behind Act of 2001, 20 U.S.C. 6301, et seq.
9. "IEP" means individualized education program, a written statement specifying special education services to be provided to a child with a disability.

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10. "LEA" means local education agency, the school district or charter school that provides educational services.
  11. "PHLOTE" means primary or home language other than English.
  12. "Reassessment for reclassification" means the process of determining whether an English language learner may be reclassified as fluent English proficient (FEP).
  13. "Superintendent" means the State Superintendent of Public Instruction.
  14. "WICP" means written individualized compensatory plan that documents the scope and type of services provided to an ELL to overcome the identified language and academic deficiencies.
- B. Identification of students to be assessed.**
1. The primary or home language of all students shall be identified by the students' parent or legal guardian on the enrollment form and on the home language survey. These documents shall inform parents that the responses to these questions will determine whether their student will be assessed for English language proficiency.
  2. A student shall be considered as a PHLOTE student if the home language survey or enrollment form indicates that one or more of the following are true:
    - a. The primary language used in the home is a language other than English, regardless of the language spoken by the student.
    - b. The language most often spoken by the student is a language other than English.
    - c. The student's first acquired language is a language other than English.
  3. The English language proficiency of all PHLOTE students shall be assessed as provided in subsection (C).
- C. English language proficiency assessment.**
1. PHLOTE students in kindergarten and first grade shall be administered an oral English language proficiency test approved by the Board. Students who score below the publisher's designated score for fluent English language proficiency, or other such score based on the publisher's designated score that is adopted by the Board, shall be classified as ELLs.
  2. PHLOTE students in grades 2-12 shall be administered the oral, reading and writing English language proficiency tests approved by the Board. Students who score below the publisher's designated score for fluent English proficiency, or such other score based on the publisher's designated score, that is adopted by the Board, shall be classified as ELLs. PHLOTE students in grades 2-12 who have scored at or above the 40th percentile on the English reading comprehension subtest of the nationally standardized norm-referenced achievement test adopted pursuant to A.R.S. § 15-741 or who have met or exceeded the standards on the reading and writing portions of the AIMS test are exempt from taking the oral, reading, and writing English language proficiency tests and shall not be classified as ELLs.
  3. English language proficiency assessments shall be conducted by individuals who are proficient in English and trained in language proficiency testing to administer and score the tests.
  4. The LEA shall assess the English language proficiency of all new PHLOTE students as prescribed above within 60 days of the beginning of the school year or within 30 school days of a student's enrollment in school, whichever is later, unless the LEA receives funds under Title III of the No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq. or another federal grant that requires earlier assessment and parental notification.
- D. Assessment of students in special education or in the special education referral process.** If a multidisciplinary evaluation or IEP team finds the procedures prescribed in subsections (B) and (C) inappropriate for a particular special education student, the LEA shall employ alternate procedures for identifying such students or assessing their English language proficiency. Persons conducting the English language assessment shall participate with the special education multidisciplinary evaluation or IEP team in the determination of the student's English language proficiency designation.
- E. Screening and assessment of students in gifted education.** ELLs who meet the qualifications for placement in a gifted educational program shall receive programmatic services designed to develop their specific areas of potential and academic ability and may be concurrently enrolled in gifted programs and English language learner programs.
- F. English language learner programs.**
1. All ELLs shall be provided daily instruction in English language development appropriate to their level of English language proficiency and consistent with A.R.S. §§ 15-751, 15-752, and, as applicable, 15-753. The English language instruction shall include listening and speaking skills, reading and writing skills, and cognitive and academic development in English.
  2. ELLs shall be provided daily instruction in subject areas required under the minimum course of study adopted by the Board pursuant to R7-2-301 and R7-2-302 that is understandable and appropriate to the level of academic achievement of the ELL and is in conformity with accepted strategies for teaching ELLs. This subsection does not require an LEA to provide daily instruction in every subject area required pursuant to R7-2-301 and R7-2-302 if those subject areas are not provided daily to English proficient students.
  3. The curriculum of all English language learner programs shall incorporate the Academic Standards adopted by the Board and shall be comparable in amount, scope and quality to that provided to English language proficient students.
  4. ELLs who are not progressing toward achieving proficiency of the Arizona Academic Standards adopted by the Board, as evidenced by the failure to improve scores on the AIMS test or the nationally standardized norm-referenced achievement test adopted pursuant to A.R.S. § 15-741, shall be provided compensatory instruction to assist them in achieving those Arizona Academic Standards. A WICP describing the compensatory instruction provided shall be kept in the student's academic file.
  5. On request of a parent or legal guardian of an ELL the principal of the ELL's school shall require a meeting with the principal or principal's designee, the parent or legal guardian and the classroom teacher to review the student's progress in achieving proficiency in the English language or in making progress toward the Arizona Academic Standards adopted by the Board, to identify any problems, to determine appropriate solutions and to identify the person or persons responsible for implementing the changes and determining their effectiveness.
- G. Reassessment for reclassification.**
1. The purpose of reassessment is to determine if an ELL has developed the English language skills necessary to succeed in the English language curricula.

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2. An ELL may be reassessed for reclassification at any time, but shall be reassessed for reclassification at least once per year.
  3. ELLs in kindergarten or first grade shall be reassessed with an alternate version of the oral test of English language proficiency used for initial assessment, unless the same test is no longer published or available when a student is to be reassessed. In such case, the school shall select a test from the Board approved tests for reassessment. Students who score at or above the test publisher's designated score for English language proficiency, or such other score adopted by the Board based on the publisher's designated score, may be reclassified as FEP. LEAs may also consider other indications of a student's overall progress, including teacher evaluation, and subject matter assessments that are aligned with grade level state content and performance standards in deciding whether to reclassify a student who has passed the oral proficiency test.
  4. ELLs in grades 2-12 shall be reassessed with an alternate version of the oral, reading and writing English language proficiency tests used for initial assessment, unless the same test is no longer published or available when a student is to be reassessed. In such case the school shall select a test from the Board approved tests for reassessment. Students who score at or above the test publisher's designated score for English language proficiency, or such other score adopted by the Board, in all of the tests shall be reclassified as FEP.
  5. LEAs shall notify the parents or legal guardians in writing that their child has been reclassified as FEP when the student meets the criteria for such reclassification.
- H.** Reassessment of special education students for English language reclassification. If a multidisciplinary evaluation or IEP team finds the procedures prescribed in subsection (G) inappropriate for a particular special education student, the LEA shall employ alternate procedures for reassessing the student for purposes of English language reclassification. Persons conducting the English language reassessment shall participate with the special education multidisciplinary evaluation or IEP team in the determination of the student's English language proficiency designation.
- I.** Evaluation of FEP students after exit from ELL programs.
1. The LEA shall monitor exited students based on the criteria provided in this Section during each of the two years after being reclassified as FEP to determine whether these students are performing satisfactorily in achieving the Arizona Academic Standards adopted by the Board. Such students will be monitored in reading, writing and mathematics skills and mastery of academic content areas, including science and social studies. The criteria shall be grade-appropriate and uniform throughout the LEA, and upon request, is subject to Board review. Students who are not making satisfactory progress shall, with parent consent, be provided compensatory instruction or shall be re-enrolled in an ELL program. A WICP describing the compensatory instruction provided shall be maintained in the students' ELL files.
  2. The LEA shall use AIMS test scores to determine progress toward achieving the Arizona Academic Standards in monitoring FEP students after exit from an ELL program unless no score is available. Performing satisfactorily will be measured by whether a student meets or exceeds the state standards in reading, writing, and mathematics as measured by AIMS.
  3. If an AIMS test score is not available because the test is not administered in the students' grade or to assess progress in academic subjects not assessed by AIMS, the LEA shall use one or more of the following criteria in its evaluation to determine progress toward achieving the Arizona Academic Standards in monitoring FEP students after exit from an ELL program:
    - a. LEA-developed criterion-referenced tests of academic achievement that demonstrate alignment to the Arizona Academic Standards; or
    - b. Standardized tests measuring academic achievement that demonstrate alignment to the Arizona Academic Standards; or
    - c. Nationally norm-referenced test scores; or
    - d. Teacher recommendations based on classroom assessments that demonstrate alignment to the Arizona Academic Standards.
- J.** Monitoring of ELL programs.
1. Each year the Department shall monitor at least 32 LEAs, as follows:
    - a. At least 12 of the 50 LEAs with the highest ELL enrollment;
    - b. At least 10 LEAs with ELLs that are not included in the 50 described above;
    - c. At least 10 LEAs that have reported that they have 25 or fewer ELL students in their schools; and
    - d. Other LEAs upon receipt of a documented written complaint from any Arizona resident, the U.S. Department of Education, or the U.S. Office for Civil Rights, alleging that the LEA is not complying with state or federal law regarding ELLs.
  2. All of the 50 LEAs in subsection (J)(1)(a) shall be monitored by the Department at least once every four years.
  3. The monitoring shall be on-site monitoring and shall include classroom observations, curriculum reviews, faculty interviews, student records reviews, and review of ELL programs. The Department may use personnel from other schools to assist in the monitoring.
  4. The Department shall issue a report on the results of its monitoring within 45 days after completing the monitoring. If the Department determines that an LEA is not complying with state or federal laws applicable to ELL students, the LEA shall prepare and submit to the Department, within 60 days of the Department's determination, a corrective action plan that sets forth steps that the LEA will take to correct the deficiencies noted in the report.
  5. The Department shall review and return such corrective action plan to the LEA within 30 days, noting any required changes. No later than 30 days after receiving its corrective action plan back from the Department, the LEA shall begin implementing the measures set forth in the plan, including any revisions required by the Department.
  6. The Department shall conduct a follow-up evaluation of the LEA within one year after returning the corrective action plan to the LEA.
  7. If the Department finds continued non-compliance during the follow-up evaluation, the LEA shall be referred to the Board for a determination of non-compliance. If the Board determines the LEA to be out of compliance with state or federal laws applicable to ELL students, it may take one or more of the following actions:
    - a. Temporarily withhold cash payments of federal ELL grant monies;

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- b. Disallow (that is deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
  - c. Wholly or partly suspend or terminate the current award of federal ELL grant monies;
  - d. Withhold further awards of federal ELL grant monies for the program.
8. The Department shall monitor all LEAs that the Board has determined to be non-compliant and which have had federal ELL grant monies withheld or terminated to ensure that such LEAs do not reduce the amount of funds spent on their ELL programs as the result of its loss of funds.

**Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6). New Section R7-2-306 adopted effective July 10, 1979 (Supp. 79-4). Amended effective August 20, 1981 (Supp. 81-4). Former Section R7-2-306 repealed, new Section R7-2-306 adopted effective November 14, 1984 (Supp. 84-6). Amended by final rulemaking at 10 A.A.R. 353, effective March 8, 2004 (Supp. 04-1).

**R7-2-307. High School Equivalency Diplomas**

- A.** For the purposes of this rule, the following definitions shall apply:
- 1. "DANTES" means the Defense Activity for Non-Traditional Education Support.
  - 2. "Department" means the Adult Education Services Division of the Arizona Department of Education.
  - 3. "Equivalency Test" means a High School Equivalency Test approved by the State Board of Education.
  - 4. "High School Equivalency Testing Center" means a testing center established by the Department for the purpose of administering High School Equivalency tests and providing High School Equivalency testing services pursuant to the requirements established by a State Board approved testing provider and state jurisdictional rules.
  - 5. "USAFI" means the United States Armed Forces Institute.
- B.** Eligibility requirements. Any individual who is 16 years of age or older and who has officially been withdrawn from school may take a High School Equivalency Test.
- 1. Individuals shall be required to provide the High School Equivalency Testing Center with positive identification and proof of age, and
  - 2. Individuals who are at least 16 years of age and under 18 years of age shall also be required to provide:
    - a. A signed and notarized statement of consent from a parent or legal guardian, and
    - b. A letter from the last school attended verifying that the individual has officially withdrawn from the school.
- C.** Issuance of a diploma. The Department shall issue a high school equivalency diploma to any individual who has not received a high school diploma or high school equivalency certificate or diploma if the individual:
- 1. Meets the eligibility requirements specified in subsection (B) and has received passing scores on a High School Equivalency Test; or
  - 2. Is a member of the U.S. Armed Forces and has received passing scores on a High School Equivalency Test through USAFI or DANTES provided that the individual's last high school enrollment was in an Arizona high school. Individuals who have taken a High School Equivalency Test through USAFI or DANTES shall send their military permanent record and application card to DAN-

TES with a request that the official High School Equivalency Test scores and application card be forwarded to the Department; or

- 3. Has received passing scores on a High School Equivalency Test taken at an approved testing provider's site, provided that the Department receives an official transcript directly from the approved testing provider.
- D.** The Department shall keep a record of test scores for each individual who has taken a High School Equivalency Test.
- E.** The Arizona Department of Education may collect fees for the issuance of High School Equivalency Diplomas and Transcripts. Fees established pursuant to this Section shall not exceed \$20.
- 1. The State Board of Education will deposit, pursuant to A.R.S. §§ 35-146 and 35-147, fees collected under this Section in the High School Equivalency Testing Revenue Account within the Arizona Department of Education budget, to be used to offset costs of providing these services.
  - 2. If the state fee for General High School Equivalency Diplomas and/or Transcripts presents a financial hardship for the examinee, the examinee may request a fee waiver.
  - 3. A fee waiver shall be granted if all of the following apply:
    - a. Applicant presents documented proof of Arizona residency.
    - b. Applicant submits a completed Fee Waiver Request Form, available from the State High School Equivalency Testing Office or from any official High School Equivalency Testing Center.
    - c. Applicant demonstrates sufficient need for a fee waiver. This may include, but is not limited to the following:
      - i. Proof of eligibility for public assistance and/or federally subsidized housing,
      - ii. Residence in a foster home,
      - iii. Enrollment in a program for the economically disadvantaged such as Upward Bound, or
      - iv. Participation in a free or reduced lunch program.

**Historical Note**

Adopted effective August 20, 1981 (Supp. 81-4). Amended subsections (A), (C), and (G) effective October 2, 1984 (Supp. 84-5). Amended effective December 22, 1997 (Supp. 97-4). Amended effective December 31, 1998 (Supp. 98-4). Amended by exempt rulemaking at 18 A.A.R. 1023, effective October 24, 2011 (Supp. 12-2). Amended by final exempt rulemaking at 21 A.A.R. 1781, effective September 23, 2013 (Supp. 15-3).

**R7-2-308. Adult Education**

- A.** For the purposes of this rule the following definitions apply:
- 1. "Adult Basic Education" (ABE) means instruction in reading, writing and math equivalent to grades one through eight, speaking and citizenship skills.
  - 2. "Adult Secondary Education" (ASE) means instruction in reading, writing, math, science and social studies equivalent to the completion of high school.
  - 3. "Eligible applicants" may include local educational agencies, community based organizations, volunteer literacy organizations, institutions of higher education, public or private nonprofit organizations, institutions of higher education, public or private nonprofit agencies, libraries, public housing authorities, and consortiums of any of the aforementioned entities.
  - 4. "English Language Acquisition for Adults" (ELAA) means a program of instruction designed to help individu-

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- als of limited English proficiency achieve competency in the English language, including reading, writing, listening and speaking.
5. "Literacy" means an individual's ability to read, write and speak in English, compute and solve problems at levels of proficiency necessary to function on the job, in the family and in society.
  6. "Project" means the approved and funded application which is administered by the eligible applicant.
- B. Application for funding**
1. Only eligible applicants may apply for funding.
  2. Contracts shall be awarded through a competitive funding process.
  3. Applications shall include budgets and be submitted according to the standard procurement and grants management policies of the Department of Education for the awarding of competitive grants.
- C. Board priorities and criteria for application approval**
1. Priority shall be given to projects funded during the previous fiscal year which:
    - a. Adhered to all applicable state and federal rules and regulations.
    - b. Operated in an efficient and effective manner demonstrating high levels of student educational gains as measured by standardized assessments and student retention as compared with the state average for these projects.
    - c. Completed and submitted all required state and federal reports.
    - d. Utilized volunteers where possible.
  2. Equal opportunity for project application approval will be given to eligible applicants who demonstrate previous comparable experience and performance in another adult literacy program.
  3. Criteria for approval shall include a determination by the project review committee that the application meets state and federal rules and regulations and the policies and procedures contained in the Arizona State Plan for Adult Education.
- D. Use of funds and student reporting**
1. Federal and state funds shall not be co-mingled.
  2. Projects shall not assess students a tuition charge for instruction or fees for books, instructional supplies, or materials used in the program.
  3. Student attendance hours reported to the Adult Education Division shall not be used in securing financing from any other source. Classes taught by volunteers are not to be reported unless they are administered and supervised by the local project.
- E. An adult education certificate issued by the Board shall be required to teach in the Adult Education Program.**
- F. Students enrolled in adult education classes must be at least 16 years of age and officially withdrawn from school.**
- G. Course of study**
1. Adult Basic Education (A.B.E.) students shall be functioning academically below the eighth grade level. The sequential course of study shall:
    - a. Develop and improve communication and computational skills of students.
    - b. Raise the general educational level of students.
    - c. Improve the student's ability to benefit from occupational training.
    - d. Increase opportunities for more productive and profitable employment.
  - e. Assist students to be better able to meet their adult responsibilities as parents, citizens and as co-workers.
2. Adult Secondary Education (A.S.E.) students shall be functioning below the 12th grade level. The course of study shall:
    - a. Give the students a foundation in the areas of English, social studies, literature, science and math.
    - b. Enable students, through the development of critical thinking, to utilize new learning experiences in recognizing, evaluating and solving problems of daily life.
    - c. Attempt to motivate students to continue their education through more advanced study and to become more proficient in observing and adopting new skills in a changing society.
    - d. Equip students with the knowledge prerequisite for satisfactory achievement on a High School Equivalency Test approved by the State Board of Education.
  3. English Language Acquisition for Adults (ELAA) and citizenship students shall be resident aliens. The course of study shall:
    - a. Develop an increasing ability to speak, understand, read, and write English.
    - b. Encourage the student to become a participating citizen and give insight into the values of such participation.
    - c. Help the student prepare for the Naturalization Test for U.S. Citizenship by developing a background in American history and government.
    - d. Create a desire for continued learning and self-realization.
- H. Reports**
1. Each project shall maintain bookkeeping records and must be able to substantiate expenditures.
  2. A financial report shall be filed quarterly for each project with the Adult Education Division within 30 days after the close of the quarter.
  3. Projects shall be completed by June 30. A fiscal completion report which has been reconciled with the County School Superintendent's Office, or if another agency, that agency's comparable administrative office, shall be filed with the Adult Education Division within 60 days after the project ending date.
  4. Participation in the project reporting system designed to collect student and staff attendance, demographic information and student performance data is required. These reports shall be filed with the Adult Education Division monthly.
  5. An annual written report on the year's activities, including internal written monitoring reports, shall be submitted to the Adult Education Division, no later than August 15.
- I. If changes in the approved program or budget are desired, an amendment shall be submitted to the Adult Education Division for review and approval prior to expending any funds for the proposed changes.**

**Historical Note**

Adopted effective December 14, 1984 (Supp. 84-6).  
 Amended by exempt rulemaking at 15 A.A.R. 1292, effective June 26, 2006 (Supp. 09-1). Amended by final exempt rulemaking at 21 A.A.R. 1781, effective September 23, 2013 (Supp. 15-3).

**R7-2-309. Completion of grade 10**

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Completion of grade 10 is accomplished when a student has earned 10 credits which shall include:

1. Two credits of English.
2. One credit of mathematics.
3. One credit of science.
4. Six credits of additional courses prescribed by the local Governing Board.

**Historical Note**

Adopted effective March 13, 1986 (Supp. 86-2).

**R7-2-310. Pupil achievement testing**

- A. The nationally standardized norm-referenced achievement tests adopted by the State Board shall be given annually during a week in September or October. By June 1 of each year the Board shall designate the week during the fall for testing for the next school year and all school districts shall administer the test during the week designated.
- B. The superintendent or head of district shall be responsible for:
  1. Providing school district enrollment data to the Department of Education annually for purposes of test material distribution.
  2. Verifying the count of test materials received and distributing the test materials to each public school in the district.
  3. Securing the test materials prior to distribution to pupils or persons administering the tests at the time of testing, as well as after the time of testing. Test materials shall be kept in locked storage.
  4. Advising all district employees that the test materials are not to be reproduced in any manner.
  5. Familiarizing each person who will administer the test with the test publishers' directions for administering the tests, the timing of the tests and the testing schedule. This is to be accomplished through meetings which shall not be held prior to one week before the first day of testing. At the conclusion of each such meeting, all test materials are to be collected and returned to locked storage.
  6. Distributing actual test materials to persons administering the tests on the day of testing.
  7. Training persons administering the tests on how to properly complete the identification information on the test booklet/answer sheet and how to code the information required on the variables being collected pursuant to A.R.S. § 15-741, et seq.
  8. Properly packaging all tests/answer sheets which are to be scored by the scoring contractor. Packaging shall comply with instructions furnished by the scoring contractor or Department of Education.
  9. Forwarding all tests/answer sheets to be scored to the scoring contractor per instructions. Tests/answer sheets for the entire district should be forwarded in one shipment.
  10. Retaining all unused and reusable test materials, reporting them in the school's inventory and storing them in a safe and secure manner.
  11. Immediately reporting to the Department of Education any losses of test materials or other irregularities.
  12. The superintendent or head of district may designate a testing coordinator to act on his behalf.
- C. Persons designated by the superintendent or head of district to administer the test shall:
  1. Keep all test materials in locked storage.
  2. Not reproduce any test materials in any manner.
  3. Not disclose any actual test items to pupils prior to testing.
  4. Not provide answers of any test items to any pupils.
5. Administer only practice tests which are provided by the test publishers. Previous editions of the test series being used in the statewide testing program may not be used as practice tests.
6. Strictly observe all timed subtests. The test publishers' suggested time limits for untimed subtests shall be followed as closely as possible in order to maintain uniformity in test administration.
7. Follow directions for administering the test explicitly. No test item may be repeated unless otherwise indicated in the directions.
8. Not change a pupil's answer.
9. Return all test materials to the superintendent or head of district immediately upon completion of testing.
- D. All violations of this rule shall be referred by the superintendent or head of district to the State Superintendent of Public Instruction, for appropriate action.
- E. For purposes of determining if a student may be exempt from the norm-referenced achievement testing requirement pursuant to A.R.S. § 15-744(B), the local governing board shall:
  1. Verify that all students to be exempted have been assessed for language proficiency as required by R7-2-306 in the areas of listening, speaking, reading and writing in English and the primary language and have been determined to be limited English proficient.
  2. Verify that all limited-English-proficient students considered for exemption are enrolled in one of the following programs as required by A.R.S. § 15-754:
    - a. K-6 Transitional Bilingual Program;
    - b. 7-12 Structured Bilingual Program;
    - c. K-12 Bilingual Bicultural Program;
    - d. English as a Second Language Program; or
    - e. Individualized Education Program (this program is only acceptable if there are fewer than 10 limited-English-proficient students in a kindergarten program or a grade in a school).
  3. Submit to the Arizona Department of Education, no later than September 30 of each year, a governing board resolution for the exemption of eligible students. This resolution shall contain the number, grade level, year of exemption status and primary language of all students to be exempted and an assurance signed by the governing board president and notarized that the requirements of subsections (E)(1) and (E)(2) have been met.
  4. Submit to the Arizona Department of Education, no later than December 1 of each year, a final report describing the total number of actual students to be exempted.
- F. Limited English students exempted from the norm-referenced achievement testing program shall be assessed annually with an alternative to the norm-referenced achievement test. If the exempted student is in grades 3, 8, or 12, the student shall be administered the assessments prescribed in subsection (F)(2)(c). Alternatives shall be as follows:
  1. In the first year a limited-English-proficient student is enrolled within the district, the district may:
    - a. Administer the language proficiency testing conducted pursuant to R7-2-306; or
    - b. Administer the assessments prescribed in subsection (F)(2)(a) or (b) as the alternative assessment in the areas of reading and writing. In the area of mathematics, districts shall administer the district measurement that has been adopted to assess the essential skills in English or in the primary language to such students.
  2. In the years following the first year of enrollment in the district, the alternative assessment shall be:

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- a. The tests that have been adopted by the district in accordance with A.R.S. § 15-741 to assess the essential skills in reading, writing and mathematics in English; or
  - b. The tests that have been adopted by the district in accordance with A.R.S. § 15-741 to assess the essential skills in the student's primary language in reading, writing and mathematics. In determining which primary language assessment to administer, the governing board shall consider the extent to which the exempted student has received recent schooling in the primary language;
  - c. Beginning in the 1991-92 school year, the Arizona Student Assessment Program Essential Skills Tests in English or Spanish shall be administered to exempted students who are enrolled in grades 3, 8, or 12.
- 3. Alternative assessment instruments specified in subsection (F)(2)(a) or (b) shall be used at the instructional levels for which they were designed.
  - 4. Alternative assessment administered as specified in subsection (F)(2)(a) or (b) shall be conducted at any time prior to April 30 of the school year.
  - 5. The results of alternative assessments administered pursuant to subsections (F)(2)(a) and (b) of this subsection shall be submitted to the Department of Education prior to May 30 of the school year.
- G. The school district shall maintain cumulative files regarding exemptions.
  - H. Beginning in the 1991-1992 school year, the District Assessment Plan filed pursuant to A.R.S. § 15-741(C)(3) shall include plans for the alternative assessment of limited-English-proficient students.

**Historical Note**

Adopted effective March 13, 1986 (Supp. 86-2).  
Amended subsections (A) and (B) effective February 25, 1987 (Supp. 87-1). Amended effective October 22, 1991; amended effective December 20, 1991 (Supp. 91-4).

**R7-2-311. Pupil testing variable information**

Persons designated by the superintendent or head of district to administer the State Board approved nationally standardized norm-referenced achievement tests shall assure that the following information is properly completed on the answer document for each pupil participating in the testing program:

- 1. Sex
- 2. Primary language
- 3. Racial/ethnic background.
- 4. Limited English proficient pupils participating in required programs by type pursuant to A.R.S. § 15-754, where applicable.

**Historical Note**

Adopted effective June 25, 1986 (Supp. 86-3).

**R7-2-312. Honorary High School Diploma**

- A. An honorary high school diploma shall be provided to an individual who has never obtained a high school diploma and who meets each of the following requirements:
  - 1. Is at least 65 years of age;
  - 2. Currently resides in Arizona;
  - 3. Provides documented evidence from the Arizona Department of Veterans' Services that the individual enlisted in the armed forces of the United States before completing high school in a public or private school; and
  - 4. Was honorably discharged from service with the armed forces of the United States.

- B. All high schools shall provide for the presentation of an honorary high school diploma to an individual eligible pursuant to subsection (A). The individual shall not be required to reside within the school boundaries.

**Historical Note**

Adopted effective December 15, 1989 (Supp. 89-4).  
Repealed effective February 20, 1997 (Supp. 97-1). New Section made by final rulemaking at 9 A.A.R. 1125, effective May 10, 2003 (Supp. 03-1).

**R7-2-313. Academic contests fund**

The State Board of Education establishes an academic contests fund consisting of monies appropriated by the legislature or received as gifts or grants for deposit in the academic contests fund pursuant to A.R.S. § 15-1241.

- 1. The Superintendent of Public Instruction shall, at least annually, compile a list of national contests to be presented to the State Board of Education for approval. Contest requirements are:
  - a. Shall be sponsored by a recognized national organization.
  - b. Shall be academic in nature, motivate pupils to be creative and demonstrate excellence.
  - c. Shall be open to all pupils, regardless of race, creed, sex or national origin. Contests may separate pupils by age or grade level.
- 2. School districts shall submit an application for academic contest funds to the Superintendent of Public Instruction for student and chaperone expenses. Requirements are:
  - a. No other sponsoring agency is assuming the total costs.
  - b. The participation of the students shall be the result of successfully competing at the local or state level, or both, of that contest.
  - c. The governing board of the school district in which the students attend shall approve the participation and travel of the students.
  - d. The fiscal agent applying for academic contest funds shall be an authorized district representative and responsible for the disbursement of travel funds.
  - e. A school district receiving academic contest funds shall submit a completion report and return any unused portion within 90 days after completion of travel to the Department of Education.
- 3. Application review and approval; funding limitations.
  - a. The State Board of Education shall annually set expenditure limitations for expenses of students and chaperones. These limitations shall be based on the number of applicants, monies available and current state travel regulations.
  - b. The Superintendent of Public Instruction shall review applications for academic contest funds and shall approve applications based upon the criteria set forth in this rule and the availability of funds.

**Historical Note**

Adopted effective December 15, 1989 (Supp. 89-4).

**R7-2-314. Definitions**

The following definitions apply to Sections R7-2-315 and R7-2-315.01:

- 1. "Board examination system" means a complete instructional system that includes all of the following components:
  - a. A coherent group of courses that collectively constitutes a core curriculum at the high school level,
  - b. A comprehensive syllabus for each course,

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- c. Appropriate instructional and teaching materials for each course,
  - d. High quality examinations that are closely aligned with the course syllabus,
  - e. Professional scoring of examinations, and
  - f. Teacher education that is designed to train teachers to properly teach those courses.
2. "Grand Canyon Diploma" means a high school diploma that is offered to any student who demonstrates readiness for college level mathematics and English according to standards prescribed by an interstate compact on board examination systems, who has passing grades on an additional set of required approved board examinations in core academic courses as determined by the State Board of Education.
  3. "Readiness for college level mathematics and English" means that a student has the mathematics and English skills and knowledge needed to succeed in college level courses that count toward a degree or certificate without taking remedial or developmental coursework.

**Historical Note**

Adopted effective August 14, 1991 (Supp. 91-4).  
 Repealed effective February 20, 1997 (Supp. 97-1). New  
 Section made by exempt rulemaking at 18 A.A.R. 1025,  
 effective January 24, 2011 (Supp. 12-2).

**R7-2-315. Board Examination Systems; Offerings; Procedures**

- A. The State Board of Education shall select board examination systems that may be used by traditional public schools and charter schools in accordance with the requirements of this Section. Board examination systems selected by the State Board of Education shall:
  1. Be approved by an interstate compact on board examination systems,
  2. Be periodically modified to reflect core standards selected by an interstate compact on board examination systems,
  3. Be aligned to State Board of Education approved academic standards,
  4. Have common passing scores that are prescribed by an interstate compact on board examination systems that are set to the level of literacy required to succeed in college-level courses offered by community colleges in this state that count toward a degree or certificate without taking remedial or developmental coursework.
- B. The State Board of Education shall contract with a private organization to act as primary administrator of approved board examination systems. The private organization shall:
  1. Identify, select and contract with a national organization that is devoted to issues concerning education and the economy and that is selected by the State Board of Education to provide technical services to develop and maintain an interstate system of approved board examination systems.
  2. Provide data and other information to a national organization that is devoted to issues concerning education and the economy and that is selected by the State Board of Education to provide technical services the national organization deems necessary to set appropriate performance standards for students in this state. The Department of Education shall provide data and other information to the private organization, as necessary.
  3. Conduct technical studies required by the State Board of Education to compare the scores on approved board examinations by the students in this state to scores on the Arizona Instrument to Measure Standards Test and other measures deemed necessary to ensure the efficacy of the approved board examinations. The private organization may contract with other entities that are selected by the State Board of Education for the purpose of conducting technical studies.
- C. The Department of Education shall develop a system, subject to State Board of Education approval, to track the academic progress of pupils who participate in board examination systems.
- D. School districts or charter schools wishing to implement an approved board examination in one or more schools shall:
  1. Send written notice to the private organization described in this Section indicating that school district's or charter school's interest in implementing an approved board examination system,
  2. Submit an implementation plan to the private organization described in this Section that includes at least the following elements:
    - a. The specific approved board examination system the school district wishes to implement;
    - b. A proposed timeline for the implementation of an approved board examination system;
    - c. A description of the funding model that will be employed to ensure the sustainability of the approved board examination system offering;
    - d. A communication plan for students and parents that provides an overview of the selected approved board examination system, potential course offerings, a description of student support systems, and contact information for students and parents to obtain more detailed information regarding board examination systems and the Grand Canyon Diploma option, as defined in R7-2-315.01.
- E. Upon receipt of an implementation plan described in this Section the private organization shall work cooperatively with the applicable school district or charter school to ensure that the plan is feasible and to modify any elements of the plan deemed necessary for successful implementation of the approved board examination system.

**Historical Note**

Adopted effective November 17, 1994 (Supp. 94-4).  
 Repealed effective February 20, 1997 (Supp. 97-1). New



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Section made by exempt rulemaking at 18 A.A.R. 1025, effective January 24, 2011 (Supp. 12-2).

**R7-2-315.01. Grand Canyon Diploma**

- A.** School districts and charter schools in this state may choose to offer a Grand Canyon Diploma beginning in the 2012 – 2013 school year. A high school student who is enrolled in a school district or charter school that offers a Grand Canyon Diploma may choose to pursue a Grand Canyon Diploma.
- B.** A student may be awarded a Grand Canyon Diploma at the end of grade 10 or during or at the end of grade 11 or 12 provided that the student has passed both the mathematics and English assessments for the applicable approved board examination system, and the student has successfully completed the following subject area requirements within board examination system curriculum:
  - 1. Two credits of English;
  - 2. Two credits of mathematics;
  - 3. Two credits of science, including lab-based science, engineering or information technologies;
  - 4. One credit of American History;
  - 5. One credit of World History;
  - 6. One credit of fine arts or career and technical education and vocational education; and
  - 7. One-half credit of economics.
- C.** A student that satisfies all the criteria for issuance of a Grand Canyon Diploma is exempt from the minimum course of study requirements delineated in R7-2-302.02.
- D.** Students who earn a Grand Canyon Diploma shall have multiple pathways available to them and may:
  - 1. Enroll the following semester in a community college under the jurisdiction of a community college in this state. Students who take community college courses on high school campuses pursuant to this subsection shall be eligible to participate in extracurricular activities, including interscholastic sports, through the end of grade 12.
  - 2. Remain in high school and enroll in additional advanced preparation board examination programs that are designed to prepare students for admission to high quality postsecondary institutions that offer baccalaureate degree programs. These board examination programs shall be selected from a list provided by an interstate compact for board examination systems and approved by the State Board of Education. Students who elect to remain in high school pursuant to this subsection shall be eligible to participate in extracurricular activities, including interscholastic sports, through the end of grade 12.
  - 3. Enroll in a full-time career and technical education program offered on a community college campus, a high school campus or a joint technical education district campus, or any combination of these campuses. Students who elect to remain in high school pursuant to this subsection shall be eligible to participate in extracurricular activities, including interscholastic sports, through the end of grade 12.
  - 4. Return to a traditional academic program without completing the next level of board examination systems curriculum through the end of grade 12. Students who elect to remain in high school pursuant to this subsection shall be eligible to participate in extracurricular activities, including interscholastic sports, through the end of grade 12.
- E.** Students who pursue but do not earn a Grand Canyon Diploma at the end of grade 10 or 11 shall receive a customized program of assistance during the next school year that addresses the areas in which the student demonstrated deficiencies in the approved board examinations. These students may retake the

board examinations at the next available examination administration. Students may choose to return to a traditional academic program without completing the board examination system curriculum.

- F.** A student who remains in a board examination system curriculum through grade 12 and does not pass the board examination may graduate with a standard diploma provided that the student meets the following requirements:
  - 1. The student has passed the Arizona Instrument to Measure Standards assessments in mathematics and English or received a sufficient score as determined by the State Board of Education on the ACT, SAT, or an approved board examination in mathematics and English.
  - 2. The student has earned at least 22 credits and has passed a State Board of Education approved sequence of courses within the board examination system curriculum. For the purpose of this requirement the private organization and the Department of Education shall recommend for State Board of Education approval a sequence of courses for each approved board examination system. The sequence of courses for each board examination system shall ensure that students receive instruction in all State Board of Education approved academic standards encompassed in R7-2-302.02(1)(a) through (e).
- G.** A student who is enrolled in a school district or charter school that does not offer a board examination system curriculum may earn a Grand Canyon Diploma by:
  - 1. Obtaining a passing score on the assessments of an approved board examination system in each of the subject areas delineated in R7-2-315.01(B)(1) through (6), and
  - 2. Completing a high school course in economics.

**Historical Note**

New Section made by exempt rulemaking at 18 A.A.R. 1025, effective January 24, 2011 (Supp. 12-2).

**Appendix A. Repealed****Historical Note**

Adopted effective November 17, 1994 (Supp. 94-4).  
Repealed effective February 20, 1997 (Supp. 97-1).

**R7-2-316. Charter Schools Stimulus Fund**

- A.** “Start-up costs” mean those costs associated with developing or implementing the following essential components of a charter school:
  - 1. The hiring of teachers and other essential staff members;
  - 2. The hiring of a chief administrative officer and other costs associated with instituting the administrative structure of the school;
  - 3. Curriculum development and implementation;
  - 4. The leasing of physical facilities or equipment and costs associated with establishment of utility services and accounts;
  - 5. Operational expenses incurred prior to the date on which the charter school begins operations;
  - 6. The development and implementation of an accounting system which complies with the uniform system of financial records requirements;
  - 7. Obtaining insurance, including prepayment of premiums which will effectuate insurance coverage during the first year of operation;
  - 8. Costs associated with licensing and compliance with other health, safety and civil rights requirements.
- B.** “Costs associated with renovating or remodeling existing buildings and structures” means those costs associated with the following essential components:

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1. Modifications affecting the structural integrity of the building, including those changes needed to meet building code and zoning standards.
  2. Modifications needed to meet non-structural building code requirements, such as those related to plumbing, electrical wiring and fire safety.
  3. Modifications needed to meet state health standards, such as those related to rest rooms and food preparation and service.
  4. Adjusting the size of rooms to accommodate the number of students to be served.
  5. Construction-related finish work, such as exterior and interior replastering and painting, carpeting, flooring, baseboards and door hanging.
  6. Roofing and air conditioning/heating installation or repair required prior to operation of the school.
  7. Access requirements for persons with disabilities.
- C.** The State Board of Education shall, subject to legislative appropriation, provide an initial grant or an additional grant from the charter schools stimulus fund to applicants who have a charter or application that has been approved by a sponsor pursuant to A.R.S. § 15-183 and who meet the requirements of A.R.S. § 15-188 and this Section. The grant may be in any amount up to \$100,000 per charter school applicant or charter school.
- D.** The application for an initial grant shall include:
1. A copy of the applicant's charter;
  2. The identity of the sponsor which approved the charter;
  3. The total amount of funding requested;
  4. An itemization of the specific start-up costs and costs associated with renovating or remodeling existing building and structures for which the funds will be used. Itemization shall include the amount of funds requested for each essential component and a detailed explanation of the basis for calculating the amount requested;
  5. The number of students to be served at the school;
  6. The dimensions of the facility in which the school is to be operated;
  7. A description of the extent to which the facility must be remodeled or renovated in order to meet applicable health and safety standards, unless this information is included in the applicant's charter.
- E.** The application for an additional grant shall be in a format approved by the State Board of Education and shall include:
1. The date and amount of the initial grant award.
  2. A copy of any amendments or other modifications to the charter or application which formed the basis for the initial grant.
  3. The identity of the current sponsor of the charter school.
  4. An itemized accounting of the expenditures made with the initial grant monies.
  5. The total amount of additional funding requested.
  6. An itemization of the specific start-up costs associated with renovating or remodeling existing buildings and structures for which the additional funds will be used. Itemization shall include the amount of funds requested for each essential component and a detailed explanation of the basis for calculating the amount requested.
- F.** In its review of an application for a stimulus fund grant, the State Board of Education may receive information concerning the application from the Department of Education, an advisory committee, and any other source. The State Board may award a grant in an amount different from that requested by the applicant. No grant shall be awarded pursuant to this Section unless the State Board determines that:
1. Every amount requested in the applicant's itemization of costs is for the essential component with which the amount is associated; and
  2. Based on all of the information before the State Board concerning the application, there is a rational basis for the award of funds.
- G.** No applicant or charter school shall be eligible for more than one initial grant and one additional grant, regardless of the amount awarded.
- H.** An applicant who receives an initial grant and fails to begin operating a charter school within the 18 months following the date of the award shall reimburse the Department of Education for the amount of the initial grant plus interest calculated at a rate of 10% per year. Such reimbursement is immediately due and payable at the end of the initial 18-month period.
- I.** An applicant who receives an additional grant and fails to begin operating a charter school within the 18 months following the date of the award shall reimburse the Department of Education for the amount of the initial grant plus interest calculated at a rate of 10% per year. Such reimbursement is immediately due and payable at the end of the applicable 18-month period and is in addition to any amounts required by subsection (H).
- J.** An applicant for a grant pursuant to this rule shall be notified of the date at which the State Board of Education shall consider the application no less than 10 days in advance thereof. Written notification of the Board's decision concerning an application for a grant shall be mailed to the applicant within 10 days following such decision.

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-2).

**R7-2-317. State Seal of Biliteracy Program**

- A.** Definitions. For purposes of this rule, "foreign language" means any language other than English.
- B.** School districts and charter schools in this state may choose to participate in the State Seal of Biliteracy Program (Program) which recognizes students who have attained a high level of proficiency in one or more foreign languages, in addition to English. School districts and charter schools participating in the Program may award the State Seal of Biliteracy to any high school student who graduates from a school operated by the school district or charter school and who meets the requirements of subsection (1) or (2), and subsection (3).
1. **Assessment Method.** To demonstrate language proficiency through the assessment method, the student must attain the required score on a language assessment as adopted by the State Board of Education, upon recommendation by the Arizona Department of Education, for purposes of demonstrating language proficiency for the Program in the four domains of speaking, writing, listening, and reading.
  2. **Alternative evidence model.** A school district or charter school may choose to award the State Seal of Biliteracy through an alternative evidence method.
    - a. An alternative evidence method may be used in any of the following circumstances:
      - i. No standardized assessment exists for the targeted foreign language;
      - ii. Evaluating the language proficiency of a student with disabilities for whom the standardized assessment is inappropriate as determined by the student's Individualized Education Program team or a student on a 504 plan as determined by the student's 504 plan committee; or

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- iii. The standardized assessment for the targeted foreign language does not assess one or more of the four domains of speaking, writing, listening and reading.
  - b. Any alternative evidence method used shall consist of a student portfolio that contains evidence of experience in the targeted foreign language, as well as work samples, test results and other accomplishments that demonstrate proficiency, as established in the guidelines developed by the Arizona Department of Education, in the targeted foreign language in the four domains of speaking, writing, listening and reading. Student portfolios shall comply with guidelines adopted by the Department.
  - c. A school district or charter school that uses an alternative evidence model must notify the Arizona Department of Education.
- 3. To be eligible to be awarded the State Seal of Biliteracy, each student shall also demonstrate proficiency in English by meeting the following requirements:
  - a. The student must successfully complete all English Language Arts requirements for graduation, pursuant to A.A.C. R2-7-302, with an overall grade point average in those classes of 2.0 or higher on a 4.0 scale, or the equivalent; and
  - b. The student receives a passing score in English Language Arts on the state assessment.
  - c. If the student has a primary home language other than English, the student shall obtain a score of proficient based on the English language proficiency standards pursuant to A.R.S. § 15-756.
- C. By October 1 of each year, the Arizona Department of Education shall make an electronic facsimile of the State Seal of Biliteracy available to each school district or charter school participating in the Program. Each participating school district or charter school shall identify each student who has met the requirements of the Program, affix the State Seal of Biliteracy to the student's diploma upon graduation, and shall note the receipt of the State Seal of Biliteracy on the transcript of the student.
- D. The Arizona Department of Education shall post on its website by July 1 of each year, the list of acceptable language assessments and the score to be achieved on each, as approved by the Board, which qualifies the student as proficient in a foreign language. The Arizona Department of Education shall ensure that all approved assessments are aligned to the Arizona world and native languages standards adopted by the Board.
- E. Each school district and charter school that chooses to participate in the Program shall meet the following requirements:
  - 1. Notify the Arizona Department of Education of its intent to participate in the Program at least 30 days prior to issuing the seal by filling out the form provided on the Arizona Department of Education's website.
  - 2. Designate at least one individual to serve as coordinator of the Program and provide that individual's name and contact information to the Arizona Department of Education.
  - 3. Using a format prescribed by the Arizona Department of Education, submit a report no later than 90 days after the end of the school year with the total number of students awarded the State Seal of Biliteracy, the number of seals for each targeted foreign language and the method used to determine proficiency in the foreign language.
  - 4. Make available to parents and students information regarding the Program and the name and contact information for the coordinator of the Program.
- F. The Arizona Department of Education shall establish guidelines and procedures to assist school districts and charter schools in the administration of the Program.

**Historical Note**

New Section made by final exempt rulemaking at 22 A.A.R. 3367, effective October 24, 2016 (Supp. 16-4).

**ARTICLE 4. SPECIAL EDUCATION****R7-2-401. Special Education Standards for Public Agencies Providing Educational Services**

- A. For the purposes of this Article, the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 et seq. and its implementing regulations, 34 CFR 300.1 et seq., are incorporated herein by reference. Copies of the incorporated material can be obtained from the U.S. Government Printing Office, Attn: New Orders, P.O. Box 979050, St. Louis, MO 63197-9000 or the Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson Street, Phoenix, Arizona 85007.
- B. Definitions. All terms defined in the IDEA, its implementing regulations and A.R.S. § 15-761 are applicable, with the following additions:
  - 1. "Accommodations" means the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instructional level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations shall not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test.
  - 2. "Adaptations" means changes made to the environment, curriculum, and instruction or assessment practices in order for a student to be a successful learner. Adaptations include accommodations and modifications. Adaptations are based on an individual student's strengths and needs.
  - 3. "Administrator" means the chief administrative official or designee (responsible for special education services) of a public education agency.
  - 4. "Audiologist" means a person who specializes in the identification and prevention of hearing problems and in the non-medical rehabilitation of those who have hearing impairments, and who is licensed to practice audiology according to A.R.S. Title 36, Chapter 17, Article 4.
  - 5. "Boundaries of responsibility" means for:
    - a. A school district, the geographical area within the legally designated boundaries.
    - b. A public agency other than a school district, the population of students enrolled in a charter school or receiving educational services from a public agency.
  - 6. "Certificate in speech and language therapy" means a speech-language pathologist or speech-language technician certificate awarded by the State Board of Education.
  - 7. "Certified school psychologist" means a person holding a certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, in the area of school psychology.
  - 8. "Certified speech-language therapist" means a person holding a speech-language pathologist or speech-language technician certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, and a license from the Arizona Department of Health Services as a speech-language pathologist in accordance with A.R.S. Title 36, Chapter 17, Article 4.
  - 9. "Department" means the Arizona Department of Education.

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10. "Doctor of medicine" means a person holding a license to practice medicine pursuant to A.R.S. Title 32, Chapter 13 (medical doctor) or Chapter 17 (doctor of osteopathy).
  11. "Exceptional Student Services Division" or "ESS" means the Exceptional Student Services Division of the Arizona Department of Education.
  12. "Evaluator" means a qualified person in a field relevant to the child's disability who administers specific and individualized assessment for the purpose of special education evaluation and placement.
  13. "Full and individual evaluation" means procedures used in accordance with the IDEA to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. This evaluation includes:
    - a. A review of existing information about the child;
    - b. A decision regarding the need for additional information;
    - c. If necessary, the collection of additional information; and
    - d. A review of all information about the child and a determination of eligibility for special education services and needs of the child.
  14. "Independent educational evaluation" means an evaluation conducted by a qualified evaluator who is not employed by the public education agency responsible for the education of the child in question.
  15. "Interpreter" means a person trained to translate orally or in sign language in matters pertaining to special education identification, evaluation, placement, the provision of FAPE, or assurance of procedural safeguards for parents and students who converse in a language other than spoken English. Each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE.
  16. "Language in which the student is proficient" means all languages including sign language systems.
  17. "Licensed psychologist" means a person holding a license from the state of Arizona Board of Psychologist examiners in accordance with A.R.S. Title 32, Chapter 19.1, Article 2.
  18. "Modifications" means substantial changes in what a student is expected to learn and to demonstrate. Changes may be made in the instructional level, the content or the performance criteria. Such changes are made to provide a student with meaningful and productive learning experiences, environments, and assessments based on individual needs and abilities.
  19. "Paraeducator" means a person employed to assist with the education of students but who is not certified to teach by the Arizona Department of Education. Alternate terms may include paraprofessional, teacher aide, instructional assistant or other similar titles.
  20. "Private school" means any nonpublic educational institution where academic instruction is provided, including nonsectarian and parochial schools, that are not under the jurisdiction of the state or a public education agency.
  21. "Private special education school" means a private school that is established to serve primarily students with disabilities. The school may also serve students without disabilities.
  22. "Psychiatrist" means a doctor of medicine who specializes in the study, diagnosis, treatment and prevention of mental disorders.
  23. "Public education agency" or "PEA" means a school district, charter school, accommodation school, state supported institution, or other political subdivision of the state that is responsible for providing education to children with disabilities.
  24. "Screening" means an informal or formal process of determining the status of a child with respect to appropriate developmental and academic norms. Screening may include observations, family interviews, review of medical, developmental, or education records, or the administration of specific instruments identified by the test publisher as appropriate for use as screening tools.
  25. "Special education teacher" means a teacher holding a special education certificate from the Arizona Department of Education.
  26. "Suspension" means a disciplinary removal from a child's current placement that results in a failure to provide services to the extent necessary to enable the child to progress appropriately in the general curriculum and advance toward achieving the goals set out in the child's IEP. The term does not include disciplinary actions or changes in placement through the IEP process if the child continues to receive the services described above. The term does include actions such as "in-school" and "going home for the rest of the day" removals if the child does not receive the services described above.
- C. Public Awareness.**
1. Each public education agency shall inform the general public and all parents, within the public education agency's boundaries of responsibility, of the availability of special education services for students aged 3 through 21 years and how to access those services. This includes information regarding early intervention services for children aged birth through 2 years.
  2. Each public education agency is responsible for public awareness within their enrolled population (including the families of enrolled students).
  3. School districts are responsible for public awareness in private schools located within their geographical boundaries.
- D. Child Identification and Referral.**
1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and all parents, within the public education agency boundaries of responsibility, written procedures for the identification and referral of all children with disabilities, aged birth through 21, including children with disabilities attending private schools and home schools, regardless of the severity of their disability.
  2. Each public education agency will require all school-based staff to review the written procedures related to child identification and referral on an annual basis. The public education agency shall maintain documentation of staff review.
  3. Procedures for child identification and referral shall meet the requirements of the IDEA and regulations, A.R.S. Title 15, Chapter 7, Article 4 and these rules.
  4. The public education agency responsible for child identification activities is the school district in which the parents reside unless:
    - a. The student is enrolled in a charter school or public education agency that is not a school district. In that event, the charter school or public education agency is responsible for child identification activities;
    - b. The student is enrolled in a non-profit private school. In that event, the school district within whose boundaries the private school is located is responsible for child identification activities.

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5. Identification (screening for possible disabilities) shall be completed within 45 calendar days after:
    - a. Entry of each preschool or kindergarten student and any student enrolling without appropriate records of screening, evaluation, and progress in school; or
    - b. Notification to the public education agency by parents of concerns regarding developmental or educational progress by their child aged 3 years through 21 years.
  6. Screening procedures shall include vision and hearing status and consideration of the following areas: cognitive or academic, communication, motor, social or behavioral, and adaptive development. Screening does not include detailed individualized comprehensive evaluation procedures.
  7. For a student transferring into a school; the public education agency shall review enrollment data and educational performance in the prior school. If there is a history of special education for a student not currently eligible for special education, or poor progress, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services.
  8. If a concern about a student is identified through screening procedures or through review of records, the public education agency shall notify the parents of the student of the concern within 10 school days and inform them of the public education agency procedures to follow-up on the student's needs.
  9. Each public education agency shall maintain documentation of the identification procedures utilized, the dates of entry into school or notification by parents made pursuant to subsection (D)(5), and the dates of screening. The results shall be maintained in the student's permanent records in a location designated by the administrator. In the case of a student not enrolled, the results shall be maintained in a location designated by the administrator.
  10. If the identification process indicates a possible disability, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services. A parent or a student may request an evaluation of the student. For parentally-placed private school students the school district within whose boundaries the non-profit private school is located is responsible for such evaluation.
  11. If, after consultation with the parent, the responsible public education agency determines that a full and individual evaluation is not warranted, the public education agency shall provide prior written notice and procedural safeguards notice to the parent in a timely manner.
- E. Evaluation/re-evaluation.**
1. Each public education agency shall establish, implement, disseminate to its school-based personnel, and make available to parents within its boundaries of responsibility, written procedures for the initial full and individual evaluation of students suspected of having a disability, and for the re-evaluation of students previously identified as being eligible for special education.
  2. Procedures for the initial full and individual evaluation of children suspected of having a disability and for the re-evaluation of students with disabilities shall meet the requirements of IDEA and regulations, and state statutes and State Board of Education rules.
  3. The initial evaluation of a child being considered for special education, or the re-evaluation per a parental request of a student already receiving special education services, shall be completed as soon as possible, but shall not exceed 60 calendar days from receipt of informed written consent. If the public education agency initiates the evaluation, the 60-day period shall commence with the date of receipt of informed written consent and shall conclude with the date of the Multidisciplinary Evaluation Team (MET) determination of eligibility. If the parent requests the evaluation and the MET concurs, the 60-day period shall commence with the date that the written parental request was received by the public education agency and shall conclude with the date of the MET determination of eligibility.
  4. The 60-day evaluation period may be extended for an additional 30 days, provided it is in the best interest of the child, and the parents and PEA agree in writing to such an extension. Neither the 60-day evaluation period nor any extension shall cause a re-evaluation to exceed the timelines for a re-evaluation within three years of the previous evaluation.
  5. The public education agency may accept current information about the student from another state, public agency, public education agency, or independent evaluator. In such instances, the Multidisciplinary Evaluation Team shall be responsible for reviewing and approving or supplementing an evaluation to meet the requirements identified in subsections (E)(1) through (7).
  6. For the following disabilities, the full and individual initial evaluation shall include:
    - a. Emotional disability: verification of a disorder by a psychiatrist, licensed psychologist, or a certified school psychologist.
    - b. Hearing impairment:
      - i. An audiological evaluation by an audiologist, and
      - ii. An evaluation of communication/language proficiency.
    - c. Other health impairment: verification of a health impairment by a doctor of medicine.
    - d. Specific learning disability: a determination of whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development that meets the public education agency criteria through one of the following methods:
      - i. A discrepancy between achievement and ability;
      - ii. The child's response to scientific, research-based interventions; or
      - iii. Other alternative research-based procedures.
    - e. Orthopedic impairment: verification of the physical disability by a doctor of medicine.
    - f. Speech/language impairment: an evaluation by a certified speech-language therapist.
    - g. For students whose speech impairments appear to be limited to articulation, voice, or fluency problems, the written evaluation may be limited to:
      - i. An audiometric screening within the past calendar year,
      - ii. A review of academic history and classroom functioning,
      - iii. An assessment of the speech problem by a speech therapist, or
      - iv. An assessment of the student's functional communication skills.

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- h. Traumatic brain injury: verification of the injury by a doctor of medicine.
  - i. Visual impairment: verification of a visual impairment by an ophthalmologist or optometrist.
- 7. The Multidisciplinary Evaluation Team shall determine, in accordance with the IDEA and regulations, whether the requirements of subsections (E)(6)(a) through (i) are required for a student's re-evaluation.
- F. Parental Consent.**
  - 1. A public education agency shall obtain informed written consent from the parent of the child with a disability before the initial provision of special education and related services to the child.
  - 2. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public education agency may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child.
  - 3. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public education agency:
    - a. Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent, and
    - b. Is not required to convene an IEP Team meeting or develop an IEP in accordance with these rules.
  - 4. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public education agency:
    - a. May not continue to provide special education and related services to the child, but shall provide prior written notice before ceasing the provision of special education and related services;
    - b. May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
    - c. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
    - d. Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.
  - 5. If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- G. Individualized Education Program (IEP).**
  - 1. Each public education agency shall establish, implement, and disseminate to its school-based personnel, and make available to parents, written procedures for the development, implementation, review, and revision of IEPs.
  - 2. Procedures for IEPs shall meet the requirements of the IDEA and regulations, and state statutes and State Board of Education rules.
- 3. Procedures shall include the incorporation of Arizona Academic Standards into the development of each IEP. IEP goals aligned with the Arizona Academic Standards shall identify the specific level within the Standard that is being addressed.
- 4. Each IEP of a student with a disability shall stipulate the provision of instructional or support services by a special education teacher, certified speech-language therapist, and/or ancillary service provider(s), as appropriate.
- 5. Each student with a disability who has an IEP shall participate in the state assessment system. Students with disabilities can test with or without standard accommodations as indicated in the student's IEP. Students who are determined to have a significant cognitive disability based on the established eligibility criteria will be assessed with the state's alternate assessment as determined by the IEP team.
- 6. A meeting shall be conducted to review and revise each student's IEP at least annually, or more frequently if the student's progress substantially deviates from what was anticipated. The public education agency shall provide written notice of the meeting to the parents of the student to ensure that parents have the opportunity to participate in the meeting.
- 7. A parent or public education agency may request in writing a review of the IEP. Such review shall take place within 15 school days of the receipt of the request or at a mutually agreed upon time but not to exceed 30 school days.
- H. Least Restrictive Environment.**
  - 1. Each public education agency shall establish, implement, and disseminate to its school-based personnel, and make available to parents, written procedures to ensure the delivery of special education services in the least restrictive environment as identified by IDEA and regulations, and state statutes and State Board of Education rules.
  - 2. A continuum of services and supports for students with disabilities shall be available through each public education agency.
- I. Procedural Safeguards.**
  - 1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and parents of students with disabilities written procedures to ensure children with disabilities and their parents are afforded the procedural safeguards required by federal statute and regulation and state statute. These procedures shall include dissemination to parents information about the public education agency's and state's dispute resolution options.
  - 2. In accordance with the prior written notice requirements of IDEA, prior written notice must be issued in a timely manner following a decision by a PEA to propose to initiate or change, or refuse to initiate or change, the identification, evaluation, educational placement or the provision of FAPE to the child.
- J. Confidentiality.**
  - 1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written policies and procedures to ensure the confidentiality of records and information in accordance with the IDEA, the Family Educational Rights and Privacy Act (FERPA) and regulations, and state statutes.
  - 2. Parents shall be fully informed about the requirements of the IDEA and regulations, including an annual notice of the policies and procedures that the PEA must follow

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- regarding storage, disclosure to a third party, retention, and destruction of personally identifiable information.
3. The rights of parents regarding education records are transferred to the student at age 18, unless the student has been declared legally incompetent, or the student has executed a delegation of rights to make educational decisions pursuant to A.R.S. § 15-773.
  4. Upon receiving a written request, each public education agency shall forward special education records to any other public education agency in which a student is attempting to enroll. Records shall be forwarded within the time-frame specified in A.R.S. § 15-828(F). The public education agency shall also forward records to any other person or agency for which the parents have given signed consent.
- K. Preschool Programs.** Each public education agency responsible for serving preschool children with disabilities shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures for:
1. The operation of the preschool program in accordance with federal statute and regulation, and state statute;
  2. The smooth and effective transition from the Arizona Early Intervention Program (AzEIP) to a public school preschool program in accordance with the agreement between the Department of Economic Security and the Department; and
  3. The provision of a minimum of 360 minutes of instruction in a program that operates at least three days a week.
- L. Children in Private Schools.** Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures regarding the access to special education services to students enrolled in private schools as identified by the IDEA and regulations, and state statutes and State Board of Education rules.
- M. State Education Agency Responsible for General Supervision and Obligations Related to and Methods of Ensuring Services.**
1. The Department is responsible for the general supervision of services to children with disabilities aged 3 through 21 served through a public education agency.
  2. The Department shall ensure through fund allocation, monitoring, dispute resolution, and technical assistance that all eligible students receive a free appropriate public education in conformance with the IDEA regulations, A.R.S. Title 15, Chapter 7, Article 4, and these rules.
  3. In exercising its general supervision responsibilities, the Department shall ensure that when it identifies noncompliance with the requirements of the IDEA Part B, the noncompliance is corrected as soon as possible, and in no case later than one year after the Department's written notification to the PEA of its identification of the noncompliance.
- N. Procedural Requirements Relating to Public Education Agency Eligibility.**
1. Each public education agency shall establish eligibility for funding with the Arizona Department in accordance with the IDEA and regulations, and state statutes and with schedule and method prescribed by the Department.
  2. In the event the Department determines that a public education agency does not meet eligibility for funding requirements, the public education agency has a right to a hearing before such funding is withheld.
  3. The Department may temporarily interrupt payments during any time period when a public education agency has not corrected deficiencies in eligibility for federal funds as a result of fiscal requirements of monitoring, auditing, complaint and due process findings.
4. Each public education agency shall, on an annual basis, determine the number of children within each disability category who have been identified, located, evaluated, and/or receiving special education services. This includes children residing within the boundaries of responsibility of the public education agency who have been placed by their parents in private schools or who are home schooled.
- O. Public Participation.**
1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures to ensure that, prior to the adoption of any policies and procedures needed to comply with federal and state statutes and regulations, there are:
    - a. Public hearings;
    - b. Notice of the hearings; and
    - c. An opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.
  2. This requirement does not pertain to day-to-day operating procedures.
- P. Suspension and Expulsion.**
1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures for the suspension and expulsion of students with disabilities.
  2. Each public education agency shall require all school-based staff involved in the disciplinary process to review the policies and procedures related to suspension and expulsion on an annual basis. The public education agency shall maintain documentation of staff review.
  3. Procedures for such suspensions and expulsions shall meet the requirements of the IDEA and regulations, and state statutes.

**Historical Note**

Amended effective December 11, 1974. Amended effective July 14, 1975 (Supp. 75-1). Amended effective July 1, 1977 (Supp. 77-4). Amended effective April 26, 1978 (Supp. 78-2). Former Section R7-2-401 repealed, new Section R7-2-401 adopted effective December 4, 1978 (Supp. 78-6). Amended by adding subsection (H) as an emergency effective July 20, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Amended (D)(11), (E)(5)(b) and added (H) effective December 14, 1984 (Supp. 84-6). Amended as an emergency effective June 18, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Emergency expired. Amended subsection (D) by adding subsection (12) effective March 13, 1986 (Supp. 86-2). Amended subsection (G) effective July 8, 1986 (Supp. 86-4). Amended subsections (D) and (H) and added subsection (I) effective June 22, 1987 (Supp. 87-2). Amended effective August 2, 1988 (Supp. 88-3). Amended effective December 6, 1995 (Supp. 95-4). Amended by final rulemaking at 7 A.A.R. 1541, effective March 19, 2001 (Supp. 01-1). Amended to correct a manifest typographical error in subsection (D)(1) (Supp. 01-3). Subsections (D)(9), (E)(4), and (E)(6) amended under A.R.S. § 41-1011 to correct subsection cross-references (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 4633, effective December 8, 2003 (Supp. 03-4). Amended by exempt rulemaking at 15 A.A.R. 1838, effective August 29, 2006 (Supp. 09-1). Amended by exempt rulemaking at 15 A.A.R. 1849, effective May 19, 2008 (Supp. 09-2). Amended by exempt rulemaking at 16

A.A.R. 201, effective December 7, 2009 (Supp. 10-1).

**R7-2-402. Standards for Approval of Special Education Programs in Private Schools**

- A. Definitions. All terms defined in the regulations for the Individuals with Disabilities Education Improvement Act (IDEA) Amendments, A.R.S. § 15-761, and State Board of Education rule R7-2-401 are applicable.
- B. No student may be placed by a public education agency in a private school special education school program unless the facility has been approved as meeting the standards as outlined in this rule, and the public education agency is unable to provide satisfactory education and services through its own facilities and personnel.
- C. In order for a private special education school to be approved by the Department for the purpose of contracting with a public education agency, the private facility shall:
  1. Provide special education instructional programs for students with disabilities that are at least comparable to those provided by the public schools of Arizona and meet the requirements of IDEA.
  2. Provide the following documentation:
    - a. Policies and procedures based on IDEA and state statutes;
    - b. Curriculum that is aligned with the Arizona Academic Standards;
    - c. A completed application;
    - d. Copies of all teacher and related service personnel certifications and licenses; and
    - e. If applicable, a copy of North Central Accreditation.
  3. Provide certificated special education teachers in each classroom to implement the IEPs of those students assigned to that classroom.
  4. Provide related services to meet the needs of the students as indicated on their IEPs.
  5. Provide administration personnel such as head teacher, principal, or other administrator certificated in an administrative area or experienced and certificated in the appropriate area of special education.
  6. Provide an education that meets the standards that apply to education provided by the public education agency.
  7. Maintain student records in accordance with the statutory requirements.
  8. Accept all responsibilities concerning instructional programs to the disabled student and parent or guardian that are required of the public schools of Arizona. Ultimate responsibility for any student under contract in a private special education school rests with the public education agency contracting for the students' education.
  9. Administer all required statewide assessments to those students placed in the private facility by a PEA or through the educational voucher system.
  10. Maintain adequate liability insurance.
  11. Maintain an accounting system and budget which includes the costs of operation, maintenance, transportation, and capital outlay, and which is open to review upon request.
  12. Maintain an attendance reporting system that provides public education agencies and the Department with required information.
  13. Provide notification to contracting public education agencies and the Department of any changes in staff or deletion of programs within 10 school days of the change or deletion.
  14. Provide notification to the contracting PEA of any intent to discontinue, suspend, or terminate services to a student for longer than 10 days. Services to the student must be

continued by the private school until an IEP meeting with the PEA is convened to determine an appropriate alternative placement. The PEA must be given up to 10 school days to arrange for the transition of the student after the IEP determination.

15. Permit onsite evaluation of the program by the Department or its designees, and the representatives of the public education agencies.
16. Request approval to contract with public education agencies from the Department in accordance with the prescribed procedures.

**Historical Note**

Former Section R7-2-402 repealed, new Section R7-2-402 adopted effective December 4, 1978 (Supp. 78-6). Amended by final rulemaking at 7 A.A.R. 1541, effective March 19, 2001 (Supp. 01-1). Amended by final rulemaking at 9 A.A.R. 4633, effective December 8, 2003 (Supp. 03-4). Amended by exempt rulemaking at 15 A.A.R. 1849, effective May 19, 2008 (Supp. 09-2).

**R7-2-403. Repealed**

**Historical Note**

Adopted effective December 4, 1978 (Supp. 78-6). Amended as an emergency effective September 26, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former emergency adoption now adopted effective December 4, 1979 (Supp. 79-6). Section repealed by final rulemaking at 9 A.A.R. 4633, effective December 8, 2003 (Supp. 03-4).

**R7-2-404. Special Education Voucher Program Policies and Procedures**

- A. Institutional vouchers. Students residing and attending special education programs at the Arizona Schools for the Deaf and the Blind (ASDB) or the Arizona State Hospital (ASH) or students attending special education day programs provided by ASDB may be eligible for special education institutional voucher funding.
  1. Eligibility criteria.
    - a. Student shall be between the ages of 3 and 22 years.
    - b. Student shall have a recognized disability as documented by a current educational evaluation. Evaluations shall be completed by the institution or the student's home school district (HSD), as determined by a multidisciplinary evaluation team (MET).
    - c. Student shall have a current individualized education program (IEP) identifying the placement as the most appropriate and least restrictive educational environment.
  2. Institutional voucher application/approval.
    - a. Applications for special education institutional vouchers shall be completed by the institution and submitted to the Exceptional Student Services Division of the Department of Education. The institution shall provide all student information requested on the institutional voucher application.
    - b. Institutions shall sign a Statement of Assurance guaranteeing their maintenance of and ability to produce all supporting documentation for each application.
    - c. Institutional voucher applications shall be reviewed and approved or disapproved by the voucher unit manager. Applications that are disapproved may be corrected and resubmitted. Institutional voucher payments will not be made for student attendance prior to voucher approval date.



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- d. Voucher identification numbers shall be assigned for each new student approval, and shall be used by the institution to complete claims for payment and the special education census form.
- e. Institutional vouchers are approved for the current year only; therefore the application process shall be repeated each school year for each student.
- f. Institutions shall report any changes in student status, including withdrawals, transfers, current evaluation dates and changes in disability categories to the Exceptional Student Services Division of the Department of Education. Changes shall be submitted within ten days of the occurrence.
- 3. Institutional voucher claim for payment.
  - a. The special education institutional voucher claim for payment form shall be completed by the institution at the end of each calendar month. The claim shall be submitted in accordance with procedures established by the School Finance Division of the Department of Education.
  - b. Claims for payment shall be submitted to the School Finance Division of the Department of Education.
- 4. Special education census.  
All institutional voucher students shall be reported on the special education census in accordance with procedures established by the School Finance Division of the Department of Education.
- 5. Review of placement.
  - a. It is the responsibility of the HSD to review student progress at least once a semester.
  - b. The IEP may be completed by the institution but is ultimately the responsibility of the student's HSD to ensure that it is reviewed and revised annually.
  - c. It is the responsibility of the HSD to ensure that re-evaluations are conducted on a tri-annual basis or more frequently as needed.
- B. Residential vouchers:** Students placed in private residential treatment facilities (PRF) may be eligible for residential voucher funding for the educational portion of the placement.
  - 1. Eligibility Criteria.
    - a. Students shall be enrolled in and eligible for educational services from a Public Education Agency (PEA).
    - b. Placement shall be made by one of the State Placing Agencies. They are the Department of Economic Security (DES), the Department of Health Services (DHS), the Administrative Office of the Courts (AOC), or the Department of Juvenile Corrections (ADJC).
    - c. Residential facilities shall be licensed by the Department of Health Services or Department of Economic Security and approved by the Department of Education for the specific educational needs of each student placed there.
    - d. The following conditions invalidate eligibility.
      - i. Placement by any agency other than those noted in subsection (B)(1)(b).
      - ii. Placement in facilities not appropriately licensed by DHS or DES or approved by the Department of Education.
      - iii. Student attendance at a PEA while residing in a residential facility.
    - e. Eligible students are divided into three categories.
      - i. Non-special education (NSE): Students not eligible for special education services who are placed by a State Placing Agency for their care, safety, or treatment.
      - ii. Care special education (CSE): Students eligible for special education services who are placed by a State Placing Agency for their care, safety, or treatment.
      - iii. Residential special education (RSE): Students requiring residential placement to benefit from educational programming who are placed by an IEP team.
  - 2. Voucher application/approval process. The process differs depending on category.
    - a. NSE and CSE options:
      - i. When a placement decision is reached, the State Placing Agency (SPA) shall complete a SPA Application for Voucher Funding, and forward a copy to the student's Home School District (HSD) for appropriate signatures within five days of placement.
      - ii. Upon placement, copies of the completed voucher shall be provided to the PRF and the Exceptional Student Services of the Department of Education (ESS).
      - iii. Upon receipt and review of the application and verification of facility approval, the SPA application will be approved for the initial 60 days of placement. An approval memo is sent to the PRF and the HSD. The Exceptional Student Services shall assign a student identification number to each approved voucher student. This number shall be used by the private facility when completing the special education census form and the claim for payment form.
      - iv. The HSD shall submit the HSD Application for Education Voucher Funding packet and submit it to the Exceptional Student Services of the Department of Education. Appropriate documentation of eligibility for special education and provision of services, if applicable, shall be included.
      - v. The HSD voucher application packet shall be reviewed and approved or disapproved by the voucher unit manager. Applications that are disapproved may be corrected and resubmitted. Approvals are granted from the date of receipt through the end of the school year. An approval memo is sent to the PRF and the HSD.
      - vi. If the HSD cannot complete the requirements for the HSD application packet within the initial 60-day approval period, they shall submit an Application For Extension Of Education Voucher Funding.
    - b. RSE option.  
The HSD shall follow statutory requirements and procedures agreed upon by the ADE, DHS, and DES when considering placement in a PRF for educational reasons. If a need for such a placement is determined, the HSD shall complete and submit the HSD Application for Education Voucher Funding packet to the ESS. Documentation of the necessity for PRF placement, measurable exit criteria, and a reintegration plan shall be required.
  - 3. Changes in placement/Discharge.
    - a. If a student is discharged or is absent without leave for more than ten days from the PRF, the facility shall notify the State Placing Agency, Home School

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- District and the Exceptional Student Services Division of the Department of Education in writing within five days.
- b. Students returning to a facility after a discharge or students transferred from one facility to another require a new SPA voucher application.
  - c. Students placed under the RSE option shall not be discharged without the consent of the IEP team.
4. Voucher claim for payment.
    - a. A special education voucher claim for payment shall be submitted in accordance with procedures established by the School Finance Division of the Department of Education.
    - b. Claim for payment shall be submitted to the School Finance Division of the Department of Education.
  5. Special education census.
 

A special education census form shall be completed for all voucher students in accordance with procedures established by the School Finance Division of the Department of Education.
  6. Review and continuation of placement.
    - a. The Home School District (HSD) shall regularly monitor the progress of students, ensure the annual review and revision of IEPs, and complete three-year re-evaluations as applicable.
    - b. Voucher approval is for one school year only. Students remaining in an PRF from the end of one school year to the beginning of the next year require new voucher applications. Prior to the beginning of the new school year, the PRF shall submit an Application for Continuing Voucher funding, signed by both the SPA and the HSD. For a student who is eligible for special education services, a current IEP shall accompany the continuing application if the IEP has been reviewed or revised after the original voucher was approved.
- B. The due process procedures specified in this rule apply to all public agencies dealing with the identification, evaluation, special education placement of, and the provision of a free appropriate public education ("FAPE") for children with disabilities.
  - C. The SEA shall establish procedures concerning:
    1. Impartial due process hearings, and
    2. Confidentiality and access to student records.
  - D. An impartial hearing officer shall be:
    1. Unbiased – not prejudiced for or against any party in the hearing;
    2. Disinterested – not having any personal or professional interest that would conflict with objectivity in the hearing;
    3. Independent – may not be an officer, employee, or agent of a public agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because the person is paid by the public agency to serve as a hearing officer;
    4. Trained by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of, and the provision of FAPE for children with disabilities.
  - E. Hearing officer qualifications and training.
    1. All hearing officers shall participate in all required training conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement, and the provision of FAPE for children with disabilities.
    2. A hearing officer shall meet the requirements set forth by OAH regarding ALJs. A hearing officer shall not have represented a parent in a special education matter during the preceding 12 months, and shall not have represented a school district in any matter during the preceding 12 months.
  - F. Selection of hearing officers.
    1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in subsection (E) to serve as hearing officers. This list shall also include the qualifications of each hearing officer.
    2. A hearing officer shall be assigned in accordance with the procedures of the Office of Administrative Hearings.
  - G. Request for due process hearing.
    1. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public education agency knew or should have known about the alleged action that forms the basis of the due process complaint.
    2. A parent shall submit a written request for a due process hearing to the public education agency and the SEA. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and parents agree. If a parent requests a due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available, and provide a copy of the procedural safeguards notice. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in the public school until the completion of all proceedings.
    3. If the public education agency requests a due process hearing, such request may be made on a model form, as

**Historical Note**

Adopted effective December 4, 1978 (Supp. 78-6).

Amended by final rulemaking at 9 A.A.R. 4633, effective December 8, 2003 (Supp. 03-4).

**Editor's Note:** The following Section was erroneously published in Supp. 04-2 with amendments that were not approved by the Attorney General's Office. It is republished with the text in effect before Supp. 04-2. The correct notice was published at 10 A.A.R. 3274 (Supp. 04-3).

**R7-2-405. Special Education Dispute Resolution; Due Process**

- A. Definitions. The following definitions are applicable to this rule:
1. "Due process hearing" means a fair and impartial administrative hearing conducted by the State Education Agency by an impartial hearing officer through the Arizona Office of Administrative Hearings in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and its implementing regulations (34 CFR 300).
  2. "Impartial hearing officer" or "hearing officer" means an Administrative Law Judge ("ALJ") of the Arizona Office of Administrative Hearings ("OAH") and who is knowledgeable in the laws governing special education and administrative hearings.
  3. "Public agency" ("PEA") has the same definition as provided in R7-2-401.
  4. "State Education Agency" ("SEA") means the Department of Education, Exceptional Student Services Section.

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noted in subsection (G)(2), and a copy shall be provided to the parent and the SEA. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and the parents agree. In conjunction with its request for due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available and provide a copy of the procedural safeguards notice. All correspondence to the parent, including the due process request, shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in the public school until the completion of all proceedings.

**H.** An impartial due process hearing shall be conducted in accordance with the following procedures:

1. The hearing officer shall hold a pre-hearing conference, either telephonically or at a location that is reasonably convenient to the parents and the child involved, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the time and dates for the hearing.
2. The hearing officer shall conduct the hearing at a location that is reasonably convenient to the parents and the child involved.
3. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner, and shall ensure that all parties involved have an opportunity to:
  - a. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
  - b. Object to the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
  - c. Produce outside expert witnesses;
  - d. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
4. The parent involved in the hearing shall be given the right to:
  - a. Have the child who is the subject of the hearing present,
  - b. Have the hearing conducted in public,
  - c. Have an interpreter provided by the public agency.
5. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement, and the provision of FAPE. This shall include any Independent Education Evaluation secured by the parent.
  - a. The hearing officer shall determine whether the public agency has met all requirements of federal and state law, rules, and regulations.
  - b. The hearing officer shall render findings of fact and a decision, which shall be binding on all parties unless appealed pursuant to this rule.
6. The hearing officer's findings of fact and decision shall be in writing and shall be provided to the parent, the public education agency, the SEA, and their respective representatives. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and decision shall be

delivered by certified mail or by hand within 45 calendar days after notification to the hearing officer that the parties have been unable to resolve the matter in accordance with 20 U.S.C. 1415(f)(1)(B). A hearing officer may grant specific extensions of time beyond the 45 calendar days for good cause shown at the request of either party.

7. The findings of fact and decision of the hearing officer shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.
  8. Any party to the proceeding has the right to appeal a final administrative decision to a court of competent jurisdiction within 35 calendar days after receipt of the decision.
  9. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.
- I.** Expedited hearing.
1. An expedited hearing regarding disciplinary matters may be requested in accordance with federal law as set forth in 20 U.S.C. 1415(k).
  2. Hearing officers for an expedited hearing shall be assigned by the Office of Administrative Hearings.
  3. The expedited hearing shall be conducted within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

**Historical Note**

Adopted effective December 4, 1978 (Supp. 78-6). Amended subsection (V) effective May 1, 1987 (Supp. 87-2). Amended effective July 20, 1990 (Supp. 90-3). Emergency amendment adopted effective November 21, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendment readopted effective March 21, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Amended effective May 2, 1991 (Supp. 91-2). Amended effective November 17, 1994 (Supp. 94-4). Amended effective December 6, 1995 (Supp. 95-4). Amended by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2399, effective July 23, 2004 (Supp. 04-2). Supp. 04-2 Historical Note entry is in error. R7-2-405 was erroneously included in Supp. 04-2 with amendments that were not approved by the Attorney General's Office. It is republished with the text in effect before Supp. 04-2. The correct notice was published at 10 A.A.R. 3274 (Supp. 04-3). Amended by exempt rulemaking at 15 A.A.R. 1732, effective January 26, 2006 (Supp. 09-1). Amended by exempt rulemaking at 15 A.A.R. 1849, effective May 19, 2008 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 201, effective December 7, 2009 (Supp. 10-1).

**R7-2-405.01. Special Education Dispute Resolution; State Administrative Complaints**

- A.** Notwithstanding any other provision of law, a state administrative complaint filed with the Department regarding any alleged violations of Part B of the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.) or its implementing regulations (34 CFR 300) shall be investigated in accordance with the Code of Federal Regulations Title 34.
1. The party filing the complaint shall forward a copy of the state administrative complaint to the public education agency serving the child at the same time the party files the complaint with the Department.

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2. A written decision shall be issued to the complainant and the public education agency that is the subject of the state administrative complaint in accordance with the 60-day time limit specified in the Code of Federal Regulations Title 34.
- B. The Department shall accept and investigate state administrative complaints that allege a violation that occurred not more than one year prior to the date that the complaint is received by the Department.
- C. The state administrative complaint shall include all of the following:
  1. A statement that a public education agency has violated a requirement of Part B of the IDEA or its implementing regulations.
  2. The facts on which the statement is based.
  3. The signature and contact information for the complainant.
  4. If alleging violations with respect to a specific child, all of the following:
    - a. The name and address of the child.
    - b. The name of the school the child is attending.
    - c. In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (20 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending.
    - d. A description of the nature of the problem of the child, including facts relating to the problem.
    - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
  5. The Department shall develop a model form to assist parents and public agencies in filing a state administrative complaint under this Section.
- a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings,
- b. Is signed by both the parent and a representative of the public education agency who has the authority to bind the agency, and
- c. Is enforceable in any state court of competent jurisdiction or in a district court of the United States.
7. Whether or not the dispute is resolved through mediation, discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court.
8. Impartiality of the Mediator. An individual who serves as a mediator:
  - a. May not be an employee of the Department or of the public education agency that is involved in the education or care of the student.
  - b. Shall not have a personal or professional interest that conflicts with the person's objectivity.
  - c. Is not an employee of the Department or of a public education agency solely because the mediator is paid by the Department of Education to serve as a mediator.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 201, effective December 7, 2009 (Supp. 10-1).

**R7-2-406. Gifted Education Programs and Services**

- A. Governing boards shall adopt policies for the education of gifted students which shall include:
  1. Procedures for identification and placement of students to be placed in gifted programs.
    - a. Students shall be served who score at or above the 97th percentile on national norms in any one of three areas - verbal, nonverbal, or quantitative reasoning - on any test from the State Board-approved list. Students who score below the 97th percentile also may be served.
    - b. Local educational agencies (LEAs) shall accept, as valid for placement, scores at or above the 97th percentile on any State Board-approved test submitted by other LEAs or by qualified professionals.
    - c. LEAs shall place transfer students as soon as they have verified eligibility.
  2. Curriculum, differentiated instruction, and supplemental services for gifted students.
    - a. Expanded academic course offerings may include, for example, one or more of the following: acceleration, enrichment, flexible pacing, interdisciplinary curriculum, and seminars.
    - b. Differentiated instruction, which emphasizes the development of higher order thinking, may include critical thinking, creative thinking, and problem solving skills.
    - c. Supplemental services, which may be offered to meet the individual needs of each gifted student, may include, for example, guidance and counseling, mentorships, independent study, correspondence courses, and concurrent enrollment.
  3. Parent involvement.
    - a. Each LEA shall provide the following information to all parents or legal guardians:
      - i. Definition of a gifted child;

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 201, effective December 7, 2009 (Supp. 10-1).

**R7-2-405.02. Special Education Dispute Resolution; Mediation**

In accordance with the Individuals with Disabilities Education Act, the Department shall provide parents of students with disabilities and public education agencies the opportunity to resolve disputes involving any matter under IDEA, including matters arising prior to the filing of a request for due process, through a mediation process.

1. The mediation process shall:
  - a. Be voluntary on the part of both parties,
  - b. Not be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the IDEA,
  - c. Be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
2. The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
3. The Department shall select mediators on a random or rotational basis.
4. The Department shall bear the cost of the mediation process.
5. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to both the parent and the public education agency.
6. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that:

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- ii. Services mandated for gifted students by the state of Arizona;
      - iii. Services available from the LEA;
      - iv. Written criteria of the LEA for referral, screening, selection and placement.
    - b. Each LEA shall develop policies and procedures which ensure that parents or legal guardians are:
      - i. Given the opportunity to have their children tested;
      - ii. Given advance notice of the week that their children are to be tested;
      - iii. Given the opportunity to withhold permission for testing;
    - c. Each LEA shall:
      - i. Make testing available for students K-12 on a periodic basis but not less than three times per year;
      - ii. Inform parents or legal guardians of the results of the district-administered test within 30 school days of determining the test results;
      - iii. Upon request, explain test results to parents or legal guardians.
  - 4. The scope and sequence shall be a written program description which demonstrates articulation across all grades and schools to ensure opportunities for continuous progress and shall include:
    - a. Statement of purpose;
    - b. General population description;
    - c. Identification process and placement criteria including provisions for special populations;
    - d. Goals and objectives;
    - e. Curriculum, differentiated instruction, and supplemental services;
    - f. Program models;
    - g. Time allocations for services;
    - h. Procedures and criteria for evaluation of student and program outcomes.
  - B. The Arizona Department of Education shall develop and make available model policies for the development, implementation, and evaluation of services for gifted students.
- Historical Note**  
Adopted effective December 12, 1990 (Supp. 90-4)
- R7-2-407. Special Education Standards and Assistance for Providing Educational Services and Materials for Visually Impaired Students**
- A. All requirements in this Section are in addition to the general special education standards in R7-2-401 for public education agencies providing special education.
  - B. For the purposes of this rule, the following definitions apply:
    - 1. "Accessible Electronic File" means, until the effective date of a nationally adopted file format, a digital file in a mutually agreed upon electronic file format that has been prepared using a markup language that maintains the structural integrity of the information and can be processed by Braille conversion software. Upon the effective date of a nationally adopted file format, such as the Instructional Materials Accessibility Standard (IMAS), "Accessible Electronic File" shall mean an electronic file conforming to the specifications of the nationally adopted file format, including future technical revisions and versions of this nationally adopted file format.
    - 2. "Individualized Braille literacy assessment" means the Learning Media Assessment or other standardized or individualized assessments that pertain to the child's reading medium.
  - 3. "Non-printed instructional materials" means non-printed textbooks and related core materials, including those that require the availability of electronic equipment in order to be used as a learning resource, that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or a local educational agency for use by pupils in the classroom. These materials shall be available to the extent technologically available, and may include software programs, CD-ROMs and internet-based materials.
  - 4. "Printed instructional materials" means textbooks and related printed core materials, that are written and published primarily for use in elementary school and secondary school instruction and are required by a state educational agency or a local educational agency for use by pupils in the classroom. This may include workbooks, practice tests, and tests.
  - 5. "Publisher" means an individual, firm, partnership or corporation that publishes or manufactures printed instructional materials for students attending public schools in Arizona, including an on-line service, a software developer, or a distributor of an electronic textbook.
  - 6. "Specialized format" means Braille, audio or digital text which is exclusively for use by blind or other persons with disabilities.
  - 7. "Structural integrity" means the structure of all parts of the printed instructional material will be kept intact to the extent feasible and as mutually agreed upon by the publisher and the local educational agency. This may include appropriate representation of graphic illustrations.
  - C. Upon determination of a student having a visual impairment as assessed by a full and initial evaluation defined in R7-2-401(E)(6)(i), a visually impaired student who is determined to be blind as defined by A.R.S. § 15-214(B) shall receive an individualized Braille literacy assessment.
  - D. Individualized Education Programs (IEP) for blind students. In addition to the requirements for establishing and implementing an IEP consistent with R7-2-401(F) for a student determined to have a disability, each IEP for a student determined to be "blind" as assessed by R7-2-401(E)(6)(i) and defined by A.R.S. § 15-214(B), shall presume that proficiency in Braille is essential in achieving academic success unless otherwise determined by the IEP team established consistent with the regulations for the most recent reauthorization of the Individuals with Disabilities Education Act (IDEA) and in the manner provided by the most recent reauthorization of the IDEA Act for developing an IEP. An IEP developed under this Section for a student determined to be blind shall include all required provisions of A.R.S. § 15-214(A)(3), including the following:
    - 1. The results of the individualized Braille literacy assessment.
    - 2. The date on which Braille instruction will begin, the methods to be used and the frequency and duration of the Braille instruction.
    - 3. The level of competency expected to be achieved within specified time-frames and the objective measures to be used for evaluation.
    - 4. The Braille materials and equipment necessary to achieve the stated expected competency gains, including ordering instructional materials to achieve the IEP-stated goals.
    - 5. The rationale for not providing Braille instruction if Braille is not determined to be an appropriate medium by the IEP team and is not included in the IEP.
  - E. The Arizona Department of Education shall designate a central repository for publishers to, upon request, provide accessible

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electronic files for instructional materials used by public schools in Arizona as defined in subsection (B)(1). The central repository shall be responsible for maintaining a complete list of available accessible electronic files for instructional materials and instructional materials in specialized formats, processing requests from PEAs for instructional materials in specialized formats and providing access to these materials in specialized formats to schools throughout Arizona that are providing services to blind or other students with disabilities.

1. Upon receipt of a written request certifying to the requirements set forth in subsections (E)(1)(a) through (c) publishers shall deliver to the repository, at no additional cost and consistent with the time-frame for providing materials for students without disabilities, accessible electronic files for printed instructional materials and non-printed instructional materials. Certification shall include all of the following:
  - a. The PEA purchased a copy of the printed instructional material or non-printed instructional material for use by a student who is blind or has a visual impairment in a course that the student is attending or registered to attend;
  - b. The student who will utilize the instructional materials in a specialized format has an IEP stating that such materials and/or equipment are necessary for the student to achieve stated expected competency gains; and
  - c. The instructional materials are for use by the student in connection with a course in which he or she is enrolled, as verified by the person overseeing the education of students who are blind or visually impaired.
2. A PEA may access the materials maintained by the central repository, upon written request, for instructional use with a student with a visual impairment, as identified by R7-2-401(E)(6)(i), who requires the use of instructional materials in a specialized format pursuant to the student's IEP.
3. Nothing in this Section shall be construed to prohibit the central repository from assisting a student with a disability by using the electronic format version of instructional material provided pursuant to this Section solely to transcribe or arrange for the transcription of the printed instructional material into Braille or large print. In the event a Braille transcription is made, the central repository has the right to share the Braille copy of the printed instructional material with other eligible students with disabilities. The PEA will be required to return the specialized format version of the instructional material to the central repository when the student no longer needs the instructional material. The central repository may share the copies of the specialized format of the instructional material with other PEAs who have met the requirements of subsections (B) and (D) of this Section to provide services to students who require such services pursuant to R7-2-401(F)(5).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2399, effective July 23, 2004 (Supp. 04-2).

**R7-2-408. Extended School Year Programs for Children with Disabilities**

- A. "Extended school year" (ESY) shall be as defined in A.R.S. § 15-881.

- B. Eligibility. Eligibility shall be determined by the Individualized Education Program (IEP) Team. Criteria for determining eligibility in an extended school year program shall be as defined in A.R.S. § 15-881.
- C. For a student with a disability currently enrolled in special education, eligibility for ESY services shall be determined no later than 45 calendar days prior to the last day of the school year.
- D. The availability of an extended school year program is required for all students for whom the IEP team has determined that it is necessary in order to ensure a free appropriate public education. Student participation in an ESY program is not compulsory. ESY services are not required for all students with a disability.
- E. Factors that are inappropriate for consideration. Eligibility for participation shall not be based on need or desire for any of the following:
  1. A day care or respite care service for students with a disability;
  2. A program to maximize the academic potential of a student with a disability; and
  3. A summer recreation program for students with a disability.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 4633, effective December 8, 2003 (Supp. 03-4).

**ARTICLE 5. CAREER AND VOCATIONAL EDUCATION****R7-2-501. Repealed****Historical Note**

Not in original publication, correction, Section R7-2-501. Adopted effective July 2, 1974. Amended effective November 8, 1974. Amended effective August 11, 1975 (Supp. 75-1). Former Section R7-2-501 repealed, new Section R7-2-501 adopted effective December 4, 1978 (Supp. 78-6). Repealed effective February 20, 1997 (Supp. 97-1).

**R7-2-502. Vocational education provisions and standards**

All eligible recipients receiving federal or state monies or services in support of vocational and technical education programs, courses, or classes shall comply with the applicable provisions and standards of the following plans, which are filed with the Secretary of State, which plans are incorporated herein by reference.

1. 1986-1988 Arizona State Plan for Vocational Education for Federal Funding as required by A.R.S. § 15-784; and
2. Arizona State Plan for Vocational Education for State Funding approved April 22, 1985, as required by A.R.S. § 15-787(C).

**Historical Note**

Adopted (FY 76) effective July 14, 1975 (Supp. 75-1). Adopted (FY 77) effective June 25, 1976 (Supp. 76-3). Former Section R7-2-502 repealed, new Section R7-2-502 adopted effective December 4, 1978 (Supp. 78-6). Former Section R7-2-502 repealed, new Section R7-2-502 adopted effective March 13, 1986 (Supp. 86-2).

**R7-2-503. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-504. Repealed**

**Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-505. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-506. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-507. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-508. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-509. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-510. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-511. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-512. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-513. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-514. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-515. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-516. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-517. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-518. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-519. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**R7-2-520. Repealed****Historical Note**

Repealed effective December 4, 1978 (Supp. 78-6).

**ARTICLE 6. CERTIFICATION****R7-2-601. Definitions**

In this Article, the following definitions apply unless the context otherwise requires:

1. "Accredited institution" means one which is listed as accredited in the current Higher Education Directory. An institution based outside the United States shall be considered accredited if an approved foreign document evaluation firm approved by the Department declares it to be comparable to an accredited American institution.
2. "Board" means the State Board of Education.
3. "CTE" means Career and Technical Education.
4. "Department" means the Arizona Department of Education.
5. "Practicum" means a period of structured observation and practice of the skills being learned, supervised by an individual trained in that area. The commonly used terms "student teaching," "internship," "residency," or "observation course" are included in this definition.
6. "Professional development" means training to increase skills related to the occupation of education.
7. "Teaching experience" means full-time employment which included full responsibility for the planning and delivery of instruction and evaluation of student learning. Substitute teaching is not considered full-time teaching experience.

**Historical Note**

Former Section R7-2-601 repealed, new Section R7-2-601 adopted effective December 4, 1978 (Supp. 78-6). Amended subsection (C) effective May 31, 1983 (Supp. 83-3). Amended subsection (I) effective September 12, 1989 (Supp. 89-3). Amended effective August 14, 1991 (Supp. 91-3). Amended effective July 30, 1992 (Supp. 92-3). Section repealed, new Section adopted effective March 10, 1994 (Supp. 94-1). Amended effective July 25, 1994 (Supp. 94-3). Amended effective September 20, 1996 (Supp. 96-3). Amended effective March 6, 1997 (Supp. 97-1). Typographical error corrected in subsection (A) (Supp. 97-3). Section repealed; new Section adopted effective December 3, 1998 (Supp. 98-4). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4).

**R7-2-602. Professional Teaching Standards**

- A. The standards presented in this Section shall be the basis for approved teacher preparation programs, described in R7-2-604, and the Arizona Teacher Proficiency Assessment, described in R7-2-606.
- B. Standard 1. Learner Development: The teacher understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences. The teacher:
  1. Regularly assesses individual and group performance in order to design and modify instruction to meet learners' needs in each area of development (cognitive, linguistic, social, emotional, and physical) and scaffolds the next level of development.
  2. Creates developmentally appropriate instruction that takes into account individual learners' strengths, interests, and needs and that enables each learner to advance and accelerate his/her learning.

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3. Collaborates with families, communities, colleagues, and other professionals to promote learner growth and development.
  4. Understands how learning occurs – how learners construct knowledge, acquire skills, and develop disciplined thinking processes – and knows how to use instructional strategies that promote student learning.
  5. Understands that each learner's cognitive, linguistic, social, emotional, and physical development influences learning and knows how to make instructional decisions that build on learners' strengths and needs.
  6. Identifies readiness for learning, and understands how development in any one area may affect performance in others.
  7. Understands the role of language and culture in learning and, consistent with Arizona law, knows how to modify instruction to make language comprehensible and instruction relevant, accessible, and challenging.
  8. Respects learners' differing strengths and needs and is committed to using this information to further each learner's development.
  9. Is committed to using learners' strengths as a basis for growth, and their misconceptions as opportunities for learning.
  10. Takes responsibility for promoting learners' growth and development.
- C. Standard 2. Learning Differences:** The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards. The teacher:
1. Designs, adapts, and delivers instruction to address each student's diverse learning strengths and needs and creates opportunities for students to demonstrate their learning in different ways.
  2. Makes appropriate and timely provisions (e.g., pacing for individual rates of growth, task demands, communication, assessment, and response modes) for individual students with particular learning differences or needs.
  3. Designs instruction to build on learners' prior knowledge and experiences, allowing learners to accelerate as they demonstrate their understandings.
  4. Brings multiple perspectives to the discussion of content, including attention to learners' personal, family, and community experiences and cultural norms.
  5. Incorporates tools of language development into planning and instruction, including strategies for making content accessible to English language learners and for evaluating and supporting their development of English proficiency.
  6. Accesses resources, supports, and specialized assistance and services to meet particular learning differences or needs.
  7. Understands and identifies differences in approaches to learning and performance and knows how to design instruction that uses each learner's strengths to promote growth.
  8. Understands students with exceptional needs, including those associated with disabilities and giftedness, and knows how to use strategies and resources to address these needs.
  9. Knows about second language acquisition processes and knows how to incorporate instructional strategies and resources to support language acquisition.
  10. Understands that learners bring assets for learning based on their individual experiences, abilities, talents, prior learning, and peer and social group interactions, as well as language, culture, family, and community values.
11. Knows how to access information about the values of diverse cultures and communities and how to incorporate learners' experiences, cultures, and community resources into instruction.
  12. Believes that all learners can achieve at high levels and persists in helping each learner reach his/her full potential.
  13. Respects learners as individuals with differing personal and family backgrounds and various skills, abilities, perspectives, talents, and interests.
  14. Makes learners feel valued and helps them learn to value each other.
  15. Values diverse languages and dialects and seeks to integrate them into his/her instructional practice to engage students in learning.
- D. Standard 3. Learning Environments:** The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self motivation. The teacher:
1. Collaborates with learners, families, and colleagues to build a safe, positive learning climate of openness, mutual respect, support, and inquiry.
  2. Develops learning experiences that engage learners in collaborative and self-directed learning and that extend learner interaction with ideas and people locally and globally.
  3. Collaborates with learners and colleagues to develop shared values and expectations for respectful interactions, rigorous academic discussions, and individual and group responsibility for quality work.
  4. Manages the learning environment to actively and equitably engage learners by organizing, allocating, and coordinating the resources of time, space, and learners' attention.
  5. Uses a variety of methods to engage learners in evaluating the learning environment and collaborates with learners to make appropriate adjustments.
  6. Communicates verbally and nonverbally in ways that demonstrate respect for and responsiveness to the cultural backgrounds and differing perspectives learners bring to the learning environment.
  7. Promotes responsible learner use of interactive technologies to extend the possibilities for learning locally and globally.
  8. Intentionally builds learner capacity to collaborate in face-to-face and virtual environments through applying effective interpersonal communication skills.
  9. Understands the relationship between motivation and engagement and knows how to design learning experiences using strategies that build learner self-direction and ownership of learning.
  10. Knows how to help learners work productively and cooperatively with each other to achieve learning goals.
  11. Knows how to collaborate with learners to establish and monitor elements of a safe and productive learning environment including norms, expectations, routines, and organizational structures.
  12. Understands how learner diversity can affect communication and knows how to communicate effectively in differing environments.
  13. Knows how to use technologies and how to guide learners to apply them in appropriate, safe, and effective ways.
  14. Is committed to working with learners, colleagues, families, and communities to establish positive and supportive learning environments.



15. Values the role of learners in promoting each other's learning and recognizes the importance of peer relationships in establishing a climate of learning.
  16. Is committed to supporting learners as they participate in decision making, engage in exploration and invention, work collaboratively and independently, and engage in purposeful learning.
  17. Seeks to foster respectful communication among all members of the learning community.
  18. Is a thoughtful and responsive listener and observer.
- E. Standard 4. Content Knowledge:** The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content. The teacher:
1. Effectively uses multiple representations and explanations that capture key ideas in the discipline, guide learners through learning progressions, and promote each learner's achievement of content standards.
  2. Engages students in learning experiences in the discipline(s) that encourage learners to understand, question, and analyze ideas from diverse perspectives so that they master the content.
  3. Engages learners in applying methods of inquiry and standards of evidence used in the discipline.
  4. Stimulates learner reflection on prior content knowledge, links new concepts to familiar concepts, and makes connections to learners' experiences.
  5. Recognizes learner misconceptions in a discipline that interfere with learning, and creates experiences to build accurate conceptual understanding.
  6. Evaluates and modifies instructional resources and curriculum materials for their comprehensiveness, accuracy for representing particular concepts in the discipline, and appropriateness for his or her learners.
  7. Uses supplementary resources and technologies effectively to ensure accessibility and relevance for all learners.
  8. Creates opportunities for students to learn, practice, and master academic language in their content.
  9. Accesses school and/or district-based resources to evaluate the learner's content knowledge in his or her primary language.
  10. Understands major concepts, assumptions, debates, processes of inquiry, and ways of knowing that are central to the discipline(s) he or she teaches.
  11. Understands common misconceptions in learning the discipline and how to guide learners to accurate conceptual understanding.
  12. Knows and uses the academic language of the discipline and knows how to make it accessible to learners.
  13. Knows how to integrate culturally relevant content to build on learners' background knowledge.
  14. Has a deep knowledge of student content standards and learning progressions in the discipline(s) he or she teaches.
  15. Realizes that content knowledge is not a fixed body of facts but is complex, culturally situated, and ever evolving. The teacher keeps abreast of new ideas and understandings in the field, and ensures instruction is consistent with Arizona's adopted academic standards.
  16. Appreciates multiple perspectives within the discipline and facilitates learners' critical analysis of these perspectives.
- F. Standard 5. Application of Content:** The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues. The teacher:
1. Develops and implements projects that guide learners in analyzing the complexities of an issue or question using perspectives from varied disciplines and cross-disciplinary skills (e.g., a water quality study that draws upon biology and chemistry to look at factual information and social studies to examine policy implications).
  2. Engages learners in applying content knowledge to real world problems through the lens of interdisciplinary themes (e.g., financial literacy, environmental literacy).
  3. Facilitates learners' use of current tools and resources to maximize content learning in varied contexts.
  4. Engages learners in questioning and challenging assumptions and approaches in order to foster innovation and problem solving in local and global contexts.
  5. Develops learners' communication skills in disciplinary and interdisciplinary contexts by creating meaningful opportunities to employ a variety of forms of communication that address varied audiences and purposes.
  6. Engages learners in generating and evaluating new ideas and novel approaches, seeking inventive solutions to problems, and developing original work.
  7. Facilitates learners' ability to develop diverse social and cultural perspectives that expand their understanding of local and global issues and create novel approaches to solving problems.
  8. Develops and implements supports for learner literacy development across content areas.
  9. Understands the ways of knowing in his/her discipline, how it relates to other disciplinary approaches to inquiry, and the strengths and limitations of each approach in addressing problems, issues, and concerns.
  10. Understands how current interdisciplinary themes (e.g., civic literacy, health literacy, global awareness) connect to the core subjects and knows how to weave those themes into meaningful learning experiences.
  11. Understands the demands of accessing and managing information as well as how to evaluate issues of ethics and quality related to information and its use.
  12. Understands how to use digital and interactive technologies for efficiently and effectively achieving specific learning goals.
  13. Understands critical thinking processes and knows how to help learners develop high level questioning skills to promote their independent learning.
  14. Understands communication modes and skills as vehicles for learning (e.g., information gathering and processing) across disciplines as well as vehicles for expressing learning.
  15. Understands creative thinking processes and how to engage learners in producing original work.
  16. Knows where and how to access resources to build global awareness and understanding, and how to integrate them into the curriculum.
  17. Is constantly exploring how to use disciplinary knowledge as a lens to address local and global issues.

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18. Values knowledge outside his/her own content area and how such knowledge enhances student learning.
  19. Values flexible learning environments that encourage learner exploration, discovery, and expression across content areas.
- G. Standard 6. Assessment:** The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making. The teacher:
1. Balances the use of formative and summative assessment as appropriate to support, verify, and document learning.
  2. Designs assessments that match learning objectives with assessment methods and minimizes sources of bias that can distort assessment results.
  3. Works independently and collaboratively to examine test and other performance data to understand each learner's progress and to guide planning.
  4. Engages learners in understanding and identifying quality work and provides them with effective descriptive feedback to guide their progress toward that work.
  5. Engages learners in multiple ways of demonstrating knowledge and skill as part of the assessment process.
  6. Models and structures processes that guide learners in examining their own thinking and learning as well as the performance of others.
  7. Effectively uses multiple and appropriate types of assessment data to identify each student's learning needs and to develop differentiated learning experiences.
  8. Prepares all learners for the demands of particular assessment formats and makes appropriate accommodations in assessments or testing conditions, especially for learners with disabilities and language learning needs.
  9. Continually seeks appropriate ways to employ technology to support assessment practice both to engage learners more fully and to assess and address learner needs.
  10. Understands the differences between formative and summative applications of assessment and knows how and when to use each.
  11. Understands the range of types and multiple purposes of assessment and how to design, adapt, or select appropriate assessments to address specific learning goals and individual differences, and to minimize sources of bias.
  12. Knows how to analyze assessment data to understand patterns and gaps in learning, to guide planning and instruction, and to provide meaningful feedback to all learners.
  13. Knows when and how to engage learners in analyzing their own assessment results and in helping to set goals for their own learning.
  14. Understands the positive impact of effective descriptive feedback for learners and knows a variety of strategies for communicating this feedback.
  15. Knows when and how to evaluate and report learner progress against standards.
  16. Understands how to prepare learners for assessments and how to make accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs.
  17. Is committed to engaging learners actively in assessment processes and to developing each learner's capacity to review and communicate about their own progress and learning.
  18. Takes responsibility for aligning instruction and assessment with learning goals.
  19. Is committed to providing timely and effective descriptive feedback to learners on their progress.
20. Is committed to using multiple types of assessment processes to support, verify, and document learning.
  21. Is committed to making accommodations in assessments and testing conditions, especially for learners with disabilities and language learning needs.
  22. Is committed to the ethical use of various assessments and assessment data to identify learner strengths and needs to promote learner growth.
- H. Standard 7. Planning for Instruction:** The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context. The teacher:
1. Individually and collaboratively selects and creates learning experiences that are appropriate for curriculum goals and content standards, and are relevant to learners.
  2. Plans how to achieve each student's learning goals, choosing appropriate strategies and accommodations, resources, and materials to differentiate instruction for individuals and groups of learners.
  3. Develops appropriate sequencing of learning experiences and provides multiple ways to demonstrate knowledge and skill.
  4. Plans for instruction based on formative and summative assessment data, prior learner knowledge, and learner interest.
  5. Plans collaboratively with professionals who have specialized expertise (e.g., special educators, related service providers, language learning specialists, librarians, media specialists) to design and jointly deliver as appropriate learning experiences to meet unique learning needs.
  6. Evaluates plans in relation to short- and long-range goals and systematically adjusts plans to meet each student's learning needs and enhance learning.
  7. Understands content and content standards and how these are organized in the curriculum.
  8. Understands how integrating cross-disciplinary skills in instruction engages learners purposefully in applying content knowledge.
  9. Understands learning theory, human development, cultural diversity, and individual differences and how these impact ongoing planning.
  10. Understands the strengths and needs of individual learners and how to plan instruction that is responsive to these strengths and needs.
  11. Knows a range of evidence-based instructional strategies, resources, and technological tools and how to use them effectively to plan instruction that meets diverse learning needs.
  12. Knows when and how to adjust plans based on assessment information and learner responses.
  13. Knows when and how to access resources and collaborate with others to support student learning (e.g., special educators, related service providers, language learner specialists, librarians, media specialists, community organizations).
  14. Respects learners' diverse strengths and needs and is committed to using this information to plan effective instruction.
  15. Values planning as a collegial activity that takes into consideration the input of learners, colleagues, families, and the larger community.
  16. Takes professional responsibility to use short- and long-term planning as a means of assuring student learning.

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17. Believes that plans must always be open to adjustment and revision based on learner needs and changing circumstances.
- I. Standard 8. Instructional Strategies:** The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways. The teacher:
1. Uses appropriate strategies and resources to adapt instruction to the needs of individuals and groups of learners.
  2. Continuously monitors student learning, engages learners in assessing their progress, and adjusts instruction in response to student learning needs.
  3. Collaborates with learners to design and implement relevant learning experiences, identify their strengths, and access family and community resources to develop their areas of interest.
  4. Varies his/her role in the instructional process (e.g., instructor, facilitator, coach, audience) in relation to the content and purposes of instruction and the needs of learners.
  5. Provides multiple models and representations of concepts and skills with opportunities for learners to demonstrate their knowledge through a variety of products and performances.
  6. Engages all learners in developing higher order questioning skills and metacognitive processes.
  7. Engages learners in using a range of learning skills and technology tools to access, interpret, evaluate, and apply information.
  8. Uses a variety of instructional strategies to support and expand learners' communication through speaking, listening, reading, writing, and other modes.
  9. Asks questions to stimulate discussion that serves different purposes (e.g., probing for learner understanding, helping learners articulate their ideas and thinking processes, stimulating curiosity, and helping learners to question).
  10. Understands the cognitive processes associated with various kinds of learning (e.g., critical and creative thinking, problem framing and problem solving, invention, memorization and recall) and how these processes can be stimulated.
  11. Knows how to apply a range of developmentally, culturally, and linguistically appropriate instructional strategies to achieve learning goals.
  12. Knows when and how to use appropriate strategies to differentiate instruction and engage all learners in complex thinking and meaningful tasks.
  13. Understands how multiple forms of communication (oral, written, nonverbal, digital, visual) convey ideas, foster self expression, and build relationships.
  14. Knows how to use a wide variety of resources, including human and technological, to engage students in learning.
  15. Understands how content and skill development can be supported by media and technology and knows how to evaluate these resources for quality, accuracy, and effectiveness.
  16. Is committed to deepening awareness and understanding the strengths and needs of diverse learners when planning and adjusting instruction.
  17. Values the variety of ways people communicate and encourages learners to develop and use multiple forms of communication.
- J. Standard 9. Professional Learning and Ethical Practice:** The teacher engages in ongoing professional learning and uses evidence to continually evaluate his/her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner. The teacher:
18. Is committed to exploring how the use of new and emerging technologies can support and promote student learning.
  19. Values flexibility and reciprocity in the teaching process as necessary for adapting instruction to learner responses, ideas, and needs.
1. Engages in ongoing learning opportunities to develop knowledge and skills in order to provide all learners with engaging curriculum and learning experiences based on local and state standards.
  2. Engages in meaningful and appropriate professional learning experiences aligned with his/her own needs and the needs of the learners, school, and system.
  3. Independently and in collaboration with colleagues, uses a variety of data (e.g., systematic observation, information about learners, research) to evaluate the outcomes of teaching and learning and to adapt planning and practice.
  4. Actively seeks professional, community, and technological resources, within and outside the school, as supports for analysis, reflection, and problem-solving.
  5. Reflects on his/her personal biases and accesses resources to deepen his/her own understanding of cultural, ethnic, gender, and learning differences to build stronger relationships and create more relevant learning experiences.
  6. Advocates, models, and teaches safe, legal, and ethical use of information and technology including appropriate documentation of sources and respect for others in the use of social media.
  7. Understands and knows how to use a variety of self-assessment and problem-solving strategies to analyze and reflect on his/her practice and to plan for adaptations/adjustments.
  8. Knows how to use learner data to analyze practice and differentiate instruction accordingly.
  9. Understands how personal identity, worldview, and prior experience affect perceptions and expectations, and recognizes how they may bias behaviors and interactions with others.
  10. Understands and adheres to laws related to learners' rights and teacher responsibilities (e.g., for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse).
  11. Knows how to build and implement a plan for professional growth directly aligned with his/her needs as a growing professional using feedback from teacher evaluations and observations, data on learner performance, and school- and system-wide priorities.
  12. Takes responsibility for student learning and uses ongoing analysis and reflection to improve planning and practice.
  13. Is committed to deepening understanding of his/her own frames of reference (e.g., culture, gender, language, abilities, ways of knowing), the potential biases in these frames, and their impact on expectations for and relationships with learners and their families.
  14. Sees him/herself as a learner, continuously seeking opportunities to draw upon current education policy and

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research as sources of analysis and reflection to improve practice.

15. Understands the expectations of the profession including codes of ethics, professional standards of practice, and relevant law and policy.

**K. Standard 10. Leadership and Collaboration:** The teacher seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession. The teacher:

1. Takes an active role on the instructional team, giving and receiving feedback on practice, examining learner work, analyzing data from multiple sources, and sharing responsibility for decision making and accountability for each student's learning.
2. Works with other school professionals to plan and jointly facilitate learning on how to meet diverse needs of learners.
3. Engages collaboratively in the schoolwide effort to build a shared vision and supportive culture, identify common goals, and monitor and evaluate progress toward those goals.
4. Works collaboratively with learners and their families to establish mutual expectations and ongoing communication to support learner development and achievement.
5. Working with school colleagues, builds ongoing connections with community resources to enhance student learning and well being.
6. Engages in professional learning, contributes to the knowledge and skill of others, and works collaboratively to advance professional practice.
7. Uses technological tools and a variety of communication strategies to build local and global learning communities that engage learners, families, and colleagues.
8. Uses and generates meaningful research on education issues and policies.
9. Seeks appropriate opportunities to model effective practice for colleagues, to lead professional learning activities, and to serve in other leadership roles.
10. Strives to meet the needs of learners and to strengthen the learning environment.
11. Takes on leadership roles at the school, district, state, and/or national levels.
12. Understands schools as organizations within a historical, cultural, political, and social context and knows how to work with others across the system to support learners.
13. Understands that alignment of family, school, and community spheres of influence enhances student learning and that discontinuity in these spheres of influence interferes with learning.
14. Knows how to work with other adults and has developed skills in collaborative interaction appropriate for both face-to-face and virtual contexts.
15. Knows how to contribute to a common culture that supports high expectations for student learning.
16. Actively shares responsibility for shaping and supporting the mission of his/her school as one of advocacy for learners and accountability for their success.
17. Respects families' beliefs, norms, and expectations and seeks to work collaboratively with learners and families in setting and meeting challenging goals.
18. Takes initiative to grow and develop with colleagues through interactions that enhance practice and support student learning.

19. Takes responsibility for contributing to and advancing the profession.

20. Embraces the challenge of continuous improvement and change.

**Historical Note**

Former Section R7-2-602 repealed, new Section R7-2-602 adopted effective December 4, 1978 (Supp. 78-6).

Amended by adding a new subsection (B) effective August 29, 1988 (Supp. 88-3). Amended effective December 15, 1989 (Supp. 89-4). Amended effective July 10, 1992 (Supp. 92-3). Amended effective March 6, 1997 (Supp. 97-1). Section repealed; new Section adopted effective December 3, 1998 (Supp. 98-4). Amended by exempt rulemaking at 18 A.A.R. 1029, effective December 5, 2011 (Supp. 12-2).

**R7-2-603. Professional Administrative Standards**

**A.** The standards presented in this Section shall be the basis for approved administrative preparation programs, described in R7-2-604. The Arizona Administrator Proficiency Assessment shall assess proficiency in the standards as a requirement for certification of supervisors, principals, and superintendents, as set forth in R7-2-616.

**B.** Standard 1: Effective educational leaders develop, advocate, and enact a shared mission, vision, and core values of high-quality education and academic success and well-being of each student. Effective leaders:

1. Develop an educational mission for the school to promote the academic success and well-being of each student.
2. In collaboration with members of the school and the community and using relevant data, develop and promote a vision for the school on the successful learning and development of each child and on instructional and organizational practices that promote such success.
3. Articulate, advocate, and cultivate core values that define the school's culture and stress the imperative of child-centered education; high expectations and student support; equity, inclusiveness, and social justice; openness, caring, and trust; and continuous improvement.
4. Strategically develop, implement, and evaluate actions to achieve the vision for the school.
5. Review the school's mission and vision and adjust them to changing expectations and opportunities for the school, and changing needs and situations of students.
6. Develop shared understanding of and commitment to mission, vision, and core values within the school and the community.
7. Model and pursue the school's mission, vision, and core values in all aspects of leadership.

**C.** Standard 2: Effective educational leaders act ethically and according to professional norms to promote each student's academic success and well-being. Effective leaders:

1. Act ethically and professionally in personal conduct, relationships with others, decision-making, stewardship of the school's resources, and all aspects of school leadership.
2. Act according to and promote the professional norms of integrity, fairness, transparency, trust, collaboration, perseverance, learning, and continuous improvement.
3. Place children at the center of education and accept responsibility for each student's academic success and well-being.
4. Safeguard and promote the values of democracy, individual freedom and responsibility, equity, social justice, community, and diversity.

5. Lead with interpersonal and communication skill, social-emotional insight, and understanding of all students' and staff members' backgrounds and cultures.
  6. Provide moral direction for the school and promote ethical and professional behavior among faculty and staff.
- D. Standard 3:** Effective educational leaders strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being. Effective leaders:
1. Ensure that each student is treated fairly, respectfully, and with an understanding of each student's culture and context.
  2. Recognize, respect, and employ each student's strengths, diversity, and culture as assets for teaching and learning.
  3. Ensure that each student has equitable access to effective teachers, learning opportunities, academic and social support, and other resources necessary for success.
  4. Develop student policies and address student misconduct in a positive, fair, and unbiased manner.
  5. Confront and alter institutional biases of student marginalization, deficit-based schooling, and low expectations associated with race, class, culture and language, gender and sexual orientation, and disability or special status.
  6. Promote the preparation of students to live productively in and contribute to the diverse cultural contexts of a global society.
  7. Act with cultural competence and responsiveness in their interactions, decision making, and practice.
  8. Address matters of equity and cultural responsiveness in all aspects of leadership.
- E. Standard 4:** Effective educational leaders develop and support intellectually rigorous and coherent systems of curriculum, instruction, and assessment to promote each student's academic success and well-being. Effective leaders:
1. Implement coherent systems of curriculum, instruction, and assessment that promote the mission, vision, and core values of the school, embody high expectations for student learning, align with academic standards, and are culturally responsive.
  2. Align and focus systems of curriculum, instruction, and assessment within and across grade levels to promote student academic success, love of learning, the identities and habits of learners, and healthy sense of self.
  3. Promote instructional practice that is consistent with knowledge of child learning and development, effective pedagogy, and the needs of each student.
  4. Ensure instructional practice that is intellectually challenging, authentic to student experiences, recognizes student strengths, and is differentiated and personalized.
  5. Promote the effective use of technology in the service of teaching and learning.
  6. Employ valid assessments that are consistent with knowledge of child learning and development and technical standards of measurement.
  7. Use assessment data appropriately and within technical limitations to monitor student progress and improve instruction.
- F. Standard 5:** Effective educational leaders cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of each student. Effective leaders:
1. Build and maintain a safe, caring, and healthy school environment that meets that the academic, social, emotional, and physical needs of each student.
  2. Create and sustain a school environment in which each student is known, accepted and valued, trusted and respected, cared for, and encouraged to be an active and responsible member of the school community.
3. Provide coherent systems of academic and social supports, services, extracurricular activities, and accommodations to meet the range of learning needs of each student.
  4. Promote adult-student, student-peer, and school-community relationships that value and support academic learning and positive social and emotional development.
  5. Cultivate and reinforce student engagement in school and positive student conduct.
  6. Infuse the school's learning environment with the cultures and languages of the school's community.
- G. Standard 6:** Effective educational leaders develop the professional capacity and practice of school personnel to promote each student's academic success and well-being. Effective leaders:
1. Recruit, hire, support, develop, and retain effective and caring teachers and other professional staff and form them into an educationally effective faculty.
  2. Plan for and manage staff turnover and succession, providing opportunities for effective induction and mentoring of new personnel.
  3. Develop teachers' and staff members' professional knowledge, skills, and practice through differentiated opportunities for learning and growth, guided by understanding of professional and adult learning and development.
  4. Foster continuous improvement of individual and collective instructional capacity to achieve outcomes envisioned for each student.
  5. Deliver actionable feedback about instruction and other professional practice through valid, research-anchored systems of supervision and evaluation to support the development of teachers' and staff members' knowledge, skills, and practice.
  6. Empower and motivate teachers and staff to the highest levels of professional practice and to continuous learning and improvement.
  7. Develop the capacity, opportunities, and support for teacher leadership and leadership from other members of the school community.
  8. Promote the personal and professional health, well-being, and work-life balance of faculty and staff.
  9. Tend to their own learning and effectiveness through reflection, study, and improvement, maintaining a healthy work-life balance.
- H. Standard 7:** Effective educational leaders foster a professional community of teachers and other professional staff to promote each student's academic success and well-being. Effective leaders:
1. Develop workplace conditions for teachers and other professional staff that promote effective professional development, practice, and student learning.
  2. Empower and entrust teachers and staff with collective responsibility for meeting the academic, social, emotional, and physical needs of each student, pursuant to the mission, vision, and core values of the school.
  3. Establish and sustain a professional culture of engagement and commitment to shared vision, goals, and objectives pertaining to the education of the whole child; high expectations for professional work; ethical and equitable practice; trust and open communication; collaboration, collective efficacy, and continuous individual and organizational learning and improvement.

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4. Promote mutual accountability among teachers and other professional staff for each student's success and the effectiveness of the school as a whole.
  5. Develop and support open, productive, caring, and trusting working relationships among leaders, faculty, and staff to promote professional capacity and the improvement of practice.
  6. Design and implement job-embedded and other opportunities for professional learning collaboratively with faculty and staff.
  7. Provide opportunities for collaborative examination of practice, collegial feedback, and collective learning.
  8. Encourage faculty-initiated improvement of programs and practices.
- I.** Standard 8: Effective educational leaders engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being. Effective leaders:
1. Are approachable, accessible, and welcoming to families and members of the community.
  2. Create and sustain positive, collaborative, and productive relationships with families and the community for the benefit of students.
  3. Engage in regular and open two-way communication with families and the community about the school, students, needs, problems, and accomplishments.
  4. Maintain a presence in the community to understand its strengths and needs, develop productive relationships, and engage its resources for the school.
  5. Create means for the school community to partner with families to support student learning in and out of school.
  6. Understand, value, and employ the community's cultural, social, intellectual, and political resources to promote student learning and school improvement.
  7. Develop and provide the school as a resource for families and the community.
  8. Advocate for the school and district, and for the importance of education and student needs and priorities to families and the community.
  9. Advocate publicly for the needs and priorities of students, families, and the community.
  10. Build and sustain productive partnerships with public and private sectors to promote school improvement and student learning.
- J.** Standard 9: Effective educational leaders manage school operations and resources to promote each student's academic success and well-being. Effective leaders:
1. Institute, manage, and monitor operations and administrative systems that promote the mission and vision of the school.
  2. Strategically manage staff resources, assigning and scheduling teachers and staff to roles and responsibilities that optimize their professional capacity to address each student's learning needs.
  3. Seek, acquire, and manage fiscal, physical, and other resources to support curriculum, instruction, and assessment; student learning community; professional capacity and community; and family and community engagement.
  4. Are responsible, ethical, and accountable stewards of the school's monetary and non-monetary resources, engaging in effective budgeting and accounting practices.
  5. Protect teachers' and other staff members' work and learning from disruption.
  6. Employ technology to improve the quality and efficiency of operations and management.
7. Develop and maintain data and communication systems to deliver actionable information for classroom and school improvement.
  8. Know, comply with, and help the school community understand local, state, and federal laws, rights, policies, and regulations so as to promote student success.
  9. Develop and manage relationships with feeder and connecting schools for enrollment management and curricular and instructional articulation.
  10. Develop and manage productive relationships with the central office and school board.
  11. Develop and administer systems for fair and equitable management of conflict among students, faculty and staff, leaders, families, and community.
  12. Manage governance processes and internal and external politics toward achieving the school's mission and vision.
- K.** Standard 10: Effective educational leaders act as agents of continuous improvement to promote each student's academic success and well-being. Effective leaders:
1. Seek to make school more effective for each student, teachers and staff, families, and the community.
  2. Use methods of continuous improvement to achieve the vision, fulfill the mission, and promote the core values of the school.
  3. Prepare the school and the community for improvement, promoting readiness, an imperative for improvement, instilling mutual commitment and accountability, and developing the knowledge, skills, and motivation to succeed in improvement.
  4. Engage others in an ongoing process of evidence-based inquiry, learning, strategic goal setting, planning, implementation, and evaluation for continuous school and classroom improvement.
  5. Employ situationally-appropriate strategies for improvement, including transformational and incremental, adaptive approaches and attention to different phases of implementation.
  6. Assess and develop the capacity of staff to assess the value and applicability of emerging educational trends and the findings of research for the school and its improvement.
  7. Develop technically appropriate systems of data collection, management, analysis, and use, connecting as needed to the district office and external partners for support in planning, implementation, monitoring, feedback, and evaluation.
  8. Adopt a systems perspective and promote coherence among improvement efforts and all aspects of school organization, programs, and services.
  9. Manage uncertainty, risk, competing initiatives, and politics of change with courage and perseverance, providing support and encouragement, and openly communicating the need for, process for, and outcomes of improvement efforts.
  10. Develop and promote leadership among teachers and staff for inquiry, experimentation and innovation, and initiating and implementing improvement.

**Historical Note**

Former Section R7-2-603 repealed, new Section R7-2-603 adopted effective December 4, 1978 (Supp. 78-6). Amended effective July 21, 1980 (Supp. 80-4). Amended subsection (J) effective August 20, 1981 (Supp. 81-4). Amended subsections (D) and (E) effective April 10, 1984 (Supp. 84-2). Amended subsection (J)(8) and (9) effective October 10, 1984 (Supp. 84-5). Amended subsection (G) effective December 13, 1985. Amended sub-

section (J)(6), (7), (8) and (9) effective December 18, 1985 (Supp. 85-6). Editorial correction, amendment to subsections (D) and (E) shown effective April 10, 1984 should read Amended subsections (D) and (E) effective October 1, 1985. Amended by adding subsection (G)(9) and (10) effective January 31, 1986 (Supp. 86-1).

Amended by adding subsection (R) effective April 24, 1986 (Supp. 86-2). Amended subsection (G), filed May 5, 1986, effective July 1, 1987 (Supp. 86-3). Amended by adding subsection (J)(10) and (11) effective July 2, 1986; amended by adding subsection (J)(12), (13) and (14), filed August 7, 1986, effective July 1, 1987 (Supp. 86-4).

Amended subsection (H) effective September 16, 1987 (Supp. 87-3). Correction: subsection (G)(3), "Provisional" is corrected to read: "Principal" as certified effective December 3, 1985; amended subsection (B) effective

July 13, 1988; amended subsection (J)(2) effective August 10, 1988; amended subsection (R)(2)(b) effective August 15, 1988 (Supp. 88-3). Amended effective August 9, 1989, and amended effective September 12, 1989 (Supp. 89-3). Amended effective December 15, 1989 (Supp. 89-4). Amended effective November 6, 1990; Amended effective December 12, 1990 (Supp. 90-4).

Amended effective March 21, 1991 (Supp. 91-1). Amended effective May 2, 1991 (Supp. 91-2). Amended effective October 22, 1991 (Supp. 91-4). Section repealed, new Section adopted effective March 10, 1994 (Supp. 94-1). Amended effective December 19, 1996 (Supp. 96-4). Amended effective March 6, 1997 (Supp. 97-1). Typographical error corrected in subsection (J) (Supp. 97-4). Section repealed; new Section adopted effective December 4, 1998 (Supp. 98-4). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by exempt rulemaking at 18 A.A.R. 1029, effective December 5, 2011 (Supp. 12-2). Amended by final exempt rulemaking at 22 A.A.R. 3369, effective October 24, 2016 (Supp. 16-4).

#### **R7-2-604. Definitions**

In R7-2-604 through R7-2-604.04, unless the context otherwise requires:

1. "Accreditation" means a professional preparation institution's recognition by a national or regional agency or organization acknowledged for meeting identified standards or criteria.
2. "Biennial report" means a report submitted every two years to the Department by all Arizona State Board approved professional preparation institutions for each approved educator preparation program.
3. "Biennial status letter" means correspondence issued by the Department to the professional preparation institution within 30 days upon completion of the review of the biennial report, indicating the status of the educator preparation program(s).
4. "Board approved program" means a course of study that is approved by the Board and meets all relevant standards for teachers, administrators, school guidance counselors, or school psychologists.
5. "Capstone experience" means a culminating professional experience in a PreK-12 setting. This experience may include student teaching or internships in administration, counseling, or school psychology, or alternative path preK-12 teaching.
6. "Educator preparation program" means a traditional or alternative educator preparation program. Either type of program shall include courses, seminars, or modules of study; field experiences; and capstone experiences for preparing PreK-12 teachers, administrators, school guidance counselors, and school psychologists for an institutional recommendation for an Arizona certificate.
7. "Field experience" means scheduled, directed, structured, supervised, frequent experiences in a PreK-12 setting that occurs prior to the capstone experience. Field experiences must assist educator candidates in developing the knowledge, skills, and dispositions necessary to ensure all students learn, and provide evidence in meeting standards described in the Board approved professional teaching standards or professional administrative standards, and relevant Board approved academic standards.
8. "Institutional recommendation" means a form developed by the Department and issued by a professional preparation institution, that indicates an individual has completed a Board approved educator preparation program.
9. "Internship" means significant opportunities for candidates to practice and develop the skills identified in relevant state and national standards as measured by substantial and sustained work in real settings, appropriate for the certificate the candidate is seeking, performed under the direction of a supervising practitioner and a program supervisor.
10. "National standards" means written expectations for meeting a specified level of performance that are established by, but not limited to, the following organizations: Council for Accreditation of Counseling and Related Education Program (CACREP), Council for the Accreditation of Educator Preparation (CAEP), Council for Exceptional Children (CEC), Educational Leadership Constituent Council (ELCC), Interstate New Teacher Assessment and Support Consortium (InTASC), Interstate School Leaders Licensure Consortium (ISLLC), National Educational Technology Standards (ISTE-NETS), National Association for the Education of Young Children (NAEYC), National Association of School Psychologists (NASP), National Council for Accreditation of Teacher Education (NCATE) or Teacher Education Accreditation Council (TEAC).
11. "Probationary educator preparation program" means a program with at least one deficiency identified in the biennial status letter issued by the Department, as a result of a Department review of the biennial report. Programs with the same deficiency(s) in two consecutive biennial status letters are subject to revocation of Board approval. A deficiency may include, but is not limited to, stakeholder surveys, completer data and student achievement data.
12. "Professional preparation institutions" means organizations that include, but are not limited to, universities and colleges, school districts, not for profit organizations, professional organizations, private businesses, charter schools, and regional training centers that oversee one or more educator preparation programs.
13. "Program completer" means a student who has met all the professional program institution's requirements of a Board approved educator preparation program necessary to obtain an institutional recommendation.
14. "Program supervisor" means an educator from the professional preparation institution under whose supervision the candidate for licensure practices during a capstone experience. The program supervisor's professional work experiences must be relevant to the license the candidate is seeking. Program supervisors must also have adequate training from the professional preparation institution.

15. "Review Team" means a committee that reviews educator preparation programs seeking Board approval that consists of representatives from the Department and at least three of the following entities: institutions under the jurisdiction of the Arizona Board of Regents, Arizona private institutions of higher education, Arizona community colleges, other organizations with a Board approved educator preparation program, professional educator associations, PreK-12 administrators from local education agencies, and National Board Certified Teachers.
16. "Student teaching" means a minimum of twelve weeks of rigorous field-based experiences, appropriate for the certificate the candidate is seeking, performed under the direction of a supervising practitioner and a program supervisor. The student teaching placement must be appropriate for the certification that the applicant is seeking.
17. "Supervising practitioner" means a standard certified educator, currently employed by a local education agency, private agency or other PreK-12 setting who supervises the candidate during a capstone experience. Supervising practitioners must have:
  - a. A minimum of three full years of experience relevant to the license the candidate is seeking.
  - b. A current classification of highly effective or effective pursuant to § 15-203(A)(38) when applicable.
  - c. Adequate training from the professional preparation institution.

#### Historical Note

Repealed effective December 4, 1978 (Supp. 78-6). Adopted as an emergency effective October 1, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption amended as an emergency effective November 5, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former emergency adoption effective November 5, 1980 amended and adopted effective December 30, 1980 (Supp. 80-6). Amended effective June 30, 1981 (Supp. 81-3). Amended subsection (G) effective November 16, 1982 (Supp. 82-6). Amended subsection (B) as an emergency effective August 2, 1984 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former emergency amendment effective August 2, 1984 now adopted as a permanent amendment without change effective November 5, 1984 (Supp. 84-6). Amended effective August 9, 1989 (Supp. 89-3). Amended effective May 31, 1991 (Supp. 91-2). Amended effective July 10, 1992 (Supp. 92-3). Section repealed; new Section adopted effective December 4, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 318, effective August 29, 2006 (Supp. 09-1). Amended by final exempt rulemaking at 21 A.A.R. 2047, effective October 27, 2014 (Supp. 15-3).

#### R7-2-604.01. Educator Preparation Programs

- A. Professional preparation institutions shall include evidence that the educator preparation program is aligned to standards described in the Board approved professional teaching standards or professional administrative standards and relevant national standards, and provides field experiences, and a capstone experience.
- B. Educator preparation programs of professional preparation institutions requesting Board approval shall be reviewed by the Department, and the Department shall recommend Board action. Upon the recommendation of the Department, the Board shall evaluate and may approve an educator preparation

program. The Board may grant program approval for a period not to exceed six years.

- C. All educator preparation programs that lead to an Arizona certification must be approved by the Board pursuant to these rules. Board approval of educator preparation programs may be granted following the successful evaluation of the program. Board rules in effect at the time of the submission of a program for evaluation shall be the rules upon which the educator preparation program is evaluated.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 318, effective August 29, 2006 (Supp. 09-1). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 21 A.A.R. 2047, effective October 27, 2014 (Supp. 15-3).

#### R7-2-604.02. Educator Preparation Program Approval Procedures

- A. Professional preparation institutions with no Board approved educator preparation programs, seeking initial approval for an educator preparation program shall submit to the Department the information necessary to conduct a readiness review of the professional preparation institution. The Department shall prescribe forms to assist professional preparation institutions with providing all information required as part of the readiness review process. The required information, includes the following:
  1. An institutional profile demonstrating program and financial stability, a description of the educator preparation program seeking approval, a listing of national or regional accreditations the institution's governance and administrative structures and student demographic data.
  2. A description of the professional preparation institution's vision, mission, philosophy and goals, and a description of how this information is shared with students, relevant staff and other relevant stakeholders.
  3. Data regarding the professional preparation institution's relevant staff, including the following:
    - a. Demographic data relating to the relevant staff for each educator preparation program seeking approval, including, at a minimum, educational degrees, staff to student ratio, experience teaching in a PreK-12 setting, and, if available, ethnicity and gender data.
    - b. Definitions of titles and clarification of roles of individuals responsible for courses, seminars, or modules of study; field experiences; capstone experiences; and administration.
    - c. A description of the professional preparation institution's employment policies, including procedures for determining staff assignments, evaluation procedures and professional development opportunities and requirements.
- B. The Department shall provide professional preparation institutions written notification, within 60 days of receiving readiness review materials, either indicating readiness to submit educator preparation programs for review or specifying any deficiencies. The institution has 30 days from receipt of the notice to supply the Department with all required information regarding identified deficiencies.
- C. The Department shall initiate a review of the specific educator preparation programs being considered for Board approval. The Department shall prescribe forms to assist institutions with providing all information required as part of the educator preparation programs review. Professional Preparation Institu-



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tions with accreditation may submit accreditation documentation to be considered as part of the review process. To facilitate this review, institutions shall provide the Department with the following:

1. A description of the educator preparation programs being considered for Board approval. This shall include, at a minimum, the criteria for student entry into the program; a summary of the program courses, seminars, or modules of study; field experiences; and capstone experiences. The professional preparation institution must verify that it requires courses, seminars, or modules of study necessary to obtain a full Structured English Immersion endorsement if required for the certificate the candidate is seeking.
  2. A description of the field experience and capstone experience policies for the educator preparation programs being considered for Board approval. The review team shall verify that the field experience and capstone experience includes evidence of engagement in the application of relevant standards as articulated in the Board approved professional teaching standards or professional administrative standards and relevant national standards. Educator preparation programs applying for approval in school psychology and guidance counseling shall only be required to demonstrate compliance with applicable national standards.
  3. Evidence that candidates are provided instruction and practice in how to gather, evaluate, and synthesize multiple data sources and how to effectively use data in educational and classroom instructional decisions.
  4. Provide the Department with evidence that candidates are provided instruction and practice in how to appropriately integrate technology when working with students.
  5. A description of the assessment plan for measuring each candidate's competencies as they progress through courses, seminars, or modules of study and field experiences to ensure readiness for a capstone experience. The plan shall require, at a minimum, that candidates demonstrate competencies as articulated in the Board approved professional teaching standards or professional administrative standards, relevant Board approved academic standards, and relevant national standards. The plan shall also describe processes for utilizing performance-based assessments and for providing candidates with necessary remediation. Programs applying for approval in school psychology and guidance counseling shall only be required to demonstrate compliance with relevant national standards.
  6. A description of the procedures used to monitor and evaluate the operation, scope and quality of the educator preparation program being considered for approval. This shall include the use of internal and external evaluations, and may include stakeholder surveys, program completer employment information, and PreK-12 student achievement data.
  7. An educator preparation program matrices demonstrating that program course, seminar, or module assessments, field experiences and capstone experiences measure candidates' success in meeting the Board approved professional teaching standards or professional administrative standards, and relevant national standards. Educator preparation programs applying for approval in school psychology and guidance counseling shall only be required to demonstrate compliance with relevant national standards.
- D. The Department may schedule and conduct an onsite visit upon completion of the educator preparation programs review for professional preparation institutions seeking initial approval. The onsite visit may include, a tour of the professional preparation institution; a review of documentation and related evidence; and interviews of relevant staff, educator candidates, and local education agency, private agency or other PreK-12 administrators who employ program completers.
  - E. Upon completion of the review, and onsite review if applicable, the Department shall, within 90 days, provide the professional preparation institution with a program report of the Department's findings. This report shall cite any evidence showing deviation from each relevant standard Board approved professional teaching standard, professional administrative standard, and relevant national standard that applies to the educator preparation program. The professional preparation institution shall have 30 days from receipt of the Department's program report to submit a response addressing any identified deficiencies.
  - F. Based upon the Department's program report, the Department shall recommend to the Board that the educator preparation program be approved or denied.
  - G. The Board may grant educator preparation program approval for a period not to exceed six years or deny program approval.
  - H. Within 60 days of the Board's action, a professional preparation institution may request reconsideration of the Board's decision to deny an educator preparation program.
  - I. Professional preparation institutions with Board approval shall make available to the public a statement indicating the valid period for which the educator preparation program has been approved.
  - J. Professional preparation institutions with Board approved educator preparation programs shall comply with the reporting requirements established by Title II of the Higher Education Act (P.L. 110-315).
  - K. Each approved professional preparation institution shall submit a biennial report with the Department documenting educator preparation program activities for the previous two years. The biennial report shall include the following:
    1. A description of any substantive changes in courses, seminars, modules, assessments, field experiences or capstone experiences in Board approved educator preparation programs;
    2. Electronic access to relevant educator preparation program information;
    3. The name, title and original signature of the certification officer for the professional preparation institution;
    4. Relevant data on the educator preparation program, relevant staff, and candidates, which may include, but is not limited to, stakeholder surveys, completer data, and student achievement data required as a condition of initial or continuing program approval.
  - L. The Department shall provide annual updates to the Board and make publically available information summarizing the biennial reports to include, but not limited to, program status, deficiencies, and commendations.
  - M. Board approved educator preparation programs shall provide their program completers with an institutional recommendation for issuance of the appropriate Arizona certification within 45 days.
  - N. To maintain Board educator preparation program approval, the professional preparation institution shall be in continuous operation and training candidates in accordance with its mission and program objectives, fulfill all reporting requirements,

and maintain compliance with all applicable local, state, tribal and federal requirements.

- O. The Department shall provide a timeline for professional preparation institutions to submit educator preparation programs for approval.
- P. Professional preparation Institutions seeking renewal of educator preparation program approval shall submit the required preliminary documents for review at least six month prior to the program expiration date.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 318, effective August 29, 2006 (Supp. 09-1). Amended by final exempt rulemaking at 21 A.A.R. 2047, effective October 27, 2014 (Supp. 15-3).

#### R7-2-604.03. Alternative Educator Preparation Programs

Professional Preparation Institutions that submit an alternative educator preparation program(s) for Board approval must adhere to R7-2-604.01.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 728, effective March 22, 2010 (Supp. 10-3). Amended by final exempt rulemaking at 21 A.A.R. 2047, effective October 27, 2014 (Supp. 15-3).

#### R7-2-604.04. Alternative Educator Preparation Program Approval Process

Professional Preparation Institutions that submit an alternative educator preparation program(s) for Board approval must adhere to R7-2-604.02, except that individuals participating in or completing Board approved alternative educator preparation programs as delineated in this section may apply for a teaching intern certificate, pursuant to R7-2-614(E), and may complete their field experience and capstone experiences during the valid period of their teaching intern certificate.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 728, effective March 22, 2010 (Supp. 10-3). Amended by final exempt rulemaking at 21 A.A.R. 2047, effective October 27, 2014 (Supp. 15-3).

#### R7-2-605. Certification Responsibility

The Superintendent of Public Instruction or the Superintendent's designee shall be responsible for the issuance and evaluation of the appropriate certificates based on the applicant's compliance with the statutes and rules.

#### Historical Note

Repealed effective December 4, 1978 (Supp. 78-6). New Section R7-2-605 adopted effective April 10, 1984 (Supp. 84-2). Editorial correction, new Section R7-2-605 shown adopted effective April 10, 1984 should read new Section R7-2-605 adopted effective October 1, 1985. Amended by adding a new subsection (B) effective December 18, 1985 (Supp. 85-6). Amended by adding subsection (C), filed May 5, 1986, effective July 1, 1987; amended by adding subsection (D) effective June 30, 1986 (Supp. 86-3). Correction to Historical Note dated June 30, 1986, second part should have read: "...amended by adding subsections (D), (E), (F), (G) and (H) effective June 30, 1986"; amended subsection (A) effective August 10, 1988 (Supp. 88-3). Amended effective September 12, 1989 (Supp. 89-3). Amended effective November 6, 1990; Amended effective December 12, 1990 (Supp. 90-4). Amended effective March 10, 1994 (Supp. 94-1). Section repealed; new Section adopted effective December 4,

1998 (Supp. 98-4). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4).

#### R7-2-606. Proficiency Assessments

- A. The Arizona Teacher Proficiency Assessment is adopted as the proficiency assessment for applicants for teaching certificates. The Arizona Administrator Proficiency Assessment is adopted as the proficiency assessment for applicants for administrative certificates.
- B. The subject knowledge portion of the Arizona Teacher Proficiency Assessment shall assess proficiency as described in R7-2-602(H) as a requirement for certification of elementary and secondary teachers and in R7-2-602(H) and (J) as a requirement for certification of special education teachers.
- C. The professional knowledge portion of the Arizona Teacher Proficiency Assessment shall assess proficiency as described in R7-2-602(I) as a requirement for certification of elementary, secondary, special education, and CTE teachers.
- D. The performance assessment portion of the Arizona Teacher Proficiency Assessment shall assess proficiency as described in R7-2-602(B), (C), (D), (E), (F), and (G) as a requirement for certification of elementary, secondary, and special education teachers. In lieu of a passing score on the performance portion of the Arizona Teacher Proficiency Assessment, a teacher who holds a provisional teaching certificate may convert such certificate within two months prior to its expiration to a standard elementary, secondary, or special education teaching certificate pursuant to subsection (H) until the Board adopts the performance assessment portion of the Arizona Teacher Proficiency Assessment. The Board shall adopt the performance assessment portion of the Arizona Teacher Proficiency Assessment, or make a decision that a performance assessment will no longer be required as part of the Arizona Teacher Proficiency Assessment.
- E. The Arizona Administrator Proficiency Assessment shall assess professional knowledge as described in R7-2-603 as a requirement for certification of administrators, supervisors, principals, and superintendents.
- F. The passing score for each assessment shall be determined by the Board using the results of validity and reliability studies. The passing score for each assessment shall be reviewed by the Board at least every three years.
- G. The proficiency assessments for professional knowledge and subject knowledge shall be administered at least six times each calendar year, at times and places determined by the Department.
- H. The provisional elementary, secondary, or special education certificate allows the beginning teacher up to four semesters or two school years of teaching experience before completing the performance assessment portion of the Arizona Teacher Proficiency Assessment.
  1. If the Board has adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment but the teacher does not have full-time teaching experience for four semesters or two school years, the certificate shall, upon the written request of the holder, be extended once for the equivalent of the time the teacher was not employed during the provisional certification period.
  2. If the Board has adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment and the teacher has been employed for four semesters or two school years and has taken but not passed the performance assessment, the certificate shall be extended once, for one year, upon the written request of the holder.
  3. If the teacher has been employed full-time for four semesters or two school years in a private school, public school, charter school, or parochial school or any Depart-

ment of Defense dependent school or in a closely related education field and the Board has not yet adopted the performance portion of the Arizona Teacher Proficiency Assessment, the provisional certificate shall be converted within two months prior to its expiration to a standard teaching certificate upon verification by the teacher to the Department that the teacher has had four semesters or two school years of teaching experience or experience in a closely related education field. "Closely related education field" means employment involving the presentation of instruction to K through 12 students whether self-employed or employed by a private, parochial, public, or charter school.

4. If the teacher has not been employed full-time for four semesters or two school years in a private school, public school, charter school, or parochial school or any Department of Defense dependent school or in a closely related education field, and the Board has not yet adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment, the provisional certificate shall be extended once for three years, upon written request of the holder to the Department. "Closely related education field" means employment involving the presentation of instruction to K through 12 students whether self-employed or employed by a private, parochial, public, or charter school.
5. If the performance assessment portion of the Arizona Teacher Proficiency Assessment is adopted by the Board prior to the expiration of a teacher's provisional certificate, the provisional certificate shall be extended once for two years, upon written request of the holder to the Department, to allow the teacher additional time in which to take the performance portion of the assessment.
- I. If the provisionally certified teacher has taken but not passed the performance assessment by the expiration date on the extended certificate pursuant to subsection (H)(1) or (2) of this Section, the individual may reapply for a provisional certificate after one year, upon verification of the following:
  1. Efforts to remediate deficiencies identified in the performance assessment,
  2. Passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment, and
  3. Completion of the requirements for the provisional certificate which are in effect at the time of reapplication.

#### Historical Note

Repealed effective December 4, 1978 (Supp. 78-6). New Section adopted effective March 10, 1994 (Supp. 94-1). Amended effective March 6, 1997 (Supp. 97-1). Section repealed; new Section adopted effective December 4, 1998 (Supp. 98-4). Section R7-2-606 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 2562, effective May 23, 2002 for a period of 180 days (Supp. 02-2). Emergency Section R7-2-606 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 3739, effective August 5, 2002 for a period of 180 days (Supp. 02-3). May 23, 2002 emergency rulemaking renewed under A.R.S. § 41-1026 at 8 A.A.R. 5132, effective November 19, 2002 for a period of 180 days (Supp. 02-4). August 5, 2002 emergency rulemaking renewed under A.R.S. § 41-1026 at 9 A.A.R. 522, effective January 31, 2003 for a period of 180 days (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 1605, effective May 5, 2003 (Supp. 03-2). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-

4).

#### R7-2-607. General Certification Provisions

- A. The evaluation to determine qualification for certification shall not begin until an institutional recommendation or application for certification and official transcripts, and the appropriate fees have been received by the Department. Course descriptions, verification of employment, and other documents may also be required for the evaluation.
- B. The effective date of a new certificate shall be the date the evaluation is completed by the Department. The effective date of a renewed certificate shall be the date the evaluation for renewal is completed by the Department.
- C. Unless otherwise specified, all certificates and provisional endorsements issued for three years or less shall expire on the date of issuance in the year of expiration. All certificates issued for more than three years shall expire on the holder's birth date in the year of expiration.
- D. If an applicant has not met all the requirements for the certificate or endorsement at the time of evaluation, the applicant shall have a maximum of 60 days to complete those requirements and request re-evaluation.
- E. Only those degrees awarded by an accredited institution shall be considered to satisfy the requirements for certification.
- F. Professional preparation programs, courses, practica, and examinations required for certification shall be taken at an accredited institution or a Board-approved teacher preparation program.
- G. Only those courses in which the applicant received a passing grade or credit shall be considered to satisfy the requirements for certification.
- H. All certificates issued by the Board before the effective date of this Article are considered to have been issued in conformance with these rules.
- I. The Board shall issue a comparable Arizona certificate, if one has been established by R7-2-608, R7-2-609, R7-2-610, R7-2-611, R7-2-612, or R7-2-613, and shall waive the requirements for passing the comparable professional knowledge, subject knowledge, and performance portions of the Arizona Teacher Proficiency Assessment, to an applicant who holds current comparable certification from the National Board for Professional Teaching Standards.
- J. Teachers in grades six through 12 whose primary assignment is in an academic subject required pursuant to R7-2-301, R7-2-302, R7-302.01 and R7-302.02 shall demonstrate proficiency by passing the appropriate subject area portion of the Arizona Teacher Proficiency Assessment. The subject areas of demonstrated proficiency shall be specified on the certificate. If a proficiency assessment is not offered in a subject area, an approved area shall consist of a minimum of 24 semester hours of courses in the subject.
- K. If a language assessment is not offered through the Arizona Teacher Proficiency Assessment, a passing score on a nationally accredited test of a foreign language approved by the Board may demonstrate proficiency of that foreign language in lieu of the 24 semester hours of courses in that subject.
- L. A teacher's language proficiency in a Native American language shall be verified by a person, persons, or entity designated by the appropriate tribe in lieu of the 24 semester hours of courses in that subject.
- M. Teachers of homebound students shall hold the same certificate that is required of a classroom teacher.
- N. Fingerprint clearance cards shall be issued by the Arizona Department of Public Safety.
- O. A person who surrenders their teaching certificate for any reason shall not submit an application for certification with the Board for a period of five years. A person re-applying after the

five-year ban must apply under the current rules at the time of re-application.

#### Historical Note

Adopted effective December 5, 1977 (Supp. 77-6).  
 Repealed effective December 4, 1978 (Supp. 78-6). New Section adopted effective May 3, 1993 (Supp. 93-2).  
 Amended effective March 6, 1997 (Supp. 97-1). Section repealed; new Section adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).  
 Amended by exempt rulemaking at 16 A.A.R. 102, effective May 1, 2009 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 160, effective October 26, 2009 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 324, effective January 25, 2010 (Supp. 10-3).  
 Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 21 A.A.R. 2054, effective December 8, 2014 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 648, effective January 25, 2016 (Supp. 16-1).

#### R7-2-608. Early Childhood Teaching Certificates

- A.** By July 1, 2012, either a provisional or a standard early childhood education certificate shall be required for individuals teaching in public school early childhood education programs, except as provided in R7-2-611 or in R7-2-615(L). For individuals teaching in grades one through three, this certificate is optional. An Early Childhood Special Education certificate as described in R7-2-611 is not required for individuals who hold the Early Childhood Teaching Certificate as described in this Section in combination with an Arizona cross-categorical, specialized special education, or severe and profound teaching certificate as described in R7-2-611.
- B.** For the purposes of this rule, public school early childhood education programs are defined as education programs provided by local education agencies, including their sub-grantees and contracted providers, for children birth through age 8 for the purpose of providing academically and developmentally appropriate learning opportunities that are standards-based with defined curriculum and comprehensive in content to include all appropriate developmental and academic areas as defined by the Arizona Early Childhood Education Standards or the Arizona K-12 Academic Standards approved by the Board. The Arizona Early Childhood Education Standards: Arizona Department of Education, 1535 West Jefferson Street, Phoenix, AZ 85007, were adopted by the State Board of Education in June 2003 and the Arizona K-12 Academic Standards: Arizona Department of Education, 1535 West Jefferson Street, Phoenix, AZ 85007, were adopted by the State Board of Education as follows: Arts, April 1997; Comprehensive Health/PE, April 1997; Foreign and Native Language, April 1997; Mathematics, March 2003; Reading, March 2003; Science, May 2004; Social Studies, March 2000; Technology, September 2000; Workplace Skills, March 1997; and Writing, June 2004, are incorporated by reference and are on file with the Arizona Department of Education. This incorporation by reference contains no further editions or amendments. Copies of the incorporated material are available for review at Arizona Department of Education, 1535 West Jefferson Street, Phoenix, AZ 85007 or on the Arizona Department of Education web site at [www.ade.az.gov/standards](http://www.ade.az.gov/standards). Public school early childhood education programs include, but are not limited to, half-day and full-day kindergarten programs, Early 2 Childhood Block Grant programs pursuant to A.R.S. § 15-1251, Family Literacy Programs for preschool children pursuant to

A.R.S. § 15-191.01, and public school-administered early childhood education programs funded in whole or part with federal funds, such as the Head Start or Even Start programs, provided nothing in these rules conflicts with the terms of the federal grant. Extended day child care programs provided by local educational agencies are not considered early childhood education programs for purposes of this rule unless the program meets the definition of a public school early childhood education program set forth above.

- C.** Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619.
- D.** Provisional Early Childhood Education Certificate – birth through age 8 or through grade three.
1. This certificate is valid for three years and is not renewable but may be extended once for two years, upon written request of the holder to the Department, if the requirements in subsection (E)(3) have not been met.
  2. The requirements are:
    - a. A bachelor's degree, and
    - b. One of the following:
      - i. Completion of a teacher preparation program in early childhood education from an accredited institution or a teacher preparation program approved by the Board, or
      - ii. Early childhood education coursework and practicum experience which teaches the knowledge and skills described in R7-2-602 and includes both of the following:
        - (1) Thirty-seven semester hours of early childhood education courses to include all of the following areas of study:
          - (a) Foundations of early childhood education;
          - (b) Child guidance and classroom management;
          - (c) Characteristics and quality practices for typical and atypical behaviors of young children;
          - (d) Child growth and development, including health, safety and nutrition;
          - (e) Child, family, cultural and community relationships;
          - (f) Developmentally appropriate instructional methodologies for teaching language, math, science, social studies and the arts;
          - (g) Early language and literacy development;
          - (h) Assessing, monitoring and reporting progress of young children; and
        - (2) A minimum of eight semester hours of practicum, including:
          - (a) A minimum of four semester hours in a supervised field experience, practicum, internship or student teaching setting serving children birth through preschool. One year of full-time verified teaching experience with children in birth through preschool may substitute for this student teaching experience. This verification may come from a school-based education program or center-based program licensed by the Department of Health Services or regulated by tribal or mil-

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- itary authorities; and
    - (b) A minimum of four semester hours in a supervised student teaching setting serving children in kindergarten through grade three. One year of full-time verified teaching experience with children in kindergarten through grade three in an accredited school may substitute for this student teaching experience; or
    - iii. A valid early childhood education certificate from another state.
  - c. A valid Fingerprint Clearance Card issued by the Arizona Department of Public Safety; and
  - d. A passing score on the professional knowledge portion of the Arizona Educator Proficiency Assessment once that portion of the AEPA is adopted by the Board; and
  - e. A passing score on the early childhood subject knowledge portion of the Arizona Educator Proficiency Assessment once that portion of the AEPA is adopted by the Board.
- E. Standard Early Childhood Education Certificate – birth through age 8 or through grade three.
  1. By July 1, 2012, either a provisional or a standard early childhood education certificate shall be required for individuals teaching in public school early childhood education programs, except as provided in R7-2-611 or in R7-2-615(L). For individuals teaching in grades one through three, this certificate is optional.
  2. This certificate is valid for six years.
  3. The requirements are:
    - a. Qualification for the Provisional Early Childhood Education Certificate; and
    - b. Two years of verified teaching experience, during the valid period of the Provisional Early Childhood Education Certificate, with children birth through age 8 or grade three in a school-based education program or center-based program licensed by the Department of Health Services or regulated by Tribal or military authorities; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  4. An individual may also qualify for a Standard Early Childhood Education Certificate if the individual:
    - a. Holds current National Board Certification in Early Childhood; and
    - b. Holds a valid fingerprint Clearance Card issued by the Arizona Department of Public Safety.

**Historical Note**

Adopted effective May 20, 1994 (Supp. 94-2). Section repealed; new Section adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Section R7-2-608 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 2562, effective May 23, 2002 for a period of 180 days (Supp. 02-2). May 23, 2002 emergency rulemaking renewed under A.R.S. § 41-1026 at 8 A.A.R. 5132, effective November 19, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1605, effective May 5, 2003 (Supp. 03-2). Former Section R7-2-608 recodified to R7-2-609 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). New Section R7-2-608 made by exempt rulemaking at 16 A.A.R. 52, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 119, effective Septem-

ber 21, 2009 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 235, effective December 7, 2009 (Supp. 10-3).

**R7-2-609. Elementary Teaching Certificates**

- A. Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619.
- B. Provisional Elementary Certificate – grades K through eight
  1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree;
    - b. One of the following:
      - i. Completion of a teacher preparation program in elementary education from an accredited institution or a Board-approved teacher preparation program, described in R7-2-604; or
      - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including at least eight semester hours of practicum in grades K through eight. Two years of verified teaching experience in grades Prekindergarten through eight may be substituted for the eight semester hours of practicum; or
      - iii. A valid elementary certificate from another state.
    - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
    - d. A passing score on the elementary education subject knowledge portion of the Arizona Teacher Proficiency Assessment; and
    - e. A valid fingerprint card issued by the Arizona Department of Public Safety.
- C. Standard Elementary Certificate – grades K through eight
  1. The certificate is valid for six years.
  2. The requirements are:
    - a. A provisional elementary certificate;
    - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement;
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety; and
    - d. Forty-five hours or three semester hours of instruction in research-based systematic phonics. An accredited institution or other provider may provide this instruction.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Section R7-2-609 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 2562, effective May 23, 2002 for a period of 180 days (Supp. 02-2). May 23, 2002 emergency rulemaking renewed under A.R.S. § 41-1026 at 8 A.A.R. 5132, effective November 19, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1605, effective May 5, 2003 (Supp. 03-2). Former R7-2-609 recodified to R7-2-610; new R7-2-609 recodified from R7-2-608 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). R7-2-609 “Pre-kindergarten” corrected to “PreK” at request of the Board,

Office File No. M09-444, filed November 24, 2009 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 235, effective December 7, 2009 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4).

#### **R7-2-610. Secondary Teaching Certificates**

- A.** Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619.
- B.** Provisional Secondary Certificate - grades six through 12
  1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:
      - i. Completion of a teacher preparation program in secondary education from an accredited institution or a Board-approved teacher preparation program, described in R7-2-604; or
      - ii. Thirty semester hours of education courses which teach the knowledge and skills described in R7-2-602, including at least eight semester hours of practicum in grades six through 12. Two years of verified teaching experience in grades six through postsecondary may substitute for the eight semester hours of practicum; or
      - iii. A valid secondary certificate from another state.
    - c. A passing score on one or more subject knowledge portions of the Arizona Teacher Proficiency Assessment;
    - d. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment; and
    - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- C.** Standard Secondary Certificate - grades six through 12
  1. The certificate is valid for six years.
  2. The requirements are:
    - a. A provisional secondary certificate;
    - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- D.** Specialized Secondary Certificate – Science, Technology, Engineering or Mathematics – grades seven through 12
  1. The certificate is valid for six years.
  2. The requirements are:
    - a. A bachelor's degree;
    - b. Completion of training in structured English immersion as prescribed by the Arizona State Board of Education;
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
    - d. One of the following options:
      - i. Option A – Postsecondary teaching experience – science, technology, engineering or mathematics:
        - (1) Have taught science, technology, engineering or mathematics courses for the last two consecutive years, and for a total of at least three years, at one or more regionally or nationally accredited public or private postsecondary institutions, to be demonstrated by providing written proof of employment from each applicable qualifying postsecondary institution, including specific durations of employment and the nature of the teaching assignment; and
        - (2) A baccalaureate degree, a master's degree or a doctoral degree in an academic subject that is specific to science, technology, engineering or mathematics or a passing score the professional knowledge portion of the Arizona Teacher Proficiency Assessment.
      - ii. Option B – Work experience – science, technology, engineering or mathematics:
        - (1) A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment;
        - (2) Have ten or more years of work experience in science, technology, engineering or mathematics, to be demonstrated by providing written proof of employment from each applicable employer, including specific durations of employment and the nature of the assignment; and
        - (3) Demonstrate adequate subject matter knowledge through either:
          - a) A baccalaureate degree, a master's degree or a doctoral degree in an academic subject that is specific to science, technology, engineering or mathematics;
          - b) Twenty-four hours of relevant coursework in an academic subject that is specific to science, technology, engineering or mathematics; or
          - c) A passing score on one or more science, technology, engineering or mathematics subject knowledge portions of the Arizona Teacher Proficiency Assessment.

#### **Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Section R7-2-610 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 2562, effective May 23, 2002 for a period of 180 days (Supp. 02-2). May 23, 2002 emergency rulemaking renewed under A.R.S. § 41-1026 at 8 A.A.R. 5132, effective November 19, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1605, effective May 5, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2399, effective July 23, 2004 (Supp. 04-2). Amended by exempt rulemaking at 15 A.A.R. 1838, effective August 29, 2006 (Supp. 09-1). Former R7-2-610 recodified to R7-2-611; new R7-2-610 recodified from R7-2-609 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 235, effective December 7, 2009 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 21 A.A.R. 2054, effective December 8, 2014 (Supp. 14-4).

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**R7-2-611. Special Education Teaching Certificates**

- A.** Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619. An Early Childhood Special Education certificate as described in this Section is not required for individuals who hold the Early Childhood endorsement as described in R7-2-615 in combination with an Arizona cross-categorical, specialized special education, or severe and profound teaching certificate as described in this Section. An Early Childhood Special Education certificate as described in this Section is not required for individuals who hold the Early Childhood Teaching Certificate as described in R7-2-608 in combination with an Arizona cross-categorical, specialized special education, or severe and profound teaching certificate as described in this Section.
- B.** Terms used in this Section are defined in A.R.S. § 15-761.
- C.** Provisional Cross-Categorical Special Education Certificate - grades K through 12 for applications received through December 31, 2015, and Provisional Mild-Moderate Disabilities Special Education Certificate grades K through 12 for applications received on and after January 1, 2016.
1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The holder is qualified to teach students with mild to moderate autism, intellectual disabilities, traumatic brain injury, emotional disability, specific learning disability, orthopedic impairments and/or other health impairments.
  3. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:
      - i. Completion of a teacher preparation program in special education from an accredited institution, which included courses in the instruction and behavior management of students with mild-moderate disabilities; or
      - ii. A valid mild-moderate special education certificate from another state; or
      - iii. Semester hours of education courses as follows:
        - (1) For applications received through December 31, 2015: Forty-five semester hours of education courses which teach the standards described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum with students representing at least three of the five disability areas. Special education courses shall include survey of exceptional students; teaching methodologies and strategies for students with disabilities; foundations course in mild to moderate mental retardation intellectual disabilities, learning disability, emotional disabilities, and physical/health impairment; and diagnosis and assessment of mild disabilities. Two years of verified teaching experience in special education in grades K through 12 may substitute for the eight semester hours of practicum; or
        - (2) For applications received on and after January 1, 2016: Forty-five semester hours of education courses which teach the standards described in R7-2-602, including 37 semester hours of special education courses which shall include:
          - (a) Foundations of special education;
          - (b) Legal aspects;
          - (c) Effective collaboration and communication practices;
          - (d) Research-based instruction in math;
          - (e) Research-based instruction in English language arts;
          - (f) Classroom management and behavior analysis;
          - (g) Assessment and eligibility;
          - (h) Language development and disorders;
          - (i) Electives; and a minimum of eight semester hours of practicum with students with mild-moderate disabilities. Two years of verified teaching experience in mild-moderate special education in grades K through 12 may substitute for the eight semester hours of practicum.
- c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment,
- d. A passing score on the special education portion of the Arizona Teacher Proficiency Assessment, and
- e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- D.** Standard Cross-Categorical Special Education Certificate - grades K through 12 for applications received through December 31, 2015, and Standard Mild-Moderate Disabilities Special Education Certificate grades K through 12 for applications received on and after January 1, 2016.
1. The certificate is valid for six years.
  2. The holder is qualified to teach students with mild to moderate autism, intellectual disabilities, traumatic brain injury, emotional disability, specific learning disability, orthopedic impairments and/or other health impairments.
  3. The requirements are:
    - a. A provisional cross-categorical Special Education certificate or mild-moderate disabilities special education certificate;
    - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- E.** Provisional Specialized Special Education Certificate - grades K through 12.
1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No new applications for a Provisional Specialized Special Education Certificate will be accepted after December 31, 2015.
  3. The holder is qualified to teach students with intellectual disabilities, emotional disability, specific learning disability, orthopedic impairments or other health impairments, as specified on the certificate.
  4. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:

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- i. Completion of a teacher preparation program in the specified area of special education from an accredited institution; or
    - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum in the designated area of disability. Special education courses shall include survey of exceptional students, teaching methodologies for students with disabilities, foundations of instruction in the designated area of disability, and diagnosis and assessment of disabilities. Two years of verified teaching experience in the area of disability in grades K through 12 may be substituted for the eight semester hours of practicum; or
    - iii. A valid special education certificate in the specified area from another state.
  - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment,
  - d. A passing score on the specified disability special education portion of the Arizona Teacher Proficiency Assessment, and
  - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- F. Standard Specialized Special Education Certificate – grades K through 12.**
- 1. The certificate is valid for six years.
  - 2. The holder is qualified to teach students with intellectual disabilities, emotional disability, specific learning disability, orthopedic impairments or other health impairments, as specified on the certificate.
  - 3. The requirements are:
    - a. A provisional Special Education certificate;
    - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- G. Provisional Severely and Profoundly Disabled Certificate – grades K through 12.**
- 1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  - 2. The holder is qualified to teach students with severe and profound disabilities.
  - 3. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:
      - i. Completion of a teacher preparation program in severely and profoundly disabled education from an accredited institution; or
      - ii. A valid severe and profound special education certificate from another state; or
      - iii. Semester hours of education courses as follows:
        - (1) For applications received through December 31, 2015: Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with severe and profound disabilities, foundations of instruction of students with severe and profound disabilities, and diagnostic and assessment procedures for students with severe and profound disabilities. Two years of verified teaching experience with students in grades PreK-12 who are severely and profoundly disabled may be substituted for the eight semester hours of practicum; or
        - (2) For applications received on and after January 1, 2016: Forty-five semester hours of education courses which teach the standards described in R7-2-602, including 37 semester hours of special education courses which shall include:
          - (a) Foundations low incidence disabilities;
          - (b) Legal aspects;
          - (c) Effective collaboration and communication practices;
          - (d) Adaptive communication;
          - (e) Instructional strategies across the curriculum;
          - (f) Classroom management and behavior analysis;
          - (g) Assessment and eligibility;
          - (h) Electives; and a minimum of eight semester hours of practicum with students with severe and profound disabilities. Two years of verified teaching experience in special education in grades K through 12 who have severe and profound disabilities may substitute for the eight semester hours of practicum.
    - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment,
    - d. A passing score on the severely and profoundly disabled special education portion of the Arizona Teacher Proficiency Assessment, and
    - e. A valid fingerprint card issued by the Arizona Department of Public Safety.

**H. Standard Severely and Profoundly Disabled Certificate – grades K through 12.**

    - 1. The certificate is valid for six years.
    - 2. The holder is qualified to teach students with severe and profound disabilities.
    - 3. The requirements are:
      - a. A provisional severely and profoundly disabled certificate;
      - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
      - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**I. Provisional Hearing Impaired Certificate – birth through grade 12.**



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1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:
      - i. Completion of a teacher preparation program in hearing impaired education from an accredited institution; or
      - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses for the hearing impaired and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with hearing impairment, foundations of instruction of students with hearing impairment, and diagnostic and assessment procedures for the hearing impaired. Two years of verified teaching experience in the area of hearing impaired in grades PreK-12 may be substituted for the eight semester hours of practicum; or
      - iii. A valid hearing impaired certificate from another state.
    - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment,
    - d. A passing score on the hearing impaired special education portion of the Arizona Teacher Proficiency Assessment, and
    - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- J. Standard Hearing Impaired Certificate – birth through grade 12.**
1. The certificate is valid for six years.
  2. The requirements are:
    - a. A provisional hearing impaired certificate;
    - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- K. Provisional Visually Impaired Certificate – birth through grade 12.**
1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:
      - i. Completion of a teacher preparation program in visual impairment from an accredited institution; or
      - ii. Forty-five semester hours of education courses which teach the knowledge and skills described in R7-2-602, including 21 semester hours of special education courses for the visually impaired and eight semester hours of practicum. Special education courses shall include survey of exceptional students, teaching methodologies for students with visual impairment, foundations of instruction of students with visual impairment, and diagnostic and assessment procedures for the visually impaired. Two years of verified teaching experience in the area of visually impaired in grades PreK-12 may be substituted for the eight semester hours of practicum; or
      - iii. A valid visually impaired special education certificate from another state.
    - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment,
    - d. A passing score on the visually impaired special education portion of the Arizona Teacher Proficiency Assessment, and
    - e. Demonstration of competency in Braille through one of the following:
      - i. A passing score on the original version of the National Library of Congress certification exam, or
      - ii. A valid certificate for a literary Braille transcriber issued by the National Library of Congress, or
      - iii. A passing score on a Braille exam administered by another state, or
      - iv. A passing score on the Braille exam developed and administered by the University of Arizona. Individuals who take this test and are not students at the University of Arizona may be assessed a fee.
    - f. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- L. Standard Visually Impaired Certificate – birth through grade 12.**
1. The certificate is valid for six years.
  2. The requirements are:
    - a. A provisional visually impaired certificate;
    - b. A passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- M. Provisional Early Childhood Special Education Certificate – birth through 5 years for applications received through December 31, 2015, and birth through age 8 or grade 3 for applications received on and after January 1, 2016.**
1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree,
    - b. One of the following:
      - i. Completion of a teacher preparation program in early childhood special education from an accredited institution; or
      - ii. A valid early childhood special education certificate from another state; or
      - iii. Early childhood education coursework and practicum experience which teaches the knowledge and skills described in R7-2-602 and includes the following:
        - (1) For applications received through December 31, 2015: Forty-five semester hours of education courses which teach the standards described in R7-2-602, including

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- child development and learning, language development, social and emotional development, curriculum development and implementation, and assessment and evaluation, early childhood special education, and eight semester hours of practicum in early childhood special education. Two years of verified teaching experience in the area of early childhood special education may be substituted for the eight semester hours of practicum; or
- (2) For applications received on and after January 1, 2016:
- (a) Thirty-seven semester hours of early childhood education courses which teach the standards described in R7-2-602, to include all of the following areas of study:
    - (i) Foundations early childhood education and special education;
    - (ii) Behavioral interventions for children with and without disabilities;
    - (iii) Characteristics and quality practices for typical and atypical behaviors of young children;
    - (iv) Typical and atypical child growth and development, including health, safety and nutrition with an emphasis on special health care needs for children birth through grade 3;
    - (v) Child, family, cultural and community relationships including community organizations that support and assist children with disabilities and their families;
    - (vi) Developmentally appropriate instructional and inclusive methodologies for teaching social and emotional development, language arts, math, science, social studies, the arts and diagnosis and remediation of learning difficulties;
    - (vii) Early language and literacy development including communication methods in early childhood education/special education;
    - (viii) Assessment and evaluation for early childhood special education to include observing, assessing, monitoring and reporting on the progress of young children; and
  - (b) A minimum of eight semester hours of practicum, including:
    - (i) A minimum of four semester hours in a supervised field experience, practicum, internship or student teaching setting serving children with identified special needs birth through preschool or one year of full-time teaching experience with children identified with special needs birth through preschool, and
    - (ii) A minimum of four semester hours in a supervised student teaching setting serving children with identified special needs in kindergarten through grade 3 or one year of full time teaching experience with children identified with special needs kindergarten through grade 3.
  - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment,
  - d. A passing score on the early childhood special education portion of the Arizona Teacher Proficiency Assessment, and
  - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- N. Standard Early Childhood Special Education Certificate - birth through 5 years for applications received through December 31, 2015, and birth through age 8 or grade 3 for applications received on and after January 1, 2016.
1. The certificate is valid for six years.
  2. Requirements are:
    - a. A provisional early childhood Special Education certificate;
    - b. Passing score on the performance portion of the Arizona Teacher Proficiency Assessment. If a performance portion of the Proficiency Assessment has not been adopted by the Board, two years of verified full-time teaching experience may be used to fulfill this requirement; and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 5139, effective November 19, 2002 for a period of 180 days (Supp. 02-4). Emergency rulemaking renewed under A.R.S. § 41-1026(D) at 9 A.A.R. 1547, effective April 29, 2003 for a period of 180 days (Supp. 03-2). Emergency rulemaking repealed under A.R.S. § 41-1026(E) and permanent R7-2-611 amended by final rulemaking at 9 A.A.R. 3950, effective October 21, 2003 (Supp. 03-3). Former R7-2-611 recodified to R7-2-612; new R7-2-611 recodified from R7-2-610 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). R7-2-611 "Prekindergarten" corrected to "PreK" at request of the Board, Office File No. M09-444, filed November 24, 2009 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 119, effective September 21, 2009 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 235, effective December 7, 2009 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 21 A.A.R. 2056, effective December 2, 2013 (Supp. 15-3).

**R7-2-612. Career and Technical Education Teaching Certificates**

- A. Except as noted, all certificates are subject to the general certification provisions in R7-2-607, and the renewal requirements in R7-2-619.
- B. A provisional career and technical education certificate shall be extended once for three years upon completion of one half

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the required semester hours of courses for the standard career and technical education certificate in the same career and technical education area.

C. For purposes of this rule, the following definitions apply:

1. "Agriculture" means agriculture, agriculture operations, and related sciences; natural resources and conservation; environmental design; landscape architecture; agricultural biological engineering; forest engineering, biological and biomedical sciences; parks, recreation and leisure facilities management; geological and earth sciences/geosciences; veterinary/animal health technician/veterinary assistant; environmental health; and veterinary medicine as described in Classification of Instructional Programs: 2000 Edition: (NCES 2002-165), U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW, Washington, DC 20006: U.S. Government Printing Office, April 2002, CIP Code 01, which is incorporated by reference and on file with the Arizona Department of Education and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Arizona Department of Education located at 1535 W. Jefferson Street, Phoenix, AZ 85007 or may be ordered from the U.S. Department of Education, ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.
2. "Business and Marketing" means computer and information sciences and support services; accounting and computer information services; business/commerce, general; business administration, management and operations; accounting; business operations support and assistant services; business/corporate communications; business/man managerial economics; entrepreneurial and small business operations; finance and financial management services; hospitality administration/management; human resources management and services; international business; management information systems and services; management sciences and quantitative methods; marketing; real estate; taxation; insurance; general sales, merchandising and related marketing operations; specialized sales, merchandising and marketing operations; and business, management, marketing and related support services, other as described in Classification of Instructional Programs: 2000 Edition: (NCES 2002-165), U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW, Washington, DC 20006: U.S. Government Printing Office, April 2002, CIP Code 52, which is incorporated by reference and on file with the Arizona Department of Education and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Arizona Department of Education, located at 1535 W. Jefferson Street, Phoenix, AZ 85007 or may be ordered from the U.S. Department of Education, ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.
3. "Education and Training" means all occupational areas of secondary education and teaching; junior high/intermediate/middle school education and teaching; elementary education and teaching; kindergarten/preschool education and teaching; early childhood education and teaching; adult education and teaching; and special education as described in Classification of Instructional Programs: 2000 Edition: (NCES 2002-165) U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW, Washington, DC 20006: U.S. Government Printing Office, April 2002, CIP Code 13, which is incorporated by reference and on file with the Arizona Department of Education and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Arizona Department of Education located at 1535 W. Jefferson Street, Phoenix, AZ 85007 or may be ordered from the U.S. Department of Education, ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.
4. "Family and Consumer Sciences" means culinary arts; kindergarten/preschool education and teaching; early childhood education and teaching; family and consumer sciences/human sciences; nutrition sciences; interior design; hospitality administration/management; fashion merchandising; fashion modeling; apparel and accessories marketing operations; tourism and travel services marketing operations; tourism promotion operations; and hospitality and recreation marketing operations as described in Classification of Instructional Programs: 2000 Edition: (NCES 2002-165) U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW, Washington, DC 20006: U.S. Government Printing Office, April 2002, CIP Code 19, which is incorporated by reference and on file with the Arizona Department of Education and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Arizona Department of Education, located at 1535 W. Jefferson Street, Phoenix, AZ 85007 or may be ordered from the U.S. Department of Education, ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.
5. "Health Careers" means exercise physiology; kinesiology and exercise science; medical/clinical assistant; clinical/medical laboratory assistant; pharmacy technician/assistant; medical radiologic technology/science-radiation therapist; radiologic technology/science-radiographer; physician assistant; athletic training/trainer; clinical/medical laboratory technician; clinical laboratory science/medical technology/technologist; phlebotomy/phlebotomist; medicine; nursing/registered nurse; osteopathic medicine/osteopathy; pharmacy; physical therapy/therapist; and kinesiotherapy/kinesiotherapist as described in Classification of Instructional Programs: 2000 Edition: (NCES 2002-165) U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW, Washington, DC 20006: U.S. Government Printing Office, April 2002, CIP Code 51, which is incorporated by reference and on file with the Arizona Department of Education and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Arizona Department of Education located at 1535 W. Jefferson Street, Phoenix, AZ 85007 or may be ordered from the U.S. Department of Education, ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.
6. "Industrial and Emerging Technologies" means audiovisual communications technologies/technicians; graphic communications; cosmetology and personal grooming services; electrical engineering technologies/technicians; electromechanical instrumentation and maintenance technologies/technicians; environmental control technologies/technicians; industrial production technologies/technicians; quality control and safety technologies/tech-

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nicians; mechanical engineering related technologies/technicians; mining and petroleum technologies/technicians; construction engineering technologies; engineering-related technologies; computer engineering technologies/technicians; drafting/design engineering technologies/technicians; security and protective services; mason/masonry; carpenters; electrical and power transmission installers; building/construction finishing, management and inspection; electrical/electronics maintenance and repair technology; heating, air conditioning, ventilation and refrigeration maintenance technology/technician; heavy/industrial equipment maintenance technologies; precision systems maintenance and repair technologies; vehicle maintenance and repair technologies; precision metal working; construction/heavy equipment/earthmoving equipment operation; design and visual communications, general; commercial and advertising art; industrial design; commercial photography; and visual performing arts as described in Classification of Instructional Programs: 2000 Edition: (NCES 2002-165) U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW, Washington, DC 20006: U.S. Government Printing Office, April 2002, CIP Codes 10, 12, 15, 41, 43, 46, 47, 48, 49, and 50, which is incorporated by reference and on file with the Arizona Department of Education and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies of the incorporated materials are available for review at the Arizona Department of Education located at 1535 W. Jefferson Street, Phoenix, AZ 85007 or may be ordered from the U.S. Department of Education, ED Pubs, P.O. Box 1398, Jessup, MD 20794-1398.

7. "Occupational Area" means employment in any of the areas identified in subsections (C)(1) through (6) relating to Agriculture, Business and Marketing, Education and Training, Family and Consumer Sciences, Health Careers, or Industrial and Emerging Technologies.
8. "Professional Knowledge" means the art of teaching including the knowledge and skills necessary for instructional planning, delivery and evaluation in a career and technical education setting.
9. "Subject Knowledge" means the information, understanding and skills specific to the broad occupational area.
10. "Verified Work Experience" means written documentation from a current or former supervisor for paid or unpaid work, a current school superintendent, or the Department of Education Career and Technical Education Programmatic State Supervisor indicating that an applicant for a career and technical education certificate performed work in a business or industry setting related to the program to be taught as identified in subsections (C)(1) through (6).

**D. Provisional Career and Technical Education (CTE) Certificate - Agriculture – grades K through 12**

1. The certificate is valid for three years.
2. The requirements are:
  - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
  - b. One of the following options:
    - i. Option A – Bachelor's degree in agriculture or related sciences:
      - (1) A bachelor's or more advanced degree in agriculture from an accredited institution,
      - (2) Thirty semester hours of courses in agri-

culture, and

- (3) Two hundred forty clock hours of verified work experience in an agriculture occupational area.
  - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
    - (1) A valid Arizona provisional or standard teaching certificate issued pursuant to this Article;
    - (2) One year of the most recent teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a PreK-12 school setting and issued during the term of the Arizona teaching certificate exhibiting satisfactory performance in the classroom;
    - (3) Three semester hours of courses in career and technical education methods or content in agriculture; and
    - (4) Two hundred forty clock hours of verified work experience in an agriculture occupational area.
  - iii. Option C – Business and industry professional: Six thousand clock hours of verified work experience in an agriculture occupational area.
  - iv. Option D – Valid teaching certificate in career and technical education from another state: A valid teaching certificate in career and technical agriculture education from another state.
  - v. Option E – Bachelor's degree in an agriculture education teacher preparation program:
    - (1) A bachelor's or more advanced degree in an agriculture education teacher preparation program from an accredited institution, and
    - (2) Two hundred forty clock hours of verified work experience in an agriculture occupational area.
3. The holder of this certificate shall receive a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers, before the extension of the provisional career and technical education certificate - Agriculture. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
- a. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
  - b. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
  - c. A current certificate from the National Board for Professional Teaching Standards.
- E. Standard Career and Technical Education (CTE) Certificate - Agriculture – grades K through 12**
1. The certificate is valid for six years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and

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- b. One of the following options:
- i. Option A – Bachelor’s degree in agriculture or related sciences:
    - (1) Qualification under Option A for the provisional career and technical education certificate - Agriculture;
    - (2) Eighteen semester hours of courses in professional knowledge, to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Agriculture. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the Arizona provisional CTE teaching certificate - Agriculture exhibiting satisfactory performance in the classroom.
  - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
    - (1) Qualification under Option B for the provisional career and technical education certificate - Agriculture;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Agriculture exhibiting satisfactory performance in the classroom;
    - (3) Twelve semester hours of courses in professional knowledge to include:
      - (a) Nine semester hours of courses in agriculture subject knowledge; and
      - (b) Three semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Agriculture. Twelve semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (4) An additional 240 clock hours of verified work experience in an agriculture occupational area. Hours may have been accumulated before obtaining the provisional certification.
  - iii. Option C – Business and industry professional:
    - (1) Qualification under Option C for the provisional career and technical education certificate - Agriculture;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Agriculture exhibiting satisfactory performance in the classroom; and
    - (3) Fifteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional design/methodology, assessment/evaluation, instructional technology, educational philosophy, or classroom management. Fifteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour.
  - iv. Option D – Valid teaching certificate in career and technical education from another state:
    - (1) Qualification under Option D for the provisional career and technical education certificate - Agriculture; and
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Agriculture exhibiting satisfactory performance in the classroom.
  - v. Option E – Bachelor’s degree in an agriculture education teacher preparation program:
    - (1) Qualification under Option E for the provisional career and technical education certificate - Agriculture;
    - (2) Eighteen semester hours of courses in professional knowledge, to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the

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- provisional career and technical education certificate - Agriculture. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
- (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Agriculture exhibiting satisfactory performance in the classroom.
- c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - i. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - ii. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - iii. A current certificate from the National Board for Professional Teaching Standards.
- F. Provisional Career and Technical Education "CTE" Certificate - Business and Marketing – grades K through 12**
1. The certificate is valid for three years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor's degree business or marketing:
        - (1) A bachelor's or more advanced degree in business or marketing from an accredited institution,
        - (2) Thirty semester hours of courses in business or marketing, and
        - (3) Two hundred forty clock hours of verified work experience in a business or marketing occupational area.
      - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
        - (1) A valid Arizona provisional or standard teaching certificate issued pursuant to this Article;
        - (2) One of the most recent teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a Pre-K-12 school setting and issued during the term of the Arizona teaching certificate exhibiting satisfactory performance in the classroom;
        - (3) Three semester hours of courses in career and technical education methods or content in business or marketing; and
- (4) Two hundred forty clock hours of verified work experience in a business or marketing occupational area.
- iii. Option C – Business and industry professional: Six thousand clock hours of verified work experience in a business or marketing occupational area.
  - iv. Option D – Valid teaching certificate in career and technical education from another state: A valid teaching certificate in business education, marketing education, career and technical business education or career and technical marketing education from another state.
  - v. Option E – Bachelor's degree in business or marketing education teacher preparation program:
    - (1) A bachelor's or more advanced degree in a business or marketing education teacher preparation program from an accredited institution, and
    - (2) Two hundred forty clock hours of verified work experience in a business or marketing occupational area.
3. The holder of this certificate shall receive a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers before the extension of the provisional career and technical education certificate - Business and Marketing. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - a. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - b. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - c. A current certificate from the National Board for Professional Teaching Standards.
- G. Standard Career and Technical Education (CTE) Certificate - Business and Marketing – grades K through 12**
1. The certificate is valid for six years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor's degree in business and marketing:
        - (1) Qualification under Option A for the provisional career and technical education certificate - Business and Marketing; and
        - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/

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- development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Business and Marketing. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
- (3) Two years of teacher evaluations approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the Arizona provisional CTE teaching certificate - Business and Marketing exhibiting satisfactory performance in the classroom.
- ii. Option B – Valid non-CTE Arizona teaching certificate or Arizona CTE teaching certificate in another area:
    - (1) Qualification under Option B for the provisional career and technical education certificate - Business and Marketing;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Business and Marketing exhibiting satisfactory performance in the classroom;
    - (3) Twelve semester hours of courses in professional knowledge to include:
      - (a) Nine semester hours of courses in business or marketing subject knowledge; and
      - (b) Three semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, classroom management, educational philosophy, instructional design/methodology, or assessment/evaluation. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Business and Marketing. Twelve semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (4) An additional 240 clock hours of verified work experience in a business or marketing occupational area. Hours may have been accumulated before obtaining the provisional certification.
  - iii. Option C – Business and industry professional:
    - (1) Qualification under Option C for the provisional career and technical education certificate - Business and Marketing;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Business and Marketing exhibiting satisfactory performance in the classroom; and
    - (3) Fifteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional design/methodology, assessment/evaluation, instructional technology, educational philosophy, or classroom management. Fifteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour.
  - iv. Option D – Valid teaching certificate in career and technical education from another state:
    - (1) Qualification under Option D for the provisional career and technical education certificate - Business and Marketing; and
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Business and Marketing exhibiting satisfactory performance in the classroom.
  - v. Option E – Bachelor's degree in a business or marketing education teacher preparation program:
    - (1) Qualification under Option E for the provisional career and technical education certificate - Business and Marketing;
    - (2) Eighteen semester hours of courses in professional knowledge, to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Business and Marketing. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during

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- the term of the provisional career and technical education certificate - Business and Marketing exhibiting satisfactory performance in the classroom.
- c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - i. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - ii. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - iii. A current certificate from the National Board for Professional Teaching Standards.
- H. Provisional Career and Technical Education (CTE) Certificate - Family and Consumer Sciences – grades K through 12**
1. The certificate is valid for three years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor's degree in family and consumer sciences:
        - (1) A bachelor's degree or more advanced degree in family and consumer sciences from an accredited institution,
        - (2) Thirty semester hours of courses in family and consumer sciences, and
        - (3) Two hundred forty clock hours of verified work experience in a family and consumer sciences occupational area.
      - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
        - (1) A valid Arizona provisional or standard teaching certificate issued pursuant to this Article;
        - (2) One year of the most recent teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a PreK-12 school setting and issued during the term of the Arizona teaching certificate exhibiting satisfactory performance in the classroom;
        - (3) Three semester hours of courses in career and technical education methods or content in family and consumer sciences; and
        - (4) Two hundred forty clock hours of verified work experience in a family and consumer sciences occupational area.
      - iii. Option C – Business and industry professional: Six thousand clock hours of verified work experience in a family and consumer sciences occupational area.
  - iv. Option D – Valid teaching certificate in career and technical education from another state: A valid teaching certificate in career and technical family and consumer sciences education from another state.
  - v. Option E – Bachelor's degree in family and consumer sciences education teacher preparation program:
    - (1) A bachelor's or more advanced degree in a family and consumer sciences education teacher preparation program from an accredited institution, and
    - (2) Two hundred forty clock hours of verified work experience in a family and consumer sciences occupational area.
3. The holder of this certificate shall receive a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers before the extension of the provisional career and technical education certificate - Family and Consumer Sciences. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - a. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - b. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - c. A current certificate from the National Board for Professional Teaching Standards.
- I. Standard Career and Technical Education (CTE) Certificate - Family and Consumer Sciences – grades K through 12**
1. The certificate is valid for six years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor's degree in family and consumer sciences:
        - (1) Qualification under Option A for the provisional career and technical education certificate - Family and Consumer Sciences;
        - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Family and Consumer Sciences. Eighteen semester hours may be obtained through Department-CTE



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- approved professional development. Fifteen clock hours equals one semester hour; and
- (3) Two years of teacher evaluations approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the Arizona provisional CTE teaching certificate - Family and Consumer Sciences exhibiting satisfactory performance in the classroom.
- ii. Option B – Valid non-CTE Arizona teaching certificate or Arizona CTE teaching certificate in another area:
- (1) Qualification under Option B for the provisional career and technical education certificate - Family and Consumer Sciences;
  - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Family and Consumer Sciences exhibiting satisfactory performance in the classroom;
  - (3) Twelve semester hours of courses in professional knowledge to include:
    - (a) Nine semester hours of courses in family and consumer sciences subject knowledge; and
    - (b) Three semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Family and Consumer Sciences. Twelve semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
  - (4) An additional 240 clock hours of verified work experience in a family and consumer sciences occupational area. Hours may have been accumulated before obtaining the provisional certification.
- iii. Option C – Business and industry professional:
- (1) Qualification under Option C for the provisional career and technical education certificate - Family and Consumer Sciences;
  - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Family and Consumer Sciences exhibiting satisfactory performance in the classroom; and
- iv. Option D – Valid teaching certificate in career and technical education from another state:
- (1) Qualification under Option D for the provisional career and technical education certificate - Family and Consumer Sciences; and
  - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Family and Consumer Sciences exhibiting satisfactory performance in the classroom.
- v. Option E – Bachelor's degree in family and consumer sciences education teacher preparation program:
- (1) Qualification under Option E for the provisional career and technical education certificate - Family and Consumer Sciences;
  - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Family and Consumer Sciences. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
  - (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Family and Consumer Sciences exhibiting satisfactory performance in the classroom; and

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- and Consumer Sciences exhibiting satisfactory performance in the classroom.
- c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - i. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - ii. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - iii. A current certificate from the National Board for Professional Teaching Standards.
- J. Provisional Career and Technical Education (CTE) Certificate - Health Careers – grades K through 12**
1. The certificate is valid for three years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor’s degree in health careers:
        - (1) A bachelor’s or more advanced degree in a biological science, health science, physical science, or nursing from an accredited institution;
        - (2) Thirty semester hours of courses in health careers; and
        - (3) Two hundred forty clock hours of verified work experience in a health careers occupational area.
      - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
        - (1) A valid provisional or standard teaching certificate issued pursuant to this Article;
        - (2) One year of the most recent teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a PreK-12 school setting and issued during the term of the Arizona teaching certificate exhibiting satisfactory performance in the classroom;
        - (3) Three semester hours of courses in career and technical education methods or content in health careers; and
        - (4) Two hundred forty clock hours of verified work experience a health careers occupational area.
      - iii. Option C – Business and industry professional: Six thousand clock hours of verified work experience in a health career occupational area.
      - iv. Option D – Valid teaching certificate in career and technical education from another state: A valid teaching certificate in career and technical health careers education from another state.
- v. Option E – Bachelor’s degree in health careers education teacher preparation program:
    - (1) A bachelor’s or more advanced degree in a health careers education teacher preparation program from an accredited institution, and
    - (2) Two hundred forty clock hours of verified work experience in a health careers occupational area.
3. The holder of this certificate shall receive a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers before the extension of the provisional career and technical education certificate - Health Careers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - a. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - b. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - c. A current certificate from the National Board for Professional Teaching Standards.
- K. Standard Career and Technical Education (CTE) Certificate - Health Careers – grades K through 12**
1. The certificate is valid for six years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor’s degree in health careers:
        - (1) Qualification under Option A for the provisional career and technical education certificate - Health Careers;
        - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Health Careers. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
        - (3) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate -

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- Health Careers exhibiting satisfactory performance in the classroom.
- ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
    - (1) Qualification under Option B for the provisional career and technical education certificate – Health Careers;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Health Careers exhibiting satisfactory performance in the classroom;
    - (3) Twelve semester hours of courses in professional knowledge to include:
      - (a) Nine semester hours of courses in health careers subject knowledge; and
      - (b) Three semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Health Careers. Twelve semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (4) An additional 240 hours of verified work experience in a health careers occupational area.
  - iii. Option C – Business and industry professional:
    - (1) Qualification under Option C for the provisional career and technical education certificate – Health Careers;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Health Careers exhibiting satisfactory performance in the classroom; and
    - (3) Fifteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional design/methodology, assessment/evaluation, instructional technology, educational philosophy,
  - or classroom management. Fifteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour.
  - iv. Option D – Valid teaching certificate in career and technical education from another state:
    - (1) Qualification under Option D for the provisional career and technical education certificate - Health Careers; and
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Health Careers exhibiting satisfactory performance in the classroom.
  - v. Option E – Bachelor’s degree in health careers education teacher preparation program:
    - (1) Qualification under Option E for the provisional career and technical education certificate - Health Careers;
    - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Health Careers. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Health Careers exhibiting satisfactory performance in the classroom.
  - c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - i. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - ii. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel

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- Director to verify teaching experience at time of application, or
- iii. A current certificate from the National Board for Professional Teaching Standards.
- L. Provisional Career and Technical Education (CTE) Certificate - Industrial and Emerging Technologies – grades K through 12**
1. The certificate is valid for three years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor’s degree in industrial or emerging technologies:
        - (1) A bachelor’s or more advanced degree in Industrial Arts or Industrial Technology Education or emerging technology areas from an accredited institution,
        - (2) Thirty semester hours of courses in industrial or emerging technologies, and
        - (3) Two hundred forty clock hours of verified work experience in an industrial or emerging technology occupational area.
      - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
        - (1) A valid Arizona provisional or standard teaching certificate issued pursuant to this Article;
        - (2) One year of the most recent teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a PreK-12 school setting and issued during the term of the Arizona teaching certificate exhibiting satisfactory performance in the classroom;
        - (3) Three semester hours of courses in career and technical education methods or content in an industrial or emerging technology occupational area; and
        - (4) Two hundred forty clock hours of verified work experience in an industrial or emerging technology occupational area.
      - iii. Option C – Business and industry professional: Six thousand clock hours of verified work experience in an industrial or emerging technology occupational area.
      - iv. Option D – Valid teaching certificate in career and technical education from another state: A valid teaching certificate in career and technical industrial arts education, career and technical industrial technology education or emerging technologies from another state.
      - v. Option E – Bachelor’s degree in industrial and emerging technologies education teacher preparation program:
        - (1) A bachelor’s or more advanced degree in an industrial or emerging technologies education teacher preparation program from an accredited institution, and
        - (2) Two hundred forty clock hours of verified work experience in an industrial or emerging technologies occupational area.
    3. The holder of this certificate shall receive a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers before the extension of the provisional career and technical education certificate - Industrial and Emerging Technologies. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
      - a. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application;
      - b. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application; or
      - c. A current certificate from the National Board for Professional Teaching Standards.

**M. Standard Career and Technical Education (CTE) Certificate - Industrial and Emerging Technologies – grades K through 12**

    1. The certificate is valid for six years.
    2. The requirements are:
      - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
      - b. One of the following options:
        - i. Option A – Bachelor’s degree in industrial or emerging technologies:
          - (1) Qualification under Option A for the provisional career and technical education certificate - Industrial and Emerging Technologies Careers;
          - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Industrial and Emerging Technologies. Fifteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
          - (3) Two years of teacher evaluations approved by a certified administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the Arizona provisional CTE teaching certificate - Industrial and Emerging Technology exhibiting satisfactory performance in the classroom.
        - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
          - (1) Qualification under Option B for the provisional career and technical education certificate - Industrial and Emerging Technologies;
          - (2) Two years of teacher evaluation(s)

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- approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Industrial and Emerging Technologies exhibiting satisfactory performance in the classroom;
- (3) Twelve semester hours of courses in professional knowledge to include:
    - (a) Nine semester hours of courses in Industrial and Emerging Technologies subject knowledge; and
    - (b) Three semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Industrial and Emerging Technologies. Twelve semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
  - (4) An additional 240 clock hours of verified work experience in an industrial or emerging technologies occupational area. Hours may have been accumulated before obtaining the provisional certification.
- iii. Option C – Business and industry professional:
- (1) Qualification under Option C for the provisional career and technical education certificate - Industrial and Emerging Technologies;
  - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Industrial and Emerging Technologies exhibiting satisfactory performance in the classroom; and
  - (3) Fifteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional design/methodology, assessment/evaluation, instructional technology, educational philosophy, or classroom management. Fifteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour.
- iv. Option D – Valid teaching certificate in career and technical education from another state:
- (1) Qualification under Option D for the provisional career and technical education certificate - Industrial and Emerging Technologies; and
  - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Industrial and Emerging Technologies exhibiting satisfactory performance in the classroom.
- v. Option E – Bachelor's degree in industrial or emerging technologies education teacher preparation program:
- (1) Qualification under Option E for the provisional career and technical education certificate - Industrial and Emerging Technologies;
  - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Industrial and Emerging Technologies. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
  - (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Industrial and Emerging Technologies exhibiting satisfactory performance in the classroom.
- c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
- i. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
  - ii. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original

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- score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
- iii. A current certificate from the National Board for Professional Teaching Standards.
- N. Provisional Career and Technical Education (CTE) Certificate - Education and Training – grades K through 12**
1. The certificate is valid for three years.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - b. One of the following options:
      - i. Option A – Bachelor’s degree:
        - (1) A bachelor’s or more advanced degree in education or training field from an accredited institution,
        - (2) Thirty semester hours of courses in education or training, and
        - (3) Two hundred forty clock hours of verified work experience in an education or training occupational area.
      - ii. Option B – Valid non-CTE Arizona teaching certificate or an Arizona CTE teaching certificate in another content area:
        - (1) A valid Arizona teaching certificate issued pursuant to this Article;
        - (2) One year of the most recent teacher evaluations conducted by a certificated administrator, or the administrator’s designee, in a PreK-12 school setting and issued during the term of the Arizona teaching certificate exhibiting satisfactory performance in the classroom;
        - (3) Three semester hours of courses in career and technical education methods or content in education and training; and
        - (4) Two hundred forty clock hours of verified work experience in an education or training occupational area.
      - iii. Option C – Business and industry professional: Six thousand clock hours of verified work experience in an education or training occupational area.
      - iv. Option D – Valid teaching certificate in career and technical education from another state: A valid teaching certificate in career and technical education or an education or training area from another state.
      - v. Option E – Bachelor’s degree in education or training teacher preparation program:
        - (1) A bachelor’s or more advanced degree in an education or training teacher preparation program from an accredited institution, and
        - (2) Two hundred forty clock hours of verified work experience in an education or training occupational area.
    3. The holder of this certificate shall receive a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers before the extension of the provisional career and technical education certificate - Education and Training. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
      - a. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
      - b. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
      - c. A current certificate from the National Board for Professional Teaching Standards.

**O. Standard Career and Technical Education (CTE) Certificate - Education and Training – grades K through 12**

    1. The certificate is valid for six years.
    2. The requirements are:
      - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
      - b. One of the following options:
        - i. Option A – Bachelor’s degree in education and training:
          - (1) Qualification under Option A for the provisional career and technical education certificate - Education and Training;
          - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Education and Training. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
          - (3) Two years of teacher evaluations approved by a certified administrator, or the administrator’s designee, in a CTE school setting and issued during the term of the Arizona provisional CTE teaching certificate - Education and Training exhibiting satisfactory performance in the classroom;
        - ii. Option B – Valid non-CTE Arizona teaching certificate or Arizona teaching certificate in another content area:
          - (1) Qualification under Option B for the provisional career and technical education certificate - Education and Training;
          - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator’s designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Education and Training exhibiting satisfactory performance in the classroom;
          - (3) Twelve semester hours of courses in pro-

- professional knowledge to include:
- (a) Nine semester hours of courses in education and training subject knowledge; and
  - (b) Three semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation, or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Education and Training. Twelve semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
- (4) An additional 240 clock hours of verified work experience in an education and training occupational area. Hours may have been accumulated before obtaining the provisional certification.
- iii. Option C – Business and industry professional:
    - (1) Qualification under Option C for the provisional career and technical education certificate - Education and Training;
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Education and Training exhibiting satisfactory performance in the classroom; and
    - (3) Fifteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional design/methodology, assessment/evaluation, instructional technology, educational philosophy, or career and technical education classroom management. Fifteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour.
  - iv. Option D – Valid teaching certificate in career and technical education from another state:
    - (1) Qualification under Option D for the provisional career and technical education certificate - Education and Training; and
    - (2) Two years of teacher evaluation(s) approved by a certificated administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Education and Training exhibiting satisfactory performance in the classroom.
  - v. Option E – Bachelor's degree in education and training teacher preparation program:
    - (1) Qualification under Option E for the provisional career and technical education certificate - Education and Training;
    - (2) Eighteen semester hours of courses in professional knowledge to include any of the following areas: principles/philosophy of career and technical education, operation of a career and technical student organization, methods of teaching career and technical education, curriculum design/development, instructional technology, educational philosophy, instructional design/methodology, assessment/evaluation or classroom management. Hours may be obtained prior to issuance of the provisional career and technical education certificate - Education and Training. Eighteen semester hours may be obtained through Department-CTE approved professional development. Fifteen clock hours equals one semester hour; and
    - (3) Two years of teacher evaluation(s) approved by a certified administrator, or the administrator's designee, in a secondary CTE school setting and issued during the term of the provisional career and technical education certificate - Education and Training exhibiting satisfactory performance in the classroom.
  - c. A passing score on the Professional Knowledge portion of the Arizona Teacher Proficiency Assessment for secondary teachers. The Professional Knowledge assessment shall be waived for applicants who submit verification of one of the following:
    - i. A passing score on a comparable Professional Knowledge examination from another state or agency taken within the past seven years. Submit the original score report at time of application,
    - ii. A passing score on a comparable Professional Knowledge examination from another state or agency taken more than seven years ago and five years of full-time teaching experience within the past seven years. Submit the original score report and a letter on official letterhead from the District Superintendent or Personnel Director to verify teaching experience at time of application, or
    - iii. A current certificate from the National Board for Professional Teaching Standards.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Section R7-2-612 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 2562, effective May 23, 2002 for a period of 180 days (Supp. 02-2). May 23, 2002 emergency rulemaking renewed under A.R.S. § 41-1026 at 8 A.A.R. 5132, effective November 19, 2002 (Supp. 02-4). Amended by final

rulemaking at 9 A.A.R. 1605, effective May 5, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 1885, effective June 26, 2005 (Supp. 05-2). Amended by exempt rulemaking at 15 A.A.R. 1292, effective June 26, 2006 (Supp. 09-1). Amended by exempt rulemaking at 15 A.A.R. 1893, effective September 25, 2006 (Supp. 09-2).

Amended by exempt rulemaking at 15 A.A.R. 2086, effective May 19, 2008 (Supp. 09-3). Former R7-2-612 recodified to R7-2-613 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). New Section made by exempt rulemaking at 15 A.A.R. 2143, effective August 25, 2008 (Supp. 09-4). Former R7-2-612 recodified to R7-2-613; new R7-2-612 recodified from R7-2-611 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1).

Amended by exempt rulemaking at 16 A.A.R. 102, effective May 1, 2009 (Supp. 10-1). Amended by final exempt rulemaking at 21 A.A.R. 2063, effective August 26, 2013 (Supp. 15-3).

#### **R7-2-612.01. Standard Specialized Career and Technical Education (CTE) Certificates – grades K-12**

- A.** Standard Specialized CTE certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619.
- B.** The certificate is valid for eight years.
  1. The holder is qualified to teach CTE Agriculture, CTE Business and Marketing, CTE Education and Training, CTE Family and Consumer Sciences, CTE Health Careers, or CTE Industrial and Emerging Technologies as specified on the certificate.
  2. The requirements are:
    - a. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
    - b. Demonstration of expertise in the specified CTE area through one of the following:
      - i. A Bachelor's or more advanced degree in the specified CTE area; or
      - ii. A Bachelor's or more advanced degree and completion of twenty-four semester hours of coursework in the specified CTE area; or
      - iii. An Associate's degree in the specified CTE area; or
      - iv. An industry certification, license, or credential in the specified CTE area approved by the appropriate Department of Education Career and Technical Education Program Specialist or Career and Technical Education Program Services Director.
    - c. Verification of five years of work experience in the specified CTE occupational area.

#### **Historical Note**

New Section made by final exempt rulemaking at 22 A.A.R. 2617, effective August 22, 2016 (Supp. 16-4).

#### **R7-2-613. PreK-12 Teaching Certificates**

- A.** Except as noted, all certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619.
- B.** Provisional PreK-12 Arts Education Certificate: art, dance, dramatic arts or music.
  1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree.
    - b. One of the following:
      - i. Completion of a teacher preparation program in PreK-12 arts education in one of the following approved areas: art, dance, dramatic arts or music from a Board-approved teacher preparation program, described in R7-2-604; or
      - ii. Completion of a teacher preparation program in PreK-12 arts education in one of the following approved areas: art, dance, dramatic arts or music from an institution accredited by the National Association of Schools of Art and Design, National Association of Schools of Dance, National Association of Schools of Theatre, the National Association of Schools of Music, or National Council for Accreditation of Teacher Education; or
      - iii. Thirty semester hours of education or arts education courses which teach the knowledge and skills described in R7-2-602, including at least eight semester hours of elementary and secondary methods in the certificate area and 12 semester hours of practicum in the certificate area grades PreK-12. Two years of verified full-time teaching experience in the certificate area in grades PreK-12 may substitute for the 12 semester hours of practicum; or
      - iv. A valid PreK-12 arts education certificate from another state.

- C.** Standard PreK-12 Arts Education Certificate: for art, dance, dramatic arts or music.
  1. The certificate is valid for six years.
  2. The requirements are:
    - a. The provisional PreK-12 Arts Education certificate.
    - b. Two years of verified teaching experience will be accepted in lieu of the performance portion of the Arizona Teacher Proficiency Assessment.
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- D.** Provisional PreK-12 Physical Education Certificate.
  1. The certificate is valid for three years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. The requirements are:
    - a. A bachelor's degree.
    - b. One of the following:
      - i. Completion of a teacher preparation program in PreK-12 physical education, including 12 semester practicum hours evenly split between elementary and secondary physical education from an accredited institution or a Board-approved teacher preparation program; or
      - ii. Thirty-three semester hours of education or physical education courses, including:
        - (1) At least nine semester hours of elementary, secondary and adaptive physical education methods;
        - (2) Foundational coursework in the areas of



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Growth and Motor Development, Movement Activities, Lifelong Physical Fitness and Comprehensive School Physical Activity Programming; and

- (3) Twelve semester hours of practicum in physical education in PreK-12 grades, evenly split between elementary and secondary physical education, and supervised by a licensed or certified physical education teacher. Two years of verified full-time teaching experience in the certificate area in grades PreK-12 may substitute for the twelve semester hours of practicum; or

- iii. A valid PreK-12 physical education certificate from another state.

- c. A passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment.
- d. A passing score on the Physical Education subject knowledge portion of the Arizona Teacher Proficiency Assessment.
- e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**E. Standard PreK-12 Physical Education Certificate**

1. The certificate is valid for six years.
2. The requirements are:
  - a. The provisional PreK-12 Physical Education certificate.
  - b. Two years of verified teaching experience will be accepted in lieu of the performance portion of the Arizona Teacher Proficiency Assessment.
  - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4).  
 Amended by final rulemaking at 10 A.A.R. 4581, effective December 18, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 1885, effective June 26, 2005 (Supp. 05-2). Amended by exempt rulemaking at 15 A.A.R. 1225, effective December 5, 2006 (Supp. 09-1). Amended by exempt rulemaking at 15 A.A.R. 1259, effective March 26, 2007 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1298, effective July 18, 2007 (Supp. 09-3). Former R7-2-613 recodified to R7-2-614; new R7-2-613 recodified from R7-2-612 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-613 recodified to R7-2-614; new R7-2-613 recodified from R7-2-612 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 235, effective December 7, 2009 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 21 A.A.R. 2073, effective June 22, 2015 (Supp. 15-3).

**R7-2-614. Other Teaching Certificates**

- A.** Except as noted, all certificates are subject to the general certification provisions in R7-2-607.
- B.** Substitute Certificate -- PreK-12
  1. The certificate is valid for six years and renewable by reapplication.
  2. The certificate entitles the holder to substitute in the temporary absence of a regular contract teacher. A person holding only a substitute certificate shall not be assigned a contract teaching position.

3. An individual who holds a valid teaching or administrator certificate shall not be required to hold a substitute certificate to be employed as a substitute teacher.
4. A person holding only a substitute certificate shall be limited to teaching 120 days in the same school each school year.
5. The requirement for issuance is a bachelor's degree and a valid fingerprint clearance card issued by the Arizona Department of Public Safety.
6. Substitute certificates previously issued as valid for life under this rule shall remain valid for life.
7. A person holding only a substitute certificate may be exempt from the limit on teaching 120 days in the same school each school year if the school district superintendent has provided verification to the Department of Education that the position is continuously advertised on a statewide basis at a minimum of three sites with at least one being a higher education institution and that a highly qualified and employable candidate was not found. An exemption from teaching 120 days shall not be granted to the same individual more than three times.

**C. Emergency Substitute Certificate -- PreK-12**

1. The certificate is valid for one school year or part thereof. The expiration date shall be the following July 1.
2. The certificate entitles the holder to substitute only in the district that verifies that an emergency employment situation exists.
3. The certificate entitles the holder to substitute in the temporary absence of a regular contract teacher. A person holding only an emergency substitute certificate shall not be assigned a contract teaching position.
4. The holder of an emergency substitute certificate shall be limited to 120 days of substitute teaching per school year.
5. The requirements for initial issuance are:
  - a. High school diploma, General Education diploma, or associate's degree;
  - b. Verification from the school district superintendent that an emergency employment situation exists; and
  - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
6. The requirements for each reissuance are:
  - a. Two semester hours of academic courses completed since the last issuance of the Emergency Substitute Certificate. District in-service programs designed for professional development may substitute for academic courses. Fifteen clock hours of in-service is equivalent to one semester hour. In-service hours shall be verified by the district superintendent or personnel director. Individuals who have earned 30 or more semester hours are exempt from this requirement.
  - b. Verification from the school district superintendent that an emergency employment situation exists, and
  - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**D. Emergency Teaching Certificate -- birth through grade 12**

1. The emergency teaching certificate is valid one school year or part thereof. The expiration date shall be the following July 1. An emergency teaching certificate shall not be issued more than three times to an individual. An individual that receives an intern certificate and does not complete the requirements for a provisional certificate shall not be eligible for an emergency certificate.
2. The emergency teaching certificate entitles the holder to enter into a teaching contract.

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3. Emergency teaching certificates shall be issued for early childhood, elementary, secondary, and special education certificates required by A.R.S. § 15-502(B), and required endorsements.
  4. The emergency teaching certificate entitles the holder to teach only in the district or charter school that verifies that an emergency employment situation exists.
  5. The requirements for initial issuance are:
    - a. A bachelor's degree,
    - b. Verification from the school district superintendent or charter school administrator that an emergency employment situation exists,
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety,
    - d. Verification from the school district superintendent or charter school administrator that the following requirements have been met and that a highly qualified and employable candidate was not found:
      - i. The position was advertised on a statewide basis and with at least three career placement offices of higher education institutions, and
      - ii. The district or charter school is participating in any available Board approved alternative path to certification program(s). This requirement may be waived if a district superintendent or charter school administrator provides evidence that an alternative path to certification program is either not available or not capable of alleviating the emergency employment situation.
  6. In addition to the requirements listed in subsection (D)(5) the requirements for reissuance shall include six semester hours of education courses completed since the last issuance of the emergency teaching certificate.
- E. Teaching Intern Certificate -- PreK-12**
1. Except as noted, the teaching intern certificate is subject to the general certification provisions in R7-2-607.
  2. The certificate is valid for one year from the date of initial issuance and may be extended yearly for no more than two consecutive years at no cost to the applicant if the provisions in subsection (E)(6) are met.
  3. The teaching intern certificate entitles the holder to enter into a teaching contract while completing the requirements for an Arizona teaching certificate. During the valid period of the intern certificate the holder may teach in a Structured English Immersion classroom, or in any subject area in which the holder has passed the appropriate Arizona Teacher Proficiency Assessment. Teaching Intern certificate holders who teach in a Structured English Immersion classroom shall hold a valid Provisional or full Structured English Immersion Endorsement, an English as a Second Language Endorsement, or a Bilingual Endorsement. The candidate shall be enrolled in a Board authorized alternative path to certification program or a Board approved teacher educator preparation program.
  4. An individual is not eligible to hold the teaching intern certificate more than once in a five year period.
  5. The requirements for initial issuance of the teaching intern certificate are:
    - a. A bachelor's degree or higher from an accredited institution;
    - b. A passing score on one or more subject knowledge portions of the Arizona Teacher Proficiency Assessment that corresponds to the Board approved alternative path to certification program, or Board approved educator preparation program, in which the applicant is enrolled;
    - c. Verification of enrollment in a Board approved alternative path to certification program, or a Board approved educator preparation program; and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  6. The requirements for the extension of the intern teaching certificate are:
    - a. The teaching intern certificate outlined in subsection (E)(5),
    - b. Official transcripts documenting the completion of required coursework,
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  7. The holder of the teaching intern certificate may apply for an Arizona Teaching Certificate upon completion of the following:
    - a. Successful completion of a Board authorized alternative path to certification program or a Board approved educator preparation program. This shall include satisfactory completion of a field experience or capstone experience of no less than one full academic year. The field experience or capstone experience shall include performance evaluations in a manner that is consistent with policies for the applicable alternative professional preparation program, as described pursuant to R7-2-604.04(B)(5),
    - b. A passing score on the required professional knowledge portion of the Arizona Teacher Proficiency Assessment;
    - c. The submission of an application for the provisional teaching certificate to the Department,
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  8. Placement decisions of teaching intern certificate holders shall only be based on agreements between the educator preparation provider, the provider's partner organizations and the local education agency except as otherwise provided in R7-2-614(E).
- F. Adult Education Certificates**
1. The adult education certificates are issued for individuals teaching in the areas of Adult Basic Education, Adult Secondary Education, English Language Acquisition for Adults, or Citizenship.
  2. Provisional Adult Education Certificate.
    - a. The certificate is valid for three years and is not renewable.
    - b. The requirement for issuance is a valid fingerprint clearance card issued by the Arizona Department of Public Safety and a bachelor's degree or three years of experience as a teacher, tutor, or aide in an adult education program or in grades K through 12. Up to two years of experience may be waived by postsecondary academic credit, with 30 semester hours equivalent to one year of experience.
  3. Standard Adult Education Certificate.
    - a. The certificate is valid for six years.
    - b. The requirements are:
      - i. One year of part-time or full-time teaching experience under a provisional adult education certificate, verified by an adult education program administrator;
      - ii. Completion of 10 clock hours in a professional development program described in R7-2-

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- 619(B) since the issuance of the provisional adult education certificate; and
- iii. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  - c. The renewal requirements are completion of 60 clock hours in a professional development program, described in R7-2-619(B).
- G. Junior Reserve Officer Training Corps Teaching Certificate – grades nine through 12**
- 1. The certificate is valid for six years and is renewable upon application.
  - 2. The certificate is valid at any local education agency which conducts an approved Junior Reserve Officer Training Corps program of the Air Force, Army, Navy, or Marine Corps.
  - 3. The requirements are:
    - a. Verification by the district of an approved Junior Reserve Officer Training Corps program of instruction in which the applicant will be teaching,
    - b. Verification by the district that the applicant meets the work experience required by the respective military service, and
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- H. Athletic coaching certificate – grades seven through 12**
- 1. The certificate is valid for six years.
  - 2. The certificate entitles the holder to perform coaching duties in interscholastic and extracurricular athletic activities. It is not required for teachers who hold a valid elementary, secondary or special education certificate.
  - 3. The requirements are:
    - a. Valid certification in first aid and Coronary and Pulmonary Resuscitation (CPR);
    - b. Completion of 15 semester hours of courses which shall include at least three semester hours in courses related to each of the following:
      - i. Methods of coaching,
      - ii. Anatomy and physiology,
      - iii. Sports psychology,
      - iv. Adolescent psychology, and
      - v. The prevention and treatment of athletic injuries;
    - c. Two hundred fifty hours of verified coaching experience in the sport to be coached. Coaching experience may include experience as a head coach or assistant coach in a school program or in an organized athletic league; and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  - 4. Renewal requirements are:
    - a. Completion of 60 clock hours in a professional development program described in R7-2-619(B),
    - b. Valid certification in first aid and CPR.
- I. Provisional Foreign Teacher Teaching Certificate**
- 1. This certificate is required for a teacher or professor from any foreign country, state, territory or possession of the United States contracted through the foreign teacher exchange program as authorized by federal statutes enacted by the Congress of the United States or other foreign teacher recruitment programs approved by the United States Department of State.
  - 2. This certificate is valid for one year and may be extended yearly for up to two additional years upon request by the contracting governing board. The contracting teacher shall submit a letter of intent to hire to the Arizona Department of Education on official letterhead signed by the Superintendent or Director of Human Resources.
- 3. The requirements are:**
- a. Verification that training and background comply with the comparable Arizona teaching certificate as provided in R7-2-608, R7-2-609(B)(2), R7-2-610(B)(2), R7-2-611(C)(3), (E)(3), (G)(2), (I)(2), (K)(2), (M)(2), R7-2-612(D)(2), (F)(2), (H)(2), (J)(2), or (L)(2) and R7-2-613.
  - b. Holds a valid fingerprint Clearance Card issued by the Arizona Department of Public Safety.
  - c. Demonstrates fluency in English as verified by the Test of English as a Foreign Language (TOEFL) or other English proficiency tests approved by the Board.
  - d. The passing score by the Test of English as a Foreign Language (TOEFL) or other English proficiency tests approved by the Board shall be determined by the Board using the results of validity and reliability studies. The passing score for each assessment shall be reviewed by the Board at least every three years.
- 4. A prospective teacher seeking to instruct in a language other than English may furnish a letter for submission to the Arizona Department of Education, on official letterhead, signed by the dean or designee of the home university to verify mastery of the purposed language of instruction. The Arizona Department of Education shall review and may approve submissions for the prospective teacher's exemption to the American Council of the Teaching of Foreign Languages Exam.**
- J. Native American Language Certificate**
- 1. The certificate is optional and issued to individuals to teach only a Native American language in grades preK-12.
  - 2. The certificate is valid for six years.
  - 3. The requirements are:
    - a. A valid IVP fingerprint clearance card issued by the Arizona Department of Public Safety.
    - b. Language proficiency in a Native American Language. Proficiency shall be verified on official letterhead by a person, persons, or entity designated by the appropriate tribe.
  - 4. The certificate may be renewed upon completion of 60 clock hours of professional development, as prescribed in R7-2-619(B).

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4).  
 Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Section R7-2-614 amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 3739, effective August 5, 2002 for a period of 180 days (Supp. 02-3). Emergency rulemaking renewed under A.R.S. § 41-1026 at 9 A.A.R. 522, effective January 31, 2003 for a period of 180 days (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 1605, effective May 5, 2003 (Supp. 03-2). Amended by exempt rulemaking at 15 A.A.R. 1304, effective June 26, 2006 (Supp. 09-1).  
 Amended by exempt rulemaking at 15 A.A.R. 1898, effective April 28, 2008 (Supp. 09-2). Former R7-2-614 recodified to R7-2-615; new R7-2-614 recodified from R7-2-613 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-614 recodified to R7-2-615; new R7-2-614 recodified from R7-2-613 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 52, effective December

8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 63, effective June 22, 2009 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 728, effective March 22, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). R7-2-614(J) amended by final exempt rulemaking at 21 A.A.R. 2073, effective August 27, 2012; R7-2-614(I) amended by final exempt rulemaking at 21 A.A.R. 2073, effective June 24, 2013; R7-2-614(B)(C)(E) amended by final exempt rulemaking at 21 A.A.R. 2073, effective January 26, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 667, effective January 25, 2016; filed in the Office March 1, 2016 (Supp. 16-3). Amended by final exempt rulemaking at 22 A.A.R. 2617, effective August 22, 2016 (Supp. 16-4).

#### **R7-2-615. Endorsements**

- A.** An endorsement shall be automatically renewed with the certificate on which it is posted.
- B.** Except as noted, all endorsements are subject to the general certification provisions in R7-2-607.
- C.** Endorsements which are optional as specified herein may be required by local governing boards.
- D.** Special subject endorsements – grades K through 12
  1. Special subject endorsements shall be issued in the area of art, computer science, dance, dramatic arts, music, or physical education.
  2. Special subject endorsements are optional.
  3. The requirements are:
    - a. An Arizona elementary, secondary, or special education certificate;
    - b. One course in the methods of teaching the subject at the elementary level and one course in the methods of teaching the subject at the secondary level; and
    - c. One of the following:
      - i. Thirty semester hours of courses in the subject area which may include the courses listed in subsection (D)(3)(b);
      - ii. A passing score on the subject area portion of the Arizona Teacher Proficiency Assessment, if an assessment has been adopted by the Board; or
      - iii. A passing score on a comparable out-of-state subject area assessment.
- E.** Mathematics Specialist Endorsement – grades K through eight. This subsection is valid until June 30, 2011.
  1. The mathematics specialist endorsement is optional.
  2. The requirements are:
    - a. An Arizona elementary or special education certificate,
    - b. Three semester hours of courses in the methods of teaching elementary school mathematics, and
    - c. Fifteen semester hours of courses in mathematics education for teachers of elementary or middle school mathematics.
- F.** Mathematics Endorsement – grades K through eight. This subsection becomes effective on July 1, 2011.
  1. The mathematics endorsement is optional for all K through eight teachers, but recommended for an individual in the position of mathematics specialist, consultant, interventionist, or coach. Nothing in this Section prevents school districts from requiring certified staff to obtain a mathematics endorsement as a condition of employment. The mathematics endorsement does not waive the requirements set forth in R7-2-607(J).
  2. The requirements are:
    - a. An Arizona elementary or special education certificate;
    - b. Three years of full-time teaching experience in grades K through eight; and
    - c. Eighteen semester hours to include:
      - i. Three semester hours of data analysis, probability, and discrete mathematics;
      - ii. Three semester hours of geometry and measurement;
      - iii. Six semester hours of patterns, algebra, and functions; and
      - iv. Six semester hours of number and operations.
    - d. Six semester hours to include:
      - i. Three semester hours of mathematics classroom assessment;
      - ii. Three semester hours of research-based practices, pedagogy, and instructional leadership in mathematics.
    - e. A passing score on the middle school mathematics knowledge portion of the Arizona Educator Proficiency Assessment may be substituted for the 18 semester hours described in subsection (F)(2)(c).
    - f. Completion of a comparable valid mathematics specialist certificate or endorsement from another state may be substituted for the requirements described in subsection (F)(2)(c) and (d).
- G.** Reading Specialist Endorsement – grades K through 12. This subsection is valid until June 30, 2011.
  1. The reading specialist endorsement shall be required of an individual in the position of reading specialist, reading consultant, remedial reading teacher, special reading teacher, or in a similar position.
  2. The requirements are:
    - a. An Arizona elementary, secondary, or special education certificate; and
    - b. Fifteen semester hours of courses to include decoding, diagnosis and remediation of reading difficulties, and practicum in reading.
- H.** Reading Endorsement. This subsection becomes effective on July 1, 2011.
  1. A reading endorsement shall be required of an individual in the position of reading or literacy specialist, reading or literacy coach, and reading or literacy interventionist.
  2. Reading Endorsement for grades K through eight. The requirements are:
    - a. A valid Arizona elementary special education or early childhood certificate,
    - b. Three years of full-time teaching experience,
    - c. Three semester hours of a supervised field experience or practicum in reading completed for the grades K through eight, and
    - d. One of the following:
      - i. Twenty-one semester hours beyond requirements of initial provisional or standard teaching certificate to include the following:
        - (1) Three semester hours in the theoretical and research foundations of language and literacy;
        - (2) Three semester hours in the essential elements of elementary reading and writing instruction (K through eight);
        - (3) Three semester hours in the elements of elementary content area reading and writing (K through eight);
        - (4) Six total semester hours in reading assessment systems;

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- (5) Three semester hours in leadership; and
    - (6) Three semester hours of elective courses in an area of focus that will deepen knowledge in the teaching of reading to elementary students, such as children's literature, or teaching reading to English Language Learners.
  - ii. Proof of a comparable valid reading specialist certificate or endorsement from another state may be substituted for the requirements described in subsections (H)(2)(c) and (d)(i).
  - e. A passing score on the reading endorsement subject knowledge portion of the Arizona Educator Proficiency Assessment for grades K through eight may be substituted for 21 semester hours of reading endorsement coursework as described in subsection (H)(2)(d)(i).
3. Reading Endorsement for grades six through 12. The requirements are:
- a. A valid Arizona elementary, secondary, or special education certificate;
  - b. Three years of full-time teaching experience;
  - c. Three semester hours of supervised field experience or practicum in reading completed for the grades six through 12; and
  - d. One of the following:
    - i. Twenty-one semester hours beyond requirements of initial provisional or standard teaching certificate to include the following:
      - (1) Three semester hours in the theoretical and research foundations of language and literacy;
      - (2) Three semester hours in the essential elements of reading and writing instruction for adolescents (grades six through 12);
      - (3) Three semester hours in the elements of content area reading and writing for adolescents (grades six through 12);
      - (4) Six total semester hours in reading assessment systems;
      - (5) Three semester hours in leadership; and
      - (6) Three semester hours of elective courses in an area of focus that will deepen knowledge in the teaching of reading such as adolescent literature, or teaching reading to English Language Learners.
    - ii. Proof of a comparable valid reading specialist certificate or endorsement from another state may be substituted for the requirements described in subsections (H)(3)(c) and (d)(i).
  - e. A passing score on the reading endorsement subject knowledge portion of the Arizona Educator Proficiency Assessment for grades six through 12 may be substituted for 21 semester hours of reading endorsement coursework as described in subsection (H)(3)(d)(i).
4. Reading Endorsement – grades K through 12. The requirements are:
- a. A valid Arizona elementary, secondary, special education certificate or early childhood certificate;
  - b. Three years of full-time teaching experience;
  - c. Three semester hours of a supervised field experience or practicum in reading completed for the grades K through five;
  - d. Three semester hours of a supervised field experience or practicum in reading completed for the grades six through 12; and
  - e. One of the following:
    - i. Twenty-four semester hours beyond requirements of initial provisional or standard teaching certificate to include the following:
      - (1) Three semester hours in the theoretical and research foundations of language and literacy,
      - (2) Three semester hours in the essential elements of elementary reading and writing instruction (grades K through eight),
      - (3) Three semester hours in the essential elements of reading and writing instruction for adolescents (grades six through 12),
      - (4) Three semester hours in the elements of elementary content area reading and writing (grades K through eight),
      - (5) Three semester hours in the elements of content area reading and writing for adolescents (grades six through 12),
      - (6) Six total semester hours in reading assessment systems, and
      - (7) Three semester hours in leadership,
    - ii. Proof of a comparable valid reading specialist certificate or endorsement from another state may be substituted for the requirements described in subsections (H)(4)(c), (d) and (e)(i).
  - f. A passing score on the reading endorsement subject knowledge portion of the Arizona Educator Proficiency Assessment for grades K through eight and a passing score on the reading endorsement professional knowledge portion of the Arizona Educator Proficiency Assessment for grades six through 12 may be substituted for 24 semester hours of reading endorsement coursework as described in subsection (H)(4)(e)(i).
- I. Elementary Foreign Language Endorsement – grades K through eight**
- 1. The elementary foreign language endorsement is optional.
  - 2. The requirements are:
    - a. An Arizona elementary, secondary or special education certificate.
    - b. Proficiency in speaking, reading, and writing a language other than English, verified by the appropriate language department of an accredited institution. American Indian language proficiency shall be verified by an official designated by the appropriate tribe.
    - c. Three semester hours of courses in the methods of teaching a foreign language at the elementary level.
- J. Bilingual Endorsements - PreK through 12**
- 1. A provisional bilingual endorsement or a bilingual endorsement is required of an individual who is a bilingual classroom teacher, bilingual resource teacher, bilingual specialist, or otherwise responsible for providing bilingual instruction.
  - 2. The provisional bilingual endorsement is valid for three years and is not renewable. The requirements are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate; and

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- b. Proficiency in a spoken language other than English, verified by one of the following:
      - i. A passing score on the Arizona Classroom Spanish Proficiency exam;
      - ii. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state;
      - iii. If an exam in the language is not offered through the Arizona Teacher Proficiency Assessment or the American Council on the Teaching of Foreign Languages, proficiency may be verified by the language department of an accredited institution. A minimum passing score of "Advanced Low" is required on the American Council on the Teaching of Foreign Languages for Speaking and Writing Exams in the foreign language;
      - iv. Proficiency in American Indian languages shall be verified by an official designated by the appropriate tribe; or
    - c. Proficiency in sign language is verified through 24 hours of coursework from an accredited institution.
  - 3. The holder of the bilingual endorsement is also authorized to teach English as a Second Language.
  - 4. The requirements are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate;
    - b. Completion of a bilingual education program from an accredited institution or the following courses:
      - i. Three semester hours of foundations of instruction for non-English-language-background students;
      - ii. Three semester hours of bilingual methods;
      - iii. Three semester hours of English as a Second Language for bilingual settings;
      - iv. Three semester hours of courses in bilingual materials and curriculum, assessment of limited-English-proficient students, teaching reading and writing in the native language, or English as a Second Language for bilingual settings;
      - v. Three semester hours of linguistics to include psycholinguistics, sociolinguistics, first language acquisition, and second language acquisition for language minority students, or American Indian language linguistics;
      - vi. Three semester hours of courses dealing with school, community, and family culture and parental involvement in programs of instruction for non-English-language-background students; and
      - vii. Three semester hours of courses in methods of teaching and evaluating handicapped children from non-English-language backgrounds. These hours are only required for bilingual endorsements on special education certificates.
    - c. A valid bilingual certificate or endorsement from another state may be substituted for the courses described in subsection (J)(4)(b);
    - d. Practicum in a bilingual program or two years of verified bilingual teaching experience; and
    - e. Proficiency in a spoken language other than English, verified by one of the following:
      - i. A passing score on the Arizona Classroom Spanish Proficiency exam;
      - ii. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state;
      - iii. If an exam in the language is not offered through the Arizona Teacher Proficiency Assessment or the American Council on the Teaching of Foreign Languages, proficiency may be verified by the language department of an accredited institution. A minimum passing score of "Advanced Low" is required on the American Council on the Teaching of Foreign Languages for Speaking and Writing Exams in the foreign language;
      - iv. Proficiency in American Indian languages shall be verified by an official designated by the appropriate tribe; or
- K. English as a Second Language (ESL) Endorsements – grades Pre-K through 12
  - 1. An ESL or bilingual endorsement is required of an individual who is an ESL classroom teacher, ESL specialist, ESL resource teacher, or otherwise responsible for providing ESL instruction.
  - 2. The provisional ESL endorsement is valid for three years and is not renewable. The requirements are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate; and
    - b. Six semester hours of courses specified in subsection (K)(3)(b), including at least one course in methods of teaching ESL students.
  - 3. The requirements for the ESL endorsement are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate;
    - b. Completion of an ESL education program from an accredited institution or the following courses:
      - i. Three semester hours of courses in foundations of instruction for non-English-language-background students. Three semester hours of courses in the nature and grammar of the English language, taken before January 1, 1999, may be substituted for this requirement;
      - ii. Three semester hours of ESL methods;
      - iii. Three semester hours of teaching of reading and writing to limited-English-proficient students;
      - iv. Three semester hours of assessment of limited-English-proficient students;
      - v. Three semester hours of linguistics; and
      - vi. Three semester hours of courses dealing with school, community, and family culture and parental involvement in programs of instruction for non-English-language-background students.
    - c. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state; or

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- c. Three semester hours of a practicum or two years of verified ESL or bilingual teaching experience, verified by the district superintendent;
  - d. Second language learning experience, which may include sign language. Second language learning experience may be documented by any of the following:
    - i. Six semester hours of courses in a single second language, or the equivalent, verified by the department of language, education, or English at an accredited institution;
    - ii. Completion of intensive language training by the Peace Corps, the Foreign Service Institute, or the Defense Language Institute;
    - iii. Placement by the language department of an accredited institution in a third-semester level;
    - iv. Placement at level 1-intermediate/low or more advanced score on the Oral Proficiency Interview, verified by the American Council for the Teaching of Foreign Languages;
    - v. Passing score on the Arizona Classroom Spanish Proficiency Examination approved by the Board; or
    - vi. Proficiency in an American Indian language, verified by an official designated by the appropriate tribe.
  - e. A valid ESL certificate or endorsement from another state may be substituted for the requirements described in subsection (K)(3)(b), (c) and (d).
- L. Structured English Immersion (SEI) Endorsements** Structured English Immersion (SEI) Endorsement - grades Pre-K through 12
- 1. From and after August 31, 2006, an SEI, ESL or bilingual endorsement is required of all classroom teachers, supervisors, principals and superintendents. For purposes of this rule, "supervisor," "principal" and "superintendent" means an individual who holds a supervisor, principal or superintendent certificate. An ESL or Bi-lingual endorsement obtained by a supervisor, principal, or superintendent on an Arizona teaching certificate may be added to a supervisor, principal, or superintendent certificate in order to satisfy the requirement in subsection (L)(1).
  - 2. The provisional SEI endorsement is valid for three years and is not renewable. The requirements are:
    - a. An Arizona elementary, secondary, special education, CTE, early childhood arts education, supervisor, principal or superintendent certificate; and
    - b. One semester hour or 15 clock hours of professional development in Structured English Immersion methods of teaching ELL students, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools through a training program that meets the requirements of A.R.S. § 15-756.09(B).
  - 3. The requirements for the SEI endorsement are an Arizona elementary, secondary, special education, CTE, early childhood, arts education supervisor, principal, or superintendent certificate; and one of the following:
    - a. Three semester hours of courses related to the teaching of the English Language Learner Proficiency Standards adopted by the Board, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools; or
    - b. Completion of 45 clock hours of professional development in the teaching of the English Language Learner Proficiency Standards adopted by the Board, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools through a training program that meets the requirements of A.R.S. § 15-756.09(B).
    - c. A passing score on the Structured English Immersion portion of the Arizona Teacher Proficiency Assessment.
  - 4. Nothing in this Section prevents school districts from requiring certified staff to obtain an ESL or bilingual endorsement as a condition of employment.
  - 5. The requirements for a SEI endorsement may be waived for a period not to exceed one year in accordance with certification reciprocity as prescribed in R7-2-621.
  - 6. The requirements for a SEI endorsement may be waived for a period not to exceed one year for individuals who graduate from administrator or teacher preparation programs that are not approved by the Board and meet all other applicable certification requirements.
  - 7. The requirements for a SEI endorsement may be waived for a period not to exceed one year for individuals who apply and otherwise qualify for a Provisional or Standard CTE Certificate pursuant to R7-2-612 under any option that does not require a valid Arizona teaching certificate.
- M. Gifted Endorsements – grades K through 12**
- 1. A gifted endorsement is required of individuals whose primary responsibility is teaching gifted students.
  - 2. The provisional gifted endorsement is valid for three years and is not renewable. The requirements are an Arizona elementary, secondary, or special education certificate and one of the following:
    - a. Two years of verified teaching experience in which most students were gifted,
    - b. Ninety clock hours of verified in-service training in gifted education, or
    - c. Six semester hours of courses in gifted education.
  - 3. Requirements for the gifted endorsement are:
    - a. An Arizona elementary, secondary, or special education certificate;
    - b. Completion of nine semester hours of upper division or graduate level courses in an academic discipline such as science, mathematics, language arts, foreign language, social studies, psychology, fine arts, or computer science; and
    - c. Two of the following:
      - i. Three years of verified teaching experience in gifted education as a teacher, resource teacher, specialist, or similar position, verified by the district; or
      - ii. A minimum of 135 clock hours of verified in-service training in gifted education; or
      - iii. Completion of 12 semester hours of courses in gifted education. District in-service programs in gifted education may be substituted for up to six semester hours of gifted education courses. Fifteen clock hours of in-service is equivalent to one semester hour. In-service hours shall be verified by the district superintendent or personnel director. Practicum courses shall not be accepted toward this requirement; or

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- iv. Completion of six semester hours of practicum or two years of verified teaching experience in which most students were gifted.
- N. Early Childhood Education Endorsements - birth through age 8**
- 8 Early Childhood Endorsements – birth through age 8**
1. When combined with an Arizona elementary education teaching certificate or an Arizona special education teaching certificate, the Early Childhood Endorsement may be used in lieu of an early childhood education certificate as described in R7-2-608. When combined with an Arizona cross-categorical, specialized special education, or severe and profound teaching certificate as described in R7-2-611, the Early Childhood endorsement may be used in lieu of an Early Childhood Special Education certificate.
  2. The provisional early childhood endorsement is valid for three years and is not renewable. The requirements are:
    - a. A valid Arizona elementary teaching certificate as provided in R7-2-609 or a valid Arizona special education teaching certificate as provided in R7-2-611, and
    - b. A passing score on the early childhood subject knowledge portion of the Arizona Teacher Proficiency Assessment.
  3. The requirements for the Early Childhood Endorsement are:
    - a. A valid Arizona elementary education teaching certificate as provided in R7-2-609 or a valid Arizona special education teaching certificate as provided in R7-2-611, and
    - b. Early childhood education coursework and practicum experience which includes both of the following:
      - i. Twenty-one semester hours of early childhood education courses to include all of the following areas of study:
        - (1) Foundations of early childhood education;
        - (2) Child guidance and classroom management;
        - (3) Characteristics and quality practices for typical and atypical behaviors of young children;
        - (4) Child growth and development, including health, safety and nutrition;
        - (5) Child, family, cultural and community relationships;
        - (6) Developmentally appropriate instructional methodologies for teaching language, math, science, social studies and the arts;
        - (7) Early language and literacy development;
        - (8) Assessing, monitoring and reporting progress of young children; and
      - ii. A minimum of eight semester hours of practicum including:
        - (1) A minimum of four semester hours in a supervised field experience, practicum, internship or student teaching setting serving children birth through preschool. One year of full-time verified teaching experience with children in birth through preschool may substitute for this student teaching experience. This verification may come from a school-based education program or center-based program licensed by the Department of Health Services or regulated by tribal or military authorities; and
        - (2) A minimum of four semester hours in a supervised student teaching setting serving children in kindergarten through grade three. One year of full-time verified teaching experience with children in kindergarten through grade three in an accredited school may substitute for this student teaching experience;
- c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
  - d. A passing score on the early childhood professional knowledge portion of the Arizona Educator Proficiency Assessment may be substituted for the 21 semester hours of early childhood education courses as described in subsection (N)(3)(b)(i); and
  - e. A passing score on the early childhood subject knowledge portion of the Arizona Educator Proficiency Assessment.
4. Teachers with a valid Arizona elementary education certificate or Arizona special education certificate meet the requirements of this Section with evidence of the following:
  - a. A minimum of three years infant/toddler, preschool or kindergarten through grade three classroom teaching experience; and
  - b. A passing score on the early childhood subject knowledge portion of the Arizona Educator Proficiency Assessment.
- O. Library-Media Specialist Endorsement – grades K through 12**
1. The library-media specialist endorsement is optional.
  2. Requirements are:
    - a. An Arizona elementary, secondary, or special education certificate;
    - b. A passing score on the Library Media Specialist portion of the Arizona Teacher Proficiency Assessment. A master's degree in Library Science may be substituted for a passing score on the assessment; and
    - c. One year of teaching experience.
- P. Middle Grade Endorsement – grades five through nine**
1. The middle grade endorsement is optional. The middle grade endorsement may expand the grades a teacher is authorized to teach on an elementary or secondary certificate.
  2. The requirements are:
    - a. An Arizona elementary or secondary certificate, and
    - b. Six semester hours of courses in middle grade education to include:
      - i. One course in early adolescent psychology;
      - ii. One course in middle grade curriculum; and
      - iii. A practicum or one year of verified teaching experience, in grades five through nine.
- Q. Drivers Education Endorsement**
1. The drivers education endorsement is optional.
  2. The requirements are:
    - a. An Arizona teaching certificate,
    - b. A valid Arizona driver's license,
    - c. One course in each of the following:
      - i. Safety education,
      - ii. Driver and highway safety education, and
      - iii. Driver education laboratory experience, and
    - d. A driving record with less than seven violation points and no revocation or suspension of driver's license within the two years preceding application.
  3. For the purposes of this Section, a course is defined as a 3 hour semester course offered by an accredited institution



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of higher learning or 45 clock hours of educational classes approved by the Department. Each semester hour of courses shall be equivalent to 15 clock hours of training. If semester hours are used, the required documentation for the semester hours shall be an official transcript.

- R. Cooperative Education Endorsement – grades K through 12**
1. The cooperative education endorsement is required for individuals who coordinate or teach CTE.
  2. The requirements are:
    - a. A provisional or standard CTE certificate in the areas of agriculture, business, family and consumer sciences, health occupations, marketing, or industrial technology; and
    - b. One course in CTE.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 15 A.A.R. 1838, effective August 29, 2006 (Supp. 09-1). Amended by exempt rulemaking at 15 A.A.R. 1306, effective September 26, 2006 (Supp. 09-1). Former R7-2-615 recodified to R7-2-616; new R7-2-615 recodified from R7-2-614 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-615 recodified to R7-2-616; new R7-2-615 recodified from R7-2-614 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 52, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 119, effective September 21, 2009 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 129, effective September 21, 2009 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 734, effective July 1, 2011 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by exempt rulemaking at 16 A.A.R. 1496, effective July 1, 2011 (Supp. 11-1). Amended by final exempt rulemaking at 22 A.A.R. 227, effective June 23, 2014; filed in the Office January 20, 2016 (Supp. 16-2). Amended by final exempt rulemaking at 22 A.A.R. 1912, effective October 1, 2011; filed in the Office July 1, 2016 (Supp. 16-3). Amended by final exempt rulemaking at 22 A.A.R. 219, effective June 5, 2015; filed in the Office January 20, 2016 (Supp. 16-4).

**R7-2-616. Administrative Certificates**

- A.** All certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2-619.
- B. Supervisor Certificate – grades PreK through 12**
1. Except for individuals who hold a valid Arizona principal or superintendent certificate, the supervisor certificate is required for all personnel whose primary responsibility is administering instructional programs, supervising certified personnel, or similar administrative duties.
  2. The certificate is valid for six years.
  3. The requirements are:
    - a. A valid Arizona early childhood, elementary, secondary, special education, CTE certificate or other professional certificate issued by the Department;
    - b. A master's or more advanced degree;
    - c. Three years of verified full-time teaching experience or related education services experience in a PreK through 12 setting;
    - d. Completion of a program in educational administration which shall consist of a minimum of 18 graduate semester hours of educational administration

courses which teach the knowledge and skills described in R7-2-603 to include three credit hours in school law and three credit hours in school finance;

- e. A practicum in educational administration or two years of verified educational administrative experience in grades PreK through 12;
  - f. A passing score on the Arizona Administrator Proficiency Assessment;
  - g. An SEI endorsement or an ESL endorsement or a Bilingual Endorsement; and
  - h. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- C. Principal Certificate – grades PreK through 12**
1. The principal certificate is required for all personnel who hold the title of principal, assistant principal, or perform the duties of principal or assistant principal as delineated in A.R.S. Title 15.
  2. The certificate is valid for six years.
  3. The requirements are:
    - a. A master's or more advanced degree,
    - b. Three years of verified teaching experience in grades PreK through 12,
    - c. Completion of a program in educational administration for principals including at least 30 graduate semester hours of educational administration courses teaching the knowledge and skills described in R7-2-603 to include three credit hours in school law and three credit hours in school finance,
    - d. A practicum as a principal or two years of verified experience as a principal or assistant principal under the supervision of a certified principal in grades PreK through 12,
    - e. A passing score on either the Principal or Superintendent portion of the Arizona Administrator Proficiency Assessment,
    - f. An SEI endorsement or an ESL endorsement or a Bilingual Endorsement, and
    - g. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- D. Superintendent Certificate – grades PreK through 12**
1. Individuals who hold the title of superintendent, assistant superintendent or associate superintendent and who perform duties directly relevant to curriculum, instruction, certified employee evaluations, and instructional supervision may obtain a superintendent certificate.
  2. The certificate is valid for six years.
  3. The requirements are:
    - a. A master's or more advanced degree including at least 60 graduate semester hours;
    - b. Completion of a program in educational administration for superintendents, including at least 36 graduate semester hours of educational administrative courses which teach the standards described in R7-2-603 to include three credit hours in school law and three credit hours in school finance;
    - c. Three years of verified full-time teaching experience or related education services experience in a PreK through 12 setting;
    - d. A practicum as a superintendent or two years verified experience as a superintendent, assistant superintendent, or associate superintendent in grades PreK through 12;
    - e. A passing score on the Superintendent portion of the Arizona Administrator Proficiency Assessment; and

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- f. An SEI endorsement or an ESL endorsement or a Bilingual endorsement; and
  - g. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- E. Interim Supervisor Certificate – grades Pre-K through 12
  - 1. Except as noted, the administrative interim certificate is subject to the general certification provisions in R7-2-607.
  - 2. The certificate is valid for one year from the date of initial issuance and may be extended yearly for no more than two consecutive years at no cost to the applicant if the provisions in subsection (F)(6) are met.
  - 3. The administrative interim certificate entitles the holder to perform the duties described in subsection (B)(1). The candidate shall be enrolled in a Board approved alternative path to certification program, or a Board authorized administrative preparation program.
  - 4. An individual is not eligible to hold the administrative interim certificate more than once in a five year period.
  - 5. The requirements for initial issuance of the administrative interim certificate are:
    - a. A valid Arizona early childhood, elementary, secondary, special education, CTE certificate, PreK through 12 Arts, or other professional certificate issued by the Department;
    - b. A bachelor's degree or higher in education from an accredited institution;
    - c. Three years of verified full-time teaching experience or related education services experience in a PreK through 12 setting;
    - d. Verification of enrollment in a Board approved alternative path to administrator certification program, or a Board approved administrator preparation program;
    - e. Verification the holder of the interim certificate shall be under the direct supervision of an Arizona certified district administrator or the appropriate county school superintendent; and
    - f. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  - 6. The requirements for the extension of the administrative interim certificate are:
    - a. Qualification for the initial issuance of the administrative interim certificate outlined in subsection (F)(5),
    - b. Official transcripts documenting the completion of required coursework,
    - c. Verification the holder of the interim certificate shall be under the direct supervision of an Arizona certified district administrator, and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  - 7. The holder of the administrative interim certificate may apply for an Arizona Supervisor Certificate upon completion of the following:
    - a. Successful completion of a Board approved alternative path to administrator certification program or a Board approved administrator preparation program. This shall include satisfactory completion of a field experience or capstone experience of no less than one full academic year. The field experience or capstone experience shall include performance evaluations in a manner that is consistent with policies for the applicable alternative professional preparation program, as described pursuant to R7-2-604.04(B)(5);
- b. A passing score on the Arizona Administrator Proficiency Assessment;
  - c. The submission of an application for the Supervisor certificate to the Department; and
  - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- F. Interim Principal Certificate – grades Pre-K through 12
  - 1. Except as noted, the administrative interim certificate is subject to the general certification provisions in R7-2-607.
  - 2. The certificate is valid for one year from the date of initial issuance and may be extended yearly for no more than two consecutive years at no cost to the applicant if the provisions in subsection (G)(6) are met.
  - 3. The administrative interim certificate entitles the holder to perform the duties described in subsection (C)(1). The candidate shall be enrolled in a Board approved alternative path to certification program, or a Board authorized administrative preparation program.
  - 4. An individual is not eligible to hold the administrative interim certificate more than once in a five year period.
  - 5. The requirements for initial issuance of the administrative interim certificate are:
    - a. A bachelor's degree or higher in education from an accredited institution;
    - b. Three years of verified full-time teaching experience in grades PreK through 12;
    - c. Verification of enrollment in a Board approved alternative path to administrator certification program, or a Board approved administrator preparation program;
    - d. Verification the holder of the interim certificate shall be under the direct supervision of an Arizona certified district principal or superintendent or the appropriate county school superintendent; and
    - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  - 6. The requirements for the extension of the administrative interim certificate are:
    - a. Qualification for the initial issuance of the administrative interim certificate outlined in subsection (G)(5),
    - b. Official transcripts documenting the completion of required coursework,
    - c. Verification the holder of the interim certificate shall be under the direct supervision of an Arizona certified district principal or superintendent, and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  - 7. The holder of the administrative interim certificate may apply for an Arizona Principal Certificate upon completion of the following:
    - a. Successful completion of a Board approved alternative path to administrator certification program or a Board approved administrator preparation program. This shall include satisfactory completion of a field experience or capstone experience of no less than one full academic year. The field experience or capstone experience shall include performance evaluations in a manner that is consistent with policies for the applicable alternative professional preparation program, as described pursuant to R7-2-604.04(B)(5);
    - b. A passing score on either the Principal or Superintendent portion of the Arizona Administrator Proficiency Assessment;

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- c. The submission of an application for the Principal certificate to the Department; and
  - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- G. Interim Superintendent Certificate – grades Pre-K through 12**
1. Except as noted, the administrative interim certificate is subject to the general certification provisions in R7-2-607.
  2. The certificate is valid for one year from the date of initial issuance and may be extended yearly for no more than two consecutive years at no cost to the applicant if the provisions in subsection (H)(6) are met.
  3. The administrative interim certificate entitles the holder to perform the duties described in subsection (D)(1). The candidate shall be enrolled in a Board approved alternative path to certification program, or a Board authorized administrative preparation program.
  4. An individual is not eligible to hold the administrative interim certificate more than once in a five year period.
  5. The requirements for initial issuance of the administrative interim certificate are:
    - a. A master's degree or higher from an accredited institution;
    - b. Three years of verified full-time teaching experience or related education services experience in a PreK through 12 setting;
    - c. Verification of enrollment in a Board approved alternative path to administrator certification program, or a Board approved administrator preparation program;
    - d. Verification the holder of the interim certificate shall be under the direct supervision of an Arizona certified district superintendent or the appropriate county school superintendent; and
    - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  6. The requirements for the extension of the administrative interim certificate are:
    - a. Qualification for the initial issuance of the administrative interim certificate outlined in subsection (H)(5),
    - b. Official transcripts documenting the completion of required coursework,
    - c. Verification the holder of the interim certificate shall be under the direct supervision of an Arizona certified district superintendent or the appropriate county school superintendent, and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  7. The holder of the administrative interim certificate may apply for an Arizona Superintendent Certificate upon completion of the following:
    - a. Successful completion of a Board approved alternative path to administrator certification program or a Board approved administrator preparation program. This shall include satisfactory completion of a field experience or capstone experience of no less than one full academic year. The field experience or capstone experience shall include performance evaluations in a manner that is consistent with policies for the applicable alternative professional preparation program, as described pursuant to R7-2-604.04(B)(5);
    - b. A passing score on the Superintendent portion of the Arizona Administrator Proficiency Assessment;
- c. The submission of an application for the Superintendent certificate to the Department; and
  - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Former R7-2-616 recodified to R7-2-617; new R7-2-616 recodified from R7-2-615 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-616 recodified to R7-2-617; new R7-2-616 recodified from R7-2-615 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 326, effective January 25, 2010 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by exempt rulemaking at 16 A.A.R. 2034, effective October 1, 2010 (Supp. 11-1). Amended by final exempt rulemaking at 22 A.A.R. 219, effective June 5, 2015; filed in the Office January 20, 2016 (Supp. 16-4).

**R7-2-617. Other Professional Certificates**

- A.** All certificates are subject to the general certification provisions in R7-2-607 and the renewal requirements in R7-2619.
- B. Guidance Counselor Certificate - grades PreK-12**
1. The guidance counselor certificate is valid for six years.
  2. The requirements are:
    - a. A master's or more advanced degree,
    - b. Completion of a graduate program in guidance and counseling. A valid guidance counselor certificate from another state may substitute for this requirement,
    - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
    - d. One of the following:
      - i. Completion of a supervised counseling practicum in school counseling;
      - ii. Two years of verified, full-time experience as a school guidance counselor; or
      - iii. Three years of verified teaching experience.
- C. School Psychologist Certificate - grades PreK-12**
1. A school psychologist certificate is required for all personnel whose primary responsibility is in the role of a school psychologist providing services that include but are not limited to the duties of student psychoeducational assessment, therapeutic consultation and intervention, and involvement in the process of determination of student disabilities or disorders.
  2. The school psychologist certificate is valid for six years.
  3. The requirements are:
    - a. A master's or more advanced degree;
    - b. Completion of a graduate program in school psychology consisting of at least 60 graduate semester hours, or completion of a doctoral program in psychology and completion of a re-training program in school psychology from an accredited institution or Board approved program with a letter of institutional endorsement from the head of the school psychology program;
    - c. A supervised internship of at least 1200 clock hours with a minimum of 600 of those hours in a school setting. Three years experience as a certified school psychologist within the last 10 years may be substituted for the internship requirement; and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

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4. Any of the following may be substituted for the requirement described in subsection (C)(3)(b):
  - a. Five years experience within the last 10 years working full time in the capacity of a school psychologist in a school setting serving any portion of grades kindergarten through 12; or
  - b. A Nationally Certified School Psychologist Credential; or
  - c. A diploma in school psychology from the American Board of School Psychology.
- D. Speech-Language Pathologist Certificate - grades PreK-12**
  1. The speech-language pathologist certificate is required for school-based speech-language pathologists.
  2. The certificate is valid for six years and may be renewed with the completion of a minimum of 60 clock hours of relevant professional development in the field of speech pathology, or professional development in the areas of articulation, voice, fluency, language, low incidence disabilities, curriculum and instruction, professional issues and ethics, or service delivery models.
  3. The requirements are:
    - a. A master's or more advanced degree, from an accredited institution, in speech pathology or communication disorders;
    - b. A minimum of 250 clinical clock hours supervised by a university or a speech-language pathologist with a certificate of clinical competence;
    - c. A certificate of clinical competence, or a passing score on the national exam, or a passing score on the speech and language impaired special education portion of the Arizona Teacher Proficiency Assessment; and
    - d. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.
- E. Speech-Language Technician - grades PreK-12**
  1. The speech-language technician certificate is required for school-based speech-language professionals.
  2. No new applications for a speech-language technician certificate will be accepted after June 30, 2014.
  3. The certificate is valid for six years and may be renewed with the completion of a minimum of 180 clock hours of graduate level coursework in the field of speech pathology, or professional development in the areas of articulation, voice, fluency, language disorders, low incidence disabilities, professional issues and ethics, or service delivery models.
  4. The requirements are:
    - a. A bachelor's degree from an accredited program in Speech-Language Pathology, Speech-Hearing Sciences, or Communication Disorders;
    - b. A minimum of 50 hours of university supervised observation;
    - c. A minimum of 150 university clinical clock hours, or 150 clock hours supervised by a master's level licensed speech-language pathologist, or two years' experience as a school speech-language therapist or technician;
    - d. A passing score on the speech and language impaired special education portion of the Arizona Teacher Proficiency Assessment; and
    - e. A valid fingerprint clearance card issued by the Arizona Department of Public Safety.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4).  
 Amended by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 5139, effective November 19, 2002 for

a period of 180 days (Supp. 02-4). Emergency rulemaking renewed under A.R.S. § 41-1026(D) at 9 A.A.R. 1547, effective April 29, 2003 for a period of 180 days (Supp. 03-2). Emergency rulemaking repealed under A.R.S. § 41-1026(E) and permanent R7-2-617 amended by final rulemaking at 9 A.A.R. 3950, effective October 21, 2003 (Supp. 03-3). Amended by exempt rulemaking at 15 A.A.R. 1264, effective May 22, 2006 (Supp. 09-1). Former R7-2-617 recodified to R7-2-618; new R7-2-617 recodified from R7-2-616 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-617 recodified to R7-2-618; new R7-2-617 recodified from R7-2-616 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). R7-2-617 "Prekindergarten" corrected to "PreK" at request of the Board, Office File No. M09-444, filed November 24, 2009 (Supp. 10-1). Office corrected labeling error in subsection (C) under A.R.S. § 41-1011 and A.A.C. R1-1-108 (Supp. 10-4). Amended by final exempt rulemaking at 21 A.A.R. 2077, effective October 28, 2013 (Supp. 15-3).

**R7-2-618. Fees**

- A.** The Superintendent of Public Instruction or the Superintendent's designee shall collect proper fees for certification services and shall transmit the fees to the state Treasurer. The following fees are established for certification services:
  1. Evaluation of qualification for a certificate: \$30.
  2. Evaluation of qualification for an endorsement: \$30.
  3. Issuance of a certificate, endorsement, or letter of non-qualification: \$30.
  4. Renewal of a certificate: \$20.
  5. Name change, duplicate copy, or changes of coding to existing files or certificates: \$20.
- B.** Fees shall be paid by money order, cashier's check, certified check, business check, or personal check and shall be made payable to the order of the Arizona Department of Education. If a check offered in payment for services is not cleared by the financial institution, the applicant shall be notified to pay the fees by money order or certified check. If a certificate has been issued or renewed and payment is not received within two weeks of notification to the applicant, the Board shall file a statement of complaint pursuant to R7-2-1302. If a certificate or renewal has not been issued, no certificate or renewal shall be issued until the fees are paid by cashier's check or money order.
- C.** Fees paid pursuant to this Section are not refundable.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 2002, effective May 27, 1999 (Supp. 99-2). Former R7-2-618 recodified to R7-2-619; new R7-2-618 recodified from R7-2-617 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-618 recodified to R7-2-619; new R7-2-618 recodified from R7-2-617 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4).

**R7-2-619. Renewal Requirements**

- A.** A certificate may be renewed within six months of its expiration date except that an individual holding multiple valid certificates may renew all certificates at one time in order to align the expiration dates of each certificate. Certificates being aligned shall be renewed at the same time as the certificate that will expire first. Individuals seeking to align certificates shall meet the renewal requirements for each certificate being aligned. Certificates that are renewed or aligned pursuant to this Section shall be valid for eight years.

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- B.** A certificate may be renewed within one year after it expires. Individuals whose certificates have been expired for more than one year shall reapply for certification under the requirements in effect at the time of reapplication. Nothing in this Section shall imply that an individual may be employed in a position that requires certification after the expiration of the relevant certificate.
- C.** Renewal of certificates requires the completion of continuing education credits after the most recent issuance or renewal of the certificate, except that continuing education credits completed during the valid term of the certificate that expires first meets the requirement of certificates being aligned. One hour of continuing education credit shall be equivalent to one clock hour of a professional development activity. Continuing education credits must relate to Arizona academic or professional educator standards or apply toward the attainment of an additional Arizona certificate, endorsement, or approved area, and may include training regarding suicide awareness and prevention; child abuse and the sexual abuse of children, including warning signs that a child may be a victim of child abuse or sexual abuses; screening, intervention, accommodation, use of technology and advocacy for students with reading impairments, including dyslexia; or other training programs explicitly permitted by state law. Professional development that may be counted toward the required hours of continuing education credit shall consist of any of the following activities:
1. Courses related to education or a subject area taught in Arizona schools, taken from an accredited institution. Each semester hour of courses shall be equivalent to 15 clock hours of professional development. The required documentation shall be an official transcript.
  2. Professional activities such as conferences and workshops related to the profession of teaching or the field of public education. A maximum of 30 clock hours per year may be earned by attendance at professional conferences and workshops. The required documentation shall be a conference agenda and a statement or certificate from the sponsoring organization noting the clock hours earned.
  3. District-sponsored or school-sponsored in-services or activities which are specifically designed for professional development. The required documentation shall be written verification from the sponsoring district or school stating the dates of participation and the number of clock hours earned.
  4. Internships in business settings. The internship shall be based on an agreement between a business and a district or school with the stated objective of aligning teaching curriculum with workplace skills. A maximum of 80 clock hours may be earned through business internships. The required documentation shall be written verification by the sponsoring business and district or school stating the dates of participation and number of clock hours earned.
  5. Educational research. The research shall be sponsored by a research facility or an accredited institution or funded by a grant. The required documentation shall be the published report of the research or verification by the sponsoring agency; and a statement of the dates of participation and the number of clock hours earned.
  6. Serving in a leadership role of a professional organization that provides training, activities, or projects related to the profession of teaching or the field of public education. A maximum of 30 clock hours per year may be earned by serving in a leadership role of a professional organization. The required documentation shall be written verification by the governing body of the professional organization of the dates of service and clock hours earned.
7. Serving on a visitation team for a school accreditation agency. A maximum of 60 clock hours per year may be earned by serving on a visitation team. The required documentation shall be written verification from the accreditation agency of the dates of service and clock hours earned.
  8. Completion of the process for certification by the National Board of Professional Teaching Standards. The required documentation shall be written verification from the National Board of Professional Teaching Standards and a statement from the employing district or school verifying the dates and the clock hours earned during the certification process.
- D.** An individual holding a Standard teaching certificate, an administrative certificate, a Guidance Counselor certificate, or a School Psychologist certificate, may renew the certificate for eight years upon completion of fifteen hours of continuing education credits each year of the certificate term.
- E.** An individual who is employed by a school or school district at the time of renewal shall submit the required documentation of professional development to the district superintendent, director of personnel, or other designated administrator for verification. A certified individual who is not employed by a school or school district at the time of renewal shall submit the required documentation of professional development to a county school superintendent, the dean of a college of education, or the Department for verification. The school or district official, county school superintendent, or the dean of a college of education shall verify on forms provided by the Department the number of hours of professional development completed by the individual during the valid period of the certificate being renewed.
- F.** The Department shall issue a Standard teaching certificate of the same type.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 2396, effective May 10, 2002 (Supp. 02-2). Amended by exempt rulemaking at 15 A.A.R. 1225, effective December 5, 2006 (Supp. 09-1). Former R7-2-619 recodified to R7-2-620; new R7-2-619 recodified from R7-2-618 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-619 recodified to R7-2-620; new R7-2-619 recodified from R7-2-618 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 242, effective December 7, 2009 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 1249, effective May 24, 2010 (Supp. 10-4). Amended by final exempt rulemaking at 22 A.A.R. 648, effective January 25, 2016 (Supp. 16-1). Amended by final exempt rulemaking at 22 A.A.R. 2246, effective August 6, 2016 (Supp. 16-3).

**R7-2-620. Certification Time-frames**

- A.** For certification by the State Board of Education ("Board"), Certification Division ("Division"), the time-frames required by A.R.S. § 41-1072 et seq are:
1. Overall time-frame: 165 days.
  2. Administrative review time-frame: 45 days.
  3. Substantive review time-frame: 120 days.
- B.** Administrative completeness review time-frame. The Division shall issue a written notice of administrative completeness or deficiency to an applicant for certification within 45 days of receipt of the application.

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1. If the Division determines that an application for certification is not administratively complete, the Division shall include a comprehensive list of the specific deficiencies in the written notice.
  2. If the Division issues a written notice of deficiency, the administrative completeness review time-frame and the overall time-frame are suspended from the date the notice is issued until the date that the Division receives the missing information from the applicant.
  3. If the Division does not issue a notice of administrative completeness or deficiency within 45 days of receipt of the application, the application is deemed administratively complete.
- C. Substantive review time-frame.** Within 120 days after the administrative completeness review time-frame is complete, the Division shall determine whether an applicant for certification meets all substantive criteria required by statute or rule.
1. During the substantive review time-frame, the Division may make one comprehensive written request for additional information. If the Division issues a comprehensive written request for additional information, the substantive review time-frame and the overall time-frame are suspended from the date the request is issued until the date that the Division receives the additional information from the applicant.
  2. The Division and the applicant may mutually agree in writing to allow the Division to submit supplemental requests for additional information. If the Division issues a supplemental request by mutual written agreement for additional information, the substantive review time-frame and the overall time-frame are suspended from the date the request is issued until the date that the Division receives the additional information from the applicant.
- D. Overall time-frame.** The Division shall issue a written notice that the Board has granted or denied a certificate no later than 165 days after receipt of an application for certification, or no later than the time-frame extension allowed under subsection (E).
1. Written notice denying an applicant certification shall include justification for the denial with references to the statutes or rules on which the denial is based and an explanation of the applicant's right to appeal the denial.
  2. The explanation of an applicant's right to appeal the denial shall include the number of days the applicant has to file an appeal challenging the denial and the name and telephone number of the Executive Director of the Board as the contact person who can answer questions regarding the appeals process.
- E.** By mutual written agreement, the Division and an applicant for certification may extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 33 days.
- F.** If the Division does not issue to an applicant written notice granting or denying a certificate within the overall time-frame or any extension mutually agreed upon in writing, the Division shall refund to the applicant all fees charged, excuse payment of any fees that have not yet been paid, and pay all penalties required by A.R.S. § 41-1077.
- G.** The Division shall issue all written notices under this Section to the last known address of the applicant by regular, 1st-class mail. The written notices are deemed "issued" on the postmark date.
- H.** By August 1 of each year, the Division shall report to the Executive Director of the Board the Division's compliance with the overall time-frames for the prior fiscal year. The Division

shall include the number of certificates issued or denied within the time-frames specified in this Section and the dollar amount of all fees returned or excused. The Division shall also include the amount of all penalties paid to the state general fund due to the Division's failure to comply with the time-frames.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2399, effective July 23, 2004 (Supp. 04-2). Former R7-2-620 recodified to R7-2-621; new R7-2-620 recodified from R7-2-619 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-620 recodified to R7-2-621; new R7-2-620 recodified from R7-2-619 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1).

**R7-2-621. Reciprocity**

- A.** The Board shall issue a comparable, reciprocal provisional Arizona certificate, if one is established pursuant to this Chapter, to an applicant who holds a valid certificate from another state and possesses a bachelor's or higher degree from an accredited institution.
1. Certificates shall be valid for three years and are nonrenewable.
  2. The applicant shall possess a valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  3. The deficiencies allowed pursuant to Arizona Revised Statutes in Arizona Constitution, United States Constitution, and a passing score on all required portions of the Arizona Teacher Proficiency Assessment shall be satisfied prior to the issuance of the same type certificate prescribed in this Chapter, except as noted below:
    - a. The professional knowledge portion of the Arizona Teacher Proficiency Assessment shall be waived for applicants with three years of verified teaching experience. The three years of verified teaching experience shall have been during the last valid period of the certificate produced from the other state.
    - b. The subject knowledge portion of the Arizona Teacher Proficiency Assessment shall be waived for applicants who hold a master's degree or higher in the subject area to be taught.
    - c. The professional knowledge and subject knowledge portions of the Arizona Teacher Proficiency Assessment shall be waived for applicants who hold a current certificate from the National Board for Professional Teaching Standards.
  4. For the purpose of this rule the requirements in R7-2-615(J), related to the Structured English Language Immersion Endorsement, shall be waived for a period not to exceed three years.
- B.** The Board shall issue a comparable Arizona reciprocal supervisor, principal or superintendent certificate to an applicant who holds a valid equivalent certificate from another state and meets the requirements as set forth in subsection R7-2-616(B)(3), R7-2-616(C)(3), or R7-2-616(D)(3) except that an applicant for a reciprocal administrative certificate shall be required to have completed three semester hours of school law and three semester hours of school finance within three years.
1. Certificates shall be valid for three years and are nonrenewable.
  2. The applicant shall possess a valid fingerprint clearance card issued by the Arizona Department of Public Safety.
  3. The deficiencies allowed pursuant to Arizona Revised Statutes in U.S./Arizona Constitutions, a passing score on all required portions of the Arizona Administrator Profi-

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ciency Assessment, fulfillment of Structured English Immersion (SEI) clock hours as required by Board rule, and fulfillment of three semester hours of school law and three semester hours of school finance shall be satisfied prior to the issuance of any other certificate prescribed in subsection R7-2-616(B), except as noted below:

- a. The applicable Arizona Administrator Proficiency Assessment shall be waived for applicants with a passing score on a comparable assessment from another state or three years of verified full time administrative experience.
- b. The three years of verified administrative experience shall have been during the last valid period of the certificate produced from the other state.

**Historical Note**

New Section recodified from R7-2-620 at 15 A.A.R. 2146, effective August 25, 2008 (Supp. 09-4). Former R7-2-621 recodified to R7-2-622; new R7-2-621 recodified from R7-2-620 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1). Amended by exempt rulemaking at 16 A.A.R. 135, effective September 21, 2009 (Supp. 10-1). Amended by final exempt rulemaking at 22 A.A.R. 227, effective June 23, 2014; filed in the Office January 20, 2016 (Supp. 16-2). Amended by final exempt rulemaking at 22 A.A.R. 219, effective June 5, 2015; filed in the Office January 20, 2016 (Supp. 16-4).

**R7-2-622. Qualification Requirements of Professional, Non-Teaching School Personnel****A. Definitions:**

1. "Educational Interpreter." For the purposes of this Section, "educational interpreter" means a person trained to translate in sign language for students identified to require such services through an Individualized Education Program (IEP) or a 504 accommodation plan in order to access academic instruction. This does not in any way restrict the provisions of R7-2-401(B)(14) which defines "interpreter" and provides that each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE, nor does it restrict a school district's ability to develop a job description for someone in a position of "educational interpreter" that requires additional job responsibilities.
2. "Accommodation plan developed to comply with Section 504 of the Rehabilitation Act of 1973, 29 USC 794, et seq. ("504 accommodation plan")." For the purposes of this Section, "504 accommodation plan" means a plan developed for the purpose of specifying accommodations and/or services that will be implemented by classroom teachers and other school personnel so that students will benefit from their educational program.

**B. Educational Interpreters for the Hearing Impaired.**

1. Persons employed by or contracting with schools and school districts to provide educational interpreting services for hearing impaired students must meet the following qualifications from and after January 1, 2005:
  - a. Have a high school diploma or GED;
  - b. Hold a valid fingerprint clearance card, and
  - c. Show proficiency in interpreting skills through one of the following:
    - i. A minimum passing score of 3.5 or higher on the Educational Interpreter Performance Assessment (EIPA), or
    - ii. Hold a valid Certificate of Interpretation (CI) and/or Certificate of Transliteration (CT) from

the Registry of Interpreters for the Deaf (RID), or

- iii. Hold a valid certificate from the National Association of the Deaf (NAD) at level 3 or higher.
2. If a public education agency (PEA) is unable to find an individual meeting the above qualifications, the PEA may hire an individual with lesser qualifications, but the PEA is required to provide a professional development plan for the individual they employ to provide educational interpreting services. This professional development plan must include the following:
    - a. Proof of at least 24 hours of training in interpreting each year that a valid certification is not held or EIPA passing score is not attained, and
    - b. Documentation of a plan for the individual to meet the required qualifications within three years of employment. If the qualifications are not attained within three years, but progress toward attainment is demonstrated, the plan shall be modified to include an intensive program for up to one year to meet the provisions of subsection (B)(1).
  3. An individual employed under the provisions of subsection (B)(2) must also have the following:
    - a. A valid fingerprint clearance card, and
    - b. A high school diploma or GED.
  - C. Compliance with these rules will be reviewed at the same time as a PEA is monitored for compliance with the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq.

**Historical Note**

New Section recodified from R7-2-621 at 16 A.A.R. 68, effective December 8, 2008 (Supp. 10-1).

**ARTICLE 7. ADJUDICATIONS****R7-2-701. Definitions**

In this Article, unless the context otherwise specifies:

1. "Board" means the State Board of Education.
2. "Chairman" means the chairperson of the Professional Practices Advisory Committee, established pursuant to R7-2-205.
3. "Contested case" means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the State Board of Education after an opportunity for hearing.
4. "Department" means the Department of Education.
5. "Hearing body" means the Board or the Professional Practices Advisory Committee.
6. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.
7. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.
8. "PPAC" means the Professional Practices Advisory Committee, established pursuant to R7-2-205 to conduct hearings related to certification or recertification matters regarding immoral conduct, unprofessional conduct, unfitness to teach and revocation, suspension or surrender of certificates.
9. "Pupil" means any student enrolled in an Arizona public or private school. "Pupil" also means any student who was enrolled in an Arizona public or private school at the time of the events which are the subject of a proceeding and who is still of minor age.

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10. "Victim" means any person who has been previously identified pursuant to state law as a victim in a criminal proceeding which is the basis for a contested case.

**Historical Note**

Adopted effective May 25, 1978 (Supp. 78-3). Former Section R7-2-701 repealed, new Section R7-2-701 adopted effective December 4, 1978 (Supp. 78-6). Amended effective June 27, 1979 (Supp. 79-3). Amended subsection (A) effective October 7, 1980 (Supp. 80-5). Amended by adding subsection (A)(6) effective April 6, 1984 (Supp. 84-2). Amended effective October 19, 1984 (Supp. 84-5). Section R7-2-701 repealed as an emergency, new Section R7-2-701 adopted as an emergency effective January 2, 1985 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-1). Emergency expired. Repealed effective December 17, 1987 (Supp. 87-4). New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Amended by final exempt rulemaking at 21 A.A.R. 1775, effective May 20, 2013 (Supp. 15-3).

**R7-2-702. Filing; computation of time; extension of time**

- A. All papers concerning a contested case shall be filed within the time limit, if any, for such filing.
- B. All papers filed in any contested case shall be typewritten or legibly written on paper 8 1/2 by 11 inches in size, shall contain the name and address of the party or other correspondent, shall be properly captioned and designate the title and case number, shall state the name and address of each party served with a copy, and shall be signed by the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief there are good grounds to support its contents, and that it is not interposed for delay.
- C. In computing any period of time prescribed or allowed by this Article, or any notice or order concerning a contested case, the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period to time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.
- D. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party by another party, and the notice or other paper is served by mail, five days shall be added to the prescribed period. This subsection has no application to notices, orders, or other papers issued by the hearing body.
- E. For good cause shown, the presiding officer may grant continuances and extensions of time for filing notices or other papers.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-703. Contested cases; notice; hearing records**

- A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.
- B. The notice shall include:
  1. A statement of the time, place and nature of the hearing.

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
  3. A reference to the particular sections of the statutes and rules involved.
  4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.
- C. A reasonable effort shall be made to notify a victim of the time, place and nature of the hearing, and that the victim may submit a victim impact statement to be included as part of the record in a contested case.
  - D. Opportunity shall be afforded all parties to respond and present evidence and argument on the issues involved.
  - E. The Board may dispose of any contested case by decision or approved stipulation, agreed settlement, consent agreement or by default.
  - F. A hearing before a hearing body in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Board.
  - G. The hearing body may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.
  - H. The record in a contested case shall include:
    1. All pleadings, motions and interlocutory rulings.
    2. Evidence received or considered.
    3. A statement of matters officially noticed.
    4. Objections and offers of proof and rulings thereon.
    5. Proposed findings of fact and conclusions of law and exceptions thereto.
    6. Any decision, opinion, recommendation or report of the hearing body.
    7. All staff memoranda, other than privileged communications, or data submitted to the hearing body in connection with its consideration of the case.
    8. A victim impact statement, if submitted by the victim.
  - I. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Amended by final exempt rulemaking at 21 A.A.R. 1775, effective May 20, 2013 (Supp. 15-3).

**R7-2-704. Service; proof of service**

- A. The Board shall serve notices of hearing, findings of fact, conclusions of law, and recommendations of the hearing body, and decisions and final orders of the Board, either by personal service or by certified mail. All other papers required to be served may be served by regular or certified mail or may be personally served.
- B. After service of a notice of hearing in a contested case, a copy of every paper filed by a party, or individual seeking to intervene, shall be served on all parties to the contested case, or their lawyers if represented, at the same time the paper is filed.
- C. The following evidences completed service:
  1. If personally served, an affidavit of personal service, sworn to by the individual serving the paper and stating the name of the individual upon whom it was served, where service was made, and the date of such service; or



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2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
3. If served by regular or certified mail, either a statement subscribed on the paper filed, or an affidavit indicating the date mailed and listing those to whom it was mailed.

**D.** When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Attorney General, or if no Assistant Attorney General is named, then on the Attorney General, Education and Health Section, Education Unit.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-705. Hearings and evidence**

- A.** Parties may participate in the hearing in person or through an attorney.
- B.** Upon request of either party, the presiding officer may schedule a prehearing conference. The purpose of a prehearing conference shall be to narrow issues, attempt settlement, address evidentiary issues or for any other purpose deemed necessary by the presiding officer.
- C.** A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A party to such proceedings may be represented by counsel and shall have the right to submit evidence in open hearing and conduct cross examination. Hearings may be held in any location determined by the hearing body.
- D.** Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
- E.** Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the hearing body. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing body's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-706. Request for hearing**

When a request for a hearing is filed with the Board, the request shall be in writing and shall state the specific grounds which are the basis of the hearing request and the statute, rule or other legal basis entitling the person to a hearing.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-707. Denial of request for hearing**

If the Board denies the request for a hearing, the denial shall be in writing and shall state the reasons therefor. A denial of a request for hearing is final and not subject to further administrative review.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-708. Repealed****Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Section repealed by final rulemaking at 11 A.A.R. 696, effective March 29, 2005 (Supp. 05-1).

**R7-2-709. Rehearing and review of decisions**

- A.** After a hearing is held, a party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, not later than 30 days after such decision has been made, a written motion for rehearing specifying the particular grounds therefor. A motion for rehearing under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of such motion by any other party. The Board may require the filing of written briefs on the issues raised in the motion or response and may provide for oral argument.
- B.** A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  2. Misconduct of the hearing body or the prevailing party.
  3. Accident or surprise which could not have been prevented by ordinary prudence.
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing.
  5. Excessive or insufficient penalties.
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
  7. That the decision is not justified by the evidence or is contrary to the law.
- C.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties, on all or part of the issues, for any of the reasons set forth in subsection B herein. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- D.** After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. The order granting such a rehearing shall specify the grounds therefor.
- E.** Not later than 20 days after a decision is rendered, the Board may, on its own initiative, order a rehearing of its decision for any reasons for which it might have granted a rehearing on motion of a party. The order granting such a rehearing shall specify the grounds therefor.
- F.** When a motion for rehearing is based upon affidavits they shall be served with the motion. An opposing party may, within ten days after service of such motion, serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** After a hearing has been held and a final administrative decision has been entered, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- H.** Any party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, not later than

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20 days after such decision has been made, a written request for review of the decision. If a review of the decision is granted, the Board may affirm or modify the previous decision.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-710. Intervention**

- A.** Any person seeking to intervene in any contested case shall file a written request to intervene. Intervention shall be granted only if the hearing body determines that:
  - 1. The legal interests of the person requesting to intervene may be substantially affected by the outcome of the contested case;
  - 2. Intervention will not unduly delay or bias the hearing;
  - 3. The interest of the person requesting to intervene is not adequately represented by another party to the contested case; and
  - 4. The proposed intervention is in the interests of justice.
- B.** The request shall state the claims or defenses for which intervention is sought, briefly describing the interests that may be affected by the outcome of the case and including such facts as demonstrate those interests.
- C.** The request shall be filed and served upon all parties at least 15 days prior to hearing.
- D.** Any party may file a response to the request to intervene within five days of service of the request upon the party.
- E.** The hearing body shall decide on the request to intervene at least five days prior to the hearing date and shall, prior to the end of the following business day, notify the persons requesting to intervene and all parties of the decision. The hearing body may reschedule a hearing or prehearing conference to provide sufficient time for the parties to respond to a request to intervene or to prepare for the hearing or prehearing conference.
- F.** The hearing body may limit the intervenor's participation to issues in which the intervenor has a particular interest.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-711. Consolidation and severance**

- A.** When proceedings involving a common question of law or fact or common parties are pending before the hearing body, it may, upon its own volition or upon request of any party, order a joint hearing on any or all the matters at issue.
- B.** In furtherance of convenience, to avoid prejudice, or when separate hearings will be conducive to expedition and economy, the hearing body may, upon its own volition or upon request of any party, order any proceeding severed with respect to some or all issues or parties.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-712. Subpoenas**

- A.** The Department may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence on its own volition or at the request of a party.
- B.** A request for a hearing subpoena shall be in writing and served on each party at least seven days prior to the date set for hearing and shall state:
  - 1. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
  - 2. The name and address of the witness subpoenaed; and
  - 3. The documents, if any, sought to be provided.

- C.** On application of a party or the agency and for use as evidence, the hearing body may permit a deposition to be taken, in the manner and upon the terms designated by the hearing body, of a witness who cannot be subpoenaed or is unable to attend the hearing.
- D.** The individual to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for appearance, the hearing body grants a written request to quash or modify the subpoena. The request shall state the reasons why it should be granted. The hearing body shall grant or deny such request by order.
- E.** The party requesting the subpoena shall prepare it and cause it to be served upon the individual to whom it is directed in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the hearing body.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-713. Conduct of hearing**

- A.** The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
- B.** Except for those hearings which may involve presentation of evidence protected by A.R.S. § 15-350, or which are otherwise closed pursuant to an express provision of law, all hearings are open to public observation.
- C.** Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-714. Testimony of pupils**

- A.** All individuals present at a hearing regarding an action against a certificate shall:
  - 1. Keep confidential the name of any pupil involved in the hearing, unless disclosure is with the consent of the pupil's parent or guardian or by order of the superior court. This action does not prevent disclosure of the pupil's name to any party to the hearing.
  - 2. Keep confidential the testimony of any pupil, all of which shall be taken in executive session, except that the Board office shall be furnished a confidential copy of the pupil's testimony as part of the complete transcript of the hearing. The individuals present during the executive session shall be determined by the presiding officer in consultation with the Attorney General's office except that the respondent and counsel shall always be permitted to be present. The transcripts of testimony taken during executive session shall be maintained by the Board.
- B.** The Board of Education or its designee shall:
  - 1. Make available a consent form which requires the signature of the pupil's parent or guardian prior to disclosure of the pupil's name;
  - 2. Assign a fictitious name to all witnesses identified as pupils on the witness lists provided by the complainant

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and respondent if not in receipt of written parental or guardian consent for disclosure;

3. Notify hearing participants, prior to and during the hearing, of any fictitious names to be used.
- C. The presiding officer shall instruct all individuals present at the hearing of the confidentiality requirements of A.R.S. § 15-551 and this rule.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-715. Evidence**

- A. All witnesses shall testify under oath or affirmation.
- B. The hearing body shall have the power to administer oaths and affirmations.
- C. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and fair disclosure of the facts.
- D. The hearing body shall receive evidence, rule upon offers of proof, and exclude evidence the hearing body has determined to be irrelevant, immaterial, or unduly repetitious.
- E. Unless otherwise ordered by the hearing body, documentary evidence shall be limited in size when folded to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the hearing body unless the hearing body otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is so voluminous as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-716. Stipulations**

Parties to any contested case may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the presiding officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. The hearing body may require presentation of evidence for proof of stipulated facts for the hearing body's consideration. No substantive matter agreed to by the parties shall be binding upon the Board unless incorporated into the decision of the Board.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-717. Recommended Decisions**

- A. A recommended decision shall be prepared for the Board by the PPAC.
- B. A recommended decision shall be delivered to the Board within 30 days after the close of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last, unless the Board extends the period for good cause.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-718. Decisions and Orders**

- A. Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.
- B. When the Board is the hearing body, the decision shall be rendered within 60 days following the final day of the hearing or the date ordered for submission of proposed findings of fact and conclusions of law or legal memoranda, whichever comes last.
- C. Within 30 days after receipt of any recommended decision from the PPAC, the Board shall render a decision to affirm, reverse, adopt, modify, supplement, amend or reject the findings of fact, conclusions of law and recommendations in whole or in part, may remand the matter to the hearing body with instructions, or may convene itself as the hearing body.
- D. If no request for rehearing or review has been timely filed by a party, a decision in a contested case is effective and final ten days from the date served on that party.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**ARTICLE 8. COMPLIANCE****R7-2-801. Compliance**

- A. Procedures governing noncompliance with laws and rules by school districts.
  1. Scope. Except as may be otherwise directed by federal or state statute or by rules adopted by the State Board of Education, this rule shall govern the procedure for determining noncompliance by school districts with laws and rules concerning school districts, the enforcement of which is the statutory responsibility of the State Board of Education or the Department of Education.
  2. Preliminary notice of noncompliance and response:
    - a. The Department of Education, upon its own initiative or at the direction of the State Board of Education, shall inform school districts by written notice that the district is in possible noncompliance with laws or rules, the enforcement of which is the statutory responsibility of the Board or the Department.
    - b. A preliminary notice of possible noncompliance shall detail in writing the nature of the possible noncompliance and shall identify:
      - i. The law or rule which the school district may be violating; and
      - ii. The manner in which the school district may be in noncompliance with the identified law or rule.
    - c. A school district may submit a written response to the Department of Education within 20 days of receipt of a preliminary notice of noncompliance.
    - d. Nothing contained in this rule is intended to preclude a reasonable attempt between Department of Education personnel and school district personnel to resolve administratively possible noncompliance prior to sending a written preliminary notice of noncompliance.
  3. Scheduling a formal hearing
    - a. Recommendation by the Department of Education

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- i. After giving a school district preliminary notice as provided in this rule, the Department of Education shall submit a written recommendation to the State Board of Education. This recommendation shall be submitted within 10 days after receipt of a written response from the school district or if no response is received within 30 days of the issuance of the preliminary notice. The Department shall recommend one of the following courses of action to be taken by the Board.
    - (1) A formal hearing should be scheduled before noncompliance is probable and achieving voluntary compliance within a reasonable period of time under the circumstances is unlikely; or
    - (2) A formal hearing should not be scheduled at this time because, although noncompliance is probable, achieving voluntary compliance within a reasonable period of time is likely; or
    - (3) A formal hearing should not be scheduled because the school district is in compliance with the law or rule in question.
  - ii. Any written response of the school district to the preliminary notice of noncompliance shall accompany the written recommendation of the Department of Education.
  - b. Within 30 days of receipt of the recommendation of the Department of Education, the State Board of Education shall either:
    - i. Schedule formal hearing;
    - ii. Postpone the decision to schedule a hearing for a stated time period not to exceed six months, or
    - iii. Dismiss the matter.
  - c. When the State Board of Education determines that a formal hearing is necessary, it shall be scheduled within 30 days after such determination, unless an extension of time is granted by the Board.
  - d. When a formal hearing is scheduled, the Board or its designee shall give notice of the hearing as provided in A.R.S. § 41-1009(A) and (B).
  - e. When the Board decides to postpone scheduling a formal hearing, the Board shall specify the extent of the postponement and the Department of Education shall report periodically, at least every 30 days, unless otherwise directed, with respect to progress by the school district toward compliance with the law or rule in question. At the end of the postponement period, the Board shall again make a determination whether to schedule a hearing, further postpone the determination, or dismiss the matter.
  - f. The Board may order further investigation by the Department of Education at any time, and admit into evidence any such report at any subsequent formal hearing.
4. Hearings held pursuant to this rule shall be conducted as provided in A.R.S. § 41-1010.
5. The Board's decision
- a. A decision by the State Board of Education shall be determined by a majority of the members of the Board and shall be based upon substantial evidence.
  - b. A decision shall be rendered within 30 days after the hearing.
  - c. Within 30 days after a decision is reached, copies of the written decision shall be delivered to the parties personally or by certified mail.
  - d. The parties shall have the opportunity to provide proposed findings of fact and conclusions of law to the Board no later than five days after the decision of the Board is received.
6. Rehearing procedure
- a. Any party aggrieved by a decision rendered by the Board may file with the Board, not later than 15 days after service of the decision, a written motion for rehearing or review of the decision, specifying the particular grounds therefor.
  - b. A motion to alter or amend a decision or order shall be filed not later than 15 days after service of the decision.
  - c. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board.
  - d. A response may be filed within 10 days after service of such motion by any other party or by the Attorney General.
  - e. The Board may require the filing of written memoranda upon the issues raised in the motion and may provide for oral argument.
  - f. The Board may consolidate the hearing to consider the motion for rehearing with the requested rehearing.
  - g. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
    - i. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
    - ii. Misconduct of the Board of the prevailing party.
    - iii. Accident or surprise which could not have been prevented by ordinary prudence;
    - iv. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
    - v. Excessive or insufficient penalty;
    - vi. Error in the admission or rejection of evidence or other errors of law occurring in the administrative hearing;
    - vii. The decision is not justified by the evidence or is contrary to law.
  - h. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (7). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
  - i. Not later than 15 days after a decision is rendered, the Board may on its own initiative order a rehearing or a review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order grant-

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ing such a rehearing shall specify the grounds on which the order is based.

- j. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown, or by the parties by written stipulation. The Board may permit a reply affidavit by the moving party.

**B. Waiver from administrative rules.** Upon request of a school district acting either on its own behalf or on behalf of a school within the district's jurisdiction, the State Board of Education may grant a waiver exempting such district or school from specific administrative rules.

**1. Requests**

- a. Requests for exemption from any State Board of Education rule shall include:
  - i. Evidence that the school or school district is currently in compliance with all state laws and State Board of Education rules;
  - ii. A statement identifying goals that will be accomplished and how the waiver will assist in enhancing school improvement;
  - iii. A three-year plan for school improvement;
  - iv. Identification of the specific rules for which the waiver is requested;
  - v. Evidence of a public hearing held by the school or school district which provided for parental and public involvement and input into the proposed three-year plan.
- b. Requests for waiver may be granted by the State Board of Education for a period not to exceed three years. The State Board of Education may at any time rescind approved waivers at its discretion.
- c. Requests for waiver may be submitted by a local governing board and shall be made through the State Superintendent of Public Instruction for consideration by the State Board of Education.
- d. Local governing boards shall adopt policies and procedures which will allow their schools to request waivers from the State Board of Education and shall submit those policies and procedures to the Superintendent of Public Instruction prior to October 1, 1993. Those policies shall be consistent with the criteria specified in subsections (B)(1)(a) and (B)(3). Additionally, those policies shall provide that:
  - i. Requests for such waivers by schools be forwarded within 30 days of receipt by the governing board to the Superintendent of Public Instruction. Requests may include additional information as the governing board deems appropriate.
  - ii. Schools not be required to meet criteria other than those specified in subsection (B)(1)(a).

**2. Reporting**

- a. Schools or school districts with State Board-approved waivers shall document progress obtained as a result of the waiver and report on or before June 30 of each year to the State Superintendent of Public Instruction.
- b. A school district having a school with an approved waiver may report the effects that such waiver has had on the operation of the school district. Reports shall be submitted on or before June 30 of each year to the State Superintendent of Public Instruction.

- c. The State Superintendent of Public Instruction shall report to the State Board of Education, on or before September 30 of each year, the status of those schools and school districts with approved waivers and, as a minimum, include the following:

- i. The status of meeting the goals as stated in the three-year plan;
- ii. Recommendations regarding approved continuance of the waiver, conditions for continuance of the waiver, revision of the three-year plan or rescission of the waiver.

- 3. **Renewal.** Upon request from a school district, on behalf of itself or a school within its jurisdiction, waivers may be approved by the State Board of Education for additional three-year periods. Requests shall be made through the State Superintendent of Public Instruction and requests from schools shall be forwarded by the local governing board to the State Superintendent of Public Instruction within 30 days from receipt.

**Historical Note**

Adopted effective February 27, 1980 (Supp. 80-1).

Amended effective April 9, 1993 (Supp. 93-2).

**R7-2-802. School and School District Compliance with the Uniform System of Financial Records and the Uniform System of Financial Records for Charter Schools**

- A.** Upon receipt of a report from the Auditor General that a school or school district has failed to comply with the Uniform System of Financial Records ("USFR") or the Uniform System of Financial Records for Charter Schools ("USFRCS") within 90 days after having received a notice of noncompliance from the Auditor General, the State Board of Education ("Board") shall review the Auditor General's report to determine whether the school or school district is in noncompliance.
- B.** When the Board determines that a school or school district is in noncompliance with the USFR or USFRCS, it shall give written notice to the school or district of its determination. The written notice shall advise the school or district of the following:
  - 1. The Superintendent of Public Instruction shall withhold distribution of state funds to the school or district until such time as the Auditor General reports compliance with the USFR or USFRCS unless a hearing is requested by the school or district.
  - 2. The school or district has 10 days from the receipt of the written notice of noncompliance by the Board to submit a written request for a hearing.
  - 3. If the school or district makes a timely request for a hearing, the hearing will be held pursuant to the hearing procedures specified in R7-2-701 et seq.
- C.** The Board's decision
  - 1. The Board shall determine whether the school or school district was in compliance with the USFR or USFRCS within 90 days after having been informed of noncompliance by the Auditor General, and whether the district is in compliance with the USFR or USFRCS at the time of the hearing.
  - 2. A decision by the Board shall be determined by a majority of the members of the Board and shall be based upon substantial evidence.

**Historical Note**

Adopted effective February 27, 1980 (Supp. 80-1).

Amended subsections (A) and (E)(1) and (5) effective December 17, 1981 (Supp. 81-6). Amended effective

December 31, 1998 (Supp. 98-4).

**R7-2-803. Implementation of the Uniform System of Financial Records**

All school districts shall implement the current version of the Uniform System of Financial Records, as prescribed by the Auditor General, in conjunction with the Department of Education. The Uniform System of Financial Records shall include standards to ensure that enrollment is determined by all school districts on a uniform basis.

**Historical Note**

Adopted effective November 10, 1980 (Supp. 80-6).

Amended effective February 20, 1997 (Supp. 97-1).

**R7-2-804. Compliance with federal statutes or regulations**

- A. This rule prescribes procedures to be used in filing and processing written complaints alleging the failure of a public agency or school district to comply with federal statutes or regulations applicable to federal education programs conducted and subject to Title 34, Code of Federal Regulations, § 76.780.
- B. The Arizona Department of Education (Department) shall accept and investigate complaints provided that the complaint:
  1. Is written and signed by the complaining party or his or her designated representative;
  2. Sets forth the facts forming the basis of the complaint; the facts set forth in the complaint, if true, could constitute noncompliance by a public agency or school district;
- C. Upon receipt of a complaint setting forth the criteria contained in (B), the Department shall immediately begin an impartial review which may include onsite investigations. If in the course of the review it is determined that the nature of the complaint is not a matter of noncompliance, the complainant will be so informed and advised of appropriate means of resolving the complaint.
- D. A written decision with specific findings shall be issued by the Department within 60 calendar days of receipt of the written complaint. If corrective action is required, such action shall be designated in the decision and shall include the time line for correction and possible consequences for continued noncompliance. A copy of the written decision shall be sent to the complaining party and the agency involved on or before the expiration of the 60-day period. An extension of this timeline will be permitted only if exceptional circumstances exist with respect to a particular complaint.
- E. If there appears to be a failure or refusal to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance shall be effected by the Superintendent and the State Board of Education by any means authorized by law or by rule and regulation. The Superintendent shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required. However, nothing herein shall preclude the availability of an informal resolution between the complainant and the agency or school district involved, nor shall this rule preclude the availability of any administrative hearing remedies to resolve such disputes or judicial review of such administrative remedies.
- F. If, pursuant to an investigation by the Department, the Superintendent finds a failure to comply with applicable law or regulations, he or she shall so inform the agency or school district and compliance shall be obtained by informal means whenever possible. If corrective action is required, such action shall be designated in this decision and shall include the time lines for correction and the possible consequences for continued noncompliance.

- G. A summary of each complaint received and investigated by the Department and the decision of the Superintendent shall be submitted annually to the State Board of Education for informational purposes only. Any personally identifiable information shall be deleted from the report to the State Board of Education.
- H. The complainant may request the U.S. Department of Education to review the final decision of the Superintendent. The Department shall inform a complainant of the procedures for requesting a review by the U.S. Department of Education.

**Historical Note**

Adopted effective February 11, 1983 (Supp. 83-1).

Amended subsection (B) effective March 13, 1986 (Supp. 86-2).

**R7-2-805. Education division general administrative regulations**

- A. This rule prescribes procedures to be used for appealing a decision by the Arizona Department of Education (Department) relating to federal programs administered by the Department and subject to the Education Division General Administrative Regulations (EDGAR) Title 34, Code of Federal Regulations § 75 and 76.
- B. A school district or public agency may request a hearing if it alleges that the Department violated a federal statute or regulation by:
  1. Terminating further assistance for an approved project;
  2. Ordering, in accordance with a final state audit resolution determination, the repayment of misspent or misapplied federal funds;
  3. Disapproving or failing to approve the application or project in whole or in part; or
  4. Failing to provide funds in amounts in accordance with the requirements of statutes and regulations.
  5. Not approving the school district or public agency's proposal for funding.
- C. When a school district or public agency requests a hearing, the Superintendent of Public Instruction (Superintendent) shall select a hearings appeals panel from Department staff other than those within the same division as the federal program area under which the appeal rose.
- D. Hearing procedures
  1. An applicant must request a hearing by notifying the Superintendent by certified mail of its decision to appeal a decision as set forth in subsection (B) of this rule. If the applicant is or represents a school district, authorization to seek a hearing must come from the Governing Board of that school district.
  2. The request for hearing must set forth the nature of the complaint and the facts on which the complaint is based.
  3. The applicant shall request a hearing within 30 days of the date notice of the Department action was sent. For purposes of this rule, the date of notice by the Department is the date of sending notice of the Department action.
  4. A hearing shall be scheduled before the appeal panel within 30 days from the receipt of the request.
  5. The appeals panel chairperson shall give at least 10 days' notice of the hearing date to the complainant.
  6. The parties may submit written materials no later than five days prior to the hearing, such materials to consist of six copies.
  7. At the hearing the parties may present evidence in writing and through witnesses and may be represented by counsel.
  8. The length and order of the presentation may be determined by the appeals panel chairperson.

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9. If the complainant or authorized representative fails to appear at the designated time, place and date of the hearing, the appeal shall be considered closed and the process terminated.
- E.** Decision. No later than five days after the hearing, the appeals panel shall forward to the Superintendent its recommendation relating to the school district or agency's request for review. Within 10 days after the hearing, the Superintendent shall issue his or her written ruling, including findings of fact and reasons for the ruling. If the Superintendent determines that the Department's action was contrary to the statutes and regulations that govern the applicable program, the Superintendent shall rescind the action.
- F.** Appeal. If the Superintendent does not rescind the Department action, the applicant may appeal to the U.S. Department of Education. The applicant shall file a notice of appeal with the U.S. Department of Education within 20 days after the applicant has been notified by the Superintendent of his or her decision by certified mail.
- G.** State Board of Education submission. The Superintendent shall annually submit to the State Board of Education as an informational item summaries of all decisions including the findings of fact of hearing procedures conducted pursuant to this rule for State Board of Education review.

**Historical Note**

Adopted effective June 24, 1983 (Supp. 83-3).

**R7-2-806. Repealed****Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Section repealed by final rulemaking at 7 A.A.R. 182, effective December 15, 2000 (Supp. 00-4).

**R7-2-807. Repealed****Historical Note**

Adopted as an emergency effective August 2, 1984 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Permanent rule adopted effective November 27, 1984 (Supp. 84-6). Amended effective May 3, 1993 (Supp. 93-2). Repealed effective February 20, 1997 (Supp. 97-1).

**R7-2-808. Pupil Participation in Extracurricular Activities**

The following standards are effective for students in grade 6, if part of a middle school, and grades 7 through 12.

1. Definition Extracurricular activities are:
  - a. All interscholastic activities which are of a competitive nature and involve more than one school where a championship, winner, or rating is determined; and all those endeavors of a continuous and ongoing nature for which no credit is earned in meeting graduation or promotional requirements and are organized, planned, and sponsored by the district consistent with district policy.
  - b. Activities which are an integral part of a credit class shall be excepted from the rule.
2. Eligibility requirements and ineligibility.
  - a. Eligibility. To be eligible to participate in extracurricular activities, a student shall be required to:
    - i. Earn a passing grade in each course in which the student is enrolled; and
    - ii. Maintain satisfactory progress toward promotion or graduation.
  - b. Ineligibility. When it is determined that a student has failed to meet the requirements specified for eligibility, the student shall be declared ineligible to participate

in extracurricular activities and shall remain ineligible until the requirements of eligibility are met.

- i. The governing board shall establish the criteria for a passing grade and satisfactory progress toward promotion or graduation, taking into account the needs of children placed in special education programs pursuant to R7-2-401 et seq. Passing grades shall be determined on a cumulative basis, from the beginning of instruction to the recording of a final grade for the course.
  - ii. Every nine weeks or less, as determined by the governing board, district personnel shall review the progress of students to determine their eligibility status. If a student is declared ineligible, the student shall remain ineligible until a subsequent check is performed and it is determined that the student meets the eligibility requirements specified in subsection (2)(a).
3. Each governing board shall adopt a policy and implement a program pursuant to that policy to provide:
- a. Oral or written preliminary notice to all district students and their parents or guardian of pending ineligibility;
  - b. Written notice to students and their parents or guardians when ineligibility has been determined;
  - c. Educational support services to students declared ineligible because of this rule, as well as those notified of pending ineligibility.

**Historical Note**

Adopted effective December 31, 1986 (Supp. 86-6). Amended subsection (B) and added a new subsection (D) effective February 17, 1988 (Supp. 88-1). Amended subsection (A) effective August 15, 1988 (Supp. 88-3). Amended effective April 28, 1989 (Supp. 89-2). Amended effective December 20, 1991 (Supp. 91-4). Section R7-2-808 repealed, new Section adopted effective July 10, 1992 (Supp. 92-3). Amended effective September 20, 1996 (Supp. 96-3). Amended effective December 22, 1997 (Supp. 97-4).

**R7-2-809. Emergency Administration of Auto-Injectable Epinephrine**

**A.** Applicability. This rule applies to:

1. Any school district or charter school that voluntarily chooses to stock auto-injectable epinephrine pursuant to A.R.S. § 15-157.
2. All school districts and charter schools when required to stock auto-injectable epinephrine pursuant to A.R.S. § 15-157.

**B.** Definitions. The following definitions are applicable to this rule:

1. "Anaphylactic shock" is a severe systemic allergic reaction, resulting from exposure to an allergen, which may result in death.
2. "Auto-injectable epinephrine" means a disposable drug delivery device that is easily transportable and contains a premeasured single dose of epinephrine used to treat anaphylactic shock.
3. "Standing order" means a prescription protocol or instructions issued by the chief medical officer of the department of health services, the chief medical officer of a county health department, a doctor of medicine licensed pursuant to title 32, chapter 13, or a doctor of osteopathy

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- licensed pursuant to title 32, chapter 17, for non-individual specific epinephrine.
- C.** Annual training in the administration of auto-injectable epinephrine.
- Each school district and charter school shall designate at least two school personnel, in addition to any school nurse or athletic trainer, for each school site who shall be required to receive annual training in the proper administration of auto-injectable epinephrine in cases of anaphylactic shock pursuant to standing order.
  - Training in the administration of auto-injectable epinephrine shall be conducted in accordance with minimum standards and curriculum developed by the Arizona Department of Health Services in consultation with the Arizona Department of Education.
  - At a minimum, training shall include procedures to follow when responding to anaphylactic shock, including direction regarding summoning appropriate emergency care, and documenting, tracking and reporting of the event.
  - Training shall also include standards and procedures for acquiring a supply of at least two juvenile doses and two adult doses of auto-injectable epinephrine, restocking auto-injectable epinephrine upon use or expiration, and storing all auto-injectable epinephrine at room temperature and in secure, easily accessible locations on school sites.
  - Training shall be conducted by a regulated health care professional, whose competencies include the administration of auto-injectable epinephrine, including but not limited to a licensed school nurse, certified emergency medical technician or licensed athletic trainer.
  - School districts and charter schools shall maintain and make available upon request a list of those school personnel authorized and trained to administer auto-injectable epinephrine pursuant to a standing order.
- D.** Annual training on the recognition of anaphylactic shock symptoms and procedures to follow when anaphylactic shock occurs.
- Each school district and charter school shall require all school site personnel to receive an annual training on the recognition of anaphylactic shock symptoms and procedures to follow when anaphylactic shock occurs.
  - Training shall be conducted in accordance with minimum training standards developed by the Arizona Department of Health Services in consultation with the Arizona Department of Education and shall follow the most current guidelines issued by the American Academy of Pediatrics.
  - Training shall be conducted by a regulated health care professional whose competencies include the recognition of anaphylactic shock symptoms and procedures to follow when anaphylactic shock occurs, including but not limited to a licensed school nurse, certified emergency medical technician or licensed athletic trainer.
- E.** Procedures for annually requesting a standing order for auto-injectable epinephrine.
- Each school district or charter school shall obtain a standing order from its designated district or charter school physician licensed pursuant to Title 32, chapter 13 or 17, and if no such physician is available to provide a standing order, from the chief medical officer of the Department of Health Services or the chief medical officer of a county health department.
  - Standing orders shall be renewed annually and upon the change of any designated school district or charter school physician.
  - Standing orders shall identify the appropriate dosage of auto-injectable epinephrine to administer based upon weight and the frequency at which auto-injectable epinephrine may be administered if symptoms persist or return.
- F.** Procedures for the administration of auto-injectable epinephrine in emergency situations.
- All school districts and charters schools shall adopt procedures for the emergency administration of auto-injectable epinephrine by designated trained personnel.
  - Procedures shall address, at a minimum, the following requirements:
    - Determining if symptoms indicate possible anaphylactic shock.
    - Selecting the appropriate dosage of auto-injectable epinephrine to administer pursuant to a standing order.
    - Injecting epinephrine via auto-injector pursuant to a standing order, noting the time and dose given.
    - Calling 911 to advise that anaphylactic shock is suspected and epinephrine was administered.
    - Keeping the person stable until emergency responders arrive.
    - Advising school medical personnel and administration of the incident.
    - Repeating dose pursuant to a standing order when symptoms persist and emergency responders have not arrived.
    - Providing emergency responders with used epinephrine auto-injector labeled with name, date and time administered.
    - Assuring that parents/guardians have been notified and advised to promptly alert student's primary care physician of the incident.
    - Completing written documentation of the incident, detailing who administered the injection, the rationale for administering the injection, the approximate time of the injection(s), and notifications made to school administration, emergency responders, the student's parents/guardians, and the doctor or chief medical officer who issued the standing order.
    - Ordering replacement dose(s) of auto-injectable epinephrine.
    - Reviewing any incident involving emergency administration of epinephrine to determine the adequacy of response.
- G.** All school districts and charter schools shall report to the Arizona Department of Health Services all incidents of use of auto-injectable epinephrine pursuant to this rule in the format prescribed by the Arizona Department of Health Services.

**Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Amended effective April 9, 1993 (Supp. 93-2). Repealed effective February 20, 1997 (Supp. 97-1). Amended by final exempt rulemaking at 21 A.A.R. 1784, effective February 24, 2014 (Supp. 15-3).

**ARTICLE 9. SCHOOL DISTRICT BUDGET AND ACCOUNTING****R7-2-901. Teacher Experience Index Provisions**

- A.** General purpose. These guidelines are provided for local governing boards to assist in development of policies identifying activities which contribute to the instructional programs at the



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local school level. The policies will define what constitutes a full-time vs. a part-time teacher position for the purpose of developing a school district's Teacher Experience Index.

- B.** Local governing boards may include the following activities in their policies as those which contribute toward an instructional program. This listing is not intended to be exclusive, and districts may utilize additional activities:

1. Classroom related:
  - a. Classroom instruction,
  - b. Preparation time,
  - c. Supervision,
  - d. Evaluation,
  - e. Curriculum development,
  - f. Housekeeping chores, i.e., daily reports, blackboard preparation, etc.
2. School related:
  - a. Teacher conferences,
  - b. Parent conferences,
  - c. Professional association activities,
  - d. Professional days,
  - e. District directed reports,
  - f. Participation in activities related to education scheduled by county, state, or federal agencies.

Professional association activities must be, in the opinion of the local governing board, for a public purpose and must not be for the sole benefit of the professional association.

3. Other district related:
  - a. Special assignments,
  - b. School board approved leave,
  - c. Home visitation,
  - d. Home instruction,
  - e. Off-site instruction,
  - f. Research,
  - g. In-service training.

In-service training activities are those approved by the local governing board and intended to promote the educational advancement of the youth of the district. These activities may be conducted either during the regular school day or at other times.

- C.** A local governing board may exercise its option to contract with certified personnel on a less than full-time basis in order to meet local district needs.
- D.** In those instances where a district may contract with certificated personnel, and the responsibilities specified within the contract include activities not related to instruction, then the district must define in terms of "full-time equivalencies" that portion which is instruction-related.

#### Historical Note

Adopted as an emergency effective May 21, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-3). Former emergency adoption now adopted without change effective October 7, 1980 (Supp. 80-5).

#### R7-2-902. Independent Accounting Responsibilities

The governing board of a school district applying to operate with full independence from the county school superintendent as provided in Laws 1987, Chapter 132, shall submit a plan for accounting responsibility to the State Board of Education no later than January 1, 1988, which documents the following:

1. Administrative and internal accounting controls designed to achieve compliance with the Uniform System of Financial Records and the following objectives:
  - a. Procedures for approving, preparing and signing vouchers and warrants;

- b. Procedures to ensure verification of administrators' and teachers' certification records with the Department of Education for all classroom and administrative personnel required to hold a certificate by the State Board pursuant to A.R.S. § 15-203, before issuing warrants for their services;
- c. Procedures to account for all revenues, including allocation of certain revenues to funds as provided in Section III-C of the February 1986 Uniform Accounting Manual for Arizona County School Superintendents, incorporated herein by reference and on file with the Office of the Secretary of State;
- d. Procedures for reconciling the accounting records monthly to the county treasurer as provided in Section III-G of the February 1986 Uniform Accounting Manual for Arizona County School Superintendents, incorporated herein by reference and on file with the Office of the Secretary of State.

2. No amendments or additions to Sections III-C and G of the February 1986 Uniform Accounting Manual for Arizona County School Superintendents made after the effective date of this rule are included in these procedures. Copies of Sections III-C and G are available at the State Board office and from the Arizona Auditor General.
3. A compilation of resources required to implement accounting responsibility, including personnel, training and equipment, and a comprehensive analysis of the budgetary implications of accounting responsibility for the school district and the county treasurer.

#### Historical Note

Adopted effective February 4, 1988 (Supp. 88-1).

### ARTICLE 10. SCHOOL DISTRICT PROCUREMENT IN GENERAL

#### R7-2-1001. Definitions

In Articles 10 and 11, unless the context otherwise requires:

1. "Acceptance period" means the period of time specified in the solicitation that a bid or proposal is irrevocable, except as specified in R7-2-1030.
2. "Actual energy production" means the actual amount of energy that flows from the energy production measure on an annual basis as measured by a meter in kilowatt hours alternating current.
3. "Advantageous to the school district" means in the best interest of the school district, but does not necessarily mean lowest bid/cost.
4. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It also may include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.
5. "Alternative project delivery methods for construction" means construction-manager-at-risk, design-build, and job-order-contracting construction services.
6. "Architect services," "engineer services," "land surveying services," "assayer services," "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in A.R.S. Title 32, Chapter 1, Article 1.

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7. "Award" means a determination by the school district that it is entering into a contract with one or more bidders or offerors.
8. "Bid" means a response to an invitation for bids and includes an offer to contract with the school district.
9. "Bidder" means a person submitting a bid in response to an invitation for bids.
10. "Brand name or equal specification" means a written description that uses one or more manufacturers' names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet the school district's requirements, and that provides for the submission of equivalent products.
11. "Brand name specification" means a written description limited to one or more items by manufacturers' names or catalog numbers.
12. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
13. "Change order" means a written order that is approved by the governing board and that directs the contractor to make changes that the changes clause of the contract authorizes the governing board to order.
14. "Clergy" means a minister of a religion.
15. "Coefficient" means the contractor's price adjustment to the unit price in a job order contract. Several coefficients may apply to the unit price book.
16. Construction:
  - a. Means the process of building, altering, repairing, improving or demolishing any school district structure or building, or other public improvements of any kind to any public real property.
  - b. Construction does not include:
    - i. The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
    - ii. The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.
17. "Construction-manager-at-risk" means a project delivery method in which:
  - a. There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the school district may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
  - b. The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
  - c. Design and construction of the project may be either:
    - i. Sequential with the entire design complete before construction commences.
    - ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
  - d. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
18. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:
  - a. Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
  - b. A combination of construction and, as elected by the school district, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this Section.
19. "Contract" means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services, construction or construction services, or the disposal of materials.
20. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
21. "Contractor" means any person who has a contract with a school district.
22. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
23. "Cost" means the aggregate cost of all materials and services, including labor performed by school district employees.
24. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead and other cost elements that have been actually incurred or that are expected to be incurred by the offeror or contractor in performing the contract.
25. "Cost-plus-a-percentage-of-cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the cost of the work.
26. "Data" means documented information, regardless of form or characteristic.
27. "Days" means calendar days and shall be computed pursuant to A.R.S. § 1-243.
28. "Defective data" means data that is inaccurate, incomplete or outdated.
29. "Dentist" means a person licensed pursuant to A.R.S. Title 32, Chapter 11.
30. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction or operation of an item offered in a bid or proposal.
31. "Design-bid-build" means a project delivery method in which:
  - a. There is a sequential award of two separate contracts.
  - b. The first contract is for design services.
  - c. The second contract is for construction.
  - d. Design and construction of the project are in sequential phases.
  - e. Finance services, maintenance services and operations services are not included.
32. "Design-build" means a project delivery method in which:
  - a. There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the school district may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

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- b. Design and construction of the project may be either:
    - i. Sequential with the entire design complete before construction commences.
    - ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
  - c. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
33. "Design professional" means an individual or firm that is registered by the state board of technical registration pursuant to A.R.S. Title 32, Chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.
34. "Design requirements" means at a minimum:
- a. The school district's written description of the project or service to be procured, including:
    - i. The required features, functions, characteristics, qualities and properties.
    - ii. The anticipated schedule, including start, duration and completion.
    - iii. The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.
  - b. May include:
    - i. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to A.R.S. § 32-121.
    - ii. Additional design information or documents that the school district elects to include.
35. "Design services" means architect services, engineer services or landscape architect services.
36. "Designee" means the governing board member or school district employee who has been delegated procurement authority by the governing board as specified by board action.
37. "Detailed record" means minutes, that shall include the date, time, place, persons in attendance and a summary of what was said by whom and the decisions made. The minutes may be made either in writing or by a recording.
38. "Discussions" means an exchange or series of exchanges between the school district and a person who has submitted an unpriced technical offer or a proposal, resulting in an opportunity for the person to revise the unpriced technical offer or proposal prior to final evaluation by the school district.
39. "District representative" means a district employee or the governing board acting within the limits of the district representative's authority. There may be more than one appointed for different purposes and different procurements.
40. "Earth-moving, material-handling, road maintenance and construction equipment" means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader, having a published manufacturer's minimum unit list price of \$50,000 or more and a minimum expected life cycle of three years.
41. "Effective utility rate" means the average price per kilowatt hour that a school district paid to its utility provider for electricity service to the facility that is the subject of the guaranteed energy production contract over the previous twelve months.
42. "Eligible procurement unit" means a public procurement unit, a nonprofit corporation, or an external procurement activity.
43. "Employee" means an individual drawing a salary from a school district and any noncompensated individual performing personal services for any school district.
44. "Energy baseline" means a calculation of the amount of energy used in an existing facility before the installation or implementation of the energy cost savings measures.
45. "Energy cost savings measure" means a training program or facility alteration designed to reduce energy consumption, which may include one or more of the measures authorized in A.R.S. § 15-213.01(R)(3), and any related meters or other measuring devices.
46. "Energy production measure" means renewable and alternative energy projects or renewable energy power service agreements.
47. "Established catalog price" means the price included in a catalog, price list, schedule or other form that:
- a. Is regularly maintained by a manufacturer, distributor or contractor.
  - b. Is either published or otherwise available for inspection by customers.
  - c. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
48. "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using school district in possession of the materials.
49. "External procurement activity" means any buying organization not located in this state that would qualify as a public procurement unit.
50. "Fair market value" means the price at which sales have been consummated for materials of like type, quality, and quantity in a particular market at the time of acquisition.
51. "Filed" means delivery to the district representative, school district or its hearing officer, whichever is applicable. A time/date stamp affixed to a document by the school district shall be determinative of the time or delivery for purposes of filing.
52. "Finance services" means financing for a construction services project.
53. "General Services Administration contract" means contracts awarded by the United States government General Services Administration.
54. "Governing board" has the meaning defined in A.R.S. § 15-101(13).
55. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
56. "Guaranteed energy cost savings contract" means a contract for implementing one or more energy cost savings measures.
57. "Guaranteed energy price" means the agreed on price to be charged to the school district for each kilowatt hour alternating current of actual energy production as such may change on an annual basis as set forth in the guaranteed energy production contract.
58. "Guaranteed energy production" means the amount of energy, measured in kilowatt hours alternating current,

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- that the qualified provider guarantees for each year of the guaranteed energy production contract.
59. "Guaranteed energy production contract" means a contract for implementing one or more energy production measures between one or more qualified providers and a school district.
  60. "Guaranteed energy production shortfall" means the amount, if any, that the actual energy production is less than the guaranteed energy production in any given year.
  61. "Incremental award" means an award of portions of a definite quantity requirement to more than 1 contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
  62. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
  63. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
  64. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in R7-2-1024.
  65. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201(43), which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
  66. "Job-order-contracting" means a project delivery method in which:
    - a. The contract is a requirements contract for indefinite quantities of construction.
    - b. The construction to be performed is specified in job orders issued during the contract.
    - c. Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
  67. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
  68. "Life cycle" means the useful life of the earth-moving, material-handling, road maintenance and construction equipment to the original using school district.
  69. "Local public procurement unit" means any political subdivision, any agency, board, department or other instrumentality of such political subdivision, and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under Articles 10 and 11.
  70. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
  71. "Materials" means all property, including equipment, supplies, printing, insurance and leases of property, but does not include land, a permanent interest in land or real property or leasing space.
  72. "May" denotes the permissive.
  73. "Minor" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery or other contractual terms and the waiver or correction of such mistake does not prejudice other bidders or offerors.
  74. "Multiple award" means award of multiple contracts for identical or similar materials or services to more than one bidder or offeror.
  75. "Multistep sealed bidding" means a 2-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the school district and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
  76. "Negotiation" means an exchange or series of exchanges between the school district and a person with a goal of establishing the terms, conditions and prices in a contract between the school district and the person, where such negotiation is authorized in Articles 10 and 11.
  77. "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.
  78. "Nonprofit corporation" means any nonprofit corporation as designated by the Internal Revenue Service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in A.R.S. § 41-2636.
  79. "Offeror" means a person submitting a proposal in response to a request for proposals.
  80. "Operations services" means routine operation of existing facilities, structures, buildings or real property.
  81. "Outright purchase" means the initial cost to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including all vendor charges and financing costs.
  82. "Owner" means the school district.
  83. "Paper" means newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
  84. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
  85. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
  86. "Physician" means a person licensed pursuant to A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
  87. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.
  88. "Posted prices" means the sale price determined by the school district to be fair market value.
  89. "Preconstruction services" means services and other activities during the design phase.
  90. "Pricing data" means information concerning prices, including profit, for materials, services or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices or current selling prices of the items being purchased.
  91. "Prime contractor" means a general contractor, who contracts with a property owner and, in turn, employs a sub-

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- contractor, or subcontractors, to perform some or all of the work.
92. "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services. Procurement also includes all functions that pertain to the obtaining of any material, service, construction, or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
  93. "Procurement file" means the official procurement records of the school district.
  94. "Proposal" means a response to a request for proposals and includes an offer to contract with the school district.
  95. "Proprietary specification" means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.
  96. "Public procurement unit" means either a local public procurement unit, the Arizona Department of Administration, any other state or an agency of the United States.
  97. "Public service corporation" means all corporations other than municipal engaged in furnishing gas, electricity, or water and subject to regulation as a utility by the Arizona Corporation Commission.
  98. "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.
  99. "Purchase requisition" means that document, or electronic transmission, whereby a school district requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested source of supply and information supplied for the making of any written determination required by Articles 10 and 11.
  100. "Qualified products list" means an approved list of materials or construction items described by model or catalog numbers that, prior to competitive solicitation, the governing board has determined will meet the applicable specification requirement.
  101. "Qualified select bidders list" means a selection process for establishing a list of best-qualified prime contractors or construction material suppliers for a specific, single project. The selection process is based upon listed evaluation criteria and conducted through a request for qualifications. Once the selection process is complete, the qualified bidders are invited to submit a sealed competitive bid based upon architectural/engineering plans and specifications or material specifications.
  102. "Reasonably susceptible of being awarded a contract" means those proposals that the school district determines are subject to award after the initial review of all original proposals.
  103. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty percent recovered wastepaper with ten percent of that being post-consumer material.
  104. "Regional award" means an award of portions of the total requirement by geographic region.
  105. "Request for information" means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
  106. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in R7-2-1042.
  107. "Request for qualifications" means all documents, whether attached or incorporated by reference, which are used for soliciting statements of qualifications in accordance with procedures prescribed in R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117.
  108. "Residual value" means the guaranteed minimum market value of the earth-moving, material-handling, road maintenance and construction equipment at the end of the life cycle of the equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.
  109. "Responsible bidder or offeror" means a person who at the time of contract award has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
  110. "Responsive bidder or offeror" means a person who submits a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.
  111. "Reverse auction" means a procurement method in which bidders are invited to bid on supplying specified materials over the Internet in a real-time competitive bidding event.
  112. "School district" has the meaning defined in A.R.S. § 15-101(21), whose authority is exercised by the governing board or its designee.
  113. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance. Services does not include employment agreements or collective bargaining agreements.
  114. "Shall" denotes the imperative.
  115. "Solicitation" means an invitation for bids, an invitation to submit technical offers, a request for proposals, a request for qualification, or any other invitation or request by which the school district invites a person to participate in a procurement.
  116. "Specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.
  117. "Specified professional services" means services of an architect, engineer, land surveyor, assayer, geologist and landscape architect and any combination of those services.
  118. "Standard commercial material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
  119. "Statement of qualifications" means a response to a request for qualifications issued pursuant to R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117, or unsolicited qualifications submitted pursuant to R7-2-1062 or R7-2-1122, and does not include an offer to contract with the school district.
  120. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a school district.

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121. "Surplus materials" means any materials that no longer have any use to the school district or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life.
122. "Suspension" means an action taken by the governing board under R7-2-1168 temporarily disqualifying a person from participating in school district procurements.
123. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications and its terms and conditions.
124. "Total life cycle cost" means total school district costs and financing costs throughout the life cycle of the earth-moving, material-handling, road maintenance and construction equipment being purchased less residual value.
125. "Total school district costs" means costs to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including repair costs, present value of monies, vendor charges, and all other identifiable school district costs that may be incurred.
126. "Unit price" means the price published in the unit price book for a specific construction or construction related task. Each unit price is comprised of labor, equipment, or material costs to accomplish a specific task, and shall be defined in the contract.
127. "Unit price book" means a comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.
128. "Vendor charges" means the costs of all vendor support, materials, transportation, and all other identifiable costs associated with the vendor's proposal or bid.
129. "Vendor support" means services provided by the vendor for items such as consulting, education and training.
130. "Wastepaper" means recyclable paper and paperboard, including high-grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.
2. Contracts between a school district and other governments, including intergovernmental agreements and contracts pursuant to A.R.S. § 11-952, except as provided by R7-2-1191 through R7-2-1196;
3. Purchases for amounts not exceeding the aggregate dollar amount specified in A.R.S. § 41-2535(A). Such procurements shall comply with the guidelines prescribed by the Auditor General in the Uniform System of Financial Records pursuant to A.R.S. § 15-271(C);
4. Contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial or administrative proceeding in which the school district is or may become a party;
5. Agreements negotiated by legal counsel representing the school district in settlement of litigation or threatened litigation;
6. Expenditures from student activity monies as defined in A.R.S. § 15-1121, if no district funds are involved;
7. Expenditures for common school textbooks as defined in A.R.S. § 15-721(G);
8. The placement of a pupil in a private school that provides special education services if such placement is prescribed in the pupil's individualized education program and the private school has been approved by the Department of Education Division of Special Education pursuant to A.R.S. § 15-765(D);
9. Purchases of any products, materials and services directly from Arizona Industries for the Blind, certified nonprofit agencies that serve individuals with disabilities as defined in A.R.S. § 41-2636(G), and Arizona Correctional Industries if the delivery and quality of the products, materials or services meet the school district's reasonable requirements;
10. The decision to participate in programs pursuant to A.R.S. § 15-382. A program authorized by A.R.S. § 15-382 is not required to engage in competitive bidding for the services necessary to administer the program or for the purchase of insurance or reinsurance;
11. The purchase of water, gas or electric utilities from a public service corporation. This exemption expressly does not apply to guaranteed energy cost savings contracts and guaranteed energy production contracts subject to A.R.S. § 15-213.01 and A.R.S. § 15-213.03; and
12. Purchases of professional certifications, professional memberships and conference registrations.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended effective March 21, 1991 (Supp. 91-1).  
 Amended effective October 22, 1992 (Supp. 92-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1002. Applicability**

- A. Articles 10 and 11 apply to every expenditure of public monies, including federal assistance monies and grants, by a school district as specified in A.R.S. § 15-213(A) for the procurement of all construction, materials and services when the total procurement cost exceeds the aggregate dollar amount specified in A.R.S. § 41-2535(A). If procurement involves the expenditure of federal assistance or contract monies, the school district shall comply with federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in Articles 10 and 11.
- B. Articles 10 and 11 apply to the disposal of school district materials regardless of value.
- C. Nothing in Articles 10 and 11 shall prevent any governing board from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.
- D. Articles 10 and 11 do not apply to:
  1. Agreements for providing career and technological education and vocational education pursuant to A.R.S. § 15-789;

- E. Unless displaced by the particular provisions of Articles 10 and 11, the principles of law and equity, including the Uniform Commercial Code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion, and mistake supplement the provisions of Articles 10 and 11.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended effective March 21, 1991 (Supp. 91-1).  
 Amended effective March 6, 1997 (Supp. 97-1).  
 Amended effective December 4, 1998 (Supp. 98-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1491, effective October 28, 2013 (Supp. 15-3). Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1003. General Provisions**

- A. The school district shall not award a contract or incur an obligation on behalf of the school district unless it is reasonable to believe sufficient funds will be available for the procurement.

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If sufficient funds are not available when a solicitation is issued, the solicitation shall include a statement that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

- B. Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another school district contract shall be deemed nonresponsive or unacceptable.
- C. Except by mutual consent of the parties to the contract, no rule in Articles 10 and 11 may change any commitment, right or obligation of a school district or of a contractor under a contract in existence on the effective date of the rule.
- D. Rights and duties arising from a school district contract may only be transferred, waived or assigned upon the express written consent of both parties.
- E. School district employees and public officers shall not purchase construction, materials or services for their own personal or business use from contracts entered into by the school district.
- F. If a contractor requests to change the name in which it holds a school district contract, the school district may, upon receipt of a document indicating the name change, enter into a contract modification with the contractor to effect the name change. The contract modification shall provide that no other terms and conditions of the contract are changed.
- G. The school district may allow electronic media transactions, including an electronic record or electronic signature, if consistent with state law and advantageous to the school district.
- H. A person who serves on an evaluation committee for a procurement is subject to A.R.S. § 41-2616(C).
- I. No project or purchase may be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed in Articles 10 and 11.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended effective March 21, 1991 (Supp. 91-1).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1004. Written Determinations**

- A. Written determinations required by Articles 10 and 11 shall specify the reasons for the determination.
- B. The school district is authorized to prescribe methods and operational procedures to be used in preparing written determinations.
- C. The school district shall place the written determination into the school district's procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1005. Change orders and contract modifications**

Any change order or contract modification that exceeds \$100,000 or five percent, whichever is greater, may be executed only if the governing board determines in writing that the change order or contract modification is advantageous to the school district and the price is determined to be fair and reasonable.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1006. Confidential Information**

- A. If a person believes that a bid, proposal, response to a request for information, technical offer, statement of qualifications, specification, or protest contains confidential trade secrets or other proprietary data not to be disclosed as otherwise required by A.R.S. § 39-121, a statement advising the school district of this fact shall accompany the submission and the information shall be so identified wherever it appears. Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a determination is made under subsection (C), the school district shall not disclose information designated as confidential under subsection (A) except to school district personnel having a legitimate interest in, or persons assisting the school district in evaluation of, the bid, proposal, response to a request for information, technical offer, statement of qualifications, specification, or protest.
- C. Upon receipt of a submission designating information as confidential, the school district shall make one of the following written determinations:
  - 1. The designated information is confidential and the school district shall not disclose the information except to school district personnel having a legitimate interest in, or persons assisting the school district in evaluation of, the bid, proposal, response to a request for information, technical offer, statement of qualifications, specification, or protest.
  - 2. The designated information is not confidential.
- D. The school district may request additional information, if necessary to make the determination required by subsection (C).
- E. If the school district determines that information submitted is not confidential, the person who made the submission shall be notified in writing. The notice shall specify that a request for review of the district representative's determination may be filed within 10 days of the date of the district representative's determination.
- F. A request for review of the district representative's determination shall be filed in writing with the district representative. The request for review shall state the precise legal or factual errors in the district representative's decision. If a request for review is received:
  - 1. The district representative shall consider the alleged legal or factual errors in the request for review of the district representative's determination and issue a final written determination to the person filing the request.
  - 2. Until the final determination is made under subsection (C)(2), the school district shall not disclose information designated as confidential under subsection (A) except to school district personnel having a legitimate interest in, or persons assisting the school district in evaluation of, the bid, proposal, response to a request for information, technical offer, statement of qualifications, specification, or protest.
- G. The school district may release information determined to not be confidential under subsection (C)(2) if:
  - 1. A request for review is not received by the district representative within the time period specified in the notice; or
  - 2. The district representative issues a final written determination under subsection (F)(1) that the designated information is not confidential.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended effective March 21, 1991 (Supp. 91-1). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1007. Delegation of Procurement Authority**

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- A. The governing board may, in a public meeting held in conformity with A.R.S. Title 38, Chapter 3, Article 3.1, delegate procurement authority to a designee. Any delegation shall be accomplished by adopting a governing board policy for this purpose.
1. Delegated procurement authority may include, but is not limited to the following:
    - a. Authority to make determinations required by Articles 10 and 11;
    - b. Authority to award contracts;
    - c. Authority to make sole source and emergency procurements; and
    - d. Authority to approve change orders and contract modifications.
  2. Delegated activities and functions shall be adequately separated among individuals so that one individual does not have complete authority over an entire procurement.
- B. Any delegation shall specify:
1. The title of the school district employee or employees to whom authority is delegated;
  2. The activity or function authorized;
  3. Any limits or restrictions on the exercise of the delegated authority, including the maximum cost of any procurement;
  4. Whether the authority may be further delegated;
  5. The duration of the delegation; and
  6. The conditions and procedures for revocation and modification of the delegation.
- C. No person delegated such authority may participate in any aspect of a specific procurement if the person would receive any benefit directly or indirectly from a contract for such procurement. Violation of this prohibition may result in termination or other disciplinary action.
- D. Delegation of procurement authority does not abrogate the responsibility of the governing board to ensure compliance with Articles 10 and 11 notwithstanding the fact that school district personnel were authorized to make procurement decisions.
- E. A procurement consultant, a member of a procurement advisory group, or a member of an evaluation committee who participates in any aspect of a specific procurement shall be prohibited from receiving any benefit directly or indirectly from a contract for such procurement, and shall sign a statement that the person has no interest in the procurement other than that of a disclosed remote interest, as defined in A.R.S. § 38-502, and will have no contact with any representative of a competing vendor related to the particular procurement except those contacts specifically authorized by these rules.
- D. Specifications prepared by a procurement consultant or a procurement advisory group shall comply with R7-2-1010 through R7-2-1016.
- E. The school district shall not delegate to a procurement consultant, a procurement advisory group, or an evaluation committee the authority for the award or administration of any particular contract, or over any dispute, claim or litigation pertaining thereto, and a procurement consultant or a procurement advisory group shall not be authorized to obligate the school district in any manner.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1009. Repealed****Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**SPECIFICATIONS****R7-2-1010. Preparation of Specifications**

- A. Specifications shall be prepared only by the school district or by contract pursuant to R7-2-1014 and R7-2-1015. Regardless of who prepares the specifications, the governing board retains the authority to disapprove all specifications.
- B. In an emergency under R7-2-1055, any necessary specifications may be utilized by the person designated in R7-2-1055 (C) without regard to the provisions of this Section.
- C. Content of specifications.
1. A specification may provide alternate descriptions of materials, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the school district's requirements.
  2. To the extent practicable, a specification shall not include any solicitation term or condition or any contract term or condition.
  3. If a specification for a common or general use item has been developed in accordance with R7-2-1011(A) or a qualified products list has been developed in accordance with R7-2-1011(D) for a particular material, service, or construction item, it shall be used unless the school district makes a written determination that its use is not advantageous to the school district and that another specification shall be used.
  4. To the extent practicable, specifications shall emphasize functional or performance criteria. To facilitate the use of such criteria, the school district shall use reasonable efforts to include the principle functional or performance requirements as a part of their purchase requisitions.
  5. All procurement solicitations for volatile organic compound containing commodities shall include a request for substitute commodities with lower or no volatile organic

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1008. Procurement Consultants and Procurement Advisory Groups**

- A. The school district may contract with a procurement consultant to assist in drafting specifications, in the development of solicitations, or in the management of the procurement process. A procurement consultant may provide guidance or advice to a procurement evaluation committee, but shall not serve as a voting member of such committee. For the purposes of this Section, a school district employee or a contracted business manager or purchasing director for the school district is not a procurement consultant.
- B. The school district may appoint procurement advisory groups or evaluation committees to assist with respect to specifications, solicitation evaluations or procurement in specific areas. Members of such procurement advisory groups or evaluation committees are not procurement consultants as set forth in this Section. Non-school district employees serving on such procurement advisory groups or evaluation committees are not eligible to receive compensation but are eligible for reimbursement of expenses consistent with the school district's travel policy adopted pursuant to A.R.S. § 15-342(5).



content. Substitute products shall not have increased toxicity compared to the original commodity.

#### Historical Note

Adopted effective October 22, 1992 (Supp. 92-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1011. Types of Specifications

- A. Specification for common or general use items. To the extent practicable, a specification for common or general use item shall be prepared and utilized when:
  1. A material, service or construction item is used repeatedly by the school district, and the characteristics of the material, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant;
  2. The school district's recurring needs require uniquely designed or specially produced items; or
  3. The school district finds it to be advantageous to the school district.
- B. Brand name or equal specification. A brand name or equal specification may be used when the school district determines that use of a brand name or equal specification is advantageous to the school district.
- C. Brand name specification. A brand name specification may be prepared and utilized only if the school district makes a determination that only the identified brand name item will satisfy the school district's needs. If only one source can supply the requirement, the procurement shall be made pursuant to R7-2-1053.
- D. Qualified products list. A qualified products list may be prepared and utilized when:
  1. The school district determines that testing or examination of the materials or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the school district's requirements.
  2. The school district shall solicit as many potential suppliers as practicable to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The qualified products list shall not be modified after the solicitation is issued.
  3. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with requirements established by the school district.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1012. Proprietary Specifications

The school district shall not use specifications in any way proprietary to one supplier unless the specification includes a statement of the reasons why no other specification is practicable, a description of the essential characteristics of the specified product and a statement specifically permitting an acceptable alternative product to be supplied.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1013. Recycled Products Use

- A. If the price of a recycled paper product that conforms to specifications is within five percent of a low bid product that is not

recycled and the recycled product bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled product. The governing board may adopt rules requiring a five percent preference for other products made from recycled materials.

- B. Specifications shall emphasize functional or performance criteria which, to the extent practicable, do not discriminate against the use of recycled materials.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1014. Maximum Practicable Competition

- A. All specifications, including those prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the school district's needs and shall not be unduly restrictive.
- B. Unless otherwise permitted by R7-2-1010 through R7-2-1016, all specifications shall describe the school district's requirements in a manner that does not unreasonably exclude a material, service, or construction item. Proprietary specifications shall be used only as provided in R7-2-1012.
- C. To the extent practicable, the school district shall use accepted commercial specifications and shall procure standard commercial materials.
- D. Contracts for the preparation of specifications by persons other than the school district shall require the specification writer to adhere to R7-2-1010 through R7-2-1016.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1015. Conflict of Interest

- A. No person preparing specifications pursuant to R7-2-1014 shall receive any direct or indirect benefit from the utilization of such specifications.
- B. The governing board may contract for the preparation of specifications with persons, including, but not limited to, consultants, architects, engineers, designers, and other draftsmen of specifications.
- C. If a person prepares a specification pursuant to subsection (B) of this Section, such person shall comply with the requirements of R7-2-1010 through R7-2-1016.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1016. Confidentiality

- A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection pursuant to A.R.S. § 39-121, except to the extent that the withholding of such information is permitted or required by law.
- B. If the supplier believes that the specifications contain confidential trade secrets, test data, or similar information, a statement advising the school district of this fact shall accompany the specification in accordance with R7-2-1006.
- C. Qualified products lists test results shall be made available in a manner to protect the identity of the supplier.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1017. Reserved

## REVERSE AUCTIONS

**R7-2-1018. Reverse Auctions****A. Using reverse auctions**

1. If a governing board determines in writing that use of reverse auctions is more advantageous to the school district than other procurement methods prescribed by Articles 10 and 11, the school district may use reverse auctions for the purchase of materials.
2. The written determination shall include, but is not limited to the following information:
  - a. An estimate of the number of prospective bidders;
  - b. An explanation of how reverse auctions will foster competition;
  - c. An explanation of why reverse auctions is more advantageous to the school district than other prescribed procurement methods; and
  - d. The scope and estimated total dollar value of the proposed procurement.

**B. Reverse auction procedures**

1. The school district shall develop and implement procedures prior to conducting procurement via reverse auctions. The procedures shall include:
  - a. The method or methods to ensure the integrity and security of the reverse auctions;
  - b. The method or methods for registering bidders for reverse auctions;
  - c. The method or methods for notifying vendors of reverse auction opportunities;
  - d. The method or methods for receiving reverse auction bids; and
  - e. The school district official or officials authorized to conduct reverse auctions.
2. School districts may require bidders to register before the date and time for opening the reverse auction for submission of bids and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the invitation for bids.
3. Notice of a reverse auction shall be issued at least 14 days before the date and time for opening the reverse auction for submission of bids, unless a shorter time is determined necessary by the school district. If a shorter time is necessary, the school district shall document the specific reasons in the procurement file. The reverse auction notice shall include:
  - a. The school district's requirements for registering prior to the opening date and time, if any;
  - b. The designated site on the Internet for bidder registration and bid submission;
  - c. A link to the designated site on the Internet;
  - d. The scheduled date and time for opening the reverse auction for bid submission; and
  - e. The scheduled date and time for closing the reverse auction for bid submission.
4. The school district shall issue the notice of reverse auction as follows:
  - a. Mail or otherwise furnish the notice of reverse auctions to all prospective bidders registered with the school district for the specific material being solicited.
  - b. In the event there are four or fewer prospective bidders on the bidders list, publish the notice in the official newspaper of the county as defined in A.R.S. § 11-255 within which the school district is located for two publications which are not less than six nor more than 10 days apart. The second publication shall not be less than two weeks before the date and

time for closing the reverse auction for bid submission. The time of publication may be altered if determined necessary by the school district. The school district shall document the basis for the altered time of publication.

- c. In addition to the notice provided in subsections (a) and (b), the school district may give such additional notice as the school district deems appropriate, including posting on a designated site on the Internet.
5. The school district shall prepare an invitation for bids that includes:
  - a. Notice that all information submitted by bidders will be made available for public inspection following the award of the contract, except for bid prices which will be made available to other bidders and the public when submitted by the bidder;
  - b. Information for submitting bids, including:
    - i. The date and time for opening the reverse auction for bid submission;
    - ii. The date and time for closing the reverse auction for bid submission;
    - iii. The provisions for extending the period for bid submission, if any;
    - iv. Instructions for submitting bids and other required information, including the designated site on the Internet for submitting bids;
    - v. Notice that bids shall be accepted electronically at the time and in the manner designated in the invitation for bids;
    - vi. Notice that bidders' prices shall be disclosed electronically to other bidders and the public on a real time basis;
    - vii. Notice that bidders may submit multiple prices and may reduce their bid prices until the reverse auction bidding is closed;
    - viii. Notice that the lowest price offered shall become the official bid price;
    - ix. Notice that the bidder is required to certify that submission of the bid did not involve collusion or other anticompetitive practices;
    - x. Notice that the bidder is required to declare whether the bidder has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
  - c. The purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements, as applicable. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics needed to meet the school district's requirements and is not intended to limit or restrict competition. The invitation for bids shall state that products substantially equivalent to the brands designated qualify for consideration;
  - d. The factors to be used in bid evaluations, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Only objectively measurable evaluation criteria shall be included in the invitation for bids. Examples of such criteria include, but are not limited to, transportation cost,

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energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the school district has available concerning future use.

- e. The contract terms and conditions, including:
    - i. Warranty and bonding or other security requirements, as applicable;
    - ii. The length of the contract and whether the contract will include an option for extension; and
    - iii. Any other contract terms and conditions;
  - f. The name of the district representative or district representatives;
  - g. The manner by which the bidder is required to acknowledge amendments;
  - h. The minimum required information in the bid;
  - i. The specific requirements for designating trade secrets and other proprietary data as confidential;
  - j. Any specific responsibility criteria;
  - k. A statement specifying where documents incorporated by reference may be obtained;
  - l. A statement that the school district may cancel the solicitation or reject a bid in whole or in part if deemed advantageous to the school district;
  - m. The date, time and location of bid opening;
  - n. A description of all information that will be recorded and available for public inspection at bid opening; and
  - o. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as price evaluation criteria the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment and, to the extent practicable, outright purchase.
6. Amendments to invitations for bids shall be made in accordance with R7-2-1026.
- C.** The school district shall accept reverse auction bids as follows:
- 1. At the date and time for opening the reverse auction for bid submission, the school district shall begin accepting on-line bids and shall continue accepting bids until the reverse auction is officially closed.
  - 2. Bids shall be accepted electronically in the manner designated in the invitation for bids.
  - 3. All reverse auction on-line bids shall be posted electronically and updated on a real-time basis. Bidders' prices shall be disclosed to other bidders and the public.
  - 4. The identity of competing bidders shall not be disclosed until the reverse auction bidding is closed.
  - 5. Bidders shall have the opportunity to submit multiple prices and to reduce their bid prices.
  - 6. The lowest price offered shall become the official bid price.
- D.** Bids made through a reverse auction are considered to be opened when a computer generated record of the information contained in all bids that were received by the designated site on the Internet not later than the scheduled or final closing date and time are reviewed publicly by the school district in the presence of one or more witnesses at the time and place designated in the invitation for bids. Bid opening shall not be later than 24 hours after the scheduled or final closing date and time.
- E.** The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and evaluation criteria set forth in the invitation for bids.

No criteria may be used in bid evaluation that are not set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder.

- F.** The school district shall not modify evaluation criteria after the closing date and time.
- G.** In the event that multiple bidders submit identical prices for the same materials, bids will be considered in the order received with the first being considered to be the lowest bid.
- H.** If only one bid is received in response to an invitation for bids, the school district shall proceed according to R7-2-1032.
- I.** The date and time for closing a reverse auction for bid submission may be fixed or remain open depending on the materials being bid.
- J.** After the reverse auction bidding has closed, a bidder may withdraw a bid or correct a mistake in accordance with R7-2-1030. Withdrawal of bids shall also be permitted as provided in R7-2-1028.
- K.** The school district shall notify all bidders of an award.
- L.** A copy of the invitation for bids shall be made available for public inspection at the school district office.
- M.** A record of the bid prices received and the name of each bidder shall be open to public inspection following bid opening.
- N.** A record of the reverse auction shall be maintained by the school district that will include all prices offered by all bidders. This record will become part of the procurement file.
- O.** Within 10 days after a contract is awarded, the school district shall make the procurement file, including all bids, available for public inspection.
  - 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
  - 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1019. Reserved****R7-2-1020. Reserved****COMPETITIVE SEALED BIDDING****R7-2-1021. Method of Source Selection**

- A.** Unless otherwise authorized by law, all school district contracts shall be awarded by competitive sealed bidding as provided in R7-2-1021 through R7-2-1032, except as provided in R7-2-1018, R7-2-1033 through R7-2-1068, R7-2-1100 through R7-2-1123, and R7-2-1196.
- B.** A school district may conduct competitive sealed bidding electronically, provided that the electronic competitive sealed bidding process complies with the requirements of R7-2-1021 through R7-2-1032. A determination that conducting competitive sealed bidding electronically is advantageous to the school district shall be in writing and retained in the procurement file.
- C.** When using electronic competitive sealed bidding, the school district shall determine whether electronic submission of bids is required or optional and state the electronic submission requirements in the public notice and the invitation for bids.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

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Amended effective October 22, 1992 (Supp. 92-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1022. Notice of Competitive Sealed Bidding**

- A. Adequate public notice of the invitation for bids shall be given as provided in subsection (B) of this Section or in R7-2-1024(C). If notice is given pursuant to R7-2-1024(C), notice also may be given as provided in subsection (B). In the event there are four or fewer prospective bidders on the bidders list, then notice also shall be given as provided in subsection (B). If the invitation for bids is for the procurement of services other than those described in R7-2-1061 through R7-2-1068 and R7-2-1117 through R7-2-1123, notice also shall be given as provided in subsection (B).
- B. In the event there are four or fewer prospective bidders on the bidders list, the notice shall include publication in the official newspaper of the county as defined in A.R.S. § 11-255 within which the school district is located for two publications which are not less than six nor more than ten days apart. The second publication shall not be less than two weeks before bid opening. The time of publication may be altered if deemed necessary pursuant to R7-2-1024(A).
- C. In addition to the notice provided in subsections (A) and (B), the school district may give such additional notice as the school district deems appropriate, including posting on a designated site on the Internet.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1023. Prospective Bidders Lists**

- A. The school district shall compile and maintain a prospective bidders list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a school district contract.
- B. Persons desiring to be included on the prospective bidders list shall notify the school district. Upon notification, the school district shall mail or otherwise provide the person with the school district procedures for inclusion on the bidders list. Within 30 days after receiving the required information, the school district shall add the person to the prospective bidders list unless the school district makes a determination that inclusion is not advantageous to the school district.
- C. Persons who fail to respond to invitations for bids for two consecutive procurements of similar items may be removed from the applicable bidders list after notifying the person in writing. This notice shall not be required if the two invitations for bids which were not responded to both contained the notice that bidders' names may be removed from the bidders list if they fail to respond to invitations for bids for two consecutive procurements of similar items. Persons may be reinstated upon request.
- D. Prospective bidders lists shall be available for public inspection, unless the school district makes a written determination that it is advantageous to the school district that they be kept confidential or private and should not be open for inspection pursuant to A.R.S. § 39-121.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1024. Invitation for Bids**

- A. Invitation for bids shall be issued at least 14 days before the due date and time in the invitation for bids unless a shorter time is deemed necessary for a particular procurement as determined by the school district. If a shorter time is necessary, the school district shall document the specific reasons in the procurement file.
- B. Content.
  - 1. The invitation for bids shall include the following:
    - a. Notice that all information and bids submitted by bidders will be made available for public inspection following the award of the contract;
    - b. Instructions and information to bidders concerning bid submission requirements, including the means for bid submission such as, hand delivery, U.S. mail, electronic mail, facsimile, or other acceptable means, the bid due date and time, the address of the office at which bids or other documents are to be received, the bid acceptance period, and any other special information or requirements;
    - c. Whether the school district will consider partial bids for award of a contract;
    - d. Notification of whether the school district may award multiple contracts and the school district's basis for determining whether to award multiple contracts. If multiple contracts may be awarded, the invitation for bids shall include the criteria the school district will use for selecting vendors for each contract under the multiple award, including whether contracts will be awarded by individual line items or groups of line items, whether contracts will be awarded incrementally, or whether contracts will be awarded by designated regions or locations;
    - e. The basis for determining the lowest bidder or bidders;
    - f. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as price evaluation criteria the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment and, to the extent practicable, the cost of outright purchase;
    - g. The purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements, as applicable. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and other characteristics needed to meet the school district's requirements and is not intended to limit or restrict competition. The invitation for bids shall state that products substantially equivalent to the brands designated qualify for consideration;
    - h. The factors to be used in bid evaluations, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Only objectively measurable evaluation criteria shall be included in the invitation for bids. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the school district has available concerning future use;
    - i. The contract terms and conditions, including:

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- i. Warranty and bonding or other security requirements, as applicable;
  - ii. The length of the contract and whether the contract will include an option for extension; and
  - iii. Any other contract terms and conditions;
  - j. The name of the district representative or district representatives;
  - k. The manner by which the bidder is required to acknowledge amendments;
  - l. The minimum information required in the bid;
  - m. The specific requirements for designating trade secrets and other proprietary data as confidential;
  - n. Any specific responsibility criteria;
  - o. A statement specifying where documents incorporated by reference may be obtained;
  - p. A statement that the school district may cancel the solicitation or reject a bid in whole or in part if deemed advantageous to the school district;
  - q. Notice that the bidder is required to certify that submission of the bid did not involve collusion or other anticompetitive practices;
  - r. Notice that the bidder is required to declare whether the bidder has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
  - s. Any bid security required;
  - t. A description of all information that will be recorded and available for public inspection at bid opening; and
  - u. The date, time and location of any pre-bid conference.
2. When using electronic competitive sealed bidding, the invitation for bids shall specify whether electronic submission of bids is required or optional, the electronic submission requirements, and the electronic signature requirements.
- C.** The school district shall mail or otherwise furnish invitation for bids or notices of the availability of invitation for bids to all prospective bidders registered with the school district for the specific material, service or construction being bid.
- D.** A copy of the invitation for bids shall be made available for public inspection at the school district office.
- A.** An amendment to an invitation for bids shall be issued if necessary to:
1. Make changes in the invitation for bids;
  2. Correct defects or ambiguities;
  3. Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders;
  4. Provide additional information or instructions; or
  5. Set a later bid due date and time if the school district determines that an extension is advantageous to the school district.
- B.** Amendments to an invitation for bids shall be so identified and the school district shall ensure that the amendments are distributed or made available to all persons to whom the original invitation for bids was distributed or made available. The school district shall make a copy of the amendments to an invitation for bids available for public inspection at the school district office. If the school district posted the invitation for bids or a notice of the availability of an invitation for bids on a designated site on the Internet, then the school district shall post any amendments to the invitation for bids on the same designated site on the Internet. The school district shall also do one or more of the following:
1. Distribute the amendment, by any method reasonably calculated to ensure delivery, to all prospective bidders to whom the invitation for bids was distributed;
  2. Make the amendment available and issue a notice of amendment which contains instructions for obtaining copies of the amendment. The notice of amendment shall be distributed, by any method reasonably calculated to ensure delivery, to all prospective bidders to whom the invitation for bids was distributed. Upon receipt of such notice of amendment, it is the responsibility of the prospective bidder to obtain the amendment.
- C.** Amendments to invitation for bids shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the school district determines that the bid due date and time does not permit sufficient time for bid preparation, the bid due date and time shall be extended in the amendment or, if necessary, by telephone, facsimile, email, or other communications methods, and confirmed in the amendment.
- D.** A bidder shall acknowledge receipt of an amendment in the manner specified in the invitation for bids or the amendment on or before the bid due date and time.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended effective October 22, 1992 (Supp. 92-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525,  
 effective July 1, 2015 (Supp. 15-3).

**R7-2-1025. Pre-bid Conferences**

- A.** The school district may conduct a pre-bid conference to explain the procurement requirements.
- B.** If a pre-bid conference is conducted, it shall be not less than seven days before the bid due date and time, unless the school district makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-bid conference are not amendments to the solicitation.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525,  
 effective July 1, 2015 (Supp. 15-3).

**R7-2-1026. Amendments to Invitation for Bids****Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525,  
 effective July 1, 2015 (Supp. 15-3).

**R7-2-1027. Pre-opening Modification or Withdrawal of Bids**

- A.** A bidder may modify or withdraw a bid in writing at any time before bid opening if the modification or withdrawal is received before the bid due date and time at the location designated in the invitation for bids for receipt of bids.
- B.** All documents concerning a modification or withdrawal of a bid shall be retained in the procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525,  
 effective July 1, 2015 (Supp. 15-3).

**R7-2-1028. Late Bids, Late Withdrawals and Late Modifications**

- A. A bid, modification or withdrawal is late if it is received at the location designated in the invitation for bids for receipt of bids after the bid due date and time.
- B. A late bid, late modification, or late withdrawal shall be rejected, unless the late bid, late modification, or late withdrawal would have been timely received but for the action or inaction of school district personnel and is received before contract award.
- C. Upon receiving a late bid, late modification, or late withdrawal, the school district shall record the time and date of receipt and promptly send written notice of late receipt to the bidder. The school district may discard the document 30 days after the date on the notice unless the bidder requests the document be returned.
- D. All documents concerning acceptance of a late bid, late modification, or late withdrawal shall be retained in the procurement file.
  - a. An explanation of the mistake and any other relevant information;
  - b. A request for correction including the corrected bid or a request for withdrawal; and
  - c. The reasons why correction or withdrawal is consistent with fair competition and advantageous to the school district.
- B. A bidder who discovers a mistake in its bid after bid opening and before award, may request correction or withdrawal in writing and shall include all of the following in the written request:
  - 1. An explanation of the mistake and any other relevant information;
  - 2. A request for correction including the corrected bid or a request for withdrawal; and
  - 3. The reasons why correction or withdrawal is consistent with fair competition and advantageous to the school district.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

#### R7-2-1029. Receipt, Opening and Recording of Bids

- A. A school district shall maintain a record of bids and modifications received for each invitation for bids, shall record the time and date when each bid or modification is received, and shall store each unopened bid or modification in a secure place until the bid due date and time.
  - 1. If required to confirm a vendor's inquiry regarding receipt of its bid prior to the due date and time, a school district may open a bid to identify the vendor. If this occurs, the school district shall record the reason for opening the bid, the date and time the bid was opened, and the solicitation number. The school district shall secure the bid and retain it for public opening.
  - 2. One or more witnesses shall be present for the opening of a bid under subsection (A)(1).
- B. Bids and modifications shall be opened publicly at the date, time and place designated in the invitation for bids in the presence of one or more witnesses. The name of each bidder, the amount of each bid, and other relevant information deemed appropriate by the school district shall be recorded. The person opening the bids and all witnesses shall sign the record.
  - 1. The record created in subsection (B) shall be available for public inspection.
  - 2. The bids shall not be open for public inspection until after a contract is awarded.
- C. After bid opening and before award, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (D) through (F).
- D. After bid opening and before award, the school district shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the school district.
- E. After bid opening and before award, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.
- F. After bid opening and before award, the school district may permit a bidder to withdraw a bid if:
  - 1. A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or
  - 2. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.
- G. If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (D), (F) and (J), the school district shall prepare a written determination showing that the relief was permitted or denied under this Section.
- H. Notwithstanding other provisions of this Section, after bid opening and before award, no corrections in bid prices or other provisions of bids prejudicial to the interest of the school district or fair competition shall be permitted.
- I. If a mistake in the bid is discovered after the award, the bidder may request withdrawal or correction in writing and shall include all of the following in the written request:
  - 1. An explanation of the mistake and any other relevant information;
  - 2. A request for correction including the corrected bid or a request for withdrawal; and
  - 3. The reasons why correction or withdrawal is consistent with fair competition and advantageous to the school district.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

#### R7-2-1030. Mistakes in Bids

- A. If an apparent mistake in a bid, relevant to the award determination, is discovered after opening and before award, a school district shall contact the bidder for written confirmation of the bid. If the bidder fails to act, the bidder is considered nonresponsive and the school district shall place a written determination that the bidder is nonresponsive in the procurement file. The school district shall designate a time-frame within which the bidder shall either:
  - 1. Confirm that no mistake was made and assert that the bid stands as submitted; or
  - 2. Acknowledge that a mistake was made and include all of the following in a written response:
    - a. An explanation of the mistake and any other relevant information;
    - b. A request for correction including the corrected bid or a request for withdrawal; and
    - c. The reasons why correction or withdrawal is consistent with fair competition and advantageous to the school district.
- B. Based on the considerations of fair competition and the best interest of the school district, the school district may take one of the following actions regarding a bid mistake discovered after the award:
  - 1. Allow correction of the mistake, if the corrected bid amount is less than the next lowest bid;
  - 2. Cancel all or part of the award; or
  - 3. Deny correction or withdrawal.
- K. After cancellation of all or part of an award in accordance with subsection (J)(2), if the bid acceptance period has not expired, the school district may award all or part of the contract to the next lowest responsible and responsive bidder, based on the

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considerations of fair competition and the best interest of the school district.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
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#### R7-2-1031. Bid Evaluation and Award

- A.** As provided in subsection (C), the contract or contracts shall be awarded to the lowest responsible and responsive bidder or bidders whose bid or bids conform in all material respects to the requirements and evaluation criteria set forth in the invitation for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the lowest bidder.
- B.** A product acceptability evaluation shall be conducted solely to determine whether a bidder's product is acceptable as set forth in the invitation for bids and not whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as nonresponsive.
- C.** The school district shall award the contract to the single lowest responsible and responsive bidder for all materials or services, except that the school district may make a multiple award if the invitation for bids included notification that multiple contracts may be awarded, the school district's basis for determining whether to award multiple contracts, and the criteria for selecting vendors for the multiple contracts.
- D.** Before making a multiple award, the school district shall determine in writing that a multiple award is necessary and is advantageous to the school district and shall establish procedures for the use of the multiple awarded contracts to ensure that purchases are made from the contracts determined by the school district to offer the lowest cost in satisfying the school district's requirements. A multiple award shall be limited to the least number of suppliers the school district determines in writing to be necessary to meet the school district's requirements, and may include the following types of awards:
  1. Awards to the lowest responsible and responsive bidder for individual line items or groups of line items.
  2. Awards to the lowest responsible and responsive bidders for similar or identical line items or groups of line items only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery, and the awards are limited to the least number of bidders necessary to meet the school district's requirements.
  3. An incremental award only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery. The award shall be made to the lowest responsible and responsive bidder, then the next lowest responsible and responsive bidder or bidders until the total definite quantity required is awarded.
  4. A regional award to the lowest responsible and responsive bidder in designated regions or locations only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery over widely scattered locations or a particular requirement is of a local nature.
- E.** The procurement file shall contain the basis on which the award or awards are made.
- F.** The school district shall not modify evaluation criteria after the bid due date and time.
- G.** A school district may appoint an evaluation committee to assist in the evaluation of bids. If bids are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the school district. The school district may:
  1. Accept the findings of the evaluation committee;
  2. Request additional information from the evaluation committee; or
  3. Reject the findings of the evaluation committee, in which case the school district shall appoint a new evaluation committee to evaluate the existing bids or cancel the solicitation.
- H.** The school district may contact a bidder to confirm the school district's understanding of the bid. Such contact shall be prior to award. The school district shall obtain written confirmation from the bidder and shall retain the confirmation in the procurement file.
- I.** The contract or contracts shall be awarded during the bid acceptance period. If the bid acceptance period expires prior to award of the contract or contracts, the procurement shall be canceled, unless the bid acceptance period is extended in accordance with subsection (J).
- J.** To extend the bid acceptance period, a school district shall notify all bidders in writing of an extension and request written concurrence from each bidder. To be eligible for a contract award, a bidder shall submit a written concurrence to the extension. The school district shall reject a bid as nonresponsive if written concurrence is not provided as requested.
- K.** A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under subsection (A). This Section does not permit negotiations with any bidder, except as provided in subsection (L).
- L.** If all bids for a construction project exceed available monies as certified by the school district, and the lowest responsive bid from a responsible bidder does not exceed such monies by more than five percent, the school district may in situations in which time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsible and responsive bidder, to bring the bid within the amount of available monies.
- M.** If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award shall be made by drawing lots in the presence of one or more witnesses.
- N.** A record showing the basis for determining the successful bidder shall be retained in the procurement file.
- O.** The school district shall notify all bidders of an award.
- P.** After a contract is awarded, the school district shall return any bid security provided by unsuccessful bidders.
- Q.** Upon execution of the contract, if performance and payment bonds were not required, or upon receipt of the specified bonds, if performance and payment bonds were required, the school district shall return any bid security provided by the successful bidder.
- R.** Within 10 days after a contract is awarded, the school district shall make the procurement file, including all bids, available for public inspection.
  1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.

2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended effective October 22, 1992 (Supp. 92-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1032. Only One Bid Received

If only one responsive bid is received in response to an invitation for bids, an award may be made to the single bidder if the school district determines in writing that the bidder is responsible, that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected in whole or in part as may be specified in the invitation for bids if it is advantageous to the school district. The reasons for cancellation or rejection shall be made part of the procurement file and:

1. New bids may be solicited;
2. The proposed procurement may be canceled; or
3. If the school district determines that the need for the material or service continues and the acceptance of the one bid is not advantageous to the school district, the procurement may then be conducted as follows:
  - a. The school district may follow the sole source procurement procedure if R7-2-1053 applies.
  - b. Notwithstanding any other provision of Articles 10 and 11, the school district may make emergency procurements pursuant to R7-2-1055 and R7-2-1056 if an emergency condition exists pursuant to R7-2-1055.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1033. Simplified School Construction Procurement Program

- A. The simplified school construction procurement program is applicable to construction projects which do not exceed the maximum amount specified in A.R.S. § 15-213(A)(2).
- B. To participate in the simplified school construction procurement program:
  1. Each county school superintendent shall maintain a prospective bidders list of persons who desire to receive solicitations to bid on school district construction projects within that county. The prospective bidders list shall be maintained in accordance with R7-2-1023;
  2. The prospective bidders list maintained pursuant to subsection (B)(1) shall be available for public inspection;
  3. A performance bond and a payment bond, as required by A.R.S. § 34-222, shall be provided for contracts for construction by contractors;
  4. All bids for construction shall be opened at a public opening and the bids shall remain confidential until the public opening;
  5. All persons desiring to submit bids shall be treated equitably and the information related to each project shall be available to all eligible persons; and
  6. Competition for construction projects under the simplified school construction procurement program shall be encouraged to the maximum extent possible. School districts shall submit information on each project to all persons listed on the prospective bidders list maintained by

the county school superintendent pursuant to subsection (B)(1).

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1034. Reserved

#### MULTISTEP SEALED BIDDING

#### R7-2-1035. Multistep Sealed Bidding

- A. The multistep sealed bidding method may be used if:
  1. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the school district;
  2. Definite criteria exist for evaluation of technical offers;
  3. More than one technically qualified source is expected to be available; and
  4. A fixed-price contract will be used.
- B. The multistep sealed bidding method may not be used for construction contracts.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1036. Phase 1 of Multistep Sealed Bidding

- A. Multistep sealed bidding shall be initiated by the issuance of an invitation to submit technical offers. The invitation to submit technical offers shall be issued according to R7-2-1022 and R7-2-1024(A).
- B. The invitation to submit technical offers shall include the following information:
  1. Notice that the procurement shall be conducted in two phases;
  2. The best description of the material or services desired;
  3. A statement that unpriced technical offers only shall be considered in phase 1;
  4. The requirements for the technical offers, such as drawings and descriptive literature;
  5. The criteria for evaluating technical offers;
  6. The due date and time for receipt of technical offers and the location where technical offers shall be delivered or mailed;
  7. A statement that discussions may be held;
  8. A statement that only bids based on technical offers determined to be acceptable in phase 1 shall be considered for award;
  9. The name of the district representative or district representatives;
  10. Notice that all technical offers submitted will be made available for public inspection following the award of the contract; and
  11. The date, time and location of any pre-technical offer conference.
- C. A school district may conduct a pre-technical offer conference open to all persons. If a pre-technical offer conference is conducted, it shall be not less than seven days before the technical offer due date and time, unless the school district makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during the pre-technical offer conference shall not be considered modifications to the invitation to submit technical offers.



- D.** The invitation to submit technical offers may be amended before or after the submission of the unpriced technical offers. Amendments to an invitation to submit technical offers shall be so identified and the school district shall ensure that the amendments are distributed or made available to all persons to whom the original invitation to submit technical offers was distributed or made available. The school district shall make a copy of the amendments to an invitation to submit technical offers available for public inspection at the school district office. If the school district posted the invitation to submit technical offers or a notice of the availability of an invitation to submit technical offers on a designated site on the Internet, then the school district shall post any amendments to the invitation to submit technical offers on the same designated site on the Internet. The school district shall also do one or more of the following:
- a. Distribute the amendment, by any method reasonably calculated to ensure delivery, to all persons to whom the invitation to submit technical offers was distributed;
  - b. Make the amendment available and issue a notice of amendment which contains instructions for obtaining copies of the amendment. The notice of amendment shall be distributed, by any method reasonably calculated to ensure delivery, to all persons to whom the invitation to submit technical offers was distributed. Upon receipt of such notice of amendment, it is the responsibility of the person to obtain the amendment.
2. Amendments shall be issued within a reasonable time before technical offer opening to allow persons to consider them in preparing their technical offers. If the school district determines that the technical offer due date and time does not permit sufficient time for technical offer preparation, the technical offer due date and time shall be extended in the amendment or, if necessary, telephone, facsimile, email, or other communications methods, and confirmed in the amendment.
3. A person shall acknowledge receipt of an amendment in the manner specified in the invitation to submit technical offers or the amendment on or before the technical offer due date and time.
- E.** Unpriced technical offers shall not be opened publicly, but shall be opened in the presence of two or more district officials designated by the school district. The contents of unpriced technical offers shall not be disclosed to unauthorized persons. Late technical offers shall not be considered except under the circumstances set forth in R7-2-1028(B).
- F.** Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the invitation to submit technical offers and shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical offer is unacceptable shall be in writing, state the basis for the determination and be retained in the procurement file. If the school district determines a person's unpriced technical offer is unacceptable, the school district shall notify that person of the determination and that the person shall not be afforded an opportunity to amend the technical offer.
- G.** The school district may conduct discussions with any person who submits an acceptable or potentially acceptable technical offer. During discussions, the school district shall not disclose any information derived from one unpriced technical offer to any other person. After discussions, the school district shall establish a due date and time for receipt of final technical offers and shall notify, in writing, persons submitting acceptable or potentially acceptable technical offers of the due date and time. The school district shall keep a detailed record of all discussions.
- H.** At any time during phase 1, technical offers may be withdrawn.
- I.** A copy of the invitation to submit technical offers shall be made available for public inspection at the school district office.
- Historical Note**  
Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).
- R7-2-1037. Phase 2 of Multistep Sealed Bidding**
- A.** Upon completion of phase 1, the school district shall issue an invitation for bids and conduct phase 2 under R7-2-1024 through R7-2-1032 as a competitive sealed bidding procurement, except that the invitation for bids shall be issued only to persons whose technical offers were determined to be acceptable in phase 1.
- B.** Unpriced technical offers of unsuccessful persons shall be open to public inspection after contract award, except to the extent set forth in R7-2-1006.
- Historical Note**  
Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).
- R7-2-1038. Reserved**
- R7-2-1039. Reserved**
- R7-2-1040. Reserved**
- COMPETITIVE SEALED PROPOSALS**
- R7-2-1041. Competitive Sealed Proposals**
- A.** This Section does not apply to procurement of services of clergy, certified public accountants, physicians, dentists, and legal counsel, construction, construction services, or specified professional services. Services of clergy, certified public accountants, physicians, dentists and legal counsel shall be procured pursuant to R7-2-1061 through R7-2-1068. Construction and construction services shall be procured as provided in R7-2-1100. Specified professional services shall be procured pursuant to R7-2-1117 through R7-2-1123.
- B.** As an alternative to competitive sealed bidding, competitive sealed proposals may be used in order to:
1. Use a contract other than a fixed-price type;
  2. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;
  3. Afford offerors an opportunity to revise their proposals;
  4. Compare the different price, quality, and contractual factors of the proposals submitted; or
  5. Award a contract in which price is not the determining factor.
- C.** A school district may conduct competitive sealed proposals electronically, provided that the electronic competitive sealed proposals process complies with the requirements of R7-2-1041 through R7-2-1050. A determination that conducting competitive sealed proposals electronically is advantageous to the school district shall be in writing and retained in the procurement file.
- D.** When using electronic competitive sealed proposals, the school district shall determine whether electronic submission of proposals is required or optional and state the electronic submission requirements in the public notice and the request for proposals.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

Amended effective March 21, 1991 (Supp. 91-1).

Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1042. Request for Proposals**

A. Competitive sealed proposals shall be solicited through a request for proposals. A request for proposals shall include the following:

1. Instructions to offerors, including:
  - a. Instructions and information to offerors concerning proposal submission requirements, including the means for proposal submission such as, hand delivery, U.S. mail, electronic mail, facsimile, or other acceptable means, the proposal due date and time, the address of the office at which proposals or other documents are to be received, the proposal acceptance period, and any other special information or requirements;
  - b. The manner by which the offeror is required to acknowledge amendments;
  - c. Notification of whether the school district may award multiple contracts and the school district's basis for determining whether to award multiple contracts. If multiple contracts may be awarded, the request for proposals shall include the criteria the school district will use for selecting vendors for each contract under the multiple award, including whether contracts will be awarded by individual line items or groups of line items, whether contracts will be awarded incrementally, or whether contracts will be awarded by designated regions or locations;
  - d. The minimum information required in the proposal;
  - e. The specific requirements for designating trade secrets and other proprietary data as confidential;
  - f. Any specific responsibility criteria;
  - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the proposal;
  - h. Evaluation factors and the relative importance of price and other evaluation factors. Specific numerical weighting is not required;
  - i. Procurement of earth-moving, material-handling, road maintenance and construction equipment shall include as evaluation factors the total life cycle cost including residual value of the earth-moving, material-handling, road maintenance and construction equipment and, to the extent practicable, the cost of outright purchase;
  - j. A statement specifying where documents incorporated by reference may be obtained;
  - k. A statement that the school district may cancel the solicitation or reject a proposal in whole or in part if deemed advantageous to the school district;
  - l. Notice that the offeror is required to certify that submission of the proposal did not involve collusion or other anticompetitive practices;
  - m. Notice that the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
  - n. Any bid security required;

- o. Any cost or pricing data required;
  - p. The type of contract to be used;
  - q. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being awarded a contract;
  - r. The date, time and location of any pre-proposal conference;
  - s. The name of the district representative or district representatives;
  - t. A description of all information that will be recorded and available for public inspection at proposal opening;
  - u. Notice that all information and proposals submitted by offerors will be made available for public inspection following the award of the contract; and
  - v. Whether the school district will consider partial proposals for award of a contract.
2. Specifications, including:
    - a. The purchase description, delivery or performance schedule, and inspection and acceptance requirements, as applicable;
    - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and other characteristics needed to meet the school district's requirements and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
    - c. Any other specification requirements specific to the solicitation.
  3. Contract terms and conditions, including:
    - a. Warranty and bonding or other security requirements, as applicable;
    - b. The length of the contract and whether the contract will include an option for extension; and
    - c. Any other contract terms and conditions.
  4. When using electronic competitive sealed proposals, the request for proposals shall specify whether electronic submission of proposals is required or optional, the electronic submission requirements, and the electronic signature requirements.
- B. A request for proposals shall be issued at least 14 days before the due date and time for receipt of proposals unless a shorter time is determined necessary by the school district. If a shorter time is necessary, the school district shall document the specific reasons in the procurement file.
- C. Notice of the request for proposals shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C).
- D. Before submission of initial proposals, amendments to requests for proposals shall be made in accordance with R7-2-1026. After submission of proposals, amendments may be made in accordance with R7-2-1036(D).
- E. A copy of the request for proposals shall be made available for public inspection at the school district office.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

Amended effective October 22, 1992 (Supp. 92-4).

Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1043. Pre-proposal Conferences**

Pre-proposal conferences may be convened in accordance with R7-2-1025.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1044. Late Proposals, Modifications or Withdrawals**

- A. An offeror may modify or withdraw a proposal in writing at any time before proposal opening if the modification or withdrawal is received before the proposal due date and time at the location designated in the request for proposals for receipt of proposals.
- B. Withdrawal of a proposal after proposal opening is permissible only in accordance with R7-2-1049.
- C. A proposal received after the due date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R7-2-1028(B). A best and final offer received after the due date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R7-2-1028(B).
- D. A modification of a proposal received after the due date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R7-2-1028(B).
- E. A modification of a proposal resulting from an amendment issued after the due date and time for receipt of proposals or a modification of a proposal resulting from discussions shall be considered if received by the due date and time set forth in the amendment or by the due date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R7-2-1028(B).
- F. Upon receiving a late proposal, late modification, or late withdrawal, the school district shall record the time and date of receipt and promptly send written notice of late receipt to the offeror. The school district may discard the document 30 days after the date on the notice unless the offeror requests the document be returned.
- G. All documents concerning acceptance of a late proposal, late modification, or late withdrawal shall be retained in the procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1045. Receipt, Opening and Recording of Proposals**

- A. A school district shall maintain a record of proposals and modifications received for each solicitation, shall record the time and date when each proposal or modification is received, and shall store each unopened proposal or modification in a secure place until the proposal due date and time.
  - 1. If required to confirm a vendor's inquiry regarding receipt of its proposal prior to the due date and time, a school district may open a proposal to identify the vendor. If this occurs, the school district shall record the reason for opening the proposal, the date and time the proposal was opened, and the solicitation number. The school district shall secure the proposal and retain it for public opening.
  - 2. One or more witnesses shall be present for the opening of a proposal under subsection (A)(1).
- B. Proposals and modifications shall be opened publicly at the date, time and place designated in the request for proposals in the presence of one or more witnesses. The name of each offeror and other relevant information deemed appropriate by the school district shall be recorded. The person opening the proposals and all witnesses shall sign the record. All other information contained in the proposals shall be confidential so

as to avoid disclosure of contents prejudicial to competing offerors during the evaluation of proposals. Proposals and modifications shall be shown only to school district personnel having a legitimate interest in them or persons assisting the school district in evaluation.

- 1. The record created in subsection (B) shall be available for public inspection.
- 2. The proposals shall not be open for public inspection until after a contract is awarded.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1046. Evaluation of Proposals**

- A. Evaluation of proposals and best and final offers shall be based on the evaluation factors set forth in the request for proposals. Specific numerical weighting may be used.
  - 1. If only one proposal is received in response to a request for proposals, the school district shall proceed according to R7-2-1032.
  - 2. The school district shall not modify evaluation factors or the relative importance of price and other evaluation factors after the proposal due date and time.
  - 3. A school district may appoint an evaluation committee to assist in the evaluation of proposals. If proposals are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the school district. The school district may:
    - a. Accept the findings of the evaluation committee;
    - b. Request additional information from the evaluation committee; or
    - c. Reject the findings of the evaluation committee, in which case the school district shall appoint a new evaluation committee to evaluate the existing proposals or cancel the solicitation.
- B. As part of its initial evaluation, the school district may contact an offeror to confirm the school district's understanding of the proposal. Such contact shall be prior to the determination that a proposal is acceptable for further consideration. The school district shall obtain written confirmation from the offeror and shall retain the confirmation in the procurement file.
- C. The contract or contracts shall be awarded during the proposal acceptance period. If the proposal acceptance period expires prior to award of the contract or contracts, the procurement shall be canceled, unless the proposal acceptance period is extended in accordance with subsection (D).
- D. To extend the proposal acceptance period, a school district shall notify all offerors in writing of an extension and request written concurrence from each offeror. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The school district shall reject a proposal as nonresponsive if written concurrence is not provided as requested.
- E. For the purpose of conducting discussions, the school district shall determine that proposals are either acceptable for further consideration or unacceptable.
- F. A proposal is acceptable if it is determined to be reasonably susceptible of being awarded a contract in accordance with the evaluation criteria and a comparison and ranking of original proposals. Proposals to be considered reasonably susceptible of being awarded a contract shall, at a minimum, demonstrate the following:
  - 1. Affirmative compliance with mandatory requirements designated in the solicitation.

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2. An ability to deliver goods or services on terms advantageous to the school district sufficient to be entitled to continue in the competition.
3. That the proposal is technically acceptable as submitted.

- G.** A proposal is unacceptable if it is determined to not be reasonably susceptible of being awarded a contract. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be reasonably susceptible of being awarded a contract. The determination shall be in writing, state the basis for the determination and be retained in the procurement file. When there is doubt as to whether a proposal is reasonably susceptible of being awarded a contract, the proposal shall be considered acceptable.
- H.** If the school district determines an offeror's proposal is unacceptable, the school district shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to amend its proposal.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1047. Discussions with Individual Offerors**

- A.** Discussions may be conducted with responsible offerors who submit proposals determined to be acceptable for further consideration. Discussions may be conducted to assure full understanding of the proposal in order to obtain the most advantageous contract for the school district based upon the requirements and evaluation factors in the request for proposals. Offerors shall be afforded fair treatment with respect to any opportunity for discussion and revision of proposals.
- B.** A school district shall establish procedures and schedules for conducting discussions. The school district shall ensure there is no disclosure of one offeror's price or any information derived from competing proposals to another offeror.
- C.** Discussions may be conducted orally or in writing. If oral discussions are conducted, the offeror shall confirm the discussions in writing.
- D.** If discussions are conducted, they shall be conducted with all offerors who submit proposals determined to be acceptable for further consideration. Proposals may not be revised during discussions.
- E.** The school district shall keep a detailed record of all discussions in the procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1048. Best and Final Offers**

- A.** Only if discussions are conducted pursuant to R7-2-1047, the school district shall issue a written request for best and final offers to all offerors who submitted proposals determined to be acceptable pursuant to R7-2-1046(E). The request shall set forth the date, time and place for the submission of best and final offers.
- B.** Best and final offers shall be requested only once, unless the school district makes a determination that it is advantageous to the school district to conduct further discussions or change the school district's requirements.
- C.** The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1049. Mistakes in Proposals**

- A.** Prior to the due date and time for receipt of best and final offers, any offeror may withdraw a proposal in writing or correct any mistake by modifying the proposal.
- B.** After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with R7-2-1030.
- C.** The offeror shall withdraw or correct its proposal in writing. The school district shall retain the written withdrawal or correction in the procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1050. Contract Award**

- A.** As provided in subsection (B), the school district shall award a contract or contracts to the responsible offeror or offerors whose proposal or proposals are determined in writing to be most advantageous to the school district based on the factors set forth in the request for proposals. No factors or criteria may be used in proposal evaluation that are not set forth in the request for proposals. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal.
- B.** The school district shall award the contract to the offeror whose proposal is deemed most advantageous to the school district for all materials or services, except that the school district may make a multiple award if the request for proposals included notification that multiple contracts may be awarded, the school district's basis for determining whether to award multiple contracts, and the criteria for selecting vendors for the multiple contracts.
- C.** Before making a multiple award, the school district shall determine in writing that a multiple award is necessary and is advantageous to the school district and shall establish procedures for the use of the multiple awarded contracts to ensure that purchases are made from the contracts determined by the school district to be most advantageous to the school district in satisfying the school district's requirements. A multiple award shall be limited to the least number of contracts the school district determines in writing to be necessary to meet the school district's requirements, and may include the following types of awards:
1. Awards to the offerors most advantageous to the school district for individual line items or groups of line items.
  2. Awards to the offerors most advantageous to the school district for similar or identical line items or groups of line items only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery, and the awards are limited to the least number of offerors necessary to meet the school district's requirements.
  3. An incremental award only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery. The award shall be made to the offeror whose proposal is determined to be the most advantageous to the school district, then to the offeror with the next most advantageous proposal, etc., until the total definite quantity required is reached.
  4. Regional awards to the offerors most advantageous to the school district in designated regions or locations only if the school district determines in writing that such awards

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are necessary to obtain the required quantity or delivery over widely scattered locations or a particular requirement is of a local nature.

- D. The school district shall notify all offerors of an award.
- E. The procurement file shall contain the basis on which the award or awards are made.
- F. After a contract is awarded, the school district shall return any bid security provided by the unsuccessful offerors.
- G. Upon execution of the contract, if performance and payment bonds were not required, or upon receipt of the specified bonds, if performance and payment bonds were required, the school district shall return any bid security provided by the successful offeror.
- H. Within 10 days after a contract is awarded, the school district shall make the procurement file, including all proposals, available for public inspection.
  - 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
  - 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended effective October 22, 1992 (Supp. 92-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525,  
 effective July 1, 2015 (Supp. 15-3).

**R7-2-1051. Reserved****R7-2-1052. Reserved****SOLE SOURCE PROCUREMENTS****R7-2-1053. Sole Source Procurements**

- A. A contract may be awarded for a material, service or construction item without competition if the governing board determines in writing that there is only one source for the required material, service or construction item. The school district may require the submission of cost or pricing data in connection with an award under this Section. Sole source procurement shall be avoided, except when no reasonable alternative source exists.
- B. The governing board's determination shall be made before entering the contract and shall include the following information:
  - 1. A description of the procurement need and the reason why there is only a single source available or why no reasonable alternative exists;
  - 2. The name of the proposed supplier;
  - 3. The duration and estimated total dollar value of the proposed procurement;
  - 4. Documentation that the price submitted is fair and reasonable; and
  - 5. A description of efforts made to seek other sources.
- C. The school district shall, to the extent practicable, negotiate with the single supplier a contract advantageous to the school district.
- D. A copy of the written determination of the basis for the sole source procurement and any cost or pricing data shall be retained in the procurement file by the school district. The school district shall keep a record of all sole source procurements pursuant to R7-2-1086.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525,  
 effective July 1, 2015 (Supp. 15-3).

**R7-2-1054. Reserved****EMERGENCY PROCUREMENTS****R7-2-1055. Emergency Procurement Procedure**

- A. An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and seriously threatens the functioning of the school district, the preservation or protection of property or the public health, welfare or safety. Some examples of emergency conditions are floods, epidemics, or other natural disasters, riots, fire or equipment failures.
- B. An emergency procurement shall be limited to the materials, services, or construction necessary to satisfy the emergency need.
- C. The governing board shall designate a board member or members or school district official or officials authorized to make emergency procurements, and may prescribe limiting factors including maximum spending limits with regard to emergency procurements.
- D. The designated board member or district official shall:
  - 1. Select the contractor to perform the emergency work with as much competition as practicable under the circumstances;
  - 2. Obtain a price that is fair and reasonable under the circumstances;
  - 3. Prepare a written statement documenting the basis for the emergency, the basis for the selection of the particular contractor, and why the price paid was fair and reasonable. The statement shall be signed by the designated governing board member or district official authorized to initiate emergency procurements; and
  - 4. Convene a meeting of the governing board to approve the emergency procurement, unless the nature of the emergency requires that the procurement be made prior to governing board approval.

**Historical Note**

New Section made by final exempt rulemaking at 21  
 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1056. Emergency Procurement Reporting**

- A. If the nature of the emergency does not permit convening a meeting of the governing board to approve the emergency procurement, the designated board member or district official who makes an emergency procurement shall, at the first scheduled governing board meeting following the procurement, provide to the governing board a report concerning the emergency procurement including the following information:
  - 1. The written statement documenting the basis for the emergency, the basis for the selection of the particular contractor, and why the price paid was fair and reasonable; and
  - 2. Why it was impracticable to convene a meeting of the governing board.
- B. The information and documentation required in this Section shall be included in the procurement file.
- C. The school district shall keep a record of all emergency procurements pursuant to R7-2-1086.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R.

1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1057. Repealed**

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**REQUEST FOR INFORMATION**

**R7-2-1058. Request for Information**

- A. The school district may issue a request for information to obtain data about services or materials available to meet a specific need. Notice of the request for information shall be issued in accordance with R7-2-1022 and R7-2-1024(C).
- B. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
- C. Information contained in a response to a request for information may be withheld from public inspection until the subsequent procurement is awarded or terminated, two years from the date of the vendor's response, or upon commencement of a new procurement, whichever occurs first.
- D. There is no required format to be used for requests for information.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1059. Reserved**

**R7-2-1060. Reserved**

**SERVICES OF CLERGY, CERTIFIED PUBLIC ACCOUNTANTS, PHYSICIANS, DENTISTS AND LEGAL COUNSEL**

**R7-2-1061. Competitive Selection Procedures for Clergy, Certified Public Accountants, Physicians, Dentists and Legal Counsel**

- A. The services of clergy, certified public accountants, physicians, dentists, or legal counsel shall be procured in accordance with R7-2-1061 through R7-2-1068, except as authorized pursuant to R7-2-1002, R7-2-1053, or R7-2-1055.
- B. Pursuant to A.R.S. § 15-914, contracts for financial and compliance audits and completed audits shall be approved by the Auditor General as provided in A.R.S. § 41-1279.21.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1062. Statement of Qualifications**

- A. If the services specified in R7-2-1061(A) are needed, persons may submit and the school district may solicit persons engaged in providing the services to submit statements of qualifications on a prescribed form that shall include the following information:
  - 1. Technical education and training;
  - 2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;
  - 3. An expression of interest in providing a particular service; and
  - 4. Any other pertinent information requested by the school district.
- B. Persons who have submitted statements of qualifications may amend those statements at any time by filing a new statement.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1063. Request for Proposals**

- A. Adequate notice of the need for services specified in R7-2-1061(A) shall be given by the school district through a request for proposals. The request for proposals shall be in accordance with R7-2-1042.
- B. In addition to providing notice of the request for proposals pursuant to R7-2-1022 and R7-2-1024(C), the school district shall provide notice to all persons who submitted statements of qualifications for the particular services solicited.
- C. If required to evaluate proposals, the request for proposals shall require all offerors who have not already done so to submit a statement of qualifications pursuant to R7-2-1062.
- D. Pre-proposal conferences may be convened in accordance with R7-2-1025.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1064. Receipt of Proposals**

Proposals shall be received and opened in accordance with R7-2-1045. Late proposals, modifications, or withdrawals shall be considered in accordance with R7-2-1044.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1065. Evaluation of Proposals**

Proposals shall be evaluated in accordance with R7-2-1046.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1066. Discussions with Individual Offerors**

- A. As part of its initial evaluation, the school district may contact an offeror to confirm the school district's understanding of the proposal. Such contact shall be prior to the determination that a proposal is acceptable for further consideration. The school district shall obtain written confirmation from the offeror and shall retain the confirmation in the procurement file.
- B. The school district may conduct discussions with any offeror in accordance with R7-2-1047. If such discussions are conducted, the school shall issue a request for best and final offers pursuant to R7-2-1048.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1067. Mistakes in Proposals**

Mistakes in proposals shall be addressed pursuant to R7-2-1049.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1068. Contract Award**

- A. As provided in subsection (B), the school district shall award a contract or contracts to the responsible offeror or offerors best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The school district shall

not award a contract based solely on price. No factors or criteria may be used in proposal evaluation that are not set forth in the request for proposals.

- B. The school district shall award the contract to the best qualified offeror whose price is determined to be fair and reasonable for all services, except that the school district may make a multiple award if the request for proposals included notification that multiple contracts may be awarded, the school district's basis for determining whether to award multiple contracts, and the criteria for selecting vendors for the multiple contracts.
- C. Before making a multiple award, the school district shall determine in writing that a multiple award is necessary and is advantageous to the school district and shall establish procedures for the use of the multiple awarded contracts to ensure that purchases are made from the contracts determined by the school district to be most advantageous to the school district in satisfying the school district's requirements. A multiple award shall be limited to the least number of contracts the school district determines in writing to be necessary to meet the school district's requirements, and may include the following types of awards:
  - 1. Award to the best qualified offeror whose price is determined to be fair and reasonable for individual line items or groups of line items.
  - 2. Awards to the best qualified offerors whose prices are determined to be fair and reasonable for similar or identical line items or groups of line items only if the school district determines in writing that such awards are necessary to obtain the required quantity or delivery, and the awards are limited to the least number of offerors necessary to meet the school district's requirements.
  - 3. An incremental award only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery. The award shall be made to the best qualified person whose price is determined to be fair and reasonable, then to the next best qualified person whose price is determined to be fair and reasonable, etc., until the total definite quantity required is reached.
  - 4. Regional awards to the best qualified offerors whose prices are determined to be fair and reasonable in designated regions or locations only if the school district determines in writing that such an award is necessary to obtain the required quantity or delivery over widely scattered locations or a particular requirement is of a local nature.
- D. The school district shall notify all offerors of an award.
- E. The procurement file shall contain the basis on which the award or awards are made.
- F. Within 10 days after a contract is awarded, the school district shall make the procurement file, including all proposals, available for public inspection.
  - 1. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
  - 2. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

## GUARANTEED ENERGY CONTRACTS

### R7-2-1069. Guaranteed Energy Cost Savings Contracts

- A. A school district may procure a guaranteed energy cost savings contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.
  - 1. The request for proposal evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for selecting the qualified provider, including the cost of the contract, the energy cost savings, the net projected energy savings, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope.
  - 2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.
  - 3. At the qualified provider's expense, the proposal shall include an independent third-party validation of cost savings calculations associated with each proposed energy cost savings measure by a licensed, registered professional engineer, with credentials from the national association of energy engineers, who has demonstrated experience in energy analysis. The school district shall approve the selection of the independent third party.
  - 4. A school district may enter into a guaranteed energy cost savings contract with a qualified provider if the school district determines that the energy savings project will pay for itself within the expected life of the energy cost savings measures implemented (according to the manufacturer's equipment standards), the term of the financial agreement or twenty-five years, whichever is shortest, if the recommendations in the proposal are followed. The school district shall retain the cost savings achieved by a guaranteed energy cost saving contract, and these cost savings may be used to pay for the contract and project implementation.
  - 5. A qualified provider is a person that is experienced in designing, implementing or installing energy cost savings measures, that has a record of established projects or measures of similar size and scope, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for energy cost savings.
- B. In selecting a contractor to perform any construction work related to performing the guaranteed energy cost savings contract, the qualified provider may:
  - 1. Develop and use a prequalification process for contractors.
  - 2. Require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.
- C. At the selected qualified provider's expense, a study shall be performed by the selected qualified provider in order to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings. The selected qualified provider will provide the school district with a final study report which validates that the fixed cost savings guarantee amount will meet or exceed the cost savings calculations contained within the original proposal. The study report shall be reviewed and approved by the school district before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved study report to the school facilities board and the governor's office of energy policy.

- D. The information to develop the energy baseline shall be derived from historical energy costs or actual energy measurements or shall be calculated from energy measurements at the facility where energy cost savings measures are to be installed or implemented. The baseline shall be established before the installation or implementation of energy cost savings measures.
- E. One or more school districts may enter into a financing agreement with a qualified provider or a financial institution, trustee or paying agent for the purchase and installation or implementation of energy cost savings measures. Any required financing may be obtained as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution that is procured separately in accordance with Articles 10 and 11.
- F. The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).
- G. The selected qualified provider shall make public information in the subcontractor's bids.
- H. The guaranteed energy cost savings contract shall include the following:
1. A requirement that, in determining whether the projected energy savings calculations have been met, the energy savings shall be computed by comparing the energy baseline before installation or implementation of the energy cost savings measures with the energy consumed after installation or implementation of the energy cost savings measures. The qualified provider and the school district may agree to make modifications to the energy baseline only for any of the following:
    - a. Changes in utility rates.
    - b. Changes in the number of days in the utility billing cycle.
    - c. Changes in the square footage of the facility.
    - d. Changes in the operational schedule of the facility.
    - e. Changes in facility temperature.
    - f. Significant changes in the weather.
    - g. Significant changes in the amount of equipment or lighting utilized in the facility.
    - h. Significant changes in the nature or intensity of energy use such as the change of classroom space to laboratory space.
  2. A payment schedule, with payments over a period of not more than the expected life of the energy cost savings measures implemented (according to the manufacturer's equipment standards), the term of the financial agreement or twenty-five years, whichever is shortest.
  3. A requirement that all payments, except obligations on termination of the contract before its expiration, be made pursuant to the terms of the financing agreement.
  4. A written guarantee from the qualified provider that the energy savings will meet or exceed the costs of the energy cost savings measures over the expected life of the energy cost savings measures implemented (according to the manufacturer's equipment standards), the term of the financial agreement or twenty-five years, whichever is shortest. The school district shall ensure that the contractor:
    - a. For the term of the guaranteed energy savings contract, prepares a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.
    - b. Reimburses the school district for any shortfall of guaranteed energy cost savings on an annual basis.
    - c. Uses the international performance and measurement and verification protocol standards or the federal energy management program standards to validate the savings guarantee.
- I. A school district may utilize a simplified energy performance contract for projects less than \$500,000. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this Section except for subsections (D), (H)(1)(a) through (h) and (H)(4)(a) through (c).
- J. This Section does not apply to the construction of new buildings.
- K. For all projects under this Section, the school district shall report to the governor's office of energy policy and the school facilities board:
1. The name of the project.
  2. The qualified provider.
  3. The total cost of the project.
  4. The expected energy cost savings and relevant escalators.
  5. The agreed on baseline in the measurement and verification agreement in both kilowatt hours and dollars.
- L. For all projects under this Section, the school district shall annually report the actual energy cost savings to the school facilities board no later than October 15.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1070. Guaranteed Energy Production Contracts

- A. A school district may procure a guaranteed energy production contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.
1. The request for proposals evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for selecting the qualified provider, including the guaranteed energy price, the guaranteed energy production, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope.
  2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.
  3. The school district may obtain any required financing as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution procured separately in accordance with Articles 10 and 11.
  4. When submitting a proposal for the installation of equipment, the qualified provider shall include information containing the guaranteed energy production associated with each proposed energy production measure. The school district shall review and approve this guarantee before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved guarantee to the school facilities board and the governor's office of energy policy.
  5. A qualified provider is a person that is experienced in designing, implementing or installing energy cost savings measures, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for guaranteed energy production, financial solvency and experience for projects of similar size and scope.



- B. In selecting a contractor to perform any construction work related to performing the guaranteed energy production contract, the qualified provider may:
  1. Develop and use a prequalification process for contractors.
  2. Require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.
- C. A guaranteed energy production contract shall include a guaranteed energy price, and a written guaranteed energy production as measured on an annual basis over the expected life of the energy production measures implemented or within twenty-five years, whichever is shorter. The school district shall ensure that the contractor:
  1. Prepares a measurement and verification report on an annual basis in addition to an annual reconciliation of any guaranteed energy production shortfall.
  2. Reimburses the school district for any guaranteed energy production shortfall on an annual basis by multiplying any energy production shortfall by either the difference between the guaranteed energy price and the effective utility rate, or an alternative method as mutually agreed on by the school district and the provider.
- D. The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).
- E. The selected qualified provider shall make public information in the subcontractor's bids.
- F. For all projects under this Section, the school district shall report to the governor's office of energy policy and the school facilities board:
  1. The name of the project.
  2. The qualified provider.
  3. The total cost of the project.
  4. The expected guaranteed energy production and guaranteed energy price, including relevant escalators, if applicable, over the term of the guaranteed energy production contract.
- G. For all projects under this Section, the school district shall annually report the actual energy production and guaranteed energy price to the school facilities board no later than October 15.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### GENERAL CONTRACT REQUIREMENTS

##### R7-2-1071. Reserved

##### R7-2-1072. Cancellation of Solicitations; Rejection of Bids and Proposals

Each solicitation issued by the school district shall state that the solicitation may be canceled or bids or proposals rejected if it is advantageous to the school district.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

##### R7-2-1073. Cancellation of Solicitation Before the Due Date and Time

- A. Before the due date and time, a solicitation may be canceled in whole or in part if the school district determines that cancellation is advantageous to the school district. The reasons for the cancellation shall be made part of the procurement file.
- B. The school district shall notify in writing all persons to whom the original notice or solicitation was distributed by the school district. Notice shall be in the same manner as the original

notice or solicitation, including posting on a designated site on the Internet, as applicable.

- C. The school district shall not open bids or proposals after cancellation. The school district may discard the bid or proposal 30 days after notice is given in accordance with subsection (B), unless the bidder or offeror requests the bid or proposal be returned.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

##### R7-2-1074. Cancellation of Solicitation After Bid or Proposal Opening and Before Award

- A. After opening of bids or proposals but before award, a solicitation may be canceled in whole or in part if the school district determines that cancellation is advantageous to the school district. The reasons for the cancellation shall be made part of the procurement file.
- B. The school district shall notify bidders or offerors of the cancellation in writing.
- C. The school district shall retain bids or proposals received under the canceled solicitation in the procurement file. If the school district intends to issue another solicitation within six months after cancellation of the procurement, the school district shall withhold the bids or proposals from public inspection. After award of a contract under the subsequent solicitation, the school district shall make bids or proposals submitted in response to the canceled solicitation available for public inspection except for information determined to be confidential pursuant to R7-2-1006.
- D. In the event of cancellation, the school district shall promptly return any bid security provided by a bidder or offeror.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

##### R7-2-1075. Rejection of Individual Bids and Proposals

- A. A bid or proposal may be rejected in whole or in part if:
  1. The person responding to the solicitation is determined to be nonresponsive pursuant to R7-2-1076;
  2. It is nonresponsive or unacceptable;
  3. The proposed price is unreasonable; or
  4. It is otherwise not advantageous to the school district.
- B. Bidders or offerors whose bids or proposals are rejected shall be notified. A record of the rejection shall be retained in the procurement file.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

##### R7-2-1076. Responsibility of Bidders and Offerors

- A. The school district shall make a written determination that a bidder or offeror is responsible before awarding a contract to that bidder or offeror.
- B. If the school district determines a bidder or offeror is nonresponsive, the school district shall promptly send a determination to the bidder or offeror stating the basis for the determination. The school district shall file a copy of the determination in the procurement file.
- C. A finding of nonresponsibility shall not be construed as a violation of the rights of any person.

- D. If the school district included specific responsibility criteria in the solicitation, such criteria shall be considered in determining if a bidder or offeror is responsible.
- E. Factors to be considered in determining if a bidder or offeror is responsible may include:
  1. The bidder or offeror's financial, material, personnel or other resources, including subcontracts;
  2. The bidder or offeror's record of performance and integrity;
  3. Whether the bidder or offeror has been debarred or suspended; and
  4. Whether the bidder or offeror is qualified legally to contract with the school district.
- F. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the bidder or offeror.
- G. As required by A.R.S. § 41-2540(B), information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the school district without prior written consent by the bidder or offeror except to law enforcement agencies.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

#### R7-2-1077. Prequalification of Contractors for Materials, Services and Construction

- A. Prospective contractors may be prequalified for particular types of materials, services and construction. Prospective contractors have a continuing duty to provide the school district with information on any material change affecting the basis of prequalification. Solicitation mailing lists of prospective contractors shall include the prequalified contractors.
- B. A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.
- C. The existence of a qualified product list pursuant to R7-2-1011(D) does not constitute prequalification of any prospective supplier of that product.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

#### R7-2-1078. Bid and Contract Security

- A. Bid and performance bonds or other security may be required for material or service contracts to guarantee faithful bid and contract performance if the governing board determines that such requirement is advantageous to the school district. In determining the amount and type of security required for each contract, the governing board shall consider the nature of the performance and the need for future protection to the school district. The requirement for bonds or other security shall be included in the solicitation.
- B. Bid or performance bonds shall not be used as a substitute for a determination of bidder or offeror responsibility.
- C. If a bid or proposal is withdrawn at any time before bid or proposal opening, any bid security shall be returned to the bidder or offeror.
- D. After the contract is awarded, any bid security shall be returned to the unsuccessful bidders or offerors. Upon execution of the contract, if performance bonds or other security were not required, or upon receipt of the specified bonds, if performance bonds or other security were required, the school

district shall return any bid security provided by the successful bidder or offeror.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

#### R7-2-1079. Cost or Pricing Data

- A. The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is fair and reasonable. A contractor shall, except as provided in subsection (C), submit current cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of a mutually determined specified date before the date of either:
  1. The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, if the total contract price is expected to exceed \$100,000.
  2. The pricing of any change order or contract modification which is expected to increase the total contract price which will then exceed \$100,000.
- B. Any contract, change order or contract modification for which certified cost or pricing data is required shall contain a provision that the price to the school district shall be adjusted to exclude any significant amounts by which the school district finds that the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by the school district may include profit or fee. The school district may reduce the contract price pursuant to R7-2-1081.
- C. The requirements of this Section may be waived if any of the following apply:
  1. The contract price is based on adequate price competition.
  2. The contract price is based on established catalog prices or market prices.
  3. Contract prices are set by law or regulation.
  4. It is determined in writing by the school district that the waiver is advantageous to the school district. The determination shall include the reasons why the waiver is advantageous to the school district.
- D. When applicable, the solicitation shall include a notice that certified cost or pricing data shall be submitted.
- E. In an emergency, cost or pricing data may be submitted at a reasonable time after the contract is awarded.
- F. A copy of all determinations by the school district that pertain to the submission of cost or pricing data shall be retained in the procurement file.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

#### R7-2-1080. Refusal to Submit Cost or Pricing Data

- A. If the offeror fails to submit cost or pricing data in the required form, the school district may reject the proposal.
- B. If a contractor fails to submit data to support a price adjustment in the form required, the school district may:
  1. Reject the price adjustment; or
  2. Set the amount of the price adjustment subject to the contractor's rights under R7-2-1141 through R7-2-1185.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1081. Defective Cost or Pricing Data**

- A. The school district may reduce the contract price if, upon determination, the cost or pricing data are defective.
- B. The contract price shall be reduced in the amount of the defect plus related overhead and profit or fee if the school district relied upon the defective data in awarding the contract.
- C. Any dispute as to the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data may be appealed as a contract controversy under R7-2-1141 through R7-2-1185. Pending appeal, the adjusted contract price shall remain in effect.
- D. If certification of either current cost or pricing data is required, the awarded contract shall include notice of the right of the school district to a reduction in price if certified cost or pricing data are subsequently determined to be defective.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1082. Right to Inspect Plant**

The school district may at reasonable times inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the school district.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1083. Right to Audit Records**

- A. The school district may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in R7-2-1079 to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years after completion of the contract.
- B. The school district is entitled to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years after completion of the contract and by the subcontractor for a period of five years after completion of the subcontract.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1084. Anticompetitive Practices**

- A. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice or the relevant facts shall be transmitted to the governing board and the attorney general. This Section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the school district.
- B. Upon submitting a bid or proposal, the bidder or offeror shall certify on a form prescribed by the school district that the submission of the bid or proposal did not involve collusion or other anticompetitive practices.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1085. Retention of Procurement Records**

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Arizona State Library, Archives and Public Records.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1086. Record of Procurement Actions**

- A. The school district shall maintain a record listing all contracts made under R7-2-1053, Sole source procurements, or R7-2-1055, Emergency procurements, for a minimum of five years. The record shall contain:
  1. Each contractor's name.
  2. The amount and type of each contract.
  3. A listing of the materials, services or construction procured under each contract.
- B. The record shall be available for public inspection.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final exempt rulemaking at 21 A.A.R. 1525,  
effective July 1, 2015 (Supp. 15-3).

**R7-2-1087. Contract Clauses**

- A. The school district shall include in solicitations and contracts all contract clauses necessary to ensure the school district's interests are addressed. The school district may modify clauses for inclusion in any particular school district contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.
- B. All contract clauses shall be consistent with the provisions of Articles 10 and 11.
- C. The school district may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.
- D. A contract for the procurement of construction or construction services shall include a provision for the recovery of damages related to expenses incurred by the contractor for a delay for which the school district is responsible, that is unreasonable under the circumstances and that was not within the contemplation of the parties to the contract. This subsection shall not be construed to void any provision in the contract that requires notice of delays, provides for arbitration or any other procedure for settlement or provides for liquidated damages.
- E. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.
- F. A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract or a design professional services contract or subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

- G.** If a design professional provides work, services, studies, planning, surveys or other preparatory work in connection with a public building or improvement, the school district or property owner may require that the design professional services contract or subcontract require the design professional to indemnify and hold harmless the school district or property owner, and its officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional or other persons employed or used by such design professional in the performance of the contract or subcontract.
- H.** A design professional services subcontract entered into in connection with a public building or improvement may also require any design professional to indemnify and hold harmless the school district or property owner and the indemnified design professional who executed the subcontract, and their respective owners, officers and employees, from liabilities, damages, losses and costs, including reasonable attorney fees and court costs, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of such design professional, or persons employed or used by the indemnifying design professional in connection with the subcontract.
- I.** Nothing in this Section shall prohibit the requirement of insurance coverage that complies with this Section, including the designation of the school district or property owner as an additional insured on a general liability insurance policy or as a designated insured on an automobile liability policy provided in connection with a construction contract or subcontract or design professional services contract or subcontract.
- J.** Notwithstanding subsection (F), a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and that, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.
- K.** Except as provided in subsections (G), (H) and (I), a design professional services contract or subcontract entered into in connection with a public building or improvement shall not require that a design professional defend, indemnify, insure or hold harmless the school district or property owner or its employees, officers, directors, agents, contractors or subcontractors from any liability, damage, loss, claim, action or proceeding, and any contract provision that is not permitted by subsections (G), (H) and (I) is against the public policy of this state and is void.
- L.** If any provision or condition contained in this Section conflicts with any provision of a contract between the school district and the federal government, such provision shall not apply to any construction contract or subcontract, or design professional services contract or subcontract to the extent such conflict exists, but all provisions of this Section with which there is no such conflict, shall apply.
- M.** In this Section:
1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development, or other improvement to land.
  2. "Design professional services" means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination

of those services performed by or under the supervision of a design professional or any person employed by the design professional.

3. "Design professional services contract or subcontract" means a written or oral agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility, development or other improvement to land.
4. "Other persons employed or used" means a subcontractor to a contractor or design professional in any tier, or any other person or entity who performs work or design professional services, or provides labor, services, materials or equipment in connection with a construction contract or subcontract or design professional service contract or subcontract subject to this Section.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1088. Reserved**

**R7-2-1089. Reserved**

**R7-2-1090. Reserved**

#### CONTRACT TYPES

**R7-2-1091. Repealed**

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1092. Authority to Use Contract Types**

Subject to the limitations of this Section, any type of contract that would be advantageous to the school district may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1093. Multiterm Contracts**

- A.** Unless otherwise provided by law, multiterm contracts for materials or services and contracts for job-order-contracting construction services may be entered into if the duration of the contract and the conditions of renewal or extension, if any, are included in the invitation for bids or the request for proposals and if monies are available for the first fiscal period at the time the contract is executed. The duration of contracts for materials or services and contracts for job-order-contracting construction services shall be limited to no more than five years unless the governing board determines in writing before the procurement solicitation is issued that a contract of longer duration would be advantageous to the school district. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.
- B.** Before the use of a multiterm contract, it shall be determined in writing by the governing board that:

1. Estimated requirements cover the period of the contract and are reasonable and continuing.
2. Such a contract will be advantageous to the school district by encouraging effective competition or otherwise promoting economies in school district procurement.
- C. The school district shall include in all multiterm contracts a clause specifying that the contract shall be canceled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year.
- D. If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purposes.
- E. A contract for specified professional services shall have a term not exceeding five years after the date of contract award by the school district of the first contract under the procurement, except that the contract may continue in effect after the five year term for projects on which the rendering of specified professional services commences within the five year term.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1094. Reserved**

**R7-2-1095. Reserved**

**R7-2-1096. Reserved**

**R7-2-1097. Reserved**

**R7-2-1098. Reserved**

**R7-2-1099. Reserved**

### ARTICLE 11. SCHOOL DISTRICT PROCUREMENT (CONTINUED)

#### PROCUREMENT OF CONSTRUCTION

##### R7-2-1100. Construction Project Delivery Methods

- A. For the design-bid-build project delivery method, the school district shall procure:
  1. Design services pursuant to R7-2-1117 through R7-2-1123, except as authorized by R7-2-1053 and R7-2-1055.
  2. Construction by competitive sealed bidding pursuant to R7-2-1021 through R7-2-1032 and R7-2-1102 through R7-2-1105, except as authorized by R7-2-1033, R7-2-1053, R7-2-1055, and R7-2-1101.
- B. For construction-manager-at-risk, design-build and job-order-contracting project delivery methods, the school district shall procure construction services pursuant to R7-2-1102 through R7-2-1115.
- C. For construction-manager-at-risk project delivery method, the school district shall purchase design services pursuant to R7-2-1117 through R7-2-1123.
- D. For job-order-contracting project delivery method, the school district may include design services in the job-order-contracting construction services contract, but if the school district does not include design services in the contract, the school district shall procure any design services relating to construction services projects under the contract pursuant to R7-2-1117 through R7-2-1123.

#### Historical Note

New Section made by final exempt rulemaking at 21

A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

##### R7-2-1101. Qualified Select Bidders List

- A. The school district may use the qualified select bidders list method to determine the vendors who receive the notice of competitive sealed bidding for a construction contract. The qualified select bidders list shall be determined in accordance with this Section.
- B. Sealed prime contractor or construction materials supplier statements of qualifications shall be solicited through requests for qualifications.
  1. Notice of the request for qualifications shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C).
  2. Requests for qualifications shall be issued at least 21 days before the due date and time for submission.
  3. Use of the qualified select bidders list shall be restricted to the specific projects identified in the request for qualifications.
  4. The qualified select bidders list shall consist of at least three prime contractors when a contractor is solicited or three construction material suppliers when material suppliers are solicited.
  5. The qualified select bidders list for any specific project is valid for one year but may be extended for an additional year, at the option of the school district.
- C. The request for qualifications shall include the following:
  1. Notice that all information and statements of qualifications submitted by persons will be made available for public inspection following the establishment of a qualified select bidders list.
  2. Instructions and information to persons concerning the statement of qualifications submission requirements, including the due date and time for submission, the address of the office at which the statements of qualifications are to be received, and any other special information.
  3. The anticipated evaluation period and selection of a qualified select bidders list.
  4. General information on the project site or sites, scope of work, schedule, evaluation criteria, project design and construction budget, or life cycle budget for a procurement that includes maintenance, operations, and finance services.
  5. The weight prescribed by the school district for each of the criteria to be used in making the evaluation.
  6. The criteria to be used in making the evaluation, which shall include at a minimum:
    - a. Person's capabilities and qualifications for performing the scope of work;
    - b. Person's project team, and key members' education, training and qualifications;
    - c. Method of approach, including subcontractor plan, safety plan;
    - d. Safety record and worker's compensation rate;
    - e. Projected construction schedule;
    - f. Current workload;
    - g. Five most recent representative examples of similar work along with references for each example;
    - h. Current bonding availability and capacity;
    - i. Any judgment or liens against the person within the last three years;
    - j. Any current unresolved bond claims against the person;
    - k. Any deficiency orders issued against the prime contractor by the Arizona Registrar of Contractors within the last three years; and

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1. Any filing under the United States Bankruptcy Code, assignments for the benefit of creditors, or other measures taken for the protection against creditors during the last three years.
  7. The type of contract to be used.
  8. The name of the district representative or district representatives.
  9. The expiration date of the qualified select bidders list if less than one year.
  10. A statement that the school district reserves the right to conduct interviews as part of the evaluation process.
  11. The date, time and location of any pre-submittal conference.
- D.** The school district may conduct a pre-submittal conference not less than 14 days prior to the statement of qualifications due date and time for the purposes of explaining the requirements of the request for qualifications.
- E.** Amendments to request for qualifications.
1. An amendment to a request for qualifications shall be issued if necessary to do any of the following:
    - a. Make changes in the request for qualifications;
    - b. Correct defects or ambiguities;
    - c. Furnish to persons information given to any other person, if the information will assist the persons in submitting their statements of qualifications or if the lack of the information will prejudice the persons;
    - d. Provide additional information or instructions; or
    - e. Extend the due date and time if the school district determines that an extension is advantageous to the school district.
  2. Amendments to a request for qualifications shall be so identified and the school district shall ensure that the amendments are distributed or made available to all persons to whom the original request for qualifications was distributed or made available. The school district shall make a copy of the amendments to a request for qualifications available for public inspection at the school district office. If the school district posted the request for qualifications or a notice of the availability of a request for qualifications on a designated site on the Internet, then the school district shall post any amendments to the request for qualifications on the same designated site on the Internet. The school district shall also do one or more of the following:
    - a. Distribute the amendment, by any method reasonably calculated to ensure delivery, to all persons to whom the request for qualifications was distributed;
    - b. Make the amendment available and issue a notice of amendment which contains instructions for obtaining copies of the amendment. The notice of amendment shall be distributed, by any method reasonably calculated to ensure delivery, to all persons to whom the request for qualifications was distributed. Upon receipt of such notice of amendment, it is the responsibility of the person to obtain the amendment.
  3. Amendments to request for qualifications shall be issued within a reasonable time before the due date and time to allow persons to consider them in preparing their statements of qualifications. If the school district determines that the due date and time in the request for qualifications does not permit sufficient time for statement of qualifications preparation, the due date and time shall be extended in the amendment or, if necessary, by telephone, facsimile, email, or other communications methods, and confirmed in the amendment.
  4. A person shall acknowledge receipt of an amendment in the manner specified in the request for qualifications or the amendment on or before the due date and time.
- F.** Pre-submittal modification or withdrawal of statements of qualifications
1. A person may modify or withdraw a statement of qualifications in writing at any time before the prescribed due date and time if the modification or withdrawal is received before the due date and time at the location designated in the request for qualifications for receipt of statements of qualifications.
  2. All documents concerning a modification or withdrawal of a statement of qualifications shall be retained in the procurement file.
- G.** Late statements of qualifications, late withdrawals and late modifications
1. A statement of qualifications, modification or withdrawal is late if it is received at the location designated in the request for qualifications for receipt of statements of qualifications after the due date and time.
  2. A late statement of qualifications, late modification, or late withdrawal shall be rejected, unless the statement of qualifications, modification or withdrawal would have been timely received but for the action or inaction of school district personnel and is received before the qualified select bidders list is established.
  3. Upon receiving a late statement of qualifications, late modification, or late withdrawal, the school district shall record the time and date of receipt and promptly send notice of late receipt to the person. The school district may discard the document 30 days after the date on the notice unless the person requests the document be returned.
  4. All documents concerning acceptance of a late statement of qualifications, late modification, or late withdrawal shall be retained in the procurement file.
- H.** Receipt, opening and recording statements of qualifications
1. A school district shall maintain a record of statements of qualifications and modifications received for each solicitation, shall record the time and date when each statement of qualifications or modification is received, and shall store each unopened statement of qualifications or modification in a secure place until the due date and time.
    - a. If required to confirm a vendor's inquiry regarding receipt of its statement of qualifications prior to the due date and time, a school district may open a statement of qualifications to identify the vendor. If this occurs, the school district shall record the reason for opening the statement of qualifications, the date and time the statement of qualifications was opened, and the solicitation number. The school district shall secure the statement of qualifications and retain it for public opening.
    - b. One or more witnesses shall be present for the opening of a statement of qualifications under subsection (H)(1)(a).
  2. Statements of qualifications and modifications shall be opened publicly at the date, time and location designated in the request for qualifications in the presence of one or more witnesses. The name of each person and any other relevant information deemed appropriate by the school district shall be recorded. The person opening the statements of qualifications and all witnesses shall sign the record.
    - a. The record created in subsection (H)(2) shall be available for public inspection.

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- b. The statements of qualifications shall not be open for public inspection until after the qualified select bidders list has been established.
- I. Establishing the qualified select bidders list.**
  1. The qualified select bidders list shall be established by determining the highest rated persons from the statements of qualifications received. This will be a minimum of three and a maximum of five.
  2. For each qualified select bidders list process there will be established by the school district an evaluation committee composed of five members. These members shall include the project designer or construction material specifier, one member from the prime contracting or construction material supplier community that performs commensurate level work and is disinterested in this project, a school district facilities representative and two other members as designated by the school district.
  3. The evaluation committee shall review and score each statement of qualifications received according to the established evaluation criteria. The committee shall rank the statements of qualifications in accordance with the scores.
  4. The committee may conduct interviews before making the final determination of the qualified select bidders list. The committee shall document the interviews in writing.
  5. The committee shall select at least three and not more than five of the highest scoring persons for the qualified select bidders list.
  6. The district representative shall review the committee's qualified select bidders list. The district representative shall:
    - a. Accept the list as submitted;
    - b. Return the list for additional committee review;
    - c. Reject the list and terminate the process.
  7. A one-year eligibility period for the qualified select bidders list shall begin on the date the district representative accepts it. The qualified select bidders list may be extended one year at the option of the school district.
  8. Once the qualified select bidders list is established, a written notice of the selected persons shall be sent to all the persons that submitted statements of qualifications.
  9. After the establishment of the qualified select bidders list, a written record showing the basis for determining the qualified select bidders list shall be prepared by the district representative and retained in the procurement file. Within 10 days after the qualified select bidders list has been established, the school district shall make the procurement file, including all statements of qualifications, available for public inspection.
    - a. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection.
    - b. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.
  10. The qualified select bidders shall be provided an invitation for bids in accordance with R7-2-1024 to R7-2-1032. For any projects not identified in the request for qualifications, the school district may not solicit bids on those projects under the qualified select bidders list either in the initial one-year period or the one-year extension period.
11. Projects identified in the request for qualifications shall have invitation for bids issued within the initial one-year period, or in the one-year extension period, to be awarded a contract under that qualified select bidders list.
- J. Terminating the process for insufficient response or selection**
  1. In the event that less than three statements of qualifications are received, this procurement process shall cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
  2. In the event that less than three persons are identified by the selection committee as being the most highly qualified, this procurement process shall cease and the school district may elect to reissue the request for qualifications or pursue other procurement methods.
- K. A copy of the request for qualifications shall be made available for public inspection at the school district office.**

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1102. Bid Security**

- A.** Bid security shall be required for all competitive sealed bidding for construction contracts, and for all competitive sealed proposals for design-build construction services or job-order-contracting construction services procured pursuant to R7-2-1111, if the price, excluding the cost of any finance services, maintenance services, operations services, design services, preconstruction services, or other related services included in the contract, is estimated by the school district to exceed the amount established by R7-2-1002(A).
- B.** Invitations for bid on school district construction contracts and requests for proposals for design-build construction services or job-order-contracting construction services, shall require submission of bid security as follows:
  1. For design-bid-build construction services, ten percent of the contractor's bid.
  2. For design-build construction services awarded by competitive sealed proposals pursuant to R7-2-1111, ten percent of the school district's construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operations services, design services, preconstruction services or any other related services included in the contract.
  3. For job-order-contracting construction services awarded by competitive sealed proposals pursuant to R7-2-1111, the amount prescribed by the school district in the request for proposals, but not more than ten percent of the school district's reasonably estimated budget for construction that the school district believes is likely to actually be done during the first year under the contract, excluding any finance services, maintenance services, operations services, design services, preconstruction services or other related services included in the contract.
- C.** Acceptable bid security shall be limited to:
  1. An annual or one-time bid bond executed and furnished as required by A.R.S. Title 34, Chapter 2 or 6, as applicable; or
  2. A certified or cashier's check.
- D.** The school district may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
  1. Only one bid or proposal is received and there is not sufficient time to rebid or resolicit proposals;

2. The amount of the bid security submitted, although less than the amount required by the invitation for bids or request for proposals, is equal to or greater than the difference between the apparent low bid or highest scoring proposal and the next higher acceptable bid or next highest scoring proposal; or
  3. The bid security is inadequate as a result of modifying or correcting a bid in accordance with R7-2-1027 or R7-2-1030, if the bidder increases the amount of security to required limits within two days after notification.
- E. After the bids and proposals are opened, they are irrevocable for the period specified in the invitation for bids or request for proposals, except as provided in R7-2-1030. If a bidder or offeror is permitted to withdraw its bid before award, no action may be had against the bidder or offeror or the bid security.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1103. Contract Performance and Payment Bonds

- A. The following bonds or security is required and is binding on the parties to the contract if the value of a construction or construction services award exceeds the amount established by R7-2-1002(A):
1. A performance bond that is executed and furnished as required under Arizona Revised Statutes Title 34, Chapter 2, Article 2 or Chapter 6, as applicable, in an amount equal to one hundred percent of the price specified in the contract conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract, except that:
    - a. For job-order-contracting construction services, the performance bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the school district, and, if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the school district's reasonable estimate of the amount of construction that the school district believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.
    - b. For construction-manager-at-risk construction services and design-build construction services, the amount of the performance bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract. This bond is solely for the protection of the school district. The conditions and provisions of the performance bond regarding the surety's obligations shall follow the form required under A.R.S. § 34-222(G) or A.R.S. § 34-610(G), as applicable.
    - c. For guaranteed energy cost savings contracts and guaranteed energy production contracts, the amount of the performance bond shall be one hundred percent of the project amount to the school district for its faithful performance of the equipment installation.
  2. A payment bond that is executed and furnished as required by Arizona Revised Statutes Title 34, Chapter 2, Article 2 or Chapter 6, as applicable, in an amount equal to one hundred percent of the price specified in the contract for the protection of all persons supplying labor or material to the contractor or its subcontractors for the performance of the construction provided for in the contract, except that:
    - a. For job-order-contracting construction services, the payment bond shall cover the full amount of construction under the job-order-contracting construction services contract, shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract, may be a single bond for the full term of the contract, a separate bond for each year of a multiyear contract or a separate bond for each job order, as determined by the school district, and, if a single bond for the full term of the contract or a separate bond for each year of a multiyear contract, shall initially be based on the school district's reasonable estimate of the amount of construction that the school district believes is likely to actually be done during the full term of the contract or during the particular year of a multiyear contract, as applicable.
    - b. For construction-manager-at-risk construction services and design-build construction services, the amount of the payment bond shall be the price of construction and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract. The conditions and provisions of the payment bond regarding the surety's obligations shall follow the form required under A.R.S. § 34-222(F) or A.R.S. § 34-610(F), as applicable.
- B. For design-bid-build construction, the bonds prescribed in subsection (A) shall be provided on and at the same time as execution of the construction contract. For construction-manager-at-risk, design-build and job-order-contracting construction services, the bonds prescribed in subsection (A) shall be provided only on and at the same time as execution of a contract or contract modification that commits the contractor to provide construction for a fixed price, guaranteed maximum price or other fixed amount within a designated time frame.
- C. If the prime contract or specifications require any persons supplying labor or materials in the prosecution of the work to furnish payment or performance bonds, these bonds shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the Department of Insurance pursuant to Arizona Revised Statutes Title 20, Chapter 2, Article 1. Notwithstanding the provisions of any other statute, the bonds shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. § 7-101 are satisfied.
- D. If a contractor fails to deliver the required performance bond or payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made pursuant to Articles 10 and 11.
- E. This Section shall not be construed to limit the authority of the school district to require a performance bond or other security



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in addition to those bonds or in circumstances other than specified in subsection (A).

- F.** Any person who furnishes labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this Section, and who has not been paid in full within 90 days from the date on which the last of the labor was performed or material was supplied by the person for whom the claim is made has the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due the person. However, any person who has a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, has a right of action on the payment bond on giving the contractor, only, a written preliminary 20-day notice as provided for in A.R.S. § 33-992.01, subsection (C)(1), (2), (3), and (4) and subsections (D), (E), and (H), and upon giving written notice to the contractor within 90 days from the date on which the last of the labor was performed or material was supplied by the person for whom the claim is made. The person shall state in the notice the amount claimed and the name of the party for whom the labor was performed or to whom the material was supplied. The notice shall be personally served or sent by registered mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1104. Contract Payment Retention and Substitute Security**

- A.** Ten percent of all construction contract payments shall be retained by the school district as insurance of proper performance of the contract or, at the option of the contractor, a substitute security may be provided by the contractor pursuant to this Section. The contractor is entitled to all interest from any such substitute security. When the contract is fifty percent completed, one-half of the amount retained or securities substituted pursuant to this Section shall be paid to the contractor upon the contractor's request provided the contractor is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty percent completed, no more than five percent of the amount of any subsequent progress payments made under the contract shall be retained providing the contractor is making satisfactory progress on the project, except if at any time the governing board determines satisfactory progress is not being made, ten percent retention shall be reinstated for all progress payments made under the contract subsequent to the determination.
- B.** Notwithstanding subsection (A), there shall be no retention for job-order-contracting construction services contracts. The school district may elect to have no retention for construction-manager-at-risk and design-build construction services contracts. If the school district elects to have retention, then payment retention for construction-manager-at-risk and design-build contracts shall be in accordance with this Section.
- C.** Retention applies only to amounts payable for construction and does not apply to amounts payable for design services, preconstruction services, finance services, maintenance services, operations services, or any other related services included in the contract.
- D.** The form of substitute security is limited to the following:

1. An assignment of time certificates of deposit by financial institutions licensed by this state;
  2. Share certificate of a financial institution or credit union authorized to transact business in this state; or
  3. Security issued or guaranteed as to principal and interest by:
    - a. The United States;
    - b. The state;
    - c. Counties, municipalities and school districts within this state.
- E.** Conditions for use of substitute security.
1. A contractor may submit substitute security to replace contract payment retention if:
    - a. The use of substitute security is requested of the school district or designee for work performed under the contract. The contractor shall have the option of submitting the substitute security:
      - i. Prior to each progress payment in an amount of no less than five percent of each progress payment; or
      - ii. Once, prior to the first progress payment in an amount no less than five percent of the total contract amount.
    - b. The interest earned on such security shall accrue to the benefit of the contractor, but shall be retained until the school district has approved completion and acceptance of all work to be performed under the contract;
    - c. The term of such security shall not mature until after the estimated contract completion date; and
    - d. The security shall mature no later than one year after the estimated contract completion date.
  2. The substitute security shall not be released without written approval by the school district.
  3. A contractor may submit a single substitute security for more than one project provided that:
    - a. The amount of such security is sufficient to cover the aggregate retention amount;
    - b. The school district determines that such single substitute security is advantageous to the school district; and
    - c. Such security complies with the requirements of subsection (E)(1).
- F.** Any retention shall be paid or substitute security shall be returned to the contractor within 60 days after final completion and acceptance of work under the contract. Retention of payments by a school district longer than 60 days after final completion and acceptance requires a specific written finding by the governing board of the reasons justifying the delay in payment. No school district may retain any monies after 60 days which are in excess of the amount necessary to pay the expenses the governing board reasonably expects to incur in order to pay or discharge the expenses determined in the finding justifying the retention of monies.
- G.** The school district shall not accept any substitute security unless accompanied by a signed and acknowledged waiver of any right or power of the obligor to set off any claim against either the school district or the contractor in relationship to the security assigned. In any instance in which the school district accepts substitute security as provided in this Section, any subcontractor undertaking to perform any part of the contract is entitled to provide such security to the contractor.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015

(Supp. 15-3).

#### **R7-2-1105. Progress Payments**

- A.** Progress payments may be made by the school district to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding month if the contractor agrees to adhere to the provisions of A.R.S. § 41-2577(B), (D), and (F). Payment shall be made within 14 days after the estimate of the work is certified and approved, except that a percentage of all estimates shall be retained as provided in R7-2-1104. The estimate of the work shall be deemed received by the school district on submission of the estimate of the work to the school district or a person designated by the school district for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this Section shall be considered approved and certified after seven days from the date of submission unless before that time the school district or designee prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. The school district may withhold an amount from the progress payment sufficient to pay the expenses the school district reasonably expects to incur in correcting the deficiency set forth in the written finding. No contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this Section. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided pursuant to R7-2-1104.
- B.** Progress payments pursuant to subsection (A) are authorized for construction services contracts. The requirements of subsection (A) apply only to amounts payable in a construction services contract for construction and do not apply to amounts payable in a construction services contract for design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.
- C.** A subcontractor may notify the school district, in writing, requesting that the subcontractor be notified by the school district in writing within five days from payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.
- D.** If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one percent per month, or a fraction of a month, on such unpaid balance as may be due.

#### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1106. Procurement of Construction Using Alternative Project Delivery Methods**

- A.** A school district may use an alternative project delivery method if it determines in writing that such alternative project delivery method is advantageous to the school district. The following factors may be used for such determination:
  1. Cost and cost control method;
  2. Value engineering;
  3. Market conditions;
  4. Schedule;
  5. Required specialized expertise;
  6. Technical complexity of the project; or
  7. Project management.

- B.** Use of alternative project delivery methods
  1. Alternative project delivery methods for construction services shall be procured as provided in R7-2-1100.
  2. For design-build construction services and construction-manager-at-risk construction services, the school district is limited to one contract per procurement.
    - a. Alternatively, for construction-manager-at-risk construction services, a school district may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
    - b. Alternatively, for design-build construction services, a school district may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
    - c. If the school district enters into the first contract for preconstruction services or construction services the procurement ends. After execution of that first contract the school district may not use the procurement or the existing final list in the procurement as the basis for entering into a contract with any other person that participated in the procurement.
  3. For job-order-contracting construction services, the school district may award a single contract, or multiple contracts for similar job-order-contracting construction services to be awarded to separate persons. If the school district enters into the number of contracts specified under the request for qualifications, the procurement ends. After that time the school district may not use the procurement or any existing final list in the procurement as the basis for entering into a contract with any other person that participated in the procurement.
  4. All construction-manager-at-risk construction services or design-build construction services included in a procurement shall be limited to construction services to be performed at a single location, a common location or, if the construction services are all for a similar purpose, multiple locations. For construction-manager-at-risk construction services and design-build construction services to be performed at multiple locations:
    - a. At the time the request for qualifications is issued, the school district shall intend to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.
    - b. The request for qualifications shall include the information described in R7-2-1108(B)(2).
  5. The school district and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this Section and R7-2-1107, R7-2-1108, R7-2-1110, and R7-2-1111, including the selection of persons to be interviewed, the selection of persons to be on the final list, in determining the order of preference of persons on the final list or for any other purpose in the selection process, except as provided in R7-2-1110(D) and R7-2-1111.
  6. In determining the persons to participate in any interviews, in determining the persons to be on the final list, and in determining the order on the final list, the selection committee shall use and consider only the criteria and weighting of criteria in the request for qualifications. No

other factors or criteria may be used in the evaluation, determinations and other actions.

7. Notwithstanding any other provision specifying the number of persons to be interviewed, the number of persons to be on a final list, or any other numerical specification in R7-2-1106 through R7-2-1115:
  - a. If a smaller number of persons respond to the request for qualifications or if one or more persons drop out of the procurement so there is a smaller number of persons participating in the procurement, the school district, as the school district determines necessary and appropriate, may elect to proceed with the participating persons if there are at least two participating responsive and responsible persons. Alternatively, the school district may elect to terminate the procurement.
  - b. As to a request for qualifications to be negotiated pursuant to R7-2-1110(D), if only one responsive and responsible person responds to the request for qualifications or if one or more persons drop out of the procurement so that only one responsive and responsible person remains in the procurement, the school district may elect to proceed with the procurement with only one person if the governing board determines in writing that the negotiated fee is fair and reasonable and that either other prospective persons had reasonable opportunity to respond or there is not adequate time for a resolicitation.
  - c. If a person on the final list withdraws or is removed from the procurement and the selection committee determines that it is advantageous to the school district, the selection committee may replace that person on the final list with another person that submitted qualifications in the procurement and that is selected as the next most qualified.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1107. Selection Committee

- A. The school district shall initiate an appropriately qualified selection committee for each request for qualifications. The school district shall ensure that selection committee members are competent to serve on the selection committee.
- B. Each selection committee shall include at least one school district representative appointed by the school district.
- C. The selection committee shall not have more than seven members and shall include at least one person who is a senior management employee of a licensed contractor and one person who is an architect or an engineer who is registered pursuant to A.R.S. § 32-121.
- D. Non-school district employees serving on a selection committee shall not receive compensation from the school district for performing this service, but the school district may elect to reimburse non-school district members for travel, lodging and other expenses incurred in connection with service on a selection committee.
- E. A person who is a member of a selection committee shall not be a contractor or subcontractor under a contract awarded under the procurement or provide any specified professional services, construction, construction services, materials or other services under the contract.
- F. For the procurement of multiple contracts for job-order-contracting, the same selection committee shall be used for all contracts in the procurement.

#### Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1108. Request for Qualifications

- A. Notice of the need for construction services shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C). Such notice shall be issued not less than 14 days in advance of when responses shall be received. The notice shall:
  1. Contain a statement of the construction services required that adequately describes the procurement and specifies how a request for qualifications containing specific information on the procurement may be obtained;
  2. Specify whether the procurement is for a single contract or, for job-order-contracting construction services only, for multiple contracts; and
  3. If the procurement is for multiple job-order-contracting construction services contracts:
    - a. Specify that multiple contracts may or will be awarded;
    - b. Specify the number of contracts that may or will be awarded; and
    - c. Describe the construction services to be performed under each contract.
- B. The request for qualifications shall include the following:
  1. Instructions and information to persons concerning the statement of qualifications submission requirements, including the due date and time for receipt of statements of qualifications, the address of the office at which the statements of qualifications are to be received, and any other special information.
  2. In a procurement of construction-manager-at-risk construction services or design-build construction services to be performed at multiple locations, include:
    - a. A brief description of the construction services to be performed at each location;
    - b. The estimated budget for the construction services to be performed at each location; and
    - c. A schedule for the construction services to be performed at each location that shows the school district's intent to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.
  3. General information on the project site, scope of work, schedule, selection criteria, project design and construction budget, or life cycle budget for a procurement that includes maintenance, operations, and finance services.
  4. The criteria and the weight prescribed by the school district for each of the criteria to be used in making the evaluation.
    - a. All selection criteria shall be factors that demonstrate competence and qualifications for the type of construction services included in the procurement.
    - b. One of the criteria shall be the person's subcontractor selection plan or procedures to implement the school district's subcontractor selection plan.
    - c. If interviews will be held, state the selection criteria and relative weights to be used in selecting the persons to be interviewed. The request for qualifications may state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons to be interviewed. The request for qualifications also

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- shall state whether the school district will select the persons on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the school district's request for qualifications.
- d. If interviews will not be held, state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list.
5. Whether one contract or multiple contracts may or will be awarded.
    - a. For design-build construction services, construction-manager-at-risk construction services, and a single contract for job-order-contracting construction services, state that one person may or will be awarded the contract.
    - b. For multiple contracts for similar job-order-contracting construction services, state the number of contracts that may or will be awarded, the job-order-contracting construction services to be performed under each of the contracts, and that each of the multiple contracts will be awarded to a separate person.
  6. In a procurement where the contract is to be negotiated under R7-2-1110(D):
    - a. State that there will be a single final list of at least three and not more than five persons for a design-build, construction-manager-at-risk, or single job-order-contracting construction services award.
    - b. State that there will be a single final list equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five for a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons.
  7. In a procurement in which the contract will be awarded under R7-2-1111:
    - a. State that there will be a single final list and that the number of persons on the final list will be three for a design-build or single job-order-contracting construction services award.
    - b. State that there will be a single final list equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five for a procurement for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons.
  8. The type of contract to be used.
  9. The name of the district representative or district representatives and the publicly available location of the school district's protest policy and procedures.
  10. If the school district will hold interviews as part of the selection process:
    - a. State that interviews will be held and that the interviews will be with at least three and not more than five persons for a design-build, construction-manager-at-risk, or single job-order-contracting construction services procurement.
    - b. State that interviews will be held and that the interviews will be with a specified number of persons in a procurement of multiple contracts for similar job-order-contracting construction services to be awarded to separate persons. The specified number shall be the sum of the number of contracts that may or will be awarded and a number that is determined by the school district and that is not more than five.
  11. The manner in which subcontractors shall be selected, either:
    - a. A requirement that each person submit a proposed subcontractor selection plan and a requirement that the proposed subcontractor selection plan shall select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone; or
    - b. A subcontractor selection plan adopted by the school district that applies to the person that is selected to perform the construction services and that requires subcontractors to be selected based on qualifications alone or on a combination of qualifications and price and not based on price alone and a requirement that each person shall submit a description of the procedures it proposes to use to implement the school district's subcontractor selection plan.
  12. Notice that all information and statements of qualifications submitted by persons will be made available for public inspection after the school district has entered into a single contract or all of the multiple contracts.
- C. A copy of the request for qualifications shall be made available for public inspection at the school district office.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1109. Receipt and Opening of Statements of Qualifications, Technical Proposals and Price Proposals for Design-build and Job-order-contracting**

- A. Statements of qualifications, technical proposals and price proposals shall be received and opened in accordance with R7-2-1045. Late statements of qualifications, proposals, modifications, or withdrawals shall be considered in accordance with R7-2-1044 and R7-2-1049.
- B. A school district may cancel a request for qualifications or a request for proposals, reject in whole or in part any or all statements of qualifications or proposals or determine not to enter into a contract as specified in the solicitation if it is advantageous to the school district. The school district shall make the reasons for cancellation, rejection or determination not to enter into a contract part of the procurement file.

**Historical Note**

New Section made by exempt rulemaking at 13 A.A.R. 1266, effective February 26, 2007 (Supp. 07-1). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1110. Committee Evaluation and Contract Award**

- A. If interviews are specified in the request for qualifications:
1. The selection committee shall determine the persons to be interviewed by evaluating the statements of qualifications and performance data submitted based solely on the selection criteria and relative weights in the request for qualifications to be used to determine the persons to be interviewed.
  2. If the selection criteria and relative weights to be used by the selection committee to select the persons on the final list and to determine their order on the final list are not included in the request for qualifications:
    - a. Before the interviews are held the school district shall distribute to the persons to be interviewed the selection criteria and relative weights to be used to

- select the persons on the final list and to determine their order on the final list.
- b. These selection criteria and relative weights may be different than the selection criteria and relative weight used to determine the persons to be interviewed.
3. The selection committee shall conduct interviews with the number of persons specified in the request for qualifications.
- B.** Based solely on the selection criteria and relative weights for selection of the persons on the final list and their order on the final list, the selection committee shall select the persons for the final list and, in the case of a final list for a contract that will be negotiated under subsection (D), rank the persons in order of preference.
- C.** The school district shall make the following notifications regarding the final lists:
1. If the contract will be negotiated under subsection (D) before or at the same time as the school district notifies the highest ranking person on the final list that it is the highest ranking person, the school district shall send actual notice to each of the following that it is not the highest ranking person or that another person is the highest ranking person:
    - a. If interviews were held, the other persons interviewed.
    - b. If interviews were not held, the other persons that made submittals.
  2. If the contract will be awarded under R7-2-1111, before or at the same time as the school district notifies the persons on the final list that they are on the final list, the school district shall send actual notice to each of the following persons that they are not on the final list or that other persons are on the final list:
    - a. If interviews were held, the other persons interviewed.
    - b. If interviews were not held, the other persons that made submittals.
- D.** The school district shall conduct negotiations with persons on the final list as follows:
1. The negotiations shall include consideration of compensation and other contract terms that the school district determines to be fair and reasonable to the school district. In making this decision, the school district shall take into account the estimated value, the scope, the complexity and the nature of the construction services to be rendered.
  2. If the procurement is for a single contract, there is one final list and the school district shall enter into negotiations with the highest qualified person on the final list. If the school district is not able to negotiate a satisfactory contract with the highest qualified person on the final list, at compensation and on other contract terms the school district determines to be fair and reasonable, the school district shall formally terminate negotiations with that person. The school district shall then undertake negotiations with the next most qualified person on the final list in sequence until an agreement is reached or a determination is made to reject all persons on the final list.
  3. If the procurement is for multiple contracts for similar job-order-contracting construction services to be awarded to separate persons, there is one final list and the school district shall enter into separate negotiations for contracts with the number of the highest qualified persons on the final list equal to the number of contracts to be awarded. If the school district is not able to negotiate a satisfactory contract with a person with whom the school district has

commenced negotiations, the school district shall formally terminate negotiations with that person. The school district shall then undertake negotiations for a contract with the next most qualified person on the final list with whom the school district is not then negotiating and with whom the school district has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons on the final list.

4. If the school district terminates negotiations with a person and commences negotiations with another person on the final list, the school district shall not recommence negotiations or enter into a contract for the construction services covered by the final list with any person with whom the school district terminated negotiations.

#### Historical Note

New Section made by exempt rulemaking at 13 A.A.R. 1266, effective February 26, 2007 (Supp. 07-1). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1111. Alternative Procedure for Design-build or Job-order-contracting Construction Services**

- A.** As an alternative to R7-2-1110(D), the school district may award a single contract for design-build construction services or a single or multiple contracts for similar job-order-contracting construction services pursuant to this Section.
- B.** The school district shall use the selection committee appointed for the request for qualifications pursuant to R7-2-1107.
- C.** The school district shall issue a request for proposals to the persons on the final list developed pursuant to R7-2-1110(A) through (C). The request for proposals shall be issued at least 14 days before the due date and time for receipt of proposals unless a shorter time is determined necessary by the school district.
- D.** The request for proposals shall include the following:
1. A statement that the procurement is for a single contract or, for similar job-order-contracting construction services only, for multiple contracts.
  2. If the procurement is for multiple contracts for similar job-order-contracting construction services, the notice shall specify that multiple contracts will be awarded, shall specify the number of contracts that will be awarded, shall specify the number of offerors to whom contracts will be awarded which shall be the number of contracts in the procurement, and shall describe the job-order-contracting services to be performed under each contract.
  3. Instructions and information to persons concerning the proposal submission requirements, including the due date and time for receipt of proposals, the address of the office at which proposals are to be received, the proposal acceptance period, and any other special information.
  4. The school district's project schedule and project final budget for design and construction or life cycle budget for a procurement that includes maintenance services or operations services.
  5. If a single contract will be awarded, a statement that the contract will be awarded to the person whose proposal receives the highest number of points under a scoring method. If multiple contracts for similar job-order-contracting services will be awarded, a statement that the multiple contracts will be awarded to a specified number of offerors whose proposals receive the highest number of points under a scoring method. The specified number

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- of offerors will be the number of contracts included in the procurement.
6. A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor.
  7. For design-build construction services only, the design requirements, including the required features, functions, characteristics, qualities and properties, the anticipated schedule, including start, duration and completion, and the estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by an architect or engineer, as appropriate, and additional design information or documents specified by the school district, may also be included.
  8. A requirement that each offeror submit separately a technical proposal and a price proposal and that the offeror's entire proposal is responsive to the requirements in the request for proposals. For design-build construction services, the price in the price proposal shall be a fixed price or a guaranteed maximum price.
  9. A statement that in applying the scoring method, the selection committee will separately evaluate and score the technical proposal before opening, evaluating, and scoring the price proposal.
  10. If the school district desires to conduct discussions with offerors, a statement that discussions may be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.
  11. Type of contract to be used.
  12. That offerors may designate as proprietary portions of the proposal.
  13. Notice that all information and proposals submitted by offerors, except as stated in subsection (D)(12), will be made available for public inspection after the school district has entered into a single contract or all of the multiple contracts.
  14. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
  15. The name of the district representative or district representatives.
  16. If the request for proposals incorporates documents by reference, the request for proposals shall specify where such documents may be obtained.
- E.** The factors in the scoring method described in the request for proposals may include:
1. For design-build construction services only, demonstrated compliance with the design requirements.
  2. Offeror qualifications.
  3. Offeror financial capacity.
  4. Compliance with the school district's project schedule.
  5. For design-build construction services only, if the request for proposals specifies that the school district will spend its project budget and not more than its project budget and is seeking the best proposal for the project budget, compliance of the offeror's price or life cycle price for procurements that include maintenance services, operations services or finance services with the school district's budget as prescribed in the request for proposals.
  6. For design-build construction services if the request for proposals does not contain the specifications prescribed in subsection (E)(5) and for job-order-contracting construction services, the price or life cycle price for procurements that include maintenance services, operations services or finance services.
7. An offeror quality management plan.
  8. Other evaluation factors that demonstrate competence and qualifications for the type of construction services in the request for proposals as determined by the school district, if any.
- F.** If determined by the school district and included in the request for proposals, the selection committee shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and for clarification by the school district. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.
- G.** After completion of any discussions pursuant to subsection (F) or if no discussions are held, each offeror shall submit separately its final technical proposal and its price proposal.
- H.** Before opening any price proposal, the selection committee shall open and evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in evaluation and scoring.
- I.** After completion of the evaluation and scoring of all final technical proposals, the selection committee shall open, evaluate and score the price proposals, and complete scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in evaluation and scoring.
- J.** The school district shall award the contract to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in evaluation and award.
- K.** For procurements of multiple contracts for similar job-order-contracting construction services, the school district may award up to the number of contracts specified in the request for proposals.
- L.** Before or at the same time as the school district notifies the selected offeror of contract award, the school district shall notify all other offerors of the award.
- M.** For design-build construction services only, the school district shall award a stipulated fee equal to a percentage of the school district's project final budget for design and construction, as prescribed in the request for proposals, but not less than two-tenths of one percent of the project final budget for design and construction to each final list offeror who provides a responsive, but unsuccessful, proposal. If the school district does not award a contract, all responsive final list offerors shall receive the stipulated fee based on the school district's project final budget for design and construction as included in the request for proposals. The school district shall pay the stipulated fee to each offeror within 90 days after the award of the initial contract or the decision not to award a contract. In consideration for paying the stipulated fee, the school district may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the offerors. Notwithstanding the other provisions of this subsection, an offeror may elect to

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waive the stipulated fee. If an offeror elects to waive the stipulated fee, the school district may not use ideas and information contained in the offeror's proposal, except that this restriction does not prevent the school district from using any idea or information if the idea or information is also included in a proposal of an offeror that accepts the stipulated fee.

- N. The procurement file shall contain the basis on which the award is made, including at a minimum the information and documents required under R7-2-1115.
- O. A copy of the request for proposals shall be made available for public inspection at the school district office.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1112. Contractor Licenses, Contract and Performance Requirements****A. Notwithstanding any other rule:**

- 1. The contractor for design-build or job-order-contracting construction services is not required to be registered to perform design services pursuant to A.R.S. Title 32, Chapter 1 if the person actually performing the design services on behalf of the contractor is appropriately registered.
- 2. The contractor for construction-manager-at-risk, design-build or job-order-contracting construction services shall be licensed to perform construction pursuant to A.R.S. Title 32, Chapter 10.

- B. In a procurement for construction-manager-at-risk construction services or design-build construction services, except for design-build contracts awarded pursuant to R7-2-1111, the school district shall enter into a written contract with the contractor for preconstruction services under which the school district shall pay the contractor a fee for preconstruction services in an amount agreed by the school district and the contractor, and the school district shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the school district has entered into the written contract for preconstruction services and a preconstruction services fee.

- C. Construction shall not commence under a construction services contract until the school district and contractor agree in writing on either a fixed price that the school district will pay or a guaranteed maximum price for the construction to be commenced. The construction to be commenced may be the entire project or may be one or more phased parts of the project.

- D. For negotiated construction-manager-at-risk and design-build contracts, preconstruction services, general conditions, schedules, construction contingency, and construction fees shall be part of the contract. For design-build contracts awarded pursuant to a request for proposals, the fees shall be included in the vendor's proposal and shall become part of the awarded contract.

**E. For job-order-contracting construction services only:**

- 1. The maximum dollar amount of an individual job order for job-order-contracting construction services shall be one million dollars or a higher or lower amount prescribed by the governing board in a policy adopted in a public meeting held pursuant to A.R.S. Title 38, Chapter 3, Article 3.1. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies the requirements of this subsection.

- 2. If the contractor subcontracts or intends to subcontract part or all of the work under a job order and if the job-order-contracting construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:

- a. The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders a copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid and a copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.
- b. If not previously delivered to the subcontractor, the contractor has a duty to promptly deliver to each subcontractor invited to or that has agreed to do any of the work included in any job order a copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform, the number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform, and the standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

- F. For all construction services contracts, the contractor performing the construction services is permitted to self-perform part of the construction work, if and to the extent agreed in writing by the school district and the contractor. The school district may use methods other than competitive bidding to assure itself that the price the school district pays to the contractor for self-performed work is fair and reasonable. Permitted methods to evaluate fairness and reasonableness of the price of self-performed work include evaluation of the contractor's proposed scope of work and price for self-performed work by an estimator who is hired and paid by the school district, who is independent of the contractor and who may be an employee of the school district. Although the school district may elect to so require, nothing in Articles 10 and 11 shall be construed or interpreted to require the school district to require a contractor desiring to self-perform part of the construction work to competitively bid that part of the construction work against other contractors in a bid competition.

- G. For all construction services contracts, the following requirements apply to the construction work to be performed by subcontractors and do not apply to construction work that the school district and the contractor agree in writing will be self-performed by the contractor:

- 1. The person selected to perform the construction services shall select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. A qualifications and price selection may be a single-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.
- 2. The school district shall include in each contract:
  - a. If the school district included its subcontractor selection plan in the request for qualifications, the school district's subcontractor selection plan and the procedures to implement the school district's subcontractor selection plan proposed by the awarded

contractor in submitting its qualifications with those modifications to the procedures as the school district and the contractor agree.

- b. If the school district did not include its subcontractor selection plan in the request for qualifications, the subcontractor selection plan proposed by the awarded contractor in submitting its qualifications with those modifications as the school district and the contractor agree.

3. In making the selection of subcontractors, the contractor shall use the subcontractor selection plan and any procedures included in its contract.

- H. The school district shall include in each contract for construction services the full street or physical address of each separate location at which the construction will be performed and a requirement that the contractor and each subcontractor at any level include in each of its subcontracts the same address information. The contractor and each subcontractor at any level shall include in each subcontract the full street or physical address of each separate location at which construction work will be performed.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1113. Prohibitions

- A. Notwithstanding any contrary provision of Articles 10 and 11, a school district shall not enter into a contract to provide construction-manager-at-risk construction services, design-build construction services or job-order-contracting construction services.
- B. The prohibitions prescribed in subsection (A) do not prohibit a school district from providing construction for itself as provided by law.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1114. Bid Security, Contract Performance and Payment Bonds, and Payment and Retention

- A. Bid security shall be provided pursuant to R7-2-1102.
- B. Contract performance and payment bonds shall be provided pursuant to R7-2-1103.
- C. Contract payment retention and substitute security shall be in accordance with R7-2-1104.
- D. Progress payments shall be in accordance with R7-2-1105.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended effective March 21, 1991 (Supp. 91-1).  
Amended effective October 22, 1992 (Supp. 92-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1115. Procurement File Contents and Review

- A. At a minimum, the school district shall retain the following for each procurement under R7-2-1106 through R7-2-1114:
  1. For each request for qualifications procurement process:
    - a. If interviews were not held:
      - i. The submittal of the person listed first on the final list and the submittal of each person with whom the school district enters into a contract.

- ii. The final list.
- iii. A list of the selection criteria and relative weight of selection criteria used to select the persons for the final list and to determine their order on the final list.
- iv. A list that contains the name of each person that submitted qualifications and that shows the person's final overall rank or score.
- v. Documents that show the final score or rank on each selection criteria of each person that submitted qualifications and that support the final overall rankings and scores of the persons that submitted qualifications. The school district shall retain the individual scoring sheets for individual selection committee members.

- b. If interviews were held:

- i. All submittals of the person listed first on the final list and the submittal of each person with whom the school district enters into a contract.
- ii. The final list.
- iii. A list of the selection criteria and relative weight of selection criteria used to select the persons for the final list and to determine their order on the final list.
- iv. A list that contains the name of each person that was interviewed and that shows the person's final overall rank or score.
- v. Documents that show the final score or rank on each selection criteria of each person that was interviewed and that support the final overall rankings and scores of the persons that were interviewed. The school district shall retain the individual scoring sheets for individual selection committee members.
- vi. A list of the selection criteria and relative weight of the selection criteria used to select the persons for the short list to be interviewed.
- vii. A list that contains the name of each person that submitted qualifications and that shows the person's final overall rank or score in the selection of the persons to be on the short list to be interviewed.
- viii. Documents that show the final score or rank on each selection criteria of each person that submitted qualifications and that support the final overall rankings and scores of the persons that submitted qualifications. The school district shall retain the individual scoring sheets for individual selection committee members.

2. For each request for proposals procurement process under R7-2-1111:

- a. The entire proposal submitted by the person that received the highest score in the scoring method in the request for proposals and the entire proposal submitted by each person with whom the school district enters into a contract.
- b. The description of the scoring method, the list of factors in the scoring method and the number of points allocated to each factor, all as included in the request for proposals.
- c. A list that contains the name of each offeror that submitted a proposal and that shows the offeror's final overall score.
- d. Documents that show the final score or rank on each factor in the scoring method in the request for proposals of each offeror that submitted a proposal and



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that support the final overall scores of the offerors that submitted proposals. The school district shall retain the individual scoring sheets for individual selection committee members.

**B.** Information relating to each procurement under R7-2-1106 through R7-2-1114 shall be made available to the public as follows:

1. Until the school district awards a single contract or all of the multiple contracts or terminates the procurement, only the name of each person on the final list may be made available to the public. All other information received by the school district in response to the request for qualifications shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing respondents during the selection process.
2. After the school district awards a single contract or all of the multiple contracts or terminates the procurement, the school district shall make the contents of the procurement file, except the proposals and statements of qualifications submitted in response to a solicitation and the documents described in subsections (A)(1)(a)(v), (A)(1)(b)(v), (A)(1)(b)(viii), and (A)(2)(d), available to the public.
3. After the school district has entered into a single contract or all of the multiple contracts or has terminated the procurement, the school district shall make the proposals and statements of qualifications and the documents described in subsections (A)(1)(a)(v), (A)(1)(b)(v), (A)(1)(b)(viii), and (A)(2)(d) available to the public.
4. To the extent that an offeror designates and the school district concurs, trade secrets and other proprietary data contained in a proposal or statement of qualifications shall remain confidential.
5. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**C.** The school district shall retain the records of a procurement under R7-2-1106 through R7-2-1114 in accordance with R7-2-1085.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

Amended effective March 21, 1991 (Supp. 91-1).

Amended effective October 22, 1992 (Supp. 92-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1116. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 13 A.A.R. 1266, effective February 26, 2007 (Supp. 07-1). Section repealed by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**PROCUREMENT OF SPECIFIED PROFESSIONAL SERVICES**

**R7-2-1117. Procurement of Specified Professional Services**

**A.** Specified professional services, which is defined in R7-2-1001(117), as services of an architect, engineer, land surveyor, assayer, geologist and landscape architect, shall be procured as provided in R7-2-1117 through R7-2-1123, except as authorized in R7-2-1033, R7-2-1053, R7-2-1055, and R7-2-1122.

**B.** Prior to public notice of the need for specified professional services, the school district shall determine that the services to be acquired are specified professional services.

**C.** In the procurement of specified professional services:

1. The school district shall specify whether the procurement is for a single contract or for multiple contracts. Multiple contracts may be awarded to separate persons or may be awarded to a single person as specified in the request for qualifications.
2. The school district and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this Section and R7-2-1120 or R7-2-1121, including the selection of persons to be interviewed, the selection of persons to be on the final list, in determining the order of preference of persons on a final list or for any other purpose in the selection process except as provided in R7-2-1121.
3. In determining the persons to participate in any interviews, in determining the persons to be on the final list, and in determining the order on the final list, the selection committee shall use and consider only the criteria and weighting of criteria in the request for qualifications. No other factors or criteria may be used in the evaluation, determinations and other actions.
4. If the school district enters into the number of contracts specified in the request for qualifications, the procurement ends. After that time the school district may not use the procurement or any final list in the procurement as the basis for entering into a contract with any other person that participated in the procurement.
5. Notwithstanding any other provision specifying the number of persons to be interviewed, the number of persons to be on a final list, or any other numerical specification in this Section or R7-2-1121:
  - a. If a smaller number of persons respond to the request for qualifications or if one or more persons drop out of the procurement so that there is a smaller number of persons participating in the procurement, the school district, as the school district determines necessary and appropriate, may elect to proceed with the participating persons if there are at least two participating responsive and responsible persons. Alternatively, the school district may elect to terminate the procurement.
  - b. As to a request for qualifications to be negotiated pursuant to R7-2-1121(D), if only one responsive and responsible person responds to the request for qualifications, or if one or more persons drop out of the procurement so that only one responsive and responsible person remains in the procurement, the school district may elect to proceed with the procurement with only one person if the governing board determines in writing that the negotiated fee is fair and reasonable and that either other prospective persons had reasonable opportunity to respond or there is not adequate time for a resolicitation.
  - c. If a person on the final list withdraws or is removed from the procurement and the selection committee determines that it is advantageous to the school district, the selection committee may replace that person on the final list with another person that submitted qualifications in the procurement and that is selected as the next most qualified.

**D.** The request for qualifications shall:

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1. Provide instructions and information to persons concerning the statement of qualifications submission requirements, including the due date and time for receipt of statements of qualifications, the address of the office at which the statements of qualifications are to be received, and any other special information.
  2. State whether one contract or multiple contracts may or will be awarded.
    - a. If one contract will be awarded, state that one contract may or will be awarded, describe the services to be performed under the contract and state that one person may or will be awarded the contract.
    - b. If multiple contracts may or will be awarded, state the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts, and either that each contract will be awarded to a separate person or that all of the contracts will be awarded to the same person.
  3. State the number of persons to be included on the final list.
    - a. If a single contract will be awarded, state that there will be a single final list of at least three and not more than five persons.
    - b. If multiple contracts will be awarded to a single person, state that there will be a single final list of at least three and not more than five persons.
    - c. If multiple contracts for similar specified professional services will be awarded to separate persons, state that there will be a single final list equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five.
    - d. If multiple contracts for different specified professional services will be awarded to separate persons, state that there will be a separate final list for each type of specified professional services and that the number of persons on each final list will be equal to the number of contracts that may or will be awarded for each type of specified professional services and a number determined by the school district not to exceed five.
  4. State the selection criteria and relative weight to be used. All selection criteria shall be factors that demonstrate competence and qualifications for the type of specified professional services included in the procurement.
    - a. If interviews will be held, state the selection criteria and relative weights to be used in selecting the persons to be interviewed. The request for qualifications may state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list. The final list selection criteria and relative weights may be different than the selection criteria and relative weights used to determine the persons to be interviewed. The request for qualifications also shall state whether the school district will select the persons on the final list and their order on the final list solely through the results of the interview process or through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the request for qualifications.
    - b. If interviews will not be held, state the selection criteria and relative weights to be used in selecting the persons on the final list and in determining their order on the final list.
  5. State whether interviews will be held.
    - a. If a single contract will be awarded, state that there will be interviews with at least three and not more than five persons.
    - b. If multiple contracts will be awarded to a single person, state that there will be interviews with at least three and not more than five persons.
    - c. If multiple contracts for similar specified professional services will be awarded to separate persons, state that there will be interviews with a number of persons equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five.
    - d. If multiple contracts for different specified professional services will be awarded to separate persons, state that interviews will be held and that the interviews will be with a specified number of persons. The specified number shall be stated in the request for qualifications, shall be determined by the school district, shall be at least three times the number of contracts that may or will be awarded and shall not be more than five times the number of contracts that may or will be awarded.
  6. The name of the district representative or district representatives and the publicly available location of the school district's protest policy or procedure.
  7. Notice that all information and statements of qualifications submitted by persons will be made available for public inspection after the school district has entered into a single contract or all of the multiple contracts.
- E.** Statements of qualifications shall be received and opened in accordance with R7-2-1045. Late statements of qualifications, late modifications, or late withdrawals shall be considered in accordance with R7-2-1044 and R7-2-1049.
- F.** A copy of the request for qualifications shall be made available for public inspection at the school district office.
- Historical Note**  
 Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).
- R7-2-1118. Public Notice of Specified Professional Services**
- A.** Notice of the need for specified professional services shall be given by the school district pursuant to R7-2-1022 and R7-2-1024(C). Such notice shall be issued not less than 14 days in advance of when responses shall be received.
- B.** The notice shall:
1. Contain a statement of the services required that adequately describes the procurement and specifies how a request for qualifications containing specific information on the procurement may be obtained.
  2. Specify whether the procurement is for a single contract or for multiple contracts; and
  3. If the procurement is for multiple contracts:
    - a. Specify that multiple contracts may or will be awarded;
    - b. Specify the number of contracts that may or will be awarded; and
    - c. Describe the specified professional services to be performed under each contract.
- Historical Note**  
 Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).
- R7-2-1119. Cancellation or Rejection of the Solicitation**

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A school district may cancel a request for qualifications, reject in whole or in part any or all statements of qualifications or determine not to enter into a contract as specified in the solicitation if it is advantageous to the school district. The school district shall make the reasons for cancellation, rejection or determination not to enter into a contract part of the procurement file.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1120. Specified Professional Services Selection Committee**

- A. The school district shall initiate an appropriately qualified selection committee for each request for qualifications. The school district shall ensure that selection committee members are competent to serve on the selection committee.
- B. Each selection committee shall include at least one school district representative appointed by the school district.
- C. The school district shall determine the number and qualifications of the selection committee members. These members may be employees of the school district or non-school district appointees.
- D. Non-school district employees serving on a selection committee shall not receive compensation from the school district for performing this service, but the school district may elect to reimburse non-school district members for travel, lodging and other expenses incurred in connection with service on a selection committee.
- E. A person who is a member of a selection committee shall not be a contractor or subcontractor under a contract awarded under the procurement or provide any specified professional services or other services under the contract.
- F. For the procurement of multiple contracts for specified professional services, the same selection committee shall be used for all contracts in the procurement.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1121. Committee Evaluation and Selection**

- A. If interviews are specified in the request for qualifications:
  - 1. The selection committee shall determine the persons to be interviewed by evaluating the statements of qualifications and performance data submitted based solely on the selection criteria and relative weights in the request for qualifications to be used to determine the persons to be interviewed.
  - 2. If the selection criteria and relative weights to be used by the selection committee to select the persons on the final list or final lists are not included in the request for qualifications:
    - a. Before the interviews are held the school district shall distribute to the persons to be interviewed the selection criteria and relative weights to be used to select the persons on the final list and to determine their order on the final list.
    - b. These selection criteria and relative weight may be different than the selection criteria and relative weight used to determine the persons to be interviewed.

- 3. The selection committee shall conduct interviews with the number of persons specified in the request for qualifications.
- B. Based solely on the selection criteria and relative weights for selection of the persons on the final list or final lists and their order on the final list or final lists, the selection committee shall select the persons for the final list or final lists and rank the persons on the final list or final lists in order of preference. If the procurement is for multiple contracts for different specified professional services to be awarded to separate persons, and if a person submitted qualifications for more than one type of specified professional services, the person may be on more than one final list.
- C. Before or at the same time as the school district notifies the highest ranking person on the final list or final lists that it is the highest ranking person, the school district shall send actual notice to each of the following that it is not the highest ranking person or that another person is the highest ranking person:
  - 1. If interviews were held, the other persons interviewed.
  - 2. If interviews were not held, the other persons that made submittals.
- D. The school district shall conduct negotiations with persons on the final list or final lists as follows:
  - 1. The school district shall negotiate a contract with the highest qualified person for the required specified professional services at compensation determined in writing to be fair and reasonable to the school district. Contract negotiations shall be directed toward:
    - a. Making certain that the person has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;
    - b. Determining that the person will make available the necessary personnel and facilities to perform the services within the required time; and
    - c. Agreeing upon compensation that is fair and reasonable.
  - 2. The negotiations shall include consideration of compensation and other contract terms that the school district determines to be fair and reasonable to the school district. In making this decision, the school district shall take into account the estimated value, the scope, the complexity and the nature of the specified professional services to be rendered.
  - 3. If the procurement is for a single contract, there is one final list and the school district shall enter into negotiations with the highest qualified person on the final list. If the school district is not able to negotiate a satisfactory contract with the highest qualified person on the final list, at compensation and on other contract terms the school district determines to be fair and reasonable, the school district shall formally terminate negotiations with that person. The school district shall then undertake negotiations with the next most qualified person on the final list in sequence until an agreement is reached or a determination is made to reject all persons on the final list.
  - 4. If the procurement is for multiple contracts for specified professional services to be awarded to a single person on the final list, there is one final list and the school district shall enter into negotiations with the highest qualified person on the final list. If the school district is not able to negotiate a satisfactory contract with the highest qualified person on the final list, at compensation and on other contract terms the school district determines to be fair and reasonable, the school district shall formally terminate negotiations with that person. The school district shall

then undertake negotiations with the next most qualified person on the final list in sequence until an agreement is reached or a determination is made to reject all persons on the final list.

5. If the procurement is for multiple contracts for similar specified professional services to be awarded to separate persons, there is one final list and the school district shall enter into separate negotiations for contracts with the number of the highest qualified persons on the final list equal to the number of contracts to be awarded. If the school district is not able to negotiate a satisfactory contract with a person with whom the school district has commenced negotiations, the school district shall formally terminate negotiations with that person. The school district shall then undertake negotiations for a contract with the next most qualified person on the final list with whom the school district is not then negotiating and with whom the school district has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons on the final list.
6. If the procurement is for multiple contracts for different specified professional services to be awarded to separate persons, there is a separate final list for each type of specified professional services and the school district shall enter into separate negotiations for contracts with the number of the highest qualified persons on each final list equal to the number of contracts to be awarded. If the school district is not able to negotiate a satisfactory contract with a person with whom the school district has commenced negotiations, the school district shall formally terminate negotiations with that person. The school district shall then undertake negotiations for a contract with the next most qualified person on the applicable final list with whom the school district is not then negotiating and with whom the school district has not previously negotiated in sequence until an agreement is reached for some or all of the multiple contracts included in the request for qualifications or a determination is made to reject all persons on the final list.
7. If the school district terminates negotiations with a person and commences negotiations with another person on the final list, the school district shall not recommence negotiations or enter into a contract for the specified professional services covered by the final list with any person with whom the school district terminated negotiations.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1122. Specified Professional Services Contracts Not Exceeding Certain Amounts**

- A. A school district may procure a single contract or multiple contracts for specified professional services under this Section if the contract is for specified professional services by an architect or architect firm and the contract amount is \$250,000 or less or if the contract is for specified professional services by a person other than an architect and the contract amount is \$500,000 or less. For such procurements, the school district shall encourage persons engaged in the lawful practice of the profession to submit annually a statement of qualifications and experience.

- B. For each procurement of specified professional services under this Section, the school district shall establish a selection committee pursuant to R7-2-1120.
- C. The selection committee shall evaluate current statements of qualifications and experience on file with the school district, together with those that may be submitted by other persons regarding the procurement.
- D. The school district and the selection committee shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this Section, including the selection of the persons to be interviewed, the selection of persons to be on a final list, in determining the order of preference of persons on a final list or for any other purpose in the selection process, except as provided in subsection (F).
- E. If possible and practicable, the selection committee shall conduct interviews regarding the procurement and the relative methods of furnishing the required specified professional services and, if possible, shall select, in order of preference and based on criteria established and published by the selection committee, one or more final lists of the persons deemed to be the most qualified to provide the specified professional services required. The selection committee shall base the selection of each final list and the order of preference on demonstrated competence and qualifications only.
  1. If the procurement is for a single contract or if the procurement is for multiple contracts to be awarded to a single person, there shall be one final list of three persons.
  2. If the procurement is for multiple contracts for different specified professional services to be awarded to separate persons, there shall be a separate final list of three persons for each contract.
  3. If the procurement is for multiple contracts for the same specified professional services to be awarded to separate persons, there shall be one final list equal to the number of contracts that may or will be awarded and a number determined by the school district not to exceed five.
- F. The school district shall enter into negotiations with the highest qualified person on each final list or, in the case of a single final list for multiple contracts for the same specified professional services to be awarded to separate persons, the school district shall enter into negotiations with a number of the highest qualified persons on the final list equal to the number of contracts that may or will be awarded.
  1. Negotiations shall include consideration of compensation and other contract terms that the school district determines to be fair and reasonable to the school district. In making this determination, the school district shall take into account the estimated value, the scope, the complexity and the nature of the specified professional services to be rendered.
  2. If the school district is unable to negotiate a satisfactory contract with a person with whom the school district is negotiating at a price and on other contract terms the school district determines to be fair and reasonable to the school district, the school district shall formally terminate negotiations with that person.
  3. The school district may undertake negotiations with the next most qualified person on the final list in sequence until an agreement is reached or a determination is made to reject all persons on the final list.
  4. If the school district terminates negotiations with a person on a final list and commences negotiations with another person on the final list, the school district shall not in that procurement recommence negotiations or enter into a

contract or contracts with any person with whom the school district has terminated negotiations.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1123. Procurement File Contents and Review for Procurements Conducted under R7-2-1117 through R7-2-1121**

**A.** At a minimum, the school district shall retain the following for each procurement under R7-2-1117 through R7-2-1121:

1. If interviews were not held:
  - a. The submittal of the person listed first on the final list and the submittal of each person with whom the school district enters into a contract. If the procurement has multiple final lists, the school district shall retain the submittal of the person listed first on the final list and the submittal of each person with whom the school district enters into a contract, for each final list.
  - b. The final list or final lists.
  - c. A list of the selection criteria and relative weight of selection criteria used to select the persons for the final list or final lists and to determine their order on the final list or final lists.
  - d. A list that contains the name of each person that submitted qualifications and that shows the person's final overall rank or score.
  - e. Documents that show the final score or rank on each selection criteria of each person that submitted qualifications and that support the final overall rankings and scores of the persons that submitted qualifications. The school district shall retain the individual scoring sheets for individual selection committee members.
2. If interviews were held:
  - a. All submittals of the person listed first on the final list and the submittal of each person with whom the school district enters into a contract. If the procurement has multiple final lists, the school district shall retain the submittal of the person listed first on the final list and the submittal of each person with whom the school district enters into a contract, for each final list.
  - b. The final list or final lists.
  - c. A list of the selection criteria and relative weight of selection criteria used to select the persons for the final list or final lists and to determine their order on the final list or final lists.
  - d. A list that contains the name of each person that was interviewed and that shows the person's final overall rank or score.
  - e. Documents that show the final score or rank on each selection criteria of each person that was interviewed and that support the final overall rankings and scores of the persons that were interviewed. The school district shall retain the individual scoring sheets for individual selection committee members.
  - f. A list of the selection criteria and relative weight of the selection criteria used to select the persons for the short list or short lists to be interviewed.
  - g. A list that contains the name of each person that submitted qualifications and that shows the person's final overall rank or score in the selection of the per-

sons to be on the short list or short lists to be interviewed.

- h. Documents that show the final score or rank on each selection criteria of each person that submitted qualifications and that support the final overall rankings and scores of the persons that submitted qualifications. The school district shall retain the individual scoring sheets for individual selection committee members.

**B.** Information relating to each procurement under R7-2-1117 through R7-2-1121 shall be made available to the public as follows:

1. Until the school district awards a single contract or all of the multiple contracts or terminates the procurement, only the name of each person on the final list may be made available to the public. All other information received by the school district in response to the request for qualifications shall be confidential in order to avoid disclosure of the contents that may be prejudicial to competing respondents during the selection process.
2. After the school district awards a single contract or all of the multiple contracts or terminates the procurement, the school district shall make the contents of the procurement file, except the statements of qualifications and the documents described in subsections (A)(1)(e), (A)(2)(e), and (A)(2)(h), available to the public.
3. After the school district has entered into a single contract or all of the multiple contracts or has terminated the procurement, the school district shall make the statements of qualifications and the documents described in subsections (A)(1)(e), (A)(2)(e), and (A)(2)(h) available to the public.
4. To the extent that a person designates and the school district concurs, trade secrets and other proprietary data contained in a statement of qualifications shall remain confidential.
5. If the procurement file contains information that is confidential under R7-2-1006, a copy of the applicable documents with the confidential information redacted shall be placed in the procurement file for the purpose of public inspection. The unredacted original copy of the confidential information shall be placed in a sealed envelope or other appropriate container, identified as confidential information, and maintained in the procurement file.

**C.** The school district shall retain the records of a procurement under R7-2-1117 through R7-2-1121 in accordance with R7-2-1085.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section repealed; new Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1124. Reserved**

#### **COST PRINCIPLES**

#### **R7-2-1125. Cost Principles**

The cost principles adopted by the director of the Department of Administration pursuant to A.R.S. § 41-2591 shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R.

1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1126. Reserved**

**R7-2-1127. Reserved**

**R7-2-1128. Reserved**

**R7-2-1129. Reserved**

**R7-2-1130. Reserved**

#### MATERIALS MANAGEMENT

##### **R7-2-1131. Material Management and Disposition**

- A.** The school district shall ascertain or verify that materials, services, or construction items procured by the school district conform to specifications as set forth in the solicitation.
- B.** The school district shall determine the fair market value of excess and surplus material.
- C.** Disposition of surplus materials.
  1. Except as provided in A.R.S. § 15-342(7) related to sales or leases to the state, a county, a city, another school district, or a tribal government agency, and A.R.S. § 15-342(18) related to the disposition of surplus or outdated learning materials, educational equipment and furnishings, surplus materials, regardless of value, shall be offered through competitive sealed bids, public auction, on-line sales, established markets, trade in, posted prices or state surplus property. If unusual circumstances render the above methods impractical, the school district may employ other disposition methods, including appraisal or barter, provided the school district makes a written determination that such procedure is advantageous to the school district. Only United States Postal Money Orders, certified checks, cashiers' checks or cash shall be accepted for sales of surplus material unless otherwise approved by the school district.
  2. Competitive sealed bidding.
    - a. Notice for sale bids shall be publicly available from the school district at least 10 days before the due date set for bids. Notice of the sale bids shall be provided to prospective bidders, including those bidders on lists maintained by the school district pursuant to R7-2-1023. The notice for sale bids shall list the materials offered for sale, their location, availability for inspection, the terms and conditions of sale and instructions to bidders including the bid due date and time. Bids shall be opened publicly pursuant to the requirements of R7-2-1029.
    - b. The award shall be made in accordance with the provisions of the notice for sale bids to the highest responsive and responsible bidder, provided that the price offered by such bidder is acceptable to the school district. If the school district determines that the bid is not advantageous to the school district, the school district may reject the bids in whole or in part and may resolicit bids or the school district may negotiate the sale, provided that the negotiated sale price is higher than the highest responsive and responsible bidder's price.
  3. Auctions shall be advertised at least two times prior to the auction date in a newspaper of the county as defined in A.R.S. § 11-255. Advertisements shall be at least seven days apart. The second publication shall not be less than seven days before the auction date. All the terms and conditions of any sale shall be available to the public at least 24 hours prior to the auction date. The school district or any agent acting on the school district's behalf may also

advertise the auction in any other manner determined advantageous to the school district.

4. Internet-based on-line sales shall not be subject to the advertisement requirements in subsection (C)(3). For such disposal services, the school district shall post and maintain a notice explaining the use of Internet-based on-line sales on a designated site on the Internet. The notice shall include:
  - a. The name of the on-line sales provider and the designated site on the Internet where potential buyers may obtain information or participate in the on-line auctions;
  - b. A link to the Internet-based on-line sales service;
  - c. A link to the terms and conditions of sale;
  - d. Instructions for bidding on the Internet-based on-line sales site; and
  - e. A period of not less than 14 days for each Internet-based on-line sale during which persons may submit offers to purchase the specified materials.
5. Before surplus materials are disposed of by trade-in to a vendor for credit on an acquisition, the school district shall approve such disposal. The school district shall base this determination on whether the trade-in value is expected to exceed the value realized through the sale or other disposition of such materials.
6. An employee of the school district or a governing board member, or an employee of a school district's agent conducting an auction on behalf of the school district, shall not directly or indirectly purchase or agree with another person to purchase surplus property if said employee or board member is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, or preparation for sale of the surplus material.
7. State surplus property manager. The school district may enter into an agreement with the State Surplus Property Manager for the disposition of materials pursuant to Article 8 of the Arizona Procurement Code (A.R.S. § 41-2601 et seq.) and the rules adopted thereunder.
8. Pursuant to A.R.S. § 15-342(35), a school district may offer to sell outdated learning materials, educational equipment or furnishings at a posted price commensurate with the value of the items to pupils who are currently enrolled in that school district before those materials are offered for public sale.

#### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

Amended effective March 21, 1991 (Supp. 91-1).

Amended effective October 22, 1992 (Supp. 92-4). Sec-

tion amended by final exempt rulemaking at 21 A.A.R.

1525, effective July 1, 2015 (Supp. 15-3).

##### **R7-2-1132. State and Federal Surplus Materials Program**

- A.** The governing board may acquire surplus materials from the state and the United States government.
- B.** The governing board may enter into an agreement with the State Surplus Property Manager for the purpose of acquiring surplus materials from the United States government pursuant to A.R.S. § 41-2603 and the rules adopted thereunder.

#### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

Amended effective March 21, 1991 (Supp. 91-1).

##### **R7-2-1133. Authority for Transfer of Material**

Notwithstanding any provision of law to the contrary, the governing board may secure the transfer of surplus materials and obligate its

monies to the extent necessary to comply with the laws and conditions of such transfers.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1134. Reserved**

**R7-2-1135. Reserved**

**R7-2-1136. Reserved**

**R7-2-1137. Reserved**

**R7-2-1138. Reserved**

**R7-2-1139. Reserved**

**R7-2-1140. Reserved**

### BID PROTESTS

#### R7-2-1141. Resolution of Bid Protests

- A. Informal resolution of bid protests. Nothing in Articles 10 and 11 are intended to eliminate the informal resolution of problems by school district personnel.
- B. Formal resolution of bid protests. The governing board pursuant to R7-2-1007 shall designate a district representative, as defined in R7-2-1001(39), to resolve bid protests. All solicitations issued by the school district shall include the name of the district representative and shall indicate that any bid protest shall be filed with the district representative. Appeal from the decision of the district representative may be made to the hearing officer pursuant to R7-2-1147 and R7-2-1181.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1142. Filing of a Protest

- A. Any interested party may protest a solicitation issued by the school district, a determination that a proposal is unacceptable, or the proposed award or the award of a school district contract. Protests shall be filed with the district representative.
- B. Content of protest. The protest shall be in writing and shall include the following information:
  1. The name, address and telephone number of the interested party;
  2. The signature of the interested party or the interested party's representative;
  3. Identification of the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  5. The form of relief requested.
- C. The interested party shall supply promptly any other information requested by the district representative.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1143. Time for Filing Protests

- A. Protests based upon alleged improprieties in a solicitation that are apparent before the due date and time for responses to the solicitation, shall be filed before the due date and time for responses to the solicitation.
- B. In cases other than those covered in subsection (A), the interested party shall file the protest within 10 days after the school district makes the procurement file available for public inspection.

- C. The interested party may file a written request with the district representative for an extension of the time limit for protest filing set forth in subsection (B). The written request shall be filed before the expiration of the time limit set forth in subsection (B) and shall set forth good cause as to the specific action or inaction of the school district that resulted in the interested party being unable to file the protest within the 10 days. The district representative shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.
- D. If the interested party shows good cause and it is advantageous to the school district, the district representative may consider any protest that is not filed timely.
- E. The district representative shall immediately give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties.
- F. At any time the district representative or hearing officer may refer the protest to the governing board for resolution in accordance with R7-2-1152.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1144. Stay of Procurements During the Protest

The district representative may stay all or part of the procurement or contract if it is determined that there is a reasonable probability the protest will be upheld or that a stay is advantageous to the school district. The district representative shall notify the successful contractor if award has been made or, if no award has been made, all interested parties of the stay in writing.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### R7-2-1145. Decision by the District Representative

- A. The district representative shall have the authority granted to the district representative by the governing board to settle and resolve a protest.
- B. The district representative shall issue a written decision within 42 days after a protest has been filed pursuant to R7-2-1142. The decision shall include:
  1. A statement of the decision of the district representative with supporting rationale; and
  2. A paragraph substantially as follows: "This is the decision of the district representative of the \_\_\_\_\_ School District. The decision may be appealed to a hearing officer. If you appeal, you must file a written notice of appeal with the district representative within 14 days from the date of the decision."
- C. The district representative shall furnish a copy of the decision to the interested party by any method that provides evidence of receipt.
- D. On agreement of all interested parties, the time limit for decisions set forth in subsection (B) may be extended by the district representative for good cause for a reasonable time not to exceed 14 days. The district representative shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- E. If the district representative fails to issue a decision within the time limits set forth in subsections (B) or (D), the interested party may proceed as if the district representative had issued an adverse decision.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1146. Remedies**

- A.** If the district representative sustains the protest in whole or part and determines that a solicitation, a determination that a proposal is unacceptable, proposed contract award, or contract award does not comply with Articles 10 and 11, the school district shall implement an appropriate remedy.
- B.** In determining an appropriate remedy, the district representative shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the school district, the urgency of the procurement, the impact of the relief on the mission of the school district, and other relevant issues.
- C.** An appropriate remedy may include one or more of the following:
  1. Decline to exercise an option to renew under the contract;
  2. Terminate the contract;
  3. Amend the solicitation;
  4. Issue a new solicitation;
  5. Award a contract consistent with procurement statutes and regulations; or
  6. Such other relief as is determined necessary to ensure compliance with Articles 10 and 11.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1147. Appeals to a Hearing Officer**

- A.** An appeal to a hearing officer from a decision entered or deemed to be entered by the district representative shall be filed with the district representative within 14 days from the date of decision.
- B.** Content of appeal. The appeal shall contain:
  1. The information set forth in R7-2-1142(B); and
  2. The precise factual or legal error in the decision of the district representative from which an appeal is taken.
- C.** All costs associated with conducting a hearing, including the costs of the hearing officer, shall be paid by the school district. If the hearing officer decides in favor of the school district, the other party shall reimburse the school district for the costs of the hearing.
- D.** The Executive Director of the State Board of Education ("Executive Director") shall prepare and maintain a list of individuals who meet the qualifications specified in R7-2-1185 to serve as hearing officers.
- E.** A hearing officer may be selected by mutual agreement of both parties. If the parties are unable to mutually agree on a hearing officer, three hearing officers shall be selected randomly by the Executive Director and shall be screened to determine availability and possible bias. Once the Executive Director has selected three hearing officers who are available and show no evidence of bias, the three names shall be provided to both parties. Both parties have the opportunity to strike one name from the list provided, but shall do so within 14 calendar days from the date on which the Executive Director provided the list to the parties. If after the time period for striking a hearing officer has passed and more than one person remains on the list, the Executive Director shall select one of the remaining individuals on the list as the hearing officer

unless either party objects for cause and provides such reason in writing to the Executive Director. If after the time period for striking a hearing officer has passed and there is only one person remaining on the list, the remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in R7-2-1185. The Executive Director shall review the evidence submitted and determine the qualifications of the individual. If the Executive Director determines that the individual is not qualified to serve as the hearing officer, the Executive Director shall repeat the process and select three additional hearing officers to be provided to the parties.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1148. Notice of Appeal**

The district representative shall within three working days give notice of the filing of the appeal to the governing board and the successful contractor if award has been made.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1149. Stay of Procurement During Appeal**

If an appeal is filed and the procurement or contract was stayed by the district representative pursuant to R7-2-1144, the filing of an appeal shall automatically continue the stay unless the hearing officer makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the school district.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1150. District Representative's Response**

- A.** The district representative shall prepare a complete response to the appeal within 14 days from the date the appeal is filed or within five days after the hearing officer has been selected, whichever is later. The district representative's response shall be filed with the hearing officer within five days after the hearing officer is selected. At the same time, the district representative shall furnish a copy of the response to the appellant and to any interested party.
- B.** The interested party shall file comments on the district representative's response with the hearing officer within 10 days after receipt of the response. The interested party shall provide copies of the comments to the district representative and other interested parties.
- C.** The interested party may submit a written request to the hearing officer for an extension of the period for submission of comments, identifying the reasons for the extension. The hearing officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The hearing officer shall notify the district representative of any extension.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R.



1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1151. Dismissal Before Hearing**

- A. The hearing officer shall dismiss, upon a written determination, an appeal before scheduling a hearing if:
1. The appeal does not state a valid basis for protest;
  2. The appeal is untimely pursuant to R7-2-1147(A); or
  3. The appeal attempts to raise issues not raised in the protest.
- B. The hearing officer shall notify the interested party and the district representative in writing of a determination to dismiss an appeal before hearing.

##### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1152. Hearing**

Hearings on appeals of bid protest decisions shall be conducted pursuant to R7-2-1181 and A.R.S. § 41-1092.07 as contested cases.

##### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1153. Remedies**

If the hearing officer sustains the appeal in whole or part and determines that a solicitation, a determination that a proposal is unacceptable, proposed award, or award does not comply with Articles 10 and 11, remedies shall be implemented pursuant to R7-2-1146.

##### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1154. Reserved**

### **CONTRACT CLAIMS AND CONTROVERSIES**

#### **R7-2-1155. Resolution of Contract Claims and Controversies**

- A. The district representative shall have the authority granted to the district representative by the governing board to settle and resolve contract claims and controversies including claims relating to assignees of the contractor.
- B. The district representative shall receive prior written approval of the governing board for the settlement or resolution of a claim of \$50,000 or greater.
- C. Appeals from decisions of the district representative may be made to the hearing officer pursuant to R7-2-1158.
- D. A claimant shall file a contract claim with the district representative within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
  2. The signature of the claimant or claimant's representative;
  3. Identification of the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
  5. The form and dollar amount of the relief requested.

##### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1156. District Representative's Decision**

- A. If a controversy cannot be resolved by mutual agreement, the district representative shall issue a written decision within no more than 42 days from receipt of the contractor's written request for a decision. Before issuing a written decision, the district representative shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. Decision of the district representative. The district representative shall furnish a copy of the decision to the contractor by any method that provides evidence of receipt. The decision shall include:
1. A description of the claim;
  2. A reference to the pertinent contract provision;
  3. A statement of the factual areas of agreement or disagreement;
  4. A statement of the district representative's decision, with supporting rationale; and
  5. A paragraph substantially as follows:  
"This is the decision of the district representative of the \_\_\_\_\_ School District. This decision may be appealed to a hearing officer. If you appeal, you must file a written notice of appeal with the district representative within 14 days from the date of decision."

##### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Amended by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1157. Issuance of a Timely Decision**

- A. On agreement of all interested parties, the time limit for decisions set forth in R7-2-1156(A) may be extended for good cause for a reasonable time not to exceed 14 days. The district representative shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- B. If the district representative fails to issue a decision within 42 days after the request is filed or within the time prescribed under subsection (A), the contractor may proceed as if the district representative had issued an adverse decision.

##### **Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1158. Appeals to a Hearing Officer**

- A. An appeal from a decision entered or deemed to be entered by the district representative on a contract claim or controversy shall be filed with the district representative within 14 days from the date of decision.
- B. The appeal shall contain the basis for the precise factual or legal error in the decision of the district representative from which an appeal is taken.
- C. The district representative shall prepare a complete response to the appeal within 14 days from the date the appeal is filed or within five days after the hearing officer has been selected, whichever is later. The district representative's response shall be filed with the hearing officer within five days after the hearing officer is selected. At the same time, the district representative shall furnish a copy of the response to the appellant and to any interested party.
- D. All costs associated with conducting a hearing, including the costs of the hearing officer, shall be paid by the school district.

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If the hearing officer decides in favor of the school district, the other party shall reimburse the school district for the costs of the hearing.

- E. The Executive Director of the State Board of Education ("Executive Director") shall prepare and maintain a list of individuals who meet the qualifications specified in R7-2-1185 to serve as hearing officers.
- F. A hearing officer may be selected by mutual agreement of both parties. If the parties are unable to mutually agree on a hearing officer, three hearing officers shall be selected randomly by the Executive Director and shall be screened to determine availability and possible bias. Once the Executive Director has selected three hearing officers who are available and show no evidence of bias, the three names shall be provided to both parties. Both parties have the opportunity to strike one name from the list provided, but shall do so within 14 calendar days from the date on which the Executive Director provided the list to the parties. If after the time period for striking a hearing officer has passed and more than one person remains on the list, the Executive Director shall select one of the remaining individuals on the list as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. If after the time period for striking a hearing officer has passed and there is only one person remaining on the list, the remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the Executive Director. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in R7-2-1185. The Executive Director shall review the evidence submitted and determine the qualifications of the individual. If the Executive Director determines that the individual is not qualified to serve as the hearing officer, the Executive Director shall repeat the process and select three additional hearing officers to be provided to the parties.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1159. Hearing**

Hearings on appeals of contract claim and controversy decisions shall be conducted pursuant to R7-2-1181 and A.R.S. § 41-1092.07 as contested cases.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1160. Reserved****DEBARMENT AND SUSPENSION****R7-2-1161. Authority to Debar or Suspend**

- A. Except as provided in A.R.S. § 41-1279.21(B), the governing board has the sole authority to debar or suspend a person from participating in school district procurements.
- B. The causes for debarment or suspension include the following:
  1. Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
  2. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government,

this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a school district contractor.

- 3. Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
- 4. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:
  - a. Knowingly fails without good cause to perform in accordance with the specification or within the time limit provided in the contract.
  - b. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- 5. Any other cause deemed to affect responsibility as a school district contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1162. Initiation of Debarment**

Upon receipt of information concerning a possible cause for debarment, the school district shall investigate the possible cause. If the school district has a reasonable basis to believe that a cause for debarment exists, the school district may propose debarment under R7-2-1164.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1163. Period of Debarment**

- A. The period of time for a debarment shall not exceed three years from the date of the debarment determination.
- B. If debarment is based solely upon debarment by another governmental agency including another school district, the period of debarment may run concurrently with the period established by that other debarring agency.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1164. Notice**

- A. If the school district proposes debarment, the school district shall notify the person and affected affiliates in writing within seven days of the proposed debarment by any means evidencing receipt, which notice shall indicate that a hearing shall be scheduled, if requested, in accordance with R7-2-1181 as contested cases.
- B. The notice of debarment shall state:
  1. The basis for debarment;
  2. The period, including dates, of the debarment;
  3. That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
  4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with a

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designated district representative within 10 days after receipt of the notice.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1165. Notice to Affiliates**

- A. If the school district proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.
- B. The affiliate shall in writing advise the school district within 10 days of receipt of the notice under R7-2-1164 of its intention to appear under subsection (A). Failure to provide written notice of appearance within the 10-day period shall be a waiver of the right to appear in the hearing.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1166. Imputed Knowledge**

- A. Improper conduct may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B. The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the actual or constructive knowledge, approval, or acquiescence of, the contractor.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1167. Reinstatement**

- A. The governing board may at any time reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists or upon a determination that such reinstatement or rescission is advantageous to the school district. The governing board's determination shall include any limitations on the debarred person's ability to contract with the school district.
- B. Any debarred person may request reinstatement by submitting a petition to the school district supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C. The school district may require a hearing on the request for reinstatement.
- D. The school district shall make a written decision on reinstatement within 30 days after the request is filed and specify the factors on which it is based.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1168. Suspension**

- A. If adequate grounds for debarment exist, the governing board may suspend a person from participating in any procurement or receiving any award in accordance with the procedures in R7-2-1170.

- B. The governing board shall not suspend a person pending debarment unless compelling reasons require suspension to protect school district interests.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1169. Period and Scope of Suspension**

- A. Unless otherwise agreed to by the parties, the period of suspension shall not exceed 35 days without satisfying the notice requirements of R7-2-1170. If the notice requirements are satisfied the period of suspension shall not exceed six months.
- B. For purpose of suspension, a person's conduct may be imputed to an affiliate or another person in accordance with R7-2-1166.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1170. Notice and Hearing**

- A. The school district shall notify the person suspended by any means evidencing receipt.
- B. The notice of suspension shall state:
  1. The basis for suspension;
  2. The period, including dates, of the suspension;
  3. That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
  4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing, including the basis for the request, with a designated district representative within 10 days after receipt of the notice.
- C. A hearing requested under this Section shall be conducted pursuant to R7-2-1181.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1171. List of Debarments, Suspensions and Voluntary Exclusions**

The school district shall maintain a list of debarment, suspensions, and voluntary exclusions. It is recommended that the school district provide notice of any debarments, suspensions and voluntary exclusions to the state purchasing office.

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).

**R7-2-1172. Reserved****R7-2-1173. Reserved****R7-2-1174. Reserved****R7-2-1175. Reserved****R7-2-1176. Reserved****R7-2-1177. Reserved****R7-2-1178. Reserved****R7-2-1179. Reserved****R7-2-1180. Reserved****HEARING PROCEDURES****R7-2-1181. Hearing Procedures**

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- A. If a hearing is required or permitted under Articles 10 and 11, this Section shall apply. Hearing officers shall be selected pursuant to R7-2-1147(D) and (E) or R7-2-1158(E) and (F).
- B. The Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) shall apply where the Act is not inconsistent with Articles 10 and 11.
- C. The hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.
- D. The hearing officer may:
  - 1. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
  - 2. Require parties to state their positions concerning the various issues in the proceeding;
  - 3. Require parties to produce for examination those relevant witnesses and documents under their control;
  - 4. Rule on motions and other procedural items on matters pending before such officer;
  - 5. Regulate the course of the hearing and conduct of participants;
  - 6. Establish time limits for submission of motions or memoranda;
  - 7. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
    - a. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
    - b. Excluding all testimony of an unresponsive or evasive witness; and
    - c. Expelling person from further participation in the hearing;
  - 8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
  - 9. Administer oaths or affirmations.
- E. A transcribed record of the hearing shall be made available at cost to any requesting party.
- F. Decision by the hearing officer. A decision by the hearing officer shall be sent within 30 days after the conclusion of the hearing to all parties by any means evidencing receipt. A decision shall contain:
  - 1. A statement of facts;
  - 2. A statement of the decision with supporting rationale; and
  - 3. A statement that the parties may file a motion for rehearing within 15 days from the date a copy of this decision is served upon the party.
- 3. Accident or surprise not preventable by ordinary prudence.
- 4. Material evidence, newly discovered, which despite reasonable diligence was not discovered and produced at the hearing.
- 5. Excessive or insufficient damages or penalties.
- 6. Error of law occurring at the hearing or during the progress of the proceeding.
- 7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- B. Scope. A rehearing may be granted to all or any of the parties and on all or part of the issues in the proceeding for any of the reasons for which rehearings are authorized by law or rule of court. On a motion for a rehearing, the hearing officer may open the decision, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new decision.
- C. Contents of motion; amendment; rulings reviewable.
  - 1. The motion for rehearing shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the hearing officer.
  - 2. Upon the general ground that the hearing officer erred in admitting or rejecting evidence, the hearing officer shall review all rulings during the hearing upon objections to evidence.
  - 3. Upon the general ground that the findings of fact or decision are not justified by the evidence, the hearing officer shall review the sufficiency of the evidence.
- D. Time for motion for rehearing. A motion for rehearing shall be filed not later than 15 days after service of the decision upon the party.
- E. Time for serving affidavits. When a motion for rehearing is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the hearing officer for good cause shown or by the parties by written stipulation. The hearing officer may permit reply affidavits.
- F. On initiative of hearing officer. Not later than 15 days after the date of the decision, the hearing officer may order a rehearing for any reason for which it might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the hearing officer may grant a motion for a rehearing, timely served, for a reason not stated in the motion. In either case, the hearing officer shall specify in the order the grounds therefor.
- G. Questions to be considered in rehearing. A rehearing, if granted, shall be only a rehearing of the question or questions with respect to which the decision is found erroneous, if separable. If a rehearing is ordered because the damages or penalties are excessive or inadequate and granted solely for that reason, the decision shall be set aside only in respect of the damages or penalties, and shall stand in all other respects.
- H. Motion on ground of excessive or inadequate damages. When a motion for rehearing is made upon the ground that the damages or penalties awarded are either excessive or insufficient, the hearing officer may grant the rehearing conditionally upon the filing within a fixed period of time, not to exceed 15 days, of a statement by the party adversely affected by reduction or increase of damages or penalties accepting that amount of damages or penalties which the hearing officer shall designate. If such a statement is filed with the prescribed time, the motion for rehearing shall be regarded as denied as of the date of such filing. If no statement is filed, the motion for rehearing shall be

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
 Amended by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1182. Rehearing of Decisions**

- A. Procedure; grounds. A decision of the hearing officer may be vacated and new hearing granted on motion of the aggrieved party for any of the following causes materially affecting the party's rights:
  - 1. Irregularity in the proceedings of the hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  - 2. Misconduct of the prevailing party.

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regarded as granted as of the date of the expiration of the time period within which a statement may have been filed. No further written order shall be required to make an order granting or denying the rehearing final. If the conditional order of the hearing officer requires a reduction of or increase in damages or penalties, then the rehearing will be granted in respect of the damages or penalties only and the decision shall stand in all other respects.

- I. Number of motions for rehearing. Not more than two motions for rehearing shall be granted to any party in the same action.
- J. Specifications of grounds of rehearing in order. An order granting a motion for rehearing shall specify with particularity the ground or grounds on which the rehearing is granted.
- K. Final decision.
  - 1. If a motion for rehearing is denied, the final decision denying the motion for rehearing shall be sent within five days after the denial to all parties by any means evidencing receipt. A final decision shall contain a paragraph substantially as follows: "This is the final decision of the hearing officer in the matter of \_\_\_\_\_."
  - 2. If the motion for rehearing was granted, after the rehearing is completed, a final decision shall be made and shall be sent within five days after the conclusion of the rehearing to all parties as required in subsection (K)(1). A final decision shall contain:
    - a. A statement of facts;
    - b. A statement of the decision with supporting rationale; and
    - c. A paragraph substantially as stated in subsection (K)(1).

**Historical Note**

Adopted effective December 17, 1987 (Supp. 87-4).  
Amended by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1183. Judicial Review**

Any final decision made as a result of a hearing held pursuant to Articles 10 and 11 are subject to judicial review in accordance with A.R.S. Title 12, Chapter 7, Article 6.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1184. Exclusive Remedy**

Articles 10 and 11 (R7-2-1001 et seq.) provide the exclusive procedure for asserting a cause against the school district and its governing board arising in relation to any procurement conducted under Articles 10 and 11.

**Historical Note**

Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1185. Qualifications for Hearing Officers**

- A. A "hearing officer" means a person assigned to preside at a hearing held pursuant to Articles 10 and 11 and whose duty it is to assure that proper procedures are followed and that the rights of the parties are protected.
- B. A hearing officer shall be:
  - 1. Unbiased - not prejudiced for or against any party in the hearing;

- 2. Disinterested - not having any personal or professional interest which would conflict with his/her objectivity in the hearing; and
- 3. Independent - may not be an officer, employee or agent of the contractor or governing board, or of any other public agency involved in the dispute to be settled. A person who otherwise qualifies to conduct a hearing is not an employee of the contractor or governing board solely because he or she is paid by the parties to serve as a hearing officer.

**C. A hearing officer shall have:**

- 1. A minimum of three years of verified experience in the practice of law; or
- 2. A minimum of three years of verified experience in school procurement or school facilities management and a minimum of one year of verified experience in conducting hearings. Completion of a course or program in conducting a hearing or arbitration may substitute for the one year of verified experience in conducting hearings.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 3750, effective September 8, 2000 (Supp. 00-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

**R7-2-1186. Reserved**

**R7-2-1187. Reserved**

**R7-2-1188. Reserved**

**R7-2-1189. Reserved**

**R7-2-1190. Reserved**

**INTERGOVERNMENTAL PROCUREMENTS****R7-2-1191. Cooperative Purchasing Authorized**

- A. A school district may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, specified professional services, construction, or construction services with one or more eligible procurement units in accordance with an agreement entered into between the participants. An agreement entered into as provided in R7-2-1191 through R7-2-1195 is exempt from A.R.S. § 11-952(D) and (E). Parties under a cooperative purchasing agreement may:
  - 1. Sponsor, conduct, or administer a cooperative purchasing agreement for the procurement or disposal of any materials, services or construction.
  - 2. Cooperatively use materials or services.
  - 3. Commonly use or share warehousing facilities, capital equipment and other facilities.
  - 4. Provide personnel, except that the requesting public procurement unit shall pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
  - 5. On request, make available to other public procurement units informational, technical or other services or software that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational, technical, or other services or software has the right to request reimbursement for the reasonable and necessary costs of providing such services or software.
- B. The activities described in subsections (A)(1) through (A)(5) do not limit what parties may do under a cooperative purchasing agreement.

- C. A nonprofit corporation shall comply with Articles 10 and 11 in any cooperative purchasing agreement the nonprofit corporation administers in which a school district participates.
- D. Whether administering or purchasing from the agreement, this Section does not abrogate the responsibility of each school district to perform due diligence in order to ensure compliance with Articles 10 and 11 notwithstanding the fact that the cooperative purchase is administered by another eligible procurement unit.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1192. Contract Provisions in a Cooperative Purchasing Agreement**

Any contract entered pursuant to R7-2-1191 shall provide that:

1. Payment for materials and services and inspection and acceptance of materials or services ordered by an eligible procurement unit under a cooperative purchasing agreement shall be the exclusive obligation of such procurement unit;
2. The exercise of any rights or remedies by a using eligible procurement unit shall be the exclusive obligation of such procurement unit. The administering public procurement unit, as the contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy;
3. Any school district may terminate without notice any cooperative purchasing agreement if another eligible procurement unit fails to comply with the terms of the contract;
4. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require any other eligible procurement unit to exercise its own rights or remedies; and
5. An eligible procurement unit shall not use a cooperative purchasing contract as a method for obtaining concessions or reduced prices for non-contract purchases of similar materials or services.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1193. Use of Payments Received by a Supplying Public Procurement Unit**

All payments received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit to defray the cost of the cooperative program.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4).

#### **R7-2-1194. Public Procurement Units in Compliance with Article Requirements**

- A. If the eligible procurement unit administering a cooperative purchase complies with the requirements of Articles 10 and 11, any public procurement unit participating in such a purchase is deemed to have complied with Articles 10 and 11. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing Articles 10 and 11.
- B. A participating public procurement unit using a contract awarded by another eligible procurement unit shall only purchase awarded materials, services, specified professional ser-

vices, construction, or construction services in compliance with the terms, conditions and prices in the contract.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1195. Contract Controversies**

- A. Under a cooperative purchasing agreement in which a school district is a party, controversies arising between an administering public procurement unit and its bidders, offerors or contractors shall be resolved in accordance with Articles 10 and 11.
- B. Any local public procurement unit which is not subject to R7-2-1181 through R7-2-1185 may enter into an agreement with a school district to establish procedures or use such school district's existing procedures to resolve controversies with contractors, whether or not such controversy arose from a cooperative purchasing agreement.

#### Historical Note

Adopted effective December 17, 1987 (Supp. 87-4). Section amended by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1196. General Services Administration Contracts**

- A. The governing board may authorize purchases under a current General Services Administration contract for materials or services without complying with the requirements of Articles 10 and 11 if the governing board determines in writing before proceeding with a General Services Administration contract procurement that all of the following apply:
  1. The price for materials or services is equal to or less than the contractor's current federal supply contract price with the General Services Administration and is fair and reasonable.
  2. The contractor has indicated in writing that the contractor is willing to extend the current federal supply contract pricing, terms and conditions to the school district.
  3. The purchase order adequately identifies the federal supply contract on which the order is based, including the name of the contractor, contract number and procurement description.
  4. The purchase contract is cost effective based on price, quality and other relevant factors, and is advantageous to the school district.
- B. The school district shall only purchase materials or services awarded under the applicable General Services Administration contract.
- C. The governing board shall comply with all federal requirements applicable to state and local government use of General Services Administration contracts.

#### Historical Note

Section made by final exempt rulemaking at 21 A.A.R. 1525, effective July 1, 2015 (Supp. 15-3).

#### **R7-2-1197. Reserved**

#### **R7-2-1198. Reserved**

#### **R7-2-1199. Reserved**

#### **R7-2-1200. Reserved**

### **ARTICLE 12. REPEALED**

#### **R7-2-1201. Repealed**

#### Historical Note

Adopted effective April 27, 1989 (Supp. 89-2). Repealed

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effective February 20, 1997 (Supp. 97-1).

### ARTICLE 13. CONDUCT

#### R7-2-1301. Definitions

In this Article, unless the context otherwise specifies:

1. "Alleging party" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or other agency who completes a statement alleging immoral or unprofessional conduct against a certificated individual.
2. "Applicant" means a person who has submitted an application to the Department requesting an evaluation of the requirements set forth in R7-2-601 et seq., requesting issuance of a certificate pursuant to R7-2-601 et seq., or requesting renewal of a previously held certificate issued pursuant to R7-2-601 et seq.
3. "Board" means the State Board of Education.
4. "Certificated individual" means an individual who holds an Arizona certificate issued pursuant to R7-2-601 et seq.
5. "Complaint" means the filing of a charge by the Board against a certificated individual alleging immoral or unprofessional conduct.
6. "Hearing" means an adjudicative proceeding held pursuant to Title 41, Chapter 6 and R7-2-701 et seq.
7. "PPAC" means the Professional Practices Advisory Committee established pursuant to R7-2-205.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).

#### R7-2-1302. Statement of Allegations

- A. Any person may file, with the Board, a statement of allegations against a certificated individual on forms provided by the Board.
- B. A statement of allegations shall state the facts under which a party is alleging immoral or unprofessional conduct and shall be signed and notarized.
- C. The facts in a statement of allegations shall clearly state the details of the alleged immoral or unprofessional conduct.
- D. A statement of allegations shall contain the names, addresses and telephone numbers of individuals who can be contacted to provide information regarding the allegations contained in the statement. The list of individuals shall also include a brief summary of the substance and extent of each individual's knowledge regarding the allegations contained in the statement.
- E. The alleging party may attach written or other evidence to a statement of allegations at the time that the statement is filed with the Board.
- F. A statement of allegations filed by a school district shall be accompanied by a certified copy of a school board resolution authorizing the statement of allegations to be filed.
- G. A statement of allegations may be returned to the alleging party if the statement is not complete or not legible.
- H. The Board shall conduct an investigation of all statements of allegations filed pursuant to this Article.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).

#### R7-2-1303. Complaint

- A. Upon completion of an investigation resulting from a statement of allegations, the Board may file a complaint against a certificated individual.
- B. The Board may, at its own discretion, investigate any matter and file a complaint against a certificated individual upon receiving any information, from any source, indicating immoral or unprofessional conduct has occurred.
- C. A hearing shall be held on a complaint before the PPAC.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4). Section R7-2-1303 renumbered to R7-2-1304; new Section R7-2-1303 renumbered from R7-2-1304 and amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).

#### R7-2-1304. Notification; Investigation

The certificated individual shall have 15 days from receipt of the complaint to file a response with the Board.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4). Section R7-2-1304 renumbered to R7-2-1303; new Section R7-2-1304 renumbered from R7-2-1303 and amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).

#### R7-2-1305. Conviction of Criminal Offenses; Investigation

- A. Applicants shall certify on forms that are provided by the Board whether they are awaiting trial on, or have ever been convicted of, or have admitted in open court or pursuant to a plea agreement committing any offense listed in A.R.S. § 15-534. Applicants for certification shall not be required to disclose information regarding misdemeanor offenses other than those listed in A.R.S. § 15-534.
- B. Upon receipt of notification that an applicant or certificated individual has been convicted of or admitted in open court or pursuant to a plea agreement committing any criminal offense specified in A.R.S. § 15-534, the Board shall initiate an investigation.
- C. Applicants and certificated individuals who are alleged to have been convicted of a criminal offense specified in A.R.S. § 15-534 shall provide the Board with copies of court records or reports pertaining to the conviction.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).

#### R7-2-1306. Reviewable Offenses

- A. Reviewable offenses are those offenses listed in A.R.S. § 15-534 which are not included in R7-2-1307.
- B. Upon completion of an investigation, the Board may file a complaint against a certificated individual or may issue or deny certification to an applicant.

#### Historical Note

Adopted effective December 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1).

#### R7-2-1307. Criminal Offenses; Nonreviewable

- A. The Board shall revoke, not issue, or not renew the certification of a person who has been convicted of or admitted in open court or pursuant to a plea agreement committing any of the following criminal offenses in this state or similar offenses in another jurisdiction:
  1. Sexual abuse of a minor;
  2. Incest;

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3. First-degree murder;
  4. Sexual assault;
  5. Sexual exploitation of a minor;
  6. Commercial sexual exploitation of a minor;
  7. A dangerous crime against children as defined in A.R.S. § 13-604.01;
  8. Armed robbery;
  9. Sexual conduct with a minor;
  10. Molestation of a child;
  11. Exploitation of minors involving drug offenses.
- B.** Upon notification that a certificated individual has been convicted of a nonreviewable offense, the Board shall revoke the certificate.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4).

**R7-2-1308. Unprofessional and Immoral Conduct**

- A.** Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall:
1. Make reasonable efforts to protect pupils from conditions harmful to learning, health, or safety;
  2. Account for all funds collected from pupils, parents, or school personnel;
  3. Adhere to provisions of the Uniform System of Financial Records related to use of school property, resources, or equipment; and
  4. Abide by copyright restrictions, security, or administration procedures for a test or assessment.
- B.** Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall not:
1. Discriminate against or harass any pupil or school employee on the basis of race, national origin, religion, sex, including sexual orientation, disability, color or age;
  2. Deliberately suppress or distort information or facts relevant to a pupil's academic progress;
  3. Misrepresent or falsify pupil, classroom, school, or district-level data from the administration of a test or assessment;
  4. Engage in a pattern of conduct for the sole purpose or with the sole intent of embarrassing or disparaging a pupil;
  5. Use professional position or relationships with pupils, parents, or colleagues for improper personal gain or advantage;
  6. Falsify or misrepresent documents, records, or facts related to professional qualifications or educational history or character;
  7. Assist in the professional certification or employment of a person the certificate holder knows to be unqualified to hold a position;
  8. Accept gratuities or gifts that influence judgment in the exercise of professional duties;
  9. Possess, consume, or be under the influence of alcohol on school premises or at school-sponsored activities;
  10. Illegally possess, use, or be under the influence of marijuana, dangerous drugs, or narcotic drugs, as each is defined in A.R.S. § 13-3401;
  11. Make any sexual advance towards a pupil or child, either verbal, written, or physical;
  12. Engage in sexual activity, a romantic relationship, or dating of a pupil or child;
  13. Submit fraudulent requests for reimbursement of expenses or for pay;

14. Use school equipment to access pornographic, obscene, or illegal materials; or
  15. Engage in conduct which would discredit the teaching profession.
- C.** Individuals found to have engaged in unprofessional or immoral conduct shall be subject to, and may be disciplined by, the Board.
- D.** Procedures for making allegations, complaints, and investigation of unprofessional or immoral conduct shall be as set forth in this Article.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1544, effective June 28, 2003 (Supp. 03-2).

**R7-2-1308. Reserved**

**R7-2-1309. Reserved**

**R7-2-1400. Reserved**

**ARTICLE 14. CHARTER SCHOOLS****R7-2-1401. Definitions**

For the purpose of this Article the following definitions shall apply:

1. "Applicant" means a person, public body, or private organization that has applied to the State Board of Education to establish a charter school under the provisions of A.R.S. § 15-181 et seq.
2. "Background check" means a report received related to an applicant and the identified governing board members regarding the status of each person's credit and credit history, and any criminal activity identified by the law enforcement agency processing the applicant and governing board member's fingerprints.
3. "Committee" means the Charter School Committee established pursuant to this Article.
4. "Charter School" means a school chartered pursuant to A.R.S. § 15-181 et seq. and sponsored by the Board of Education.
5. "Contract" means a document outlining the terms and conditions of an agreement between the parties.
6. "Governing board" means the governing body responsible for the policy and operational decisions of the charter school formed pursuant to A.R.S. § 15-183 et seq.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1402. Charter School Committee**

- A.** The Board of Education shall establish a Charter School Committee that shall have the responsibility of reviewing applications and preparing a recommendation for the Board of Education's consideration.
- B.** The Board of Education shall appoint the members of the committee. The committee shall consist of seven members as follows:
1. An individual knowledgeable in building construction or renovation;
  2. An individual knowledgeable in finance and accounting and in generally accepted accounting practices;
  3. An individual representing a city in this state who is knowledgeable about zoning and operating permit requirements;
  4. An individual knowledgeable about elementary and high school curricula and the development and evaluation of curricula;
  5. An individual knowledgeable about assessments and the administration of assessments;



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- 6. An individual representing the Board of Education;
  - 7. A current operator of a charter school sponsored by the Board of Education.
- C. Terms of each member of the committee shall be for three years. Members may be appointed for subsequent terms upon approval by the Board of Education.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1403. Application**

- A. Interested parties or individuals may submit an application for approval by the Board of Education pursuant to A.R.S. § 15-181 et seq. Applications shall be on forms approved by the Board of Education.
- B. Applications shall be evaluated by the committee. The committee shall prepare a recommendation for the Board of Education's consideration. The recommendation shall be based upon a review of all aspects of the application, including, for example, completeness of the application, the viability of the school including the financial viability, the projected funding sources, the number and population to be served, including school-aged students who are deemed to be unserved or underserved.
1. The committee may request additional information as needed to assist in evaluating the application and preparing a recommendation for the Board of Education's consideration.
  2. Recommendations of the committee to the Board of Education may include approval of the application, denial of the application, or deferral of the application pending further information or clarification.
  3. Applicants shall be notified in writing at least 10 days prior to the Board of Education meeting of the date, time, and place of the meeting at which the Board of Education shall consider the charter school committee's recommendation related to the application.
  4. Action by the Board of Education may include approval of the application, denial of the application, or deferral of the application pending further information or clarification. The Board of Education shall state the reasons for denial or deferral of the application.
  5. Applicants shall be notified in writing of the decision of the Board of Education. Written notification that the Board of Education has denied an application shall include reasons for denial. Written notification shall be provided to applicants within 15 days following a decision of the Board of Education.
- C. An approved application does not constitute an approved contract, and approval of an application shall not be construed to imply that a contract will be issued.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1404. Contract**

- A. A contract shall be on forms approved by the Board of Education.
- B. At least once per year, the Board of Education shall consider issuance of a contract to approved applicants.
- C. Upon review and recommendation from the committee, the Board of Education may approve the issuance of a contract, approve the issuance of a contract pending receipt of specific information or completion of requirements, defer the issuance of a contract, or deny the issuance of a contract. The Board of

Education shall state the reasons for denial or deferral of issuance of a contract.

- D. Applicants shall be notified in writing at least 10 days prior to the Board of Education meeting of the date, time, and place of the meeting at which the Board of Education shall consider the charter school committee's recommendation related to issuance of a charter.
- E. Applicants shall be notified in writing of the decision of the Board of Education. Written notification that the Board of Education has denied issuance of a contract shall include reasons for denial. Written notification shall be provided to applicants within 15 days following a decision of the Board of Education.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1405. Execution of a Contract**

- A. Contracts shall be signed by the applicant, or a person with signatory authority for the applicant, within six months from the date of approval of issuance of the contract by the Board of Education, unless an extension of time is granted by the Board of Education. If issuance of a contract was approved by the Board of Education pending receipt of additional information, the contract shall be signed by the applicant or a person with signatory authority for the applicant within six months of receipt of the additional information by the Board of Education.
- B. Contracts which have not been signed pursuant to this rule shall require reapplication and approval during a subsequent application cycle.
- C. The following items shall be submitted to the Board of Education prior to signing of a contract:
1. Background check, including fingerprint clearance for all authorized signatories and all governing board members approved;
  2. Certificate of Occupancy or a written exemption from the local municipality or county that the certificate is not required for operation of a public school. A set of architectural plans approved by the local planning and zoning office may be submitted in lieu of a certificate of occupancy for the purposes of this subsection for construction of new buildings or renovation of existing buildings. A certificate of occupancy will be required to be submitted prior to opening of the school.
  3. A lease agreement or proof of building availability;
  4. Executed statement of assurances;
  5. Written verification that the facility meets the requirements established by the state and local fire marshal;
  6. Written verification from an insurance company authorized to do business in the state of Arizona that arrangements have been finalized to provide the required amount of insurance;
  7. Proof of local County Health Department approval.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1406. Amendments to a Contract**

- A. Any changes to the contract shall be submitted on forms approved the Board of Education.
- B. All amendments to the contract shall be accompanied by a signed governing board resolution or an official copy of the minutes of a governing board meeting that the amendment was approved by the governing board.

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- C. No amendment shall be effective or implemented prior to being approved by the governing board, submitted to and approved by the Board of Education.
- D. Amendments requesting a change in the membership of the governing board shall, in addition to the requirements specified in subsection (B), include a completed fingerprint application and a signed affidavit authorizing a background check.
- E. If an extension of time was granted pursuant to R7-2-1405(A), amendments to update the application shall be submitted at the time the contract is executed.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1407. Revocation of a Contract**

- A. The Board of Education may issue a Notice of Intent to Revoke a Contract and Notice of Hearing to any contract holder who is alleged to be in violation of the contract and the governing board.
- B. Within 10 days of receipt of a Notice of Intent to Revoke a Contract and Notice of Hearing, the governing board shall:
  - 1. Notify the parents or guardians of the students enrolled in the charter school that a Notice of Intent to Revoke a Contract and Notice of Hearing has been received;
  - 2. Hold a public meeting to inform the public and discuss the specific charges outlined in the Notice of Intent to Revoke a Contract;
  - 3. Provide the Board of Education with copies of all correspondence and communications used to comply with subsection (B)(1) above and minutes of the meeting as evidence of compliance with subsection (B)(2) above;
  - 4. Provide the Board of Education with the names and mailing addresses of parents or guardians of all students enrolled in the charter school at the time the Notice of

Intent to Revoke a Contract and Notice of Hearing was received.

- C. Hearings held pursuant to a Notice of Intent to Revoke a Contract and Notice of Hearing shall be held in accordance with Sections R7-2-701 through R7-2-709.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3211, effective August 24, 1999 (Supp. 99-4).

**R7-2-1408. Renewal of Contract**

When considering renewal of a contract, the following, as a minimum, shall be provided to the Board of Education:

1. Assessment results, including scores of the norm-referenced achievement test, the scores of the Arizona's Instrument to Measure Standards (AIMS), and scores of any school assessment programs;
2. Results of any audits conducted, including independent audits, Uniform System of Financial Records or Uniform System of Financial Records for Charter Schools compliance audits, or any audits conducted by the Auditor General's Office;
3. Enrollment reports that include enrollment figures, funding sources, budget updates, and financial reporting of expenditures;
4. All complaints received;
5. Copies of Board of Education minutes where consideration and action was taken on all issues related to the charter school;
6. Any other reports, information, or materials pertinent to the charter school.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3211, effective August 24, 1999 (Supp. 99-4).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 9. Health Services**

### **Chapter 21. Arizona Health Care Cost Containment System - Behavioral Health Services for Persons with Serious Mental Illness**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R9-21-101, R9-21-102 through R9-21-106, R9-21-201, R9-21-203 through R9-21-206.01, R9-21-208, R9-21-209, Exhibit A, R9-21-301, R9-21-303, R9-21-307, R9-21-309 through R9-21-311, R9-21-401 through R9-21-410

REMOVE Supp. 03-2  
Pages: 1 - 57

REPLACE with Supp. 16-4  
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*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 9. HEALTH SERVICES****CHAPTER 21. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) - BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS**

*Editor's Note: Laws 2015, Ch. 195 provided for the statutory transfer of behavioral health responsibilities from the Arizona Department of Health Services to the Arizona Health Care Cost Containment System (AHCCCS). Therefore the Chapter name has been amended from Department of Health Services to the Arizona Health Care Cost Containment System at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).*

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-3).*

*Editor's Note: Title 9, Chapter 21 was adopted and amended by the Department of Health Services under the provisions of Laws 1992, Ch. 301, § 61, which provided for an exemption from the rulemaking process as specified in the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, § 41-1001 et seq.). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. Because this Chapter contains rules which are exempt from the provisions of the Arizona Administrative Procedure Act, the Chapter is printed on blue paper.*

*Former Title 9, Chapter 21 renumbered to Title 18, Chapter 11.*

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## Arizona Health Care Cost Containment System (AHCCCS) - Behavioral Health Services for Persons with Serious Mental Illness

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**ARTICLE 1. GENERAL PROVISIONS****R9-21-101. Definitions and Location of Definitions**

A. Location of definitions. Unless the context otherwise requires, terms used in this Chapter that are defined in A.R.S. § 36-501 shall have the same meaning as in A.R.S. § 36-501. In addition, the following definitions applicable to this Chapter are found in the following Section or Citation:

"Abuse"	R9-21-101
"ADHS"	R9-22-101
"Administration"	A.R.S. § 36-2901
"Agency director"	R9-21-101
"AHCCCS"	R9-22-101
"Applicant"	R9-21-101
"ASH"	R9-21-101
"Authorization"	R9-21-101
"Behavioral health issue"	R9-21-101
"Burden of proof"	R9-21-101
"Case manager"	R9-21-101
"Client"	R9-21-101
"Client record"	R9-21-101
"Client who needs special assistance"	R9-21-101
"Clinical team"	R9-21-101
"Community services"	R9-21-101
"Condition requiring investigation"	R9-21-101
"County Annex"	R9-21-101
"Court"	A.R.S. § 36-501
"Court-ordered treatment"	R9-21-101
"Crisis services" or "emergency services"	R9-21-101
"Danger to others"	A.R.S. § 36-501
"Dangerous"	R9-21-101
"Department"	R9-21-101, A.R.S. § 36-501
"Designated representative"	R9-21-101
"Director"	A.R.S. § 36-501
"Discharge plan"	R9-21-101
"Division"	R9-21-101
"Drug used as a restraint"	R9-21-101
"DSM" or "Diagnostic and Statistical Manual of Mental Disorders"	R9-21-101
"Emergency safety situation"	R9-21-101
"Enrolled Children"	R9-21-101
"Evaluation"	A.R.S. § 36-501
"Exploitation"	R9-21-101
"Family member"	A.R.S. § 36-501
"Frivolous"	R9-21-101
"Generic services"	R9-21-101
"Grievance"	R9-21-101
"Guardian"	R9-21-101
"Hearing officer"	R9-21-101
"Human rights advocate"	R9-21-101
"Human rights committee"	R9-21-101
"Illegal"	R9-21-101
"Individual service plan" or "ISP"	R9-21-101
"Informed consent"	A.R.S. § 36-501
"Inhumane"	R9-21-101
"Inpatient facility"	R9-21-101
"Inpatient treatment and discharge plan" or "ITDP"	R9-21-101
"Licensed physician"	A.R.S. § 36-501
"Long-term view"	R9-21-101
"Mechanical restraint"	R9-21-101
"Medical practitioner"	R9-21-101
"Meeting"	R9-21-101
"Mental disorder"	A.R.S. § 36-501
"Mental health agency"	R9-21-101
"Mental health provider"	A.R.S. § 36-501
"Nurse"	R9-21-101
"Outpatient treatment"	A.R.S. § 36-501

"Party" or "parties"	R9-21-101
"Persistent or acute disability"	A.R.S. § 36-501
"Personal restraint"	R9-21-101
"PRN order" or "Pro re rata medication"	R9-21-101
"Professional"	A.R.S. § 36-501
"Program director"	R9-21-101
"Proposed patient"	A.R.S. § 36-501
"Psychiatrist"	A.R.S. § 36-501
"Psychologist"	A.R.S. § 36-501
"Qualified clinician"	R9-21-101
"Records"	A.R.S. § 36-501
"Region"	R9-21-101
"Regional authority"	R9-21-101
"Regional Behavioral Health Authority (RBHA)"	A.R.S. § 36-3401
"Restraint"	R9-21-101
"Seclusion"	R9-21-101
"Seriously Mentally Ill (SMI)"	A.R.S. § 36-550
"Service provider"	R9-21-101
"Social worker"	A.R.S. § 36-501
"State Protection and Advocacy System"	R9-21-101
"Title XIX"	R9-21-101
"Treatment team"	R9-21-101

B. In this Chapter, unless the context otherwise requires:

"Abuse" means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.

"Agency director" means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, regional authority or the Administration, or their designees.

"AHCCCS" means the Arizona Health Care Cost Containment System.

"Applicant" means an individual who:

- Submits to a regional authority an application for behavioral health services under this Chapter or on whose behalf an application has been submitted; or
- Is referred to a regional authority for a determination of eligibility for behavioral health services according to this Chapter.

"ASH" means the Arizona State Hospital.

"Authorization" means written permission for a mental health agency to release or disclose a client's record or information, containing:

- The name of the mental health agency releasing or disclosing the client's record or information;
- The purpose of the release or disclosure;
- The individual, mental health agency, or entity requesting or receiving the client's record or information;
- A description of the client's record or information to be released or disclosed;
- A statement:

- i. Of permission for the mental health agency to release or disclose the client's record or information; and
- ii. That permission may be revoked at any time;
- f. The date when or conditions under which the permission expires;
- g. The date the document is signed; and
- h. The signature of the client or, if applicable, the client's guardian.

"Behavioral health issue" means an individual's condition related to a mental disorder, personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.

"Behavioral health service" means the assessment, diagnosis, or treatment of an individual's behavioral health issue.

"Burden of proof" means the necessity or obligation of affirmatively proving the fact or facts in dispute.

"Case manager" means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.

"Client" means an individual who is seriously mentally ill and is being evaluated or treated for a mental disorder by or through a regional authority.

"Client record" means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.

"Client who needs special assistance" means a client who has been:

- a. Deemed by a qualified clinician, case manager, clinical team, or regional authority to need special assistance in participating in the ISP or ITDP process, which may include, but is not limited to:
  - i. A client who requires 24-hour supervision;
  - ii. A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or
  - iii. A client with physical disabilities or language difficulties impacting the client's ability to make or communicate decisions or to prepare or participate in meetings; or
- b. Otherwise deemed by a program director, the Administration, or an Administrative Law Judge to need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.

"Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of behavioral health services or community services. A clinical team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client's needs. The team shall also include a team leader who is a certified behavioral health supervisor.

"Community services" means services such as clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile

crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.

"Condition requiring investigation" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.

"County Annex" means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.

"Court-ordered treatment" means treatment ordered by the court.

"Court-ordered evaluation" means evaluation ordered by the court.

"Crisis services" or "emergency services" means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up counseling for clients who are experiencing a psychiatric emergency.

"Dangerous" as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.

"Department" means the Arizona Department of Health Services.

"Designated representative" means a parent, guardian, relative, advocate, friend, or other person, designated in writing by a client or guardian who, upon the request of the client or guardian, assists the client in protecting the client's rights and voicing the client's service needs.

"Discharge plan" means a hospital or community treatment and discharge plan prepared according to Article 3 of these rules.

"Drug used as a restraint" means a pharmacological restraint as used in A.R.S. § 36-513 that is not standard treatment for a client's medical condition or behavioral health issue and is administered to:

- a. Manage the client's behavior in a way that reduces the safety risk to the client or others,
- b. Temporarily restrict the client's freedom of movement.

"DSM" means the latest edition of the "Diagnostic and Statistical Manual of Mental Disorders," edited by the American Psychiatric Association.

"Emergency safety situation" means unanticipated client behavior that creates a substantial and imminent risk that the client may inflict injury, and has the ability to inflict injury, upon:

- a. The client, as evidenced by threats or attempts to commit suicide or to inflict injury on the client; or
- b. Another individual, as evidenced by threats or attempts to inflict injury on another individual or individuals, previous behavior that has caused injury to another individual or individuals, or behavior that



places another individual or individuals in reasonable fear of sustaining injury.

“Enrolled Children” means persons under the age of 18 who receive behavioral health services by or through a regional authority.

“Exploitation” means the illegal or improper use of a client or a client’s resources for another’s profit or advantage.

“Frivolous” as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless the grievance:

- a. Involves conduct that is not within the scope of this Chapter,
- b. Is impossible on its face, or
- c. Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.

“Generic services” means services other than behavioral health services or community services for which clients may have a need and include, but are not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.

“Grievance” means a complaint regarding an act, omission or condition, as provided in this Chapter.

“Guardian” means an individual appointed by court order according to A.R.S. Title 14, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.

“Hearing officer” refers to an impartial person designated by the Office of Administrative Hearing to hear a dispute and render a written decision.

“Human rights advocate” means the human rights advocates appointed by the Administration under R9-21-105.

“Human rights committee” means the human rights committee established under A.R.S. § 41-3803.

“Illegal” means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.

“Individual service plan” or “ISP” means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.

“Inhumane” as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client, or which is inconsistent with the proper regard for the right of the client to humane treatment.

“Inpatient facility” means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility registered with or funded by or through the Administration to provide behavioral health services, including psychiatric health facilities, psychiatric hospitals, and psychiatric units in general hospitals.

“Inpatient treatment and discharge plan” or “ITDP” means the written plan for services to a client prepared

and implemented by an inpatient facility in accordance with Article 3 of this Chapter.

“Long-term view” means a planning statement that identifies, from the client’s perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client’s unique interests, strengths, and personal desires. It includes predicted times for achievement.

“Mechanical restraint” means any, device, article, or garment attached or adjacent to a client’s body that the client cannot easily remove and that restricts the client’s freedom of movement or normal access to the client’s body, but does not include a device, article, or garment:

- a. Used for orthopedic or surgical reasons, or
- b. Necessary to allow a client to heal from a medical condition or to participate in a treatment program for a medical condition.

“Medical practitioner” means a

- a. Physician,
- b. Physician assistant, or
- c. Nurse practitioner.

“Meeting” means an encounter or assembly of individuals which may be conducted in person or by telephone or by video-conferencing.

“Mental health agency” includes a regional authority, service provider, inpatient facility, or an entity that conducts screening and evaluation under Article 5.

“Nurse” means an individual licensed as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.

“Party” or “parties” as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate human rights committee.

“Personal restraint” means the application of physical force without the use of any device, for the purpose of restricting the free movement of a client’s body, but for a behavioral health agency licensed as a level 1 Residential Treatment Center RTC or a Level I sub-acute agency does not include:

- a. Holding a client for no longer than five minutes, without undue force, in order to calm or comfort the client; or
- b. Holding a client’s hand to escort the client from one area to another.

“PRN order” or “Pro re nata medication” means medication given as needed.

“Program director” means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.

“Qualified clinician” means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.

“Region” means the geographical region designated by the Administration in its contract with the regional authority.

“Regional authority” means the Regional Behavioral Health Authority (RBHA) under contract with the Administration to organize and administer the delivery of behavioral health services or community services to clients and enrolled children within a defined geographic area.

“Restraint” means personal restraint, mechanical restraint, or drug used as a restraint.

“Seclusion” means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a client to the residential site, according to specific provisions of an individual service plan or court order, does not constitute seclusion.

“Seriously mentally ill” means a person 18 years of age or older as defined in A.R.S. § 36-550.

“Service provider” means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, certified by, approved by, registered with, or supervised by the Administration or receiving funds under Title XIX, to provide behavioral health services or community services.

“State Protection and Advocacy System” means the agency designated as the Protection and Advocacy System for individuals with mental illness, according to 42 U.S.C. 10801-10851.

“Title XIX” means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

“Treatment team” means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client who is in an inpatient facility.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-102. Applicability

With regard to the provision of behavioral health services or community services to clients under A.R.S. Title 36 Chapter 5, this Chapter shall apply to the Administration and to all mental health agencies. This Chapter shall not apply to the Arizona Department of Corrections.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-103. Computation of Time

For any period of time prescribed or allowed by this Chapter, the time shall be calculated as follows:

1. The period of time shall not include the day of the act, event or default from which the designated period of time begins to run;
2. If the period of time prescribed or allowed is less than 11 days, the period of time shall not include intermediate Saturdays, Sundays and legal holidays;
3. If the period of time is 11 days or more, the period of time shall include intermediate Saturdays, Sundays and legal holidays;
4. If the last day of the period of time is a Saturday, Sunday, or legal holiday, the period of time shall extend until the end of the next day that is not a Saturday, Sunday or legal holiday.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-103 renumbered from R9-21-104 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-104. Office of Human Rights; Human Rights Advocates

- A. An Office of Human Rights shall be established within the Administration. The office shall have its own chief officer who shall be responsible for the management and control of the office, as well as the hiring, training, supervision, and coordination of human rights advocates.
- B. The chief officer shall appoint at least one human rights advocate for each 2,500 clients in each region. Each region shall have at least one human rights advocate. The chief officer shall appoint at least one human rights advocate for ASH. All clients shall have the right of access to a human rights advocate in order to understand, exercise, and protect their rights. The human rights advocate shall advocate on behalf of clients and shall assist clients in understanding and protecting their rights and obtaining needed services. The human rights advocate shall also assist clients in resolving appeals and grievances under Article 4 of this Chapter and shall coordinate and assist the human rights committees in performing their duties.
- C. The human rights advocates shall be given access to all:
  1. Clients; and
  2. Client records from a service provider, regional authority, or the Administration, except as prohibited by federal or state law.
- D. Staff of inpatient facilities, regional authorities, and service providers shall cooperate with the advocate by providing relevant information, reports, investigations, and access to meetings, staff persons, and facilities except as prohibited by federal or state law and the client's right to privacy.

- E. An agency director shall notify the Office of Human Rights and the applicable human rights committee of each client who needs special assistance.
  - F. The Office of Human Rights shall:
    - 1. Maintain a list that contains the names of each client who needs special assistance and, if applicable, the name and address of the residential program providing behavioral services to the client; and
    - 2. Provide each human rights committee with a list of all clients who need special assistance who reside in the respective jurisdiction of the human rights committee.
  - G. The Office of Human Rights shall promptly distribute to all appropriate human rights committees copies of all reports received according to this Chapter (e.g., reports regarding clients who need special assistance, allegations of mistreatment, denial of rights, restraint, and seclusion).
- Historical Note**
- Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-104 renumbered to R9-21-103; new Section R9-21-104 renumbered from R9-21-105 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).
- R9-21-105. Human Rights Committees**
- A. According to A.R.S. §§ 41-3803 and 41-3804, the Administration shall establish human rights committees to provide independent oversight to ensure that the rights of clients and enrolled children are protected. The Administration shall establish at least one human rights committee for each region and the Arizona State Hospital. Upon the establishment of a human rights committee, if more than 2,500 clients reside within a region, the Administration shall establish additional human rights committees until there is one human rights committee for each 2,500 clients in a region.
  - B. Each human rights committee shall be composed of at least seven and not more than 15 members. At least two members of the committee shall be clients or former clients, at least two members shall be relatives of clients, two members shall be parents of enrolled children and at least three members shall have expertise in one of the following areas: psychology, law, medicine, education, special education, social work, or behavioral health services.
  - C. The Administration shall appoint the initial members to each regional committee and the human rights committee for the Arizona State Hospital. Members shall be appointed to fill vacancies on a human rights committee, subject to the approval of the committee.
  - D. Each committee shall meet at least four times each year. Within three months of its formation, each committee shall establish written guidelines governing the committee's operations. These guidelines shall be consistent with A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee's guidelines shall be by a majority vote of the committee and shall be submitted to the Administration for approval.
  - E. No employee or individual under contract with the Administration, regional authority, or service provider may be a voting member of a committee.
  - F. If a member of a human rights committee or the human rights committee determines that a member has a conflict of interest regarding an agenda item, the member shall refrain from:
    - 1. Participating in a discussion regarding the agenda item, and
    - 2. Voting on the agenda item.
  - G. Each committee shall, within its respective jurisdiction, provide independent oversight and review of:
    - 1. Allegations of illegal, dangerous, or inhumane treatment of clients and enrolled children;
    - 2. Reports filed with the committee under R9-21-203 and R9-21-204 concerning the use of seclusion, restraint, abuse, neglect, exploitation, mistreatment, accidents, or injuries;
    - 3. The provision of services to clients identified under R9-21-301 in need of special assistance
    - 4. Violations of rights of clients and enrolled children and conditions requiring investigation under Article 4 of this Chapter;
    - 5. Research in the field of mental health according to A.R.S. § 41-3804(E)(2); and
    - 6. Any other issue affecting the human rights of clients and enrolled children.
  - H. Within its jurisdiction, each human rights committee shall, for a client who needs special assistance, and may, for other clients and enrolled children:
    - 1. Make regular site visits to residential environments;
    - 2. Meet with the client, including a client who needs special assistance, in residential environments to determine satisfaction of the clients with the residential environments; and
    - 3. Inspect client records, including client records for clients who need special assistance, except as prohibited by federal or state law and a client's right to privacy.
  - I. A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the Administration or regional authority subject to the availability of funds specifically allocated for that purpose. A consultant or staff person may, in the sole discretion of the committee, be a member of another committee or an employee of the Administration, regional authority, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.
  - J. Committee members and committee consultants and staff persons shall have access to client records according to A.R.S. §§ 36-509(A)(11) and 41-3804(I). If a human rights committee's request for information or records is denied, the committee may request a review of the decision to deny the request according to A.R.S. § 41-3804(J). Nothing in this rule shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.
  - K. On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the Administration according to A.R.S. § 41-3804(F), and make any recommendations for changes it believes the Administration or regional authorities should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the regional authority and the Administration.
  - L. The Administration shall provide training and support to human rights committees.
  - M. A human rights committee may request:
    - 1. An investigation for a client according to Article 4 of this Chapter, or
    - 2. A regional authority or the Arizona State Hospital, as applicable, to conduct an investigation for an enrolled child.

- N. The regional authority or the Arizona State Hospital, as applicable, when requested by a human rights committee, shall conduct an investigation concerning:
1. A client as provided in Article 4 of this Chapter, and
  2. An enrolled child.
- O. A human rights committee shall submit an annual report of the human rights committee's activities and recommendations to the Director at the end of each calendar year according to A.R.S. § 41-3804(G).

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-105 renumbered to R9-21-104; new Section R9-21-105 renumbered from R9-21-106 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-106. State Protection and Advocacy System

Staff of mental health agencies shall cooperate with the State Protection and Advocacy System in its investigations and advocacy for clients and shall provide the System access to clients, records and facilities to the extent permitted and required by federal law, 42 U.S.C. 10801-10851. Nothing in this rule shall be construed to create an independent cause of action that does not already exist for the State Protection and Advocacy System either in state court or any administrative proceeding provided by these rules.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Former Section R9-21-106 renumbered to R9-21-105; new Section R9-21-106 renumbered from R9-21-107 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-107. Renumbered

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-106 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

### ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

#### R9-21-201. Civil and Other Legal Rights

- A. Clients shall have all rights accorded by applicable law, including but not limited to those prescribed in A.R.S. §§ 36-504 through 36-517.02. Any individual or agency providing behavioral health services or community services as defined in R9-21-101 shall not abridge these rights, including the following:
1. Those civil rights set forth in A.R.S. § 36-506;

2. The right to acquire and dispose of property, to execute instruments, to enter into contractual relationships, to hold professional or occupational or vehicle operator's licenses, unless the client has been adjudicated incompetent or there has been a judicial order or finding that such client is unable to exercise the specific right or category of rights. In the case of a client adjudicated incompetent, these rights may be exercised by the client's guardian, in accordance with applicable law;
3. The right to be free from unlawful discrimination by the Administration or by any mental health agency on the basis of race, creed, religion, sex, sexual preference, age, physical or mental handicap or degree of handicap; provided, however, classifications based on age, sex, category or degree of handicap shall not be considered discriminatory, if based on written criteria of client selection developed by a mental health agency and approved by the Administration as necessary to the safe operation of the mental health agency and in the best interests of the clients involved;
4. The right to equal access to all existing behavioral health services, community services, and generic services provided by or through the state of Arizona;
5. The right to religious freedom and practice, without compulsion and according to the preference of the client;
6. The right to vote, unless under guardianship, including reasonable assistance when desired in registering and voting in a nonpartisan and noncoercive manner;
7. The right to communicate including:
  - a. The right to have reasonable access to a telephone and reasonable opportunities to make and receive confidential calls and to have assistance when desired and necessary to implement this right;
  - b. The unrestricted right to send and receive uncensored and unopened mail, to be provided with stationery and postage in reasonable amounts, and to receive assistance when desired and necessary to implement this right;
8. The right to be visited and visit with others, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clients or to avoid serious disruptions in the normal functioning of the mental health agency;
9. The right to associate with anyone of the client's choosing, to form associations, and to discuss as a group, with those responsible for the program, matters of general interest to the client, provided that these do not result in serious disruptions in the normal functioning of the mental health agency. Clients shall receive cooperation from the mental health agency if they desire to publicize and hold meetings and clients shall be entitled to invite visitors to attend and participate in such meetings, provided that they do not result in serious disruptions in the normal functioning of the mental health agency;
10. The right to privacy, including the right not to be fingerprinted and photographed without authorization, except as provided by A.R.S. § 36-507(2);
11. The right to be informed, in appropriate language and terms, of client rights;
12. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure, as set forth in Article 4 of these rules, and the right not to be retaliated against for filing a grievance;
13. The right of access to a human rights advocate in order to understand, exercise, and protect a client's rights;

14. The right to be assisted by an attorney or designated representative of the client's own choice, including the right to meet in a private area at the program or facility with an attorney or designated representative. Nothing in this Chapter shall be construed to require the Administration or any mental health agency to pay for the services of an attorney who consults with or represents a client;
15. The right to exercise all other rights, entitlements, privileges, immunities provided by law, and specifically those rights of consumers of behavioral health services or community services set forth in A.R.S. §§ 36-504 through 36-517.02;
16. The same civil rights as all other citizens of Arizona, including the right to marry and to obtain a divorce, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.

**B. Nothing in this Article shall be interpreted to:**

1. Give the power, right, or authority to any person or mental health agency to authorize sterilization, abortion, or psychosurgery with respect to any client, except as may otherwise be provided by law; or
2. Restrict the right of physicians, nurses, and emergency medical technicians to render emergency care or treatment in accordance with A.R.S. § 36-512; or
3. Construe this rule to confer constitutional or statutory rights not already present.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-202. Right to Support and Treatment**

**A. A client has the following rights with respect to the client's support and treatment:**

1. The right to behavioral health services or community services:
  - a. Under conditions that support the client's personal liberty and restrict personal liberty only as provided by law or in this Chapter;
  - b. From a flexible service system that responds to the client's needs by increasing, decreasing and changing services as needs change;
  - c. Provided in a way that:
    - i. Preserves the client's human dignity;
    - ii. Respects the client's individuality, abilities, needs, and aspirations without regard to the client's psychiatric condition;
    - iii. Encourages the client's self-determination, freedom of choice, and participation in treatment to the client's fullest capacity;
    - iv. Ensures the client's freedom from the discomfort, distress and deprivation that arise from an unresponsive and inhumane environment;
    - v. Protects and promotes the client's privacy, including an opportunity whenever possible to be provided clearly defined private living, sleeping and personal care spaces; and

- vi. Maximizes integration of the client into the client's community through housing and residential services which are located in residential neighborhoods, rely as much as possible on generic support services to provide training and assistance in ordinary community experiences, and utilize specialized mental health programs that are situated in or near generic community services;
- vii. Offers the client humane and adequate support and treatment that is responsive to the client's needs, recognizes that the client's needs may vary, and is capable of adjusting to the client's changing needs; and
- d. That provide the client with an opportunity to:
  - i. Receive services that are adequate, appropriate, consistent with the client's individual needs, and least restrictive of the client's freedom;
  - ii. Receive treatment and services that are culturally sensitive in structure, process and content;
  - iii. Receive services on a voluntary basis to the maximum extent possible and entirely if possible;
  - iv. Live in the client's own home;
  - v. Undergo normal experiences, even though the experiences may entail an element of risk, unless the client's safety or well-being or that of others is unreasonably jeopardized; and
  - vi. Engage in activities and styles of living, consistent with the client's interests, which encourage and maintain the integration of the client into the community.
2. The right to ongoing participation in the planning of services as well as participation in the development and periodic revision of the individual service plan;
3. The right to be provided with a reasonable explanation of all aspects of one's condition and treatment;
4. The right to give informed consent to all behavioral health services and the right to refuse behavioral health services in accordance with A.R.S. §§ 36-512 and 36-513, except as provided for in A.R.S. §§ 36-520 through 36-544 and 13-3994;
5. The right not to participate in experimental treatment without voluntary, written informed consent; the right to appropriate protection associated with such participation; and the right and opportunity to revoke such consent;
6. The right to a humane treatment environment that affords protection from harm, appropriate privacy, and freedom from verbal or physical abuse;
7. The right to enjoy basic goods and services without threat of denial or delay. For residential service providers, these basic goods and services include at least the following:
  - a. A nutritionally sound diet of wholesome and tasteful food available at appropriate times and in as normal a manner as possible;
  - b. Arrangements for or provision of an adequate allowance of neat, clean, appropriate, and seasonable clothing that is individually chosen and owned;
  - c. Assistance in securing prompt and adequate medical care, including family planning services, through community medical facilities;
  - d. Opportunities for social contact in the client's home, work or schooling environments;
  - e. Opportunities for daily activities, recreation and physical exercise;

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- f. The opportunity to keep and use personal possessions; and
- g. Access to individual storage space for personal possessions;
- 8. The right to be informed, in advance, of charges for services;
- 9. The right to a continuum of care in a unified and cohesive system of community services that is well integrated, facilitates the movement of clients among programs, and ensures continuity of care;
- 10. The right to a continuum of care that consists of, but is not limited to, clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, vocational training and opportunities, day treatment, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance;
- 11. The right to a continuum of care with programs that offer different levels of intensity of services in order to meet the individual needs of each client;
- 12. The right to appropriate mental health treatment, based on each client's individual and unique needs, and to those community services from which the client would reasonably benefit;
- 13. The right to community services provided in the most normal and least restrictive setting, according to the least restrictive means appropriate to the client's needs;
- 14. The right to clinical case management services and a case manager. The clinical team negotiates and oversees the provision of services and ensures the client's smooth transition with service providers and among agencies;
- 15. The right to participate in treatment decisions and in the development and implementation of the client's ISP, and the right to participate in choosing the type and location of services, consistent with the ISP;
- 16. The right to prompt consideration of discharge from an inpatient facility and the identification of the steps necessary to secure a client's discharge as part of an ISP;
- 17. The rights prescribed in Articles 3 and 4 of this Chapter, including the right to:
  - a. A written individual service plan;
  - b. Assert grievances; and
  - c. Be represented by a qualified advocate or other designated representative of the client's choosing in the development of the ISP and the inpatient treatment and discharge plan and in the grievance process, in order to understand, exercise and protect the client's rights.
- B. Subsection (A) shall not be construed to confer constitutional or statutory rights not already present.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-203. Protection from Abuse, Neglect, Exploitation, and Mistreatment**

- A. No mental health agency shall mistreat a client or permit the mistreatment of a client by staff subject to its direction. Mistreatment includes any intentional, reckless or negligent action

or omission which exposes a client to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:

1. Abuse, neglect, or exploitation;
  2. Corporal punishment;
  3. Any other unreasonable use or degree of force or threat of force not necessary to protect the client or another person from bodily harm;
  4. Infliction of mental or verbal abuse, such as screaming, ridicule, or name calling;
  5. Incitement or encouragement of clients or others to mistreat a client;
  6. Transfer or the threat of transfer of a client for punitive reasons;
  7. Restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
  8. Any act in retaliation against a client for reporting any violation of the provisions of this Chapter to the Administration; or
  9. Commercial exploitation.
- B. The following special sanctions shall be available to the Department and/or the Administration, in addition to those set forth in 9 A.A.C. 10, Article 10 of the Department's rules, to protect the interests of the client involved as well as other current and former clients of the mental health agency.
    1. Mistreatment of a client by staff or persons subject to the direction of a mental health agency may be grounds for suspension or revocation of the license of the mental health agency or the provision of financial assistance, and, with respect to employees of the mental health agency, grounds for disciplinary action, which may include dismissal.
    2. Failure of an employee of the Administration to report any instance of mistreatment within any mental health agency subject to this Chapter shall be grounds for disciplinary action, which may include dismissal.
    3. Failure of a mental health agency to report client deaths and allegations of sexual and physical abuse to the Administration and to comply with the procedures described in Article 4 of this Chapter for the processing and investigation of grievances and reports shall be grounds for suspension of the license of the mental health agency or the provision of financial assistance, and, with respect to a service provider directly operated by the Department, grounds for disciplinary action, which may include dismissal.
    4. A mental health agency shall report all allegations of mistreatment and denial of rights to the Office of Human Rights and the regional authority for review and monitoring in accordance with R9-21-105.
  - C. A mental health agency shall report all incidents of abuse, neglect, or exploitation to the appropriate authorities as required by A.R.S. § 46-454 and shall document all such reports in the mental health agency's records.
  - D. If a mental health agency has reasonable cause to believe that a felony relevant to the functioning of the program has been committed by staff persons subject to the agency's direction, a report shall be filed with the county attorney.
  - E. The identity of persons making reports of abuse, neglect, exploitation, or mistreatment shall not be disclosed by the mental health agency or by the Administration, except as necessary to investigate the subject matter of the report.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### **R9-21-204. Restraint and Seclusion**

- A.** A mental health agency shall only use restraint or seclusion to the extent permitted by and in compliance with this Chapter, and other applicable federal or state law.
- B.** A mental health agency shall only use restraint or seclusion:
  - 1. To ensure the safety of the client or another individual in an emergency safety situation;
  - 2. After other available less restrictive methods to control the client's behavior have been tried and were unsuccessful;
  - 3. Until the emergency safety situation ceases and the client's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired; and
  - 4. In a manner that:
    - a. Prevents physical injury to the client,
    - b. Minimizes the client's physical discomfort and mental distress, and
    - c. Complies with the mental health agency's policies and procedures required in subsection (E) and with this Section.
- C.** A mental health agency shall not use restraint or seclusion as a means of coercion, discipline, convenience, or retaliation.
- D.** A service provider shall at all times have staff qualified on duty to provide:
  - 1. Restraint and seclusion according to this Section, and
  - 2. The behavioral health services the mental health agency is authorized to provide.
- E.** A mental health agency shall develop and implement written policies and procedures for the use of restraint and seclusion that are consistent with this Section and other applicable federal or state law and include:
  - 1. Methods of controlling behavior that may prevent the need for restraint or seclusion,
  - 2. Appropriate techniques for placing a client in each type of restraint or seclusion; used at the mental health agency, and
  - 3. Immediate release of a client during an emergency.
- F.** A mental health agency shall develop and implement a training program on the policies and procedures in subsection (E).
- G.** A mental health agency shall only use restraint or seclusion according to:
  - 1. A written order given:
    - a. By a physician providing treatment to a client; or
    - b. If a physician providing treatment to a client is not present on the premises or on-call:
      - i. If the agency is licensed as a level 1 psychiatric acute hospital, by a physician or a nurse practitioner; or
      - ii. If the agency is licensed as a level 1 subacute agency or a level 1 RTC, by a medical practitioner.
  - 2. An oral order given to a nurse by:
    - a. A physician providing treatment to a client, or
    - b. If a physician providing treatment to a client is not present on the premises or on-call:
      - i. If the agency is licensed as a level 1 psychiatric acute hospital, by a physician or a nurse practitioner; or
      - ii. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC, by a medical practitioner.
- H.** If a restraint or seclusion is used according to subsection (G)(2), the individual giving the order shall, at the time of the oral order in consultation with the nurse, determine whether, based upon the client's current and past medical, physical and psychiatric condition, it is clinically necessary for:
  - 1. If the agency is licensed as a level 1 psychiatric acute hospital, a physician to examine the client as soon as possible and, if applicable, the physician shall examine the client as soon as possible; or
  - 2. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC, a medical practitioner to examine the client as soon as possible and, if applicable, the medical practitioner shall examine the client as soon as possible.
- I.** An individual who gives an order for restraint or seclusion shall:
  - 1. Order the least restrictive restraint or seclusion that may resolve the client's behavior that is creating the emergency safety situation, based upon consultation with a staff member at the agency;
  - 2. Be available to the agency for consultation, at least by telephone, throughout the period of the restraint or seclusion;
  - 3. Include the following information on the order:
    - a. The name of the individual ordering the restraint or seclusion,
    - b. The date and time that the restraint or seclusion was ordered,
    - c. The restraint or seclusion ordered,
    - d. The criteria for release from restraint or seclusion without an additional order, and
    - e. The maximum duration for the restraint or seclusion;
  - 4. If the order is for mechanical restraint or seclusion, limit the order to a period of time not to exceed three hours.
  - 5. If the order is for a drug used as a restraint, limit the:
    - a. Dosage to that necessary to achieve the desired effect, and
    - b. Drug ordered to a drug other than a time-released drug designed to be effective for more than three hours; and
  - 6. If the individual ordering the use of restraint or seclusion is not a physician providing treatment to the client:
    - a. After ordering the restraint or seclusion, consult with the physician providing treatment as soon as possible, and
    - b. Inform the physician providing treatment of the client's behavior that created the emergency safety situation and required the client to be restrained or placed in seclusion.
- J.** PRN orders shall not be used for any form of restraint or seclusion.
- K.** If an individual has not examined the client according to subsection (H), the following individual shall conduct a face-to-face assessment of a client's physical and psychological well-being within one hour after the initiation of restraint or seclusion:
  - 1. For a behavioral health agency licensed as a level 1 psychiatric acute hospital, a physician or nurse practitioner who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion; or
  - 2. For a behavioral health agency licensed as a level 1 RTC or a level 1 sub-acute agency a medical practitioner or a registered nurse with at least one year of full time behavioral health work experience, who is either on-site or on-

- call at the time the mental health agency initiates the restraint or seclusion.
- L.** A face-to-face assessment of a client according to subsection (K) shall include a determination of:
1. The client's physical and psychological status,
  2. The client's behavior,
  3. The appropriateness of the restraint or seclusion used,
  4. Whether the emergency safety situation has passed, and
  5. Any complication resulting from the restraint or seclusion used.
- M.** For each restraint or seclusion of a client, a mental health agency shall include in the client's record the order and any renewal order for the restraint or seclusion, and shall document in the client's record:
1. The nature of the restraint or seclusion;
  2. The reason for the restraint or seclusion, including the facts and behaviors justifying it;
  3. The types of less restrictive alternatives that were attempted and the reasons for the failure of the less restrictive alternatives;
  4. The name of each individual authorizing the use of restraint or seclusion and each individual restraining or secluding a client or monitoring a client who is in restraint or seclusion;
  5. The evaluation and assessment of the need for seclusion or restraint conducted by the individual who ordered the restraint or seclusion;
  6. The determination and the reasons for the determination made according to subsection (H);
  7. The specific and measurable criteria for client release from mechanical restraint or seclusion with documentation to support that the client was notified of the release criteria and the client's response;
  8. The date and times the restraint or seclusion actually began and ended;
  9. The time and results of the face-to-face assessment required in subsection (L);
  10. For the monitoring of a client in restraint or seclusion required by subsection (P):
    - a. The time of the monitoring,
    - b. The name of the staff member who conducted the monitoring, and
    - c. The observations made by the staff member during the monitoring; and
  11. The outcome of the restraint or seclusion.
- N.** If, at any time during a seclusion or restraint, a medical practitioner or registered nurse determines that the emergency which justified the seclusion or restraint has subsided, or if the required documentation reflects that the criteria for release have been met, the client shall be released and the order terminated. The client shall be released no later than the end of the period of time ordered for the restraint or seclusion, unless a the order for restraint or seclusion is renewed according to subsection (Q).
- O.** For any client in restraint, the individual ordering the restraint shall determine whether one-to-one supervision is clinically necessary and shall document the determination and the reasons for the determination in the client's record.
- P.** A mental health agency shall monitor a client in restraint or seclusion as follows:
1. The client shall be personally examined at least every 15 minutes for the purpose of ensuring the client's general comfort and safety and determining the client's need for food, fluid, bathing, and access to the toilet. Personal examinations shall be conducted by staff members with documented training in the appropriate use of restraint and seclusion and who are working under the supervision of a licensed physician, nurse practitioner or registered nurse.
  2. A registered nurse shall personally examine the client every hour to assess the status of the client's mental and physical condition and to ensure the client's continued well-being.
  3. If the client has any medical condition that may be adversely affected by the restraint or seclusion, the client shall be monitored every five minutes, until the medical condition resolves, if applicable.
  4. If other clients have access to a client being restrained or secluded or, if the individual ordering the restraint or seclusion determines that one-to-one supervision is clinically necessary according to subsection (O), a staff member shall continuously supervise the client on a one-to-one basis.
  5. If a mental health agency maintains a client in a mechanical restraint, a staff member shall loosen the mechanical restraints every 15 minutes.
  6. Nutritious meals shall not be withheld from a client who is restrained or secluded, if mealtimes fall during the period of restraint. Staff shall supervise all meals provided to the client while in restraint or seclusion.
  7. At least once every two hours, a client who is restrained or secluded shall be given the opportunity to use a toilet.
- Q.** An order for restraint or seclusion may be renewed as follows:
1. For the first renewal order, the order shall meet the requirements of subsection (G)(1) or (G)(2); and
  2. For a renewal order subsequent to the first renewal order:
    - a. The individual in (G)(1) or (G)(2) shall personally examine the client before giving the renewal order, and
    - b. The order shall not permit the continuation of the restraint or seclusion for more than 12 consecutive hours unless the requirements of subsection (P) are met.
- R.** No restraint or seclusion shall continue for more than 12 consecutive hours without the review and approval by the medical director or designee of the mental health agency in consultation with the client and relevant staff to discuss and evaluate the needs of the client. The review and approval, if any, and the reasons justifying any continued restraint or seclusion shall be documented in the client's record.
- S.** If a client requires the repeated or continuous use of restraint or seclusion during a 24-hour period, a review process shall be initiated immediately and shall include the client and all relevant staff persons and clinical consultants who are available to evaluate the need for an alternative treatment setting and the needs of the client. The review and its findings and recommendations shall be documented in the client's record.
- T.** Whenever a client is subjected to extended or repeated orders for restraint or seclusion during a 30-day period, the medical director shall require a special meeting of the client's clinical team according to R9-21-314 to determine whether other treatment interventions would be useful and whether modifications of the ISP or ITDP are required.
- U.** As part of a mental health agency's quality assurance program, an audit will be conducted and a report filed with the agency's medical director within 24 hours, or the first working day, for every episode of the use of restraint or seclusion to ensure that the agency's use of seclusion or restraint is in full compliance with the rules set forth in this Article.
- V.** Not later than the tenth day of every month, the program director shall prepare and file with the Administration and the Office of Human Rights a written report describing the use of



any form of restraint or seclusion during the preceding month in the mental health agency or by any employees of the agency. In the case of an inpatient facility, the report shall also be filed with any patient or human rights committee for that facility.

- W. The Office of Human Rights, and any applicable human rights committee shall review such reports to determine if there has been any inappropriate or unlawful use of restraint or seclusion and to determine if restraint or seclusion may be used in a more effective or appropriate fashion.
- X. If any human rights committee or the Office of Human Rights determines that restraint or seclusion has been used in violation of any applicable law or rule, the committee or Office may take whatever action is appropriate, including investigating the matter itself or referring the matter to the Administration for remedial action.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-205. Labor

- A. No client shall be required to perform labor which involves the essential operation and maintenance of the service provider or the regular care, treatment or supervision of other clients, provided however, that:
  - 1. Only a residential service provider may require clients to perform activities related to maintaining their bedrooms, other personal areas, and their clothing and personal possessions in a neat and clean manner.
  - 2. Clients may perform labor in accordance with a planned and supervised program of vocational and rehabilitation training as set forth in an ISP or ITDP developed according to Article 3 of this Chapter.
- B. Any client may voluntarily perform any labor available.
- C. The requirements of federal and state laws relating to wages, hours of work, workers' compensation and other labor standards shall be met with respect to all labor.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

#### R9-21-206. Competency and Consent

- A. A client shall not be deemed incompetent to manage the client's affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to make wills, to vote or to exercise any other civil or legal right solely by reason of admission to a mental health agency.
- B. An applicant or client is presumed to be legally competent to conduct the client's personal and financial affairs, unless otherwise determined by a court in a guardianship or conservatorship proceeding.
- C. Only an applicant or client who is competent may provide informed consent, authorization, or permission as required in this Chapter. A mental health agency shall use the following

criteria to determine if an applicant or client is competent and the appropriateness of establishing or removing a guardianship, temporary guardianship, conservatorship, or guardianship ad litem for the client:

1. An applicant or client shall be determined to be in need of guardianship or conservatorship only if the applicant's or client's ability to make important decisions concerning the applicant or client or the applicant's or client's property is so limited that the absence of a person with legal authority to make such decisions for the applicant or client creates a serious risk to the applicant's or client's health, welfare or safety.
2. Although the capability of the applicant or client to make important decisions is the central factor in determining the need for guardianship, the capabilities of the applicant's or client's family, the applicant's or client's living circumstances, the probability that available treatment will improve the applicant's or client's ability to make decisions on the applicant's or client's behalf, and the availability and utility of nonjudicial alternatives to guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered.
3. If the applicant or client has been determined to be incapable of making important decisions with regard to the applicant's or client's personal or financial affairs, and if nonjudicial, less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates are inadequate to protect the applicant or client from a substantial and unreasonable risk to the applicant's or client's health, safety, welfare, or property, the applicant's or client's nearest living relatives shall be notified with an accompanying recommendation that a guardian or conservator be appointed.
4. If the applicant or client is capable of making important decisions concerning the applicant's or client's health, welfare, and property, either independently or through other less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates, the applicant's or client's nearest living relative shall be notified with an accompanying recommendation that any existing guardian or conservator be removed.
5. If the client has been determined to require or no longer require assistance in the management of financial or personal affairs, and the nearest living relative cannot be found or is incapable of or not interested in caring for the client's interest, the mental health agency shall assist in the recruitment or removal of a trustee, representative payee, advocate, conservator, or guardian. Nothing in this Chapter shall be construed to require the Administration or any regional authority or service provider to pay for the recruitment, appointment or removal of a trustee, representative payee, advocate, conservator, or guardian.
6. The assessment or periodic review shall identify the specific area or areas of the client's functioning that forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.
- D. Mental health agencies shall devise and implement procedures to ensure that suspected improprieties of a guardian, conservator, trustee, representative payee, or other fiduciary are reported to the court or other appropriate authorities.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-206.01. Informed Consent**

- A.** Except in an emergency according to A.R.S. §§ 36-512 or 36-513 or R9-21-204, or a court order according to A.R.S. Title 36, Chapter 5, Articles 4 and 5, a mental health agency shall obtain written informed consent in at least the following circumstances:
- Before providing a client a treatment with known risks or side effects, including:
    - Psychotropic medication,
    - Electro-convulsive therapy, or
    - Telemedicine;
  - Before a client participates in research activities; and
  - Before admitting a client to any medical detoxification, inpatient facility, or residential program operated by a mental health agency.
- B.** The informed consent in subsection (A) shall be voluntary and shall be obtained from:
- The client, if the client is determined to be competent according to R9-21-206; or
  - The client's guardian, if a court of competent jurisdiction has adjudicated the client incompetent.
- C.** If informed consent is required according to subsection (A), a medical practitioner or a registered nurse with at least one year of behavioral health experience shall, before obtaining the informed consent, provide a client or, if applicable, the client's guardian with the following information:
- The client's diagnosis;
  - The nature of and procedures involved with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
  - The intended outcome of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
  - The risks, including any side effects, of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
  - The risks of not proceeding with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
  - The alternatives to the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency, particularly alternatives offering less risk or other adverse effects;
  - That any informed consent given may be withheld or revoked orally or in writing at any time, with no punitive action taken against the client;
  - The potential consequences of revoking the informed consent; and
  - A description of any clinical indications that might require suspension or termination of the proposed treatment, research activity, or program operated by a mental health agency.

- D.** A client or, if applicable, the client's guardian who gives informed consent for a treatment, participation in a research activity, or admission in a program operated by a mental health agency, shall give the informed consent by:
- Signing and dating an acknowledgment that the client or, if applicable, the client's guardian has received the information in subsection (C) and gives informed consent to the proposed treatment, participation in a research activity, or admission of the client to the program operated by a mental health agency; or
  - If the informed consent is for use of psychotropic medication or telemedicine and the client or, if applicable the client's guardian, refuses to sign an acknowledgement according to subsection (D)(1), giving verbal informed consent.
- E.** If a client or, if applicable, a client's guardian gives verbal informed consent according to subsection (D)(2), a medical practitioner shall document in the client's record that:
- The information in subsection (C) was given to the client or, if applicable, the client's guardian;
  - The client or, if applicable, the client's guardian refused to sign an acknowledgement according to subsection (D)(1); and
  - The client or, if applicable, the client's guardian gives informed consent to the use of the psychotropic medication or telemedicine.
- F.** A client or, if applicable, the client's guardian may revoke informed consent at any time orally or by submitting a written statement revoking the informed consent.
- G.** If informed consent is revoked according to subsection (F):
- The treatment, the client's participation in a research activity, or the applicant's or client's admission to a program operated by a mental health agency shall be immediately discontinued, or
  - If abrupt discontinuation of a treatment poses an imminent risk to a client, the treatment shall be phased out to avoid any harmful effects.
- H.** If a client or, if applicable, the client's guardian needs assistance with revoking informed consent according to subsection (F), the client or, if applicable, the client's guardian shall receive the assistance.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-207. Medication**

- A.** Medication shall only be administered with the informed consent of the client or Title 36 guardian. Information relating to common risks and side effects of the medication, the procedures to be taken to minimize such risks, and a description of any clinical indications that might require suspension or termination of the drug therapy shall be available to the client, guardian, if any, and the staff in every mental health agency. Such information shall be available to family members in accordance with A.R.S. §§ 36-504, 36-509, and 36-517.01.
- B.** All clients have a right to be free from unnecessary or excessive medication.
- C.** Medication shall not be used as punishment, for the convenience of the staff, or as a substitute for other behavioral health services and shall be given in the least amount medically necessary with particular emphasis placed on minimizing side effects which otherwise would interfere with aspects of treatment.

- D.** Medication administered by a mental health agency shall be prescribed by a licensed physician, certified physician assistant, or a licensed nurse practitioner.
1. Psychotropic medication shall be prescribed by:
    - a. A psychiatrist who is a licensed physician; or
    - b. A licensed nurse practitioner, certified physician assistant, or physician trained or experienced in the use of psychotropic medication, who has seen the client and is familiar with the client's medical history or, in an emergency, is at least familiar with the client's medical history.
  2. Each client receiving psychotropic medication shall be seen monthly or as indicated in the client's ISP by a licensed nurse practitioner, certified physician's assistant or physician prescribing the medication, who shall note in the client's record:
    - a. The appropriateness of the current dosage,
    - b. All medication being taken by the client and the appropriateness of the mixture of medications,
    - c. Any signs of tardive dyskinesia or other side effects,
    - d. The reason for the use of the medication, and
    - e. The effectiveness of the medication.
  3. When a client on psychotropic medication receives a yearly physical examination, the results of the examination shall be reviewed by the physician prescribing the medication. The physician shall note any adverse effects of the continued use of the prescribed psychotropic medication in the client's record.
  4. Whenever a prescription for medication is written or changed, a notation of the medication, dosage, frequency of administration, and the reason why the medication was ordered or changed shall be entered in the client's record.
- E.** Self-administration of medication by clients shall be permitted unless otherwise restricted by the responsible physician or licensed nurse practitioner. Such clients shall be trained in self-administration of medication and, if necessary, shall be monitored by trained staff.
- F.** Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.
- G.** PRN orders for medication shall not be given for a drug used as a restraint.
- Historical Note**
- Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).
- R9-21-208. Property and Possessions**
- A.** No mental health agency shall interfere with a client's right to acquire, retain and dispose of personal property, including the right to maintain an individual bank account, except where:
1. The client is under guardianship, conservatorship, or has a representative payee;
  2. Otherwise ordered by court; or
  3. A particular object, other than money or personal funds, poses an imminent threat of serious physical harm to the client or others. Any restriction on the client's control of property deemed to pose an imminent threat of serious physical harm shall be recorded in the client's record together with the reasons the particular object poses an imminent threat of serious physical harm to the client or others.
- B.** If a mental health agency, which offers assistance to its clients in managing their funds, takes possession or control of a client's funds at the request of the client, guardian, or by court order, the mental health agency shall issue a receipt to the client or guardian for each transaction involving such funds. If deposited funds in excess of \$250 are held by the mental health agency, where the likelihood of the client's stay will exceed 30 days, an individual bank account or an amalgamated client trust account shall be maintained for the benefit of the client. All interest shall become the property of the client or the fair allocation of the interest in the case of an amalgamated client trust account. The mental health agency shall provide a bond to cover client funds held.
1. Unless a guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
  2. The mental health agency shall obtain prior written permission from the client, the guardian or conservator for any arrangement involving shared or delegated management responsibilities. The permission shall set forth the terms and conditions of the arrangement.
  3. Where the mental health agency has shared or delegated management responsibilities, the mental health agency shall meet the following requirements:
    - a. Client funds shall not be applied to goods or services which the mental health agency is obligated by law or funded by contract to provide, except as permitted by a client fee schedule authorized by the Administration;
    - b. The mental health agency and its staff shall have no direct or indirect ownership or survivorship interest in the funds;
    - c. Such arrangements shall be accompanied by a training program, documented in the ISP, to eliminate the need for such assistance;
    - d. Staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the mental health agency;
    - e. Any arrangements made to transfer a client from one mental health agency to another shall include provisions for transferring shared or delegated management responsibilities to the receiving mental health agency;
    - f. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored; and
    - g. Expenditures shall be made only for purposes which directly benefit the client in accordance with the client's interests and desires.
  4. A record shall be kept of every transaction involving deposited funds, including the date and amount received or disbursed, and the name of the person to or from whom the funds are received or disbursed. The client, guardian, conservator, mental health agency or regional human rights advocate or other representative may demand an accounting at any reasonable time, including at the time of the client's transfer, discharge or death.
  5. Any funds so deposited shall be treated for the purpose of collecting charges for care the same as any other property held by or on behalf of the client. The client or guardian shall be informed of any possible charges before the onset of services.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-209. Records**

- A.** Records of a client who is currently receiving or has received services from a mental health agency are private and shall be disclosed only to those individuals authorized according to federal and state law.
- B.** Inspection by the client, the client's guardian, attorney, paralegal working under the supervision of an attorney, or any other designated representative shall be permitted as follows:
  1. Except as prohibited by federal and state law, the client and, if applicable, the client's guardian shall be permitted to inspect and copy the client's record as soon as possible after a request, and no later than 10 working days after a request. If any portion of the client record is withheld under federal or state law, the mental health agency shall provide written notice to the client or, if applicable, the client's guardian including:
    - a. The reason the mental health agency is withholding a portion of the client's record,
    - b. An explanation of the client's right to a review of the decision to withhold a portion of the client's record, and
    - c. An explanation of the client's right to file a grievance according to Article 4 of this Chapter.
  2. An attorney, paralegal working under the supervision of an attorney, or other designated representative of the client shall be permitted to inspect and copy the record, if such attorney or representative furnishes written authorization from the client or guardian.
  3. When necessary for the understanding of the client or guardian and, if the client or the client's guardian provides authorization, when necessary for the understanding of an attorney, paralegal working under the supervision of an attorney, or designated representative, staff of the mental health agency possessing the records shall read or interpret the record for the client, guardian, attorney, paralegal working under the supervision of an attorney, or designated representative.
- C.** Inspection by specially authorized persons or entities shall be permitted as follows unless otherwise prohibited by federal or state law:
  1. Records of a client may be available to those individuals and agencies listed in A.R.S. § 36-509.
  2. Records of a client shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.
  3. Records of a client shall be made available to a physician who requests such records in the treatment of a medical emergency, provided that the client is given notice of such access as soon as possible.
  4. Records of a client shall be made available to staff authorized by the Administration to monitor the quality of services being provided by the mental health agency to the client.
  5. Records of a client shall be made available to guardians and family members actively participating in the client's care, treatment or supervision as provided by A.R.S. §§ 36-504, 36-509(A)(8) and (B). Except when inspection of a client's record is required under a proper judicial order

or by a physician in a medical emergency, a client, guardian or family member may challenge the decision to allow or deny inspection of the record by filing a request for administrative and judicial review in accordance with the provisions of A.R.S. § 36-517.01 or other applicable federal or state law. Once a request is filed, no further disclosure of records shall be made until the review has been completed.

- D.** Unless otherwise permitted by federal or state law, records shall be open to inspection by other third parties only upon the authorization of the client or guardian. Before authorization is given, the client or guardian shall be offered an opportunity to examine the information to be disclosed and be provided with the name of the recipient and uses to be made of the information.
- E.** The fee for copying records obtained under this rule shall be no more than the actual expense of reproducing the record or the requested parts and may be limited further by A.R.S. § 12-2295.
- F.** A client or guardian shall be informed of a court order or subpoena commanding production of a client's record as soon as possible and in any event prior to the date for production and of the client's or guardian's right to request the court to quash or modify the order or subpoena.
- G.** The records maintained by the mental health agency shall contain accurate, complete, timely, pertinent, and relevant information.
  1. If a client or guardian believes that the record contains inaccurate or misleading information, the client or guardian may prepare, with assistance if requested, a statement of disagreement which shall be entered in the record.
  2. If a client or guardian objects to the collection of the information in the record, the client or guardian may file a grievance according to Article 4 of this Chapter.
- H.** A list shall be kept of every person or organization who inspects the client's records, other than the client's clinical team, the uses to be made of that information, and the person authorizing access. A list of such access shall be placed in the client's record and shall be made available to the client or other designated representative.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-210. Policies and Procedures of Service Providers**

- A.** A mental health agency may establish policies and procedures for the provision of behavioral health services or community services that are consistent with Articles 1 through 5 of these rules and with all other requirements of Arizona law. No policy or procedure may restrict any right protected by these rules.
- B.** The mental health agency shall inform all prospective clients of its policies and procedures prior to the client or, if applicable, the client's guardian giving informed consent to the client's admission to the program according to R9-21-206.01(A)(3).
- C.** If a client acts in a manner that is seriously in disregard of a reasonable policy, the agency director shall make all reason-

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able efforts to respond to the situation, including making reasonable accommodation to the program's policy if the client's failure to conform to a reasonable policy is due to the client's disability.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-211. Notice of Rights**

- A. Every mental health agency shall provide written notice of the civil and legal rights of its clients by posting a copy of ADHS Form MH-211, "Notice of Client's Rights," set forth in Exhibit A, in one or more areas of the agency so that it is readily visible to clients and visitors.
- B. In addition to posting as required by subsection (A), a copy of ADHS Form MH-211, set forth in Exhibit B, shall be given to each client, or guardian if any, at the time of admission to the agency for evaluation or treatment. The person receiving the notice shall be required to acknowledge in writing receipt of the notice and the acknowledgment shall be retained in the client's record.
- C. Every mental health agency shall provide written notice of the terms of A.R.S. § 36-506 to each client upon discharge by giving the client a copy of ADHS Form MH-209, "Discrimination Prohibited".
- D. All notices required by this rule shall be provided and posted in both English and Spanish.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

**Exhibit A. Notice of Legal Rights for Persons with Serious Mental Illness**

If you have a serious or chronic mental illness, you have legal rights under federal and state law. Some of these rights include:

- The right to appropriate mental health services based on your individual needs;
- The right to participate in all phases of your mental health treatment, including individual service plan (ISP) meetings;
- The right to a discharge plan upon discharge from a hospital;
- The right to consent to or refuse treatment (except in an emergency or by court order);
- The right to treatment in the least restrictive setting;
- The right to freedom from unnecessary seclusion or restraint;
- The right not to be physically, sexually, or verbally abused;
- The right to privacy (mail, visits, telephone conversations);
- The right to file an appeal or grievance when you disagree with the services you receive or your rights are violated;
- The right to choose a designated representative(s) to assist you in ISP meetings and in filing grievances;
- The right to a case manager to work with you in obtaining the services you need;
- The right to a written ISP that sets forth the services you will receive;

- The right to associate with others;
- The right to confidentiality of your psychiatric records;
- The right to obtain copies of your own psychiatric records (unless it would not be in your best interests to have them);
- The right to appeal a court-ordered involuntary commitment and to consult with an attorney and to request judicial review of court-ordered commitment every 60 days;
- The right not to be discriminated against in employment or housing.

If you would like information about your rights, you may request a copy of the "Your Rights in Arizona as an Individual with Serious Mental Illness" brochure or you may also call Administration, Office of Human Rights at 1-800-421-2124.

ADHS/BHS Form MH-211 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 21, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**Exhibit B. Notice of Legal Rights for Persons with Serious Mental Illness****NOTICE****Discrimination Prohibited**

Pursuant to A.R.S. § 36-506 and R9-21-101(B)

- A. Persons undergoing evaluation or treatment pursuant to this Chapter shall not be denied any civil right, including, but not limited to, the right to dispose of property, sue and be sued, enter into contractual relationships and vote. Court-ordered treatment or evaluation pursuant to this Chapter is not a determination of legal incompetency, except to the extent provided in A.R.S. § 36-512.
- B. A person who is or has been evaluated or treated in an agency for a mental disorder shall not be discriminated against in any manner, including but not limited to:
  1. Seeking employment.
  2. Resuming or continuing professional practice or previous occupation.
  3. Obtaining or retaining housing.
  4. Obtaining or retaining licenses or permits, including but not limited to, motor vehicle licenses, motor vehicle operator's and chauffeur's licenses and professional or occupational licenses.
- C. "Discrimination" for purposes of this Section means any denial of civil rights on the grounds of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet the standards applicable to all persons. Applications for positions, licenses and housing shall contain no requests for information which encourage such discrimination.
- D. Upon discharge from any treatment or evaluation agency, the patient shall be given written notice of the provisions of this Section.

**AVISO****Discriminacion Prohibida**

Conforme a A.R.S. § 36-506 y R9-21-101(B)

- A. A las personas que estan bajo evaluacion o tratamiento conforme a este capitulo, no se les negara ningun derecho civil, incluyendo pero no limitado a, el derecho a disponer de propiedad, a demandar y ser demandado, a tomar parte en rela-

ciones contractuales y a votar. El tratamiento o evaluación ordenado por la corte conforme a este capítulo no es una determinación de incompetencia legal, excepto hasta el punto proveído en la sección 36-512.

- B.** No se harán discriminaciones de ninguna clase, en contra de una persona que ha sido o está siendo evaluada o tratada en una agencia debido a un desorden mental, incluyendo pero no limitado a:
1. Buscar trabajo.
  2. Reasumir o continuar una práctica profesional u ocupación previa.
  3. Obtener o retener vivienda.
  4. Obtener o retener licencias o permisos, incluyendo pero no limitado a, licencias para vehículo de motor, licencias de operador de vehículo de motor y de chofer, y licencias ocupacionales o profesionales.
- C.** “Discriminación” para propósitos de esta sección quiere decir cualquier denegación de derechos civiles por motivos de hospitalización o tratamiento externo no relacionado a la capacidad actual de la persona para cumplir con las normas aplicables a toda persona. Las solicitudes para posiciones, licencias y vivienda no contendrán petición de información que pueda fomentar tal discriminación.
- D.** Al ser dado de alta de cualquier agencia de tratamiento o evaluación, se dará al paciente notificación por escrito sobre las provisiones de esta sección.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

### ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

#### R9-21-301. General Provisions

- A.** Responsibilities of the regional authority, clinical team, and case manager.
1. The regional authority is responsible for providing, purchasing, or arranging for all services identified in ISPs.
    - a. The regional authority shall perform all intake and case management for its region. The regional authority may contract with a mental health agency to perform intake or case management but only with the written approval of the Administration, which may be given in its sole discretion.
    - b. Other services may be provided directly by programs operated by the Administration or by the regional authority through contracts with service providers, or through arrangements with other agencies or generic providers.
  2. The regional authority and the clinical team shall work diligently to ensure equal access to generic services for its clients in order to integrate the client into the mainstream of society.
  3. The initial clinical team shall work to meet the individual's needs from the date of application or referral for services until such time as eligibility is established and an ISP is developed.
  4. The assigned clinical team shall be primarily responsible for providing continuous treatment, outreach and support to a client, for identifying appropriate behavioral health services or community services, and for developing, implementing and monitoring ISPs for clients.
  5. The case manager, in conjunction with the clinical team, shall:

- a. Locate services identified in the ISP;
  - b. Confirm the selection of service providers and include the names of such providers in the ISP;
  - c. Obtain a written client service agreement from each provider;
  - d. Be responsible for ensuring that services are actually delivered in accordance with the ISP; and
  - e. Monitor the delivery of services rendered to clients. Monitoring shall consider, at a minimum, the consistency of the services with the goals and objectives of the ISP.
- 6.** The case manager shall also be responsible to:
- a. Initiate and maintain close contact with clients and service providers;
  - b. Provide support and assistance to a client, with the client's permission and consistent with the client's individual needs;
  - c. Ensure that each service provider participates in the development of the ISP for each client of the service provider;
  - d. Ensure that each inpatient facility, according to R9-21-312, develops an ITDP that is integrated in and consistent with the ISP;
  - e. Assess progress toward, and identify impediments to, the achievement of the client's goals and objectives identified in the ISP;
  - f. Promote client involvement in the development, review, and implementation of the ISP;
  - g. Attempt to resolve problems and disagreements with respect to any component of the ISP;
  - h. Assist in resolving emergencies concerning the implementation of the ISP;
  - i. Attend all periodic reviews of the ISP and ITDP meetings;
  - j. Assist in the exploration of less restrictive alternatives to hospitalization or involuntary commitment; and
  - k. Otherwise coordinate services provided to the client.
- 7.** If a case manager is assigned to a client who, at any time, is admitted to an inpatient facility, the case manager shall ensure the development, modification or revision of a client's ISP and the integration of the ITDP according to this Article.
- a. The inpatient facility clinician responsible for coordinating the ITDP shall immediately notify the client's case manager of the time of the admission and ensure that all treatment and discharge planning includes the case manager.
  - b. The case manager shall be provided notice of all treatment and discharge meetings, shall participate as a full member of the inpatient facility treatment team in such meetings, shall receive periodic and other reports concerning the client's treatment, and shall be responsible for identifying and securing appropriate community services to facilitate the client's discharge.
  - c. If no case manager has been assigned, the inpatient facility clinician primarily responsible for the client's inpatient care shall, within three days of admission, make a referral to the appropriate regional authority for the appointment of a case manager.
  - d. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the clinically appropriate discharge of a client from an inpatient facility.

- e. Inpatient facilities shall establish a mechanism for the credentialing of case managers and other members of the clinical team in order that they may participate in ITDP meetings.
- B. Client participation in service planning.**
  1. It is the responsibility of the regional authority and its service providers to engage in service planning, including the provision of assessments, case management, ISPs, ITDPs, and service referrals, according to the provisions of these rules for the benefit of clients requesting, receiving or referred for behavioral health services or community services. Clients and the clients' guardians may refuse to participate in or to receive any service planning. In the event of such refusal, service planning shall not be provided unless:
    - a. There is an emergency in which a qualified clinician determines that immediate intervention is necessary to prevent serious harm to the client or others; or
    - b. The client is subject to court-ordered evaluation or treatment.
  2. A client's refusal to accept a particular service, including case management services, or a particular mode or course of treatment, shall not be grounds for refusing a client's access to other services that the client accepts.
  3. A physical examination shall not be conducted over a client's refusal unless the examination is consented to by the client's guardian, or the examination is otherwise required by court order.
  4. A decision to provide services, including assessment, service planning, and case management services, to a client who is refusing such services, or a decision not to provide such services to such an individual, may be appealed according to the provisions of R9-21-401. This subsection does not limit the rights of a client to accept, reject, or appeal particular results of the service planning process as identified in other applicable provisions of these rules.
- C. Clients with special needs.**
  1. Whenever, according to an assessment or in the development or review of any plan prepared under this Article, it is determined that a client is a client who needs special assistance or a client who needs counsel or advice in making treatment decisions or in enforcing the client's rights, the case manager shall:
    - a. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committee of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
    - b. If the client does not have a guardian, identify a friend, relative, or other person who is willing to serve as a designated representative of the client.
  2. The clinical team shall make arrangements to have qualified interpreters or other reasonable accommodations, including qualified interpreters for the deaf, present at any assessment, meeting, service delivery, notice, review, or grievance for clients who cannot converse adequately in spoken English.
  3. Clients who are incarcerated in jails shall receive ISPs in accordance with R9-21-307. If legitimate security requirements of any jail in which a client is incarcerated require a reasonable modification of a specific procedure set forth in this rule, the clinical team may modify the method for preparing the ISP only to the extent necessary to accommodate the legitimate security concerns.
    - a. No modification may unreasonably restrict the client's right to participate in the ISP process;
    - b. No modification may alter the standards for developing an ISP, the client's right to obtain services identified in the ISP, as provided in this Article, or the client's right to appeal any aspect of treatment planning according to R9-21-401, including the decision to modify the process for security reasons.
- D. Notices to the individual.**
  1. Any individual or mental health agency required to give notice to an individual of any documents, including eligibility determinations, assessment reports, ISPs, and ITDPs according to this rule shall do so by:
    - a. Providing a copy of the document to the individual;
    - b. Providing copies to any designated representative and guardian;
    - c. Personally explaining to the individual and designated representative and/or guardian any right to accept, reject, or appeal the contents of the document and the procedures for doing so under this Article.
  2. Individuals requesting or receiving behavioral health services or community services shall be informed:
    - a. Of the right to request an assessment;
    - b. Of the right to have a designated representative assist the client at any stage of the service planning process;
    - c. Of the right to participate in the development of any plan prepared under this Article, including the right to attend all planning meetings;
    - d. Of the right to appeal any portion of any assessment, plan, or modification to an assessment or plan, according to R9-21-401;
    - e. Of the Administration's authority to require necessary and relevant information about the individual's needs, income, and resources;
    - f. Of the availability of assistance from the regional authority in obtaining information necessary to determine the need for behavioral health services or community services;
    - g. Of the Administration's or mental health agency's authority to charge for services and assessments;
    - h. That if the individual declines the services of a case manager or an ISP, the individual has the right to apply for services at a subsequent time; and
    - i. That if the individual declines any particular service or treatment modality, it will not jeopardize other accepted services.
- E. Extensions of time.**
  1. The time to initiate or complete eligibility determinations, assessments, ISPs, and other actions according to this Chapter may be extended if:
    - a. There is substantial difficulty in scheduling a meeting at which all necessary participants can attend;
    - b. The client fails to keep an appointment for assessment, evaluation, or any other necessary meeting;
    - c. The client is capable of but temporarily refuses to cooperate in the preparation of the plan or completion of an assessment or evaluation;
    - d. The client or the client's guardian and/or designated representative requests an extension of time or
    - e. Additional documentation has been requested but has not yet been received.
  2. An extension under this rule shall not exceed the number of days incurred by the delay and in no event may exceed

20 days, unless the whereabouts of the client are unknown.

3. For an SMI eligibility determination, an extension of time shall only apply if an applicant agrees to the extension.

**F.** Meeting attendance through telecommunications link. Attendance by any person at any meeting that is required or recommended according to this Article may be accomplished through a telecommunications link that is contemporaneous with the meeting.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-302. Identification, Application, and Referral for Services of Persons with Serious Mental Illness

- A.** Each regional authority shall develop and implement outreach programs that identify individuals within the authority's geographic area, including persons who reside in jails, homeless shelters, or other settings, who are seriously mentally ill.
  1. Inpatient facilities shall identify individuals in their respective facilities who are seriously mentally ill.
  2. An individual identified under this subsection shall be referred in writing to the appropriate regional authority for a determination of eligibility as provided in this Article.
- B.** An individual desiring behavioral health services or community services under this Article may apply to the appropriate regional authority for a determination of eligibility. Application may be made by the individual or on the individual's behalf by the person's guardian, designated representative, or other appropriate individuals such as a family member or staff of a mental health agency. Individuals may apply for behavioral health services or community services regardless of whether they reside in the community, an inpatient facility, a county jail, a homeless shelter, or any other location within the state of Arizona.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

#### R9-21-303. Eligibility Determination and Initial Assessment

- A.** Upon receipt of a request or referral for a determination of whether an individual is eligible for services under this Chapter, a regional authority shall schedule an appointment for an initial meeting with the applicant by a qualified clinician, to occur no later than seven days after the regional authority receives the request or referral.
- B.** During the initial meeting with an applicant by a qualified clinician, the qualified clinician shall:
  1. Obtain consent to an assessment of the applicant from the applicant or, if applicable, the applicant's guardian;
  2. Provide to the applicant and, if applicable, the applicant's guardian, the information required in R9-21-301(D)(2), a

client rights brochure, and the notice required by R9-21-401(B);

3. Determine whether the applicant is competent, according to R9-21-206;
4. If, during the initial meeting with an applicant by a qualified clinician, the qualified clinician is unable to obtain sufficient information to determine whether the applicant is eligible for services under this Chapter:
  - a. Obtain authorization from the applicant or, if applicable, the applicant's guardian, for release of information, if applicable;
  - b. Request the additional information the qualified clinician needs in order to make a determination of whether the applicant is eligible for services under this Chapter; and
5. Initiate an assessment according to R9-21-305.
- C.** The qualified clinician in subsection (B) shall obtain information necessary to make an eligibility determination, including:
  1. Identifying data and residence, including a social security number if available;
  2. The reasons for the request or referral for services;
  3. The individual's psychiatric diagnosis;
  4. The individual's present level of functioning, based upon the criteria set forth in the definition of "seriously mentally ill";
  5. The individual's history of mental health treatment;
  6. The individual's abilities, needs, and preferences for services; and
  7. A preliminary determination as to the individual's need for special assistance.
- D.** If at any time during the course of the eligibility process the qualified clinician determines that the individual has a current case manager, a current assessment, or an ISP, the clinician shall notify the client's case manager and terminate the eligibility process.
- E.** To be eligible for behavioral health services or community services according to this Chapter the individual must be:
  1. A resident of the state of Arizona, and
  2. Seriously mentally ill.
- F.** The qualified clinician in subsection (B) shall determine whether an applicant is eligible for services under this Chapter and provide written notice of the SMI eligibility determination to the applicant or, if applicable, the applicant's guardian according to the following time-frames:
  1. If the qualified clinician obtains sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this Chapter, within three days of the initial meeting with the applicant by the qualified clinician;
  2. If the qualified clinician does not obtain sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this Chapter, at the earliest of:
    - a. Within three days of obtaining sufficient information to determine whether the applicant is eligible for services under this Chapter, or
    - b. The time provided according to R9-21-301(E).
- G.** At the time a qualified clinician provides an applicant with written notice of an SMI eligibility determination according to subsection (F), the qualified clinician shall:
  1. Provide written notice to the applicant:
    - a. That the applicant has the right to appeal the SMI eligibility determination according to R9-21-401, including the right to an administrative hearing according to A.R.S. § 41-1092.03; and



- b. That, if the applicant is not eligible for services according to this Chapter, the applicant may reapply at any time; and
  - 2. If the applicant is eligible for services under this Chapter:
    - a. Serve as the client's case manager or arrange for the provision of case management services for the client; and
    - b. Initiate with the client the development of a clinical team that may include:
      - i. Behavioral health professionals,
      - ii. Professionals other than behavioral health professionals,
      - iii. Behavioral health technicians,
      - iv. Family members,
      - v. Paraprofessionals, and
      - vi. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.
- H. Nothing in this rule shall be construed to require the qualified clinician to make the determination of whether the applicant is eligible for services under the Arizona Health Care Cost Containment System Administration (AHCCCSA) according to A.R.S. Title 36, Chapter 29.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-304. Interim and Emergency Services

- A. At an applicant's first visit with a qualified clinician and after a determination of eligibility the qualified clinician shall:
  - 1. Determine whether the applicant or client needs interim services prior to the development and acceptance of the ISP;
  - 2. If the applicant or client needs interim services, identify the interim services that are consistent with the applicant's or client's preferences and needs and the findings in the assessment;
  - 3. Arrange for the provision of the interim services identified by the qualified clinician; and
  - 4. Document in the client's record the interim services that shall be provided to the applicant or client.
- B. If a qualified clinician determines that an emergency exists necessitating immediate intervention, emergency or crisis services shall be provided immediately.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

#### R9-21-305. Assessments

- A. The following individuals may participate in and contribute to the assessment of a client:
  - 1. The client;
  - 2. The qualified clinician in R9-21-303(B);

- 3. The client's case manager;
    - 4. Each individual on the client's clinical team, including:
      - a. Behavioral health professionals,
      - b. Professionals other than behavioral health professionals,
      - c. Behavioral health technicians,
      - d. Family members,
      - e. Paraprofessionals, and
      - f. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.
  - B. The individuals contributing to the assessment of a client shall not consider the availability of services, but shall consider the client's circumstances and evaluate all available information including:
    - 1. The information obtained during the initial meeting with the client by a qualified clinician according to R9-21-303(B);
    - 2. Written information such as the client's clinical history, records, tests, and other evaluations;
    - 3. Information from family, friends, and other individuals.
  - C. An assessment shall include:
    - 1. An evaluation of the client's:
      - a. Presenting concerns;
      - b. Behavioral health treatment;
      - c. Medical conditions and treatment;
      - d. Sexual behavior and, if applicable, sexual abuse;
      - e. Substance abuse, if applicable;
      - f. Living environment;
      - g. Educational and vocational training;
      - h. Employment;
      - i. Interpersonal, social, and cultural skills;
      - j. Developmental history;
      - k. Criminal justice history;
      - l. Public and private resources;
      - m. Legal status and apparent capacity;
      - n. Need for special assistance; and
      - o. Language and communication capabilities;
    - 2. A risk assessment of the client;
    - 3. A mental status examination of the client;
    - 4. A summary, impressions, and observations;
    - 5. Recommendations for next steps;
    - 6. Diagnostic impressions of the qualified clinician; and
    - 7. Other information determined to be relevant.
  - D. Within 45 days of a request or referral for an SMI eligibility determination, a qualified clinician shall prepare an assessment report based on the information obtained according to R9-21-303 and this Section, including:
    - 1. The development of a long-term view by the client with assistance from the clinical team that establishes a method of integration for living, employment and social conditions that the client wishes to achieve over the next three years;
    - 2. A summary of the information gathered during the eligibility and assessment processes;
    - 3. An identification of the client's legal status, resources, and assessed strengths and actual needs, regardless of the availability of services to meet that need, in each area of assessment identified in subsection (C) above;
    - 4. An analysis of the major findings of the mental health assessment, including a description of the nature and severity of any illness and a diagnosis in terms set forth in the DSM;
    - 5. The client's preferences regarding services to be provided;

6. A description of any additional interim services which are required and plans for the referral of the client to additional interim services or the continuation of interim services already provided;
  7. An identification of further evaluations which the clinical team deem necessary to determine the services appropriate to the client's needs;
  8. An identification of information that could not be obtained due to the client's circumstances or unavailability; and
  9. A functional assessment of the client's current status in terms of independent living, employment (or retirement), and social integration and analysis of the support or skills, if any, necessary to achieve the client's long-term view.
- E.** The qualified clinician shall arrange for any further evaluations recommended by the clinical team. If the client needs assessment in an area beyond the ability or expertise of the clinical team, such assessment shall be conducted by professionals with appropriate credentials, with the client's consent. The need for further evaluations shall not unreasonably delay the preparation of the ISP.
- F.** If a qualified clinician determines that the client is a client who needs special assistance, the case manager shall:
1. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committees of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
  2. If the client does not have a guardian, identify a friend, relative or other person who is willing to serve as a designated representative of the client.
- G.** Upon completion of the assessment report, copies shall be sent to the client, the designated representative, if any, the guardian, and all service providers who have been identified by the case manager or regional authority to serve the client.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

#### R9-21-306. Identification of Potential Service Providers

- A.** As soon as needs of the client for particular services are identified through the eligibility determination, assessment, or further evaluation processes, the clinical team in conjunction with the client shall begin considering and choosing potential service providers to participate in the development of the client's ISP.
1. Within five days of the completion of the assessment report, the clinical team and the client shall complete the identification of service providers most appropriate to meet the client's needs.
  2. The case manager shall promptly contact the identified providers to determine their ability to serve the client.
  3. Within 10 days of the completion of the assessment report, the case manager shall request identified providers able to serve the client to participate in the development of the client's Individual Service Plan. All identified providers shall be provided notice of the time and place of the ISP meeting.
- B.** The clinical team, in conjunction with the client, shall determine which provider(s) are the most appropriate to serve the client. The determination of appropriateness shall consider:
1. The client's preferences for the type, intensity, and location of services;
  2. The capacity and experience of the provider in meeting the client's assessed needs;
  3. The proximity of the provider to the client's family and home community;
  4. The availability and quality of services offered by the provider; and
  5. Other factors deemed relevant by the case manager and clinical team.
- C.** The clinical team shall provide sufficient information to the identified service providers to allow them to understand the client's long-term view, strengths, needs, and required services and to take an active role in the ISP meeting.
- D.** All mental health agencies currently providing services to the client shall bring to the ISP meeting a written description of the nature, type, and frequency of services provided or to be provided by the agency.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

#### R9-21-307. The Individual Service Plan

- A.** General provisions.
1. An individual service plan (ISP) shall be developed by the clinical team and each client.
  2. The ISP shall include the most appropriate and least restrictive services, consistent with the client's needs and preferences, as identified in the assessment conducted according to R9-21-305, and without regard to the availability of services or resources.
  3. The ISP shall identify those services which maximize the client's strengths, independence, and integration into the community.
  4. Generic services available to the general public should be utilized, to the maximum extent possible, when adequate to meet the client's needs and if access can be arranged by the case manager or client.
  5. If all needed services are not available, a plan for alternative services shall detail those services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs, and least restrictive of the client's freedom.
  6. The clinical team shall solicit and actively encourage the participation of the client and guardian.
  7. The clinical team shall inform the client of the right to have a designated representative throughout the ISP process and to invite family members or other persons who could contribute to the development of the ISP. The case manager shall seek to obtain a representative for clients who need special assistance or otherwise have limited capacity to articulate their own preferences and to protect their own interests in the ISP process and shall advise the relevant human rights committee that the client has been determined to need special assistance.

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8. The ISP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
  9. The ISP shall incorporate a specific description of the client objectives, services, and interventions for each mental health agency which will provide services to the client. Each existing service provider will bring to the ISP meeting a detailed written description of the objectives and services currently in effect for the client.
  10. For residents of an inpatient facility, the facility's treatment and discharge plan shall be developed according to R9-21-312 and shall be incorporated in the ISP.
  11. Prior to the planned discharge of a new client from an inpatient facility, the clinical team shall develop an ISP which describes the community services, including alternative housing and residential supports, that will be provided when the client leaves the facility.
  12. The ISP shall be written in language which can be easily understood by a lay person.
  13. In developing the ISP, the case manager shall facilitate resolution of differences among service providers and, if resolution is not achieved, shall refer the matter to the regional authority, which shall resolve the matter in accordance with the Administration's policy.
- B. The individual service plan meeting.**
1. Within 20 days of the completion of the assessment report, the case manager shall convene an ISP meeting at a convenient time and place for the client, guardian, clinical team, and potential service providers.
  2. The case manager shall arrange for the client's transportation, if needed, to the ISP meeting.
  3. The case manager shall notify in writing the following persons of the time, date and location of the ISP meeting at least 10 days prior:
    - a. The client, any designated representative and guardian, including an invitation to submit relevant information in writing if their attendance is impossible;
    - b. Clinicians involved in the assessment or further evaluation;
    - c. All current and potential service providers;
    - d. All members of the client's clinical team;
    - e. Family members, with the client's permission;
    - f. Other persons familiar with the client whose presence at the meeting is requested by the client;
    - g. Any other person whose participation is not objected to by the client and who, in the judgment of the case manager, will contribute to the ISP.
  4. The case manager shall chair the ISP meeting which shall include a discussion of:
    - a. The client's supports or skills necessary to achieve the client's long-term view in each of the areas listed in R9-21-305(B);
    - b. The findings and conclusions obtained during the assessment, further evaluations, including a list of further evaluations to be completed, and any interim services provided;
    - c. Any existing ITDP according to R9-21-312;
    - d. The client's preferences regarding services;
    - e. Recommended long-term or alternative services;
    - f. Current or proposed service providers, including the need to have service providers with staff who have language and communications skills other than English if necessary to communicate with the client;
    - g. Recommended dates for commencement of each service or date each service commenced;
- h. The methods and persons to ensure that services are provided as set forth in the ISP, adequately coordinated, and regularly monitored for effectiveness;
  - i. The procedure for completion and implementation of the ISP process, including the procedures for accepting, rejecting, or appealing the ISP; and
  - j. The procedure for clients or service providers to request changes in the ISP.
- C. The individual service plan shall include:**
1. A description of the client's long-term view and the client's preferences, strengths, and needs in all relevant areas listed in R9-21-305(C), including present functioning level and medical condition, with documentation of any chronic medical condition which requires regular monitoring or intervention.
  2. A description of the most appropriate and least restrictive services consistent with the client's needs and without reference to existing resources.
  3. A statement of whether the client requires service providers with staff who are competent in any language other than English in order to communicate with the client.
  4. Target dates for commencement of each service or date each service commenced and their anticipated duration.
  5. Long range goals for each service which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible for the client, consistent with the client's preference, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and adopts.
  6. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts.
  7. Expected dates of completion for each objective;
  8. Persons and service providers responsible for each objective.
  9. Identification of each generic or service provider responsible for providing the specific service required to meet each of the client's needs, including the name and address and telephone number of the provider and the location where the service will be provided.
  10. A detailed description of the client objectives and services for each mental health agency which will provide services to the client.
  11. Identification of any need for alternative housing or residential setting, including the support and monitoring to be provided after any change in housing or residential setting as provided in R9-21-310(D).
  12. Based upon assessments and other available information, a determination of:
    - a. The client's capacity to:
      - i. Make competent decisions on matters such as medical and mental health treatment, finances, and releasing confidential information;
      - ii. Participate in the development of the ISP; and
      - iii. Independently exercise the client's rights under this Chapter.
    - b. The client's need for guardianship or other protective services or assistance.
    - c. The client's need for special assistance.
  13. A list of the assessments which were not completed due to the client's current mental or physical condition or due to the clinical team's inability to access records together with a statement of the causes and plans to obtain these assessments.

14. A description of the methods and persons responsible for ensuring that services are:
  - a. Provided as set forth in the ISP;
  - b. Adequately coordinated; and
  - c. Regularly monitored for effectiveness.
15. A statement of the right of the client, designated representative, or guardian to accept or reject the ISP, request other services, or appeal the ISP or any aspect of the ISP.
16. A statement that the client's acceptance of the ISP constitutes consent to the services enumerated in the ISP.

**D. Preparation and distribution of the individual service plan.**

1. Within seven days of the ISP meeting, but no later than 90 days from the date of a referral or request for an SMI eligibility determination, the case manager shall prepare and distribute the ISP as provided herein.
2. The case manager or other clinical team member shall personally deliver to and review the ISP with the client.
3. The ISP shall be mailed or otherwise distributed to the following persons:
  - a. The client's designated representative and/or guardian;
  - b. The members of the clinical team; and
  - c. All existing or potential service providers.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-308. Acceptance or Rejection of the Individual Service Plan**

- A. Within seven days of the distribution of the ISP, the case manager shall contact the client concerning acceptance or rejection of all or any portion of the ISP, or request for other services, if there has not been acceptance, rejection or a request prior to that date.
- B. If the client or guardian does not object to the ISP within 30 days of receipt of the plan, the client shall be deemed to have accepted the ISP.
- C. If the client or guardian rejects some or all of the services identified in the ISP, or requests other services, the case manager shall provide written notice to the client or guardian of the right to immediately appeal the ISP according to R9-21-401 or to meet with the clinical team within seven days of the rejection to discuss the plan and suggest modifications. The case manager shall arrange the meeting at a convenient time and place for the client, any designated representative and/or guardian, and the clinical team.
- D. If the client's proposed modifications are adopted by the clinical team, the case manager shall arrange for approval of the modifications by all service providers.
- E. If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client or guardian of the right to appeal the ISP.
- F. A client or guardian who rejects the ISP may accept some or all of the identified services pending the outcome of the meeting with the clinical team or an appeal.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective

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**R9-21-309. Selection of Service Providers**

- A. Within seven days of the distribution of the ISP to the service providers identified in the ISP, the case manager, after consultation with the clinical team and the provider, shall determine whether each of these providers are capable of serving the client.
  1. A contracted service provider shall not refuse to serve a client except for good cause related to the inability of the service provider to safely and professionally meet the client's needs as identified in the ISP.
  2. If a contracted service provider believes it is incapable of meeting the client's needs or of implementing the ISP, the provider shall inform the case manager in writing within five days of receipt of the ISP. A contracted service provider shall specify the reasons for its conclusion.
- B. If the clinical team determines that a housing, residential or vocational service provider identified in the ISP is not capable of serving the client, the case manager shall, with the approval of the clinical team, identify another provider who is qualified to provide the services identified in the client's ISP, introduce the client to the new service provider, and modify the ISP as needed.
- C. If the clinical team determines that an identified provider, other than a housing, residential or vocational service provider, is not capable of serving a client, the case manager shall, with the approval of the clinical team, identify another provider that is qualified to provide the services identified in the client's ISP. The case manager shall promptly distribute the ISP to the alternative service provider.
- D. All selected service providers shall sign the ISP and implement the identified services.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-310. Implementation of the Individual Service Plan**

- A. Upon acceptance of the ISP by the client or as defined in a court order, services shall be initiated in accordance with the timetable identified in the ISP.
- B. If all or a portion of the ISP is rejected by the client or guardian, the plan shall not be implemented and services shall not be provided unless the client or guardian consents to specific services.
- C. For each client who is identified as needing alternative housing, a new residential setting, or a residential support service, the case manager shall inform the client of the need for an alternative living arrangement and shall use the case manager's best efforts to obtain appropriate housing or residential supports. These efforts may include showing the client the house or apartment in which the client could reside, introducing the client to other residents of the residential setting, as appropriate, and permitting the client to live in the alternative setting on a trial basis. All clients shall be informed that they may elect to move at any time in the future subject to the terms

of any lease, mortgage, contract, or other legal agreement between the client and the housing provider.

- D. For at least the first two months after a client moves to a new residential setting, the case manager shall coordinate and monitor support services, as identified in the client's ISP, in order to foster the maintenance of the client's key relationships with others, to provide necessary orientation, and to ensure a smooth and successful transition into the new setting.
- E. All contracts with service providers shall include:
  - 1. A provision that the service provider shall abide by the rules contained in this Chapter and shall not alter, terminate, or otherwise interrupt services required under the ISP except parts of the ISP that have been modified according to R9-21-314;
  - 2. A provision that the service provider shall cooperate with the Administration in collecting data necessary to determine if the Administration is meeting its obligations under this Chapter and A.R.S. Title 36, Chapter 5, Article 10; and
  - 3. A provision that the service provider agrees to maintain current client records that document progress toward achievement of ISP goals and objectives and that meet applicable requirements of law, contract, and professional standards.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-311. Alternative Services

- A. If the services identified in the ISP are not currently available, the clinical team shall develop an alternative plan for alternative services, based upon the client's strengths, needs, and preferences as set forth in the assessment conducted according to R9-21-305. The plan for alternative services shall be developed after the preparation of the ISP.
- B. The plan for alternative services shall be developed according to the same procedures for the preparation of an ISP and may be developed at the same meeting with the ISP if the clinical team is aware that appropriate services are not currently available. If at an ISP meeting the clinical team does not know whether the appropriate services are available, the clinical team shall use diligent efforts to locate the identified services. If appropriate services are determined to be unavailable, the ISP meeting shall be reconvened to develop an ISP for alternative services.
- C. The plan for alternative services shall identify those available mental health and generic services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs and least restrictive of the client's freedom.
- D. The plan for alternative services shall contain a list of appropriate but unavailable services and the projected date for the initiation of each service.
- E. If the clinical team determines that a recommended service is unavailable or does not exist, it shall forward a description of that service to the director of the regional authority. The director shall:
  - 1. Use best efforts to locate the needed service through existing services or reallocated resources;

- 2. Forward a description of the unmet service need to the Administration, if the appropriate service cannot be located or developed through existing services or reallocated resources; and
- 3. maintain a list of unmet service needs.
- F. The Administration shall use information concerning unmet service needs to provide the appropriate service through existing services or reallocated resources or, if necessary, to plan for the development of the needed services.
- G. Nothing in this rule shall effect or modify any provision of Arizona law with respect to a client's right to appropriate services.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-312. Inpatient Treatment and Discharge Plan

- A. General provisions.
  - 1. Every client of an inpatient facility shall have an Inpatient Treatment and Discharge Plan (ITDP).
  - 2. An ITDP shall be developed by the inpatient facility's treatment team, the case manager and other members of the clinical team, as appropriate.
  - 3. The ITDP shall include the most appropriate and least restrictive services available at the inpatient facility, as well as a plan for the client's discharge to the community.
  - 4. The ITDP shall identify those treatment interventions and services which maximize the client's strengths, independence, and integration into the community.
  - 5. The ITDP shall be developed with the fullest possible participation of the client and any designated representative and/or guardian.
  - 6. The ITDP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
  - 7. The ITDP shall be written in language which can be easily understood by a lay person.
  - 8. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the appropriate discharge of a client from an inpatient facility.
- B. The individual treatment and discharge plan meeting.
  - 1. The case manager shall encourage the client to have a designated representative assist the client at the meeting and to have other persons, including family members, attend the meeting. The case manager shall ensure that the human rights advocate is notified of the time and date of the ITDP for clients who need special assistance.
  - 2. The following persons shall be invited to attend the ITDP meeting:
    - a. The client;
    - b. Any designated representative and/or guardian;
    - c. Family members, with the client's permission;
    - d. Members of the client's inpatient facility treatment team;
    - e. The case manager and other members of the clinical team, as appropriate;

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- f. Other persons familiar with the client whose presence at the meeting is requested by the client; and
  - g. Any other person whose participation is not objected to by the client and who will, in the judgment of the case manager, contribute to the ITDP meeting.
- 3. The ITDP meeting shall include a discussion of:
  - a. A review of the ISP's long-term view;
  - b. If necessary, a new functional assessment of the supports or skills necessary to achieve the client's long-term view;
  - c. The client's needs in terms of assessed strengths and needs;
  - d. The client's preferences regarding services;
  - e. Existing services if any;
  - f. The procedure for completion and implementation of the ITDP process, including the procedures for accepting, rejecting, or appealing the ITDP;
  - g. The procedure for clients or the inpatient facility to request changes in the ITDP; and
  - h. The methods to ensure that services are provided as set forth in the ITDP and regularly monitored for effectiveness.
- C. Inpatient treatment and discharge plan.
  - 1. The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall develop a preliminary ITDP within three days, and a full ITDP within seven days thereafter, of the client's admission. Where a client's anticipated stay is less than seven days, an acute inpatient facility shall develop a preliminary ITDP within one day and a full ITDP within three days of a client's admission.
  - 2. The ITDP shall be consistent with the goals, objectives, and services set forth in the client's ISP and shall be incorporated into the ISP.
  - 3. The ITDP shall include:
    - a. The client's preferences, strengths, and needs;
    - b. A description of appropriate services to meet the client's needs;
    - c. For non-acute facilities, long-range goals which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
    - d. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
    - e. Expected dates of completion for each objective;
    - f. Persons responsible for each objective;
    - g. The person responsible for ensuring that services are actually provided and are regularly monitored; and
    - h. The right of the client or guardian to accept or reject the ITDP, request other services, or appeal the ITDP or any aspect of the ITDP.
- D. Preparation and distribution of the ITDP.
  - 1. Within three days of the ITDP meeting, the treatment team coordinator shall prepare and distribute the ITDP.
  - 2. The ITDP shall be personally presented and explained to the client by the case manager.
  - 3. The ITDP shall be mailed or otherwise distributed to the following persons:
    - a. The client's designated representative and guardian, if any;
    - b. The case manager and members of the clinical team; and
    - c. The members of the inpatient facility's treatment team.
- E. Acceptance or rejection of the ITDP.
  - 1. Within two days of the date when the ITDP was distributed, the client shall be contacted by the case manager concerning acceptance or rejection of the ITDP, if there has not been acceptance or rejection prior to that date.
  - 2. If the client or guardian does not object to the ITDP within 10 days of the date when the ITDP was distributed, the client shall be deemed to have accepted the ITDP.
  - 3. If the client or guardian rejects some or all of the treatment interventions or services identified in the ITDP or requests other services, the case manager shall provide written notice to the client of the right to meet with the treatment team coordinator within five days of the rejection to discuss the plan and to suggest modifications, or to immediately appeal the plan according to R9-21-401.
  - 4. If modifications are agreed to by the treatment team coordinator and the client or guardian, the treatment team coordinator shall arrange for approval of the modifications by all members of the inpatient facility's treatment team, the case manager, and members of the clinical team, as appropriate.
  - 5. If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client and guardian of the right to appeal according to R9-21-401. The client or guardian may appeal findings or recommendations in the ITDP within 30 days of receipt of the plan.
  - 6. A client or guardian who rejects the ITDP may accept some or all of the identified treatment interventions or services pending the outcome of the meeting with the treatment team coordinator or an appeal.
- F. The updated ITDP. The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall review the ITDP as frequently as necessary, but at least once within the first 30 days of completing the plan, every 60 days thereafter during the first year, and every 90 days thereafter during any subsequent years that the client remains a resident of the facility.
- G. Incorporation into the individual service plan.
  - 1. If the clinical team determines that the ITDP is appropriate to meet the client's needs, least restrictive of the client's freedom, and consistent with the ISP, it shall approve the ITDP by incorporating it into the ISP. If the clinical team disapproves the ITDP, it shall convene an ISP meeting, which includes the inpatient facility treatment team, to prepare a revised ITDP.
  - 2. The clinical team, with the assistance of the inpatient facility's treatment team, shall be responsible for implementing the plan for the client's discharge.
  - 3. The case manager will provide notice to those providers identified in the client's ISP three days prior to the client's actual discharge, except that the failure to provide such notice shall not delay discharge.
  - 4. The case manager shall meet with the client within five days of the client's discharge to ensure that the ISP is being implemented.
  - 5. The case manager shall review the ISP with the clinical team within 30 days of the discharge to determine whether any modifications are appropriate, consistent with the standards and requirements set forth in R9-21-314.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-313. Periodic Review of Individual Service Plans****A. General provisions.**

1. Where an ISP includes residential, vocational, or other primary service providers that do not currently serve the client, the first ISP review shall be held within 30 days from the date on which all such providers have initiated services to client. Each service provider shall bring to the review a detailed description of the objectives and services currently in effect for the client.
2. Where the ISP includes only primary service providers that currently serve the client, the first ISP review shall be held within six months of the date the ISP is accepted by the client or the date on which any appeal is concluded.
3. Thereafter, ISP reviews shall be conducted at least every six months and more frequently as needed. The ISP review shall be chaired by the case manager.
4. The purpose of the ISP review is to ensure that services continue to be, to the maximum extent possible, appropriate to the client's needs and least restrictive of the client's freedom.
5. The review shall be conducted with the fullest possible participation of the client and any designated representative and/or guardian.

**B. The ISP review.**

1. At least 10 days prior to the ISP review meeting, the case manager shall invite, in writing, the following persons to attend the meeting:
  - a. The client and any designated representative and/or guardian;
  - b. Family members, with the permission of the client;
  - c. Members of the client's clinical team;
  - d. Representatives of each of the client's service providers;
  - e. Any other person familiar with the client whose participation is requested by the client; and
  - f. Any other person whose participation is not refused by the client and who, in the judgment of the case manager, will contribute to the ISP review.
2. The ISP review shall, to the extent possible given the circumstances of the client and the availability of information, consider:
  - a. Whether there has been any change in the clinical, social, training, medical, vocational, educational and personal needs of the client;
  - b. Whether the client needs any further assessment or evaluations;
  - c. Whether the services being provided to the client continue to be appropriate to meet the client's needs, least restrictive of the client's freedom, consistent with the client's preferences, and as integrated as possible in the client's home community;
  - d. Whether there has been progress towards attainment of the long-term view, and each of the goals and objectives stated in the ISP;
  - e. Whether to reaffirm, modify or delete each goal and objective, together with the reasons for these actions;

- f. Whether there has been any change in the legal status of the client, in the necessity or advisability of having a guardian or conservator appointed or removed, or in the client's need for special assistance;
  - g. Whether any change in the client's circumstances should result in a modification of the client's priority of need for services not currently provided; and
  - h. Whether there has been any change in the availability of services formerly determined to be needed but not then available.
3. The client, any designated representative and/or guardian, and clinical team will review each service provider's detailed description of current objectives and services to determine whether it is consistent with client's needs, least restrictive of the client's freedom, and designed to maximize the client's independence and integration into the community.
    - a. If the detailed description is approved and accepted by the client, any designated representative and/or guardian, and the clinical team, it shall be incorporated into the updated ISP.
    - b. If the description of services is rejected, it shall be revised with the assistance of the service provider and, as revised, incorporated into the updated ISP.

**C. The updated ISP.**

1. Within seven days of the ISP review meeting, the case manager shall prepare an updated ISP which includes all of the elements set forth in R9-21-307(C).
2. The case manager shall personally meet with the client or guardian to explain the updated ISP. The updated ISP shall be mailed or otherwise distributed to the other participants of the review meeting.
3. The updated ISP is subject to the client acceptance, rejection, and requests for other service provisions of R9-21-308 and the appeal provisions of R9-21-401.
4. The updated ISP shall be implemented consistent with the provisions of R9-21-310.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-314. Modification or Termination of Plans**

- A.** Requests for modifications or termination of an ISP or any portion of an ISP may be initiated at the ISP review or at any other time by:
  1. The client;
  2. Any designated representative and/or guardian;
  3. A service provider; or
  4. Any member of the clinical team.
- B.** A request for modification or termination of an ISP shall be directed to the case manager.
- C.** The case manager shall give the client, the client's guardian and designated representative, appropriate service providers, and the client's clinical team written notice of any request for modification or termination of the ISP.
- D.** An ISP may be modified in order to more appropriately meet the client's needs, goals, and objectives. An ISP shall be modified where:

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1. The client withdraws consent to the ISP or any portion of the ISP;
  2. The client consents to services recommended as more suitable but previously refused by the client;
  3. The needs of the client have changed due to progress or lack of progress in meeting the client's goals and objectives;
  4. The proposed change will permit the client to receive services which are more consistent with the client's needs, less restrictive of the client's freedom, more integrated in the community, or more likely to maximize the client's ability to live independently;
  5. The client wants to change the long-term view and the focus of the ISP or no longer needs a service or services; or
  6. The client is no longer eligible for services according to R9-21-303.
- E.** The clinical team shall:
1. Be notified by a service provider of any proposed termination or modification of services in the ISP as soon as possible and always prior to its implementation;
  2. Promptly inform the client and any designated representative and/or guardian of the requested modification and seek the client's consent to implement such modification or termination; and
  3. Within 20 days of any request for modification or termination of an ISP, approve the request only if the request meets the requirements of subsection (D).
  4. Provide written notice of the right to appeal to the client and any designated representative and guardian in accordance with R9-21-401(B) whenever service to the client is to be terminated, suspended or reduced.
- F.** The case manager shall:
1. Incorporate the approved modification in the current ISP or prepare a revised ISP, as appropriate.
  2. Within five days of any approval by the clinical team, distribute the modified or revised ISP to the client, any designated representative and/or guardian, the members of the clinical team, and all service providers.
  3. Meet with the client or guardian to explain the modification or revision and the client's right to appeal according to R9-21-401.
- G.** If the client or any designated representative and/or guardian does not reject or appeal the termination or modification within 30 days of the date the modified ISP is distributed, the client shall be deemed to have accepted the termination or modification.
- H.** The client for whom a modification or termination is proposed or any designated representative and/or guardian may appeal a modification or termination according to R9-21-401.
- I.** If the clinical team denies the client's or guardian's request to modify or terminate an ISP, the client or the designated representative and/or guardian may appeal the denial according to R9-21-401.
- J.** No modification or termination of an ISP shall be made without the acceptance of the client or any designated representative and/or guardian, unless a qualified clinician determines that the modification or termination is required to avoid a serious or immediate threat to the health or safety of the client or others.
1. Except in an emergency, no requested termination of a client from a particular service or provider may be considered unless the standards and procedures set forth in R9-21-210 and the provisions of this rule are satisfied.
  2. The client may not be transferred from one program or location to another while an appeal is pending.
- K.** If a qualified clinician determines that the client is no longer eligible for services according to R9-21-303, the qualified clinician shall make a determination of non-eligibility, move to terminate services under the ISP and this rule, and notify in writing the client of the non-eligibility determination and of the right to appeal such determination, in accordance with R9-21-401. When appropriate, referral and provision for further treatment shall be made by the case manager or clinical team.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-315. Renumbered****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered to R9-21-401 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

# ARTICLE 4. APPEALS, GRIEVANCES, AND REQUESTS FOR INVESTIGATION FOR PERSONS WITH SERIOUS MENTAL ILLNESS

**R9-21-401. Appeals**

- A.** A client or an applicant may file an appeal concerning decisions regarding eligibility for behavioral health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency that made the determination.
1. Disagreements among employees of the Administration, the regional authority, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using the Administration's guidelines, rather than this Article.
  2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the Administration.
  3. The Office of Human Rights shall assist clients in resolving appeals according to R9-21-104.
  4. If a client or, if applicable, an individual on behalf of the client, files an appeal of a modification to or termination of a behavioral health service according to this Section, the client's service shall continue while the appeal is pending unless:
    - a. A qualified clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the client or another individual; or
    - b. The client or, if applicable, the client's guardian agrees in writing to the modification or termination.
- B.** Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an



eligibility determination is made, when a decision regarding fees or the waiver of fees is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification to the ISP or ITDP is distributed, when any service is suspended or terminated, and at any other time provided by this Chapter. The notice shall be in writing in English and Spanish and shall include:

1. The client's right to appeal and to an administrative hearing according to A.R.S. § 41-1092.03;
  2. The method by which an appeal and an administrative hearing may be obtained;
  3. That the client may represent himself or use legal counsel or other appropriate representative;
  4. The services available to assist the client from the Office of Human Rights, Human Rights Committees, State Protection and Advocacy System, and other peer support and advocacy services;
  5. What action the mental health agency or regional authority intends to take;
  6. The reasons for the intended action;
  7. The specific rules or laws that support such action; and
  8. An explanation of the circumstances under which services will continue if an appeal or an administrative hearing is requested.
- C. The right to appeal in this Section does not include the right to appeal a court order entered according to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:
1. Decisions regarding the individual's eligibility for behavioral health services;
  2. The sufficiency or appropriateness of the assessment or any further evaluation;
  3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
  4. The recommended services identified in the assessment report, ISP, or ITDP;
  5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
  6. The access to or prompt provision of services provided under Title XIX;
  7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
  8. A denial of a request for a review of, the outcome of a review of, a modification to or failure to modify, or a termination of an ISP, ITDP, or portion of an ISP or ITDP;
  9. The application of the procedures and timetables as set forth in this Chapter for developing the ISP or ITDP;
  10. The implementation of the ISP or ITDP;
  11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such a client; or
  12. Decisions regarding a client's fee assessment or the denial of a request for a waiver of fees;
  13. Denial of payment for a client; and
  14. Failure of the regional authority or the Administration to act within the time frames for appeal established in this Chapter.
- D. Initiation of the appeal.
1. An appeal may be initiated by the client or by any of the following persons on behalf of a client or applicant requesting behavioral health services or community services:
    - a. The client's or applicant's guardian,
    - b. The client's or applicant's designated representative, or
    - c. A service provider of the client, if the client or, if applicable, the client's guardian gives permission to the service provider;
  2. An appeal is initiated by notifying the director of the regional authority or the director designee orally or in writing of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the applicant or client and designated representative.
  3. An appeal shall be initiated within 60 days of the decision, report, plan, or action being appealed. However, the director of the regional authority or the director designee shall accept a late appeal for good cause. If the regional authority director or the director designee refuses to accept a late appeal, the director or director designee shall notify the individual or client in writing, with a statement of reasons for the decision. Within 10 days of the notification, the client or applicant may request review of that decision by the Administration, who shall act within 15 days of receipt of the request for review. The decision of the Administration shall be final.
  4. Within five days of receipt of an appeal, the director of the regional authority shall inform the client in writing that the appeal has been received and of the procedures that shall be followed during the appeal.
- E. Informal conference with the regional authority.
1. Within seven days of receipt of the notice of appeal, the director of the regional authority or the director designee shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
    - a. The regional authority director or the director's designee shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days before the conference.
    - b. Individuals may participate in the conference by telephone.
  2. The director of the regional authority or the director's designee shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the regional authority director or director's designee shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
  3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
  4. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter may be further appealed to the Administration, and of the procedure for requesting a waiver of the informal conference with the Administration.

5. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Administration according to subsection (E)(4) or, if the informal conference with the director of the regional authority or the director designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
    - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
    - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
    - c. For a client who needs special assistance, send a copy of the notice in subsection (5)(a) to the appropriate human rights committee.
  6. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the regional authority shall file the request within three days of the informal conference.
  7. If resolution satisfactory to the client or guardian is achieved, the director of the regional authority or the director designee shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.
- F. Informal conference with the Administration.**
1. Within three days of the conclusion of an informal conference with the regional authority according to subsection (E)(4), the director of the regional authority or the director designee shall notify the Administration and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
  2. Within 15 days of the notification from the regional authority director or the director designee, the Administration shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
    - a. The Administration shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
    - b. Individuals may participate in the conference by telephone.
    - c. If a client is unrepresented at the conference but needs assistance, or if for any other reason the Administration determines the appointment of a representative to be in the client's best interest, the Administration may designate a human rights advocate or other person to assist the client in the appeal.
  3. To the extent that resolution satisfactory to the client or guardian is not achieved, the Administration shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
  4. If resolution satisfactory to the client or guardian is achieved, the Administration shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.
  5. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
  6. If all issues in dispute are not resolved to the satisfaction of the client or guardian at the informal conference with the Administration, the Administration shall, at the informal conference:
    - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
    - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
    - c. For all clients including clients who need special assistance, send a copy of the notice in subsection (6)(a) to the Office of Human Rights and the appropriate human rights committee.
  7. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within three days of the informal conference according to subsection (G).
- G. The fair hearing.**
1. Within three days of the informal conference with the Administration, if the conference failed to resolve the appeal, or within five days of the date the conference was waived, the Administration shall forward a request to schedule a fair hearing.
  2. Within five days of the notification, the Administration shall send a written notice of fair hearing to all parties, informing them of the time and place of the hearing, the name, address, and telephone number of the Administrative Law Judge, and the issues to be resolved. The notice shall also be sent to the appropriate human rights committee and the Office of Human Rights for all clients, including clients who need special assistance.
  3. A fair hearing shall be held on the appeal in a manner consistent with A.R.S. § 41-1092 et seq., and those portions of 9 A.A.C. 1 which are consistent with this Article.
  4. During the pendency of the appeal, the client, any designated representative and/or guardian, the clinical team, and representatives of any service providers may agree to implement any part of the ISP or ITDP or other matter under appeal without prejudice to the appeal.
  5. The client or applicant shall have the right to be represented at the hearing by a person chosen by the client or applicant at the client's or applicant's own expense, in accordance with Rule 31, Rules of the Supreme Court.
  6. The client, any designated representative and/or guardian, and the opposing party shall have the right to present any evidence relevant to the issues under appeal and to call and examine witnesses. The Administration shall have the right to appear to present legal argument.

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7. The client and any designated representative and/or guardian shall have the right to examine and copy at a reasonable time prior to the hearing all records held by the Administration, regional authority, or service provider pertaining to the client and the issues under appeal, including all records upon which the ISP or ITDP decisions were based.
8. Any portion of the hearing may be closed to the public if the client requests or if the Administrative Law Judge determines that it is necessary to prevent the unwarranted invasion of a client's privacy or that public disclosure would pose a substantial risk of harm to a client.

**H. Expedited appeal.**

1. At the time an appeal is initiated, the applicant, client, or mental health agency may request orally or in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
2. An expedited appeal shall be conducted in accordance with the provisions of this Section, except as provided for in this subsection.
3. Within one day of receipt of an expedited appeal, the director of the regional authority shall inform the client in writing that the appeal has been received.
4. The director of the regional authority shall accept an expedited appeal on issues related to crisis or emergency services. The regional authority shall also accept an expedited appeal for good cause. If the regional authority refuses to expedite the appeal based on a determination that good cause does not exist, the director shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons for the decision, and shall proceed with the appeal in accordance with the provisions of this Section. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the Administration, who shall act within one day. The decision of the Administration shall be final.
5. If the regional authority accepts the appeal for expedited consideration, the director shall hold the informal conference according to R9-21-401(E) within two days of the initiation of the appeal. The regional authority shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
6. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter may be further appealed to the Administration, and of the procedure for requesting waiver of the informal conference with the Administration.
7. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Administration or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behav-

ioral health services, the regional authority shall, at the informal conference:

- a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
  - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
  - c. Send a copy of the notice in subsection (H)(7)(a) to the Office of Human Rights and the appropriate human rights committee.
8. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within one day of the informal conference.
  9. Within one day of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the Administration if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact unless the client or, if applicable, the client's guardian waived the client's right to an informal conference with the Administration or the issues in dispute are related to the client's eligibility for behavioral health services.
  10. Within two days of the notification from the regional authority, the Administration shall hold the informal conference pursuant to subsection (F).
  11. If all issues in dispute are not resolved to the satisfaction of the client or if applicable, the client's guardian at the informal conference with the Administration, the Administration shall, at the informal conference:
    - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
    - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Administration to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
    - c. For a client who needs special assistance, send a copy of the notice in subsection (H)(11)(a) to the Office of Human Rights and the appropriate human rights committee.
  12. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Administration file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Administration shall file the request within one day of the informal conference.
  13. Within one day of the informal conference with the Administration, if the conference failed to resolve the appeal, or within two days of the date the conference was waived, the Administration shall forward a request to schedule a fair hearing.
  14. Within one day of notification, the Administration shall send a written notice of an expedited fair hearing in accordance with subsection (G)(2) and A.R.S. 41-1092, et seq.
  15. An expedited fair hearing shall be held on the appeal in accordance with subsection (G)(3) and A.R.S. 41-1092, et seq.

- I. Standard and burden of proof.
  1. The standard of proof on all issues shall be by a preponderance of the evidence.
  2. The burden of proof on the issue of the need for or appropriateness of behavioral health services or community services shall be on the person appealing.
  3. The burden of proof on the issue of the sufficiency of the assessment and further evaluation, and the need for guardianship, conservatorship, or special assistance shall be on the agency which made the decision.
  4. The burden of proof on issues relating to services or placements shall be on the party advocating the more restrictive alternative.
- J. Implementation of final decision. Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, the regional authority shall implement the final decision and shall notify the client, any designated representative and/or guardian, and Administration of such action.
- K. Appeal log.
  1. The Administration and regional authority shall maintain logs of appeals filed under this Section.
  2. The log maintained by the Administration shall not include personally identifiable information and shall be a public record, available for inspection and copying by any person.
  3. With respect to each entry, the logs shall contain:
    - a. A unique docket number or matter number;
    - b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
    - c. The date of the filing of appeal;
    - d. The date of the initial decision appealed from;
    - e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
    - f. A substantive but concise description of the final decision and the action taken by the agency director and the date the action was taken.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-401 renumbered to R9-21-402; new Section R9-21-401 renumbered from R9-21-315 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-402. General

- A. It is the policy of the Administration to conduct investigations and bring matters to a resolution in four circumstances: first, in the event of a death of a client; second, whenever there is alleged to have occurred a rights violation; third, whenever there is alleged to exist a condition requiring investigation because it is dangerous, illegal or inhumane; and fourth, in any other case where an investigation would be in the public interest, as determined by the Administration. The purpose of R9-21-402 through R9-21-410 is to implement that policy. All investigations according to R9-21-402 through R9-21-410 shall be carried out in a prompt and equitable manner and with due regard for the dignity and rights of all persons involved. R9-21-402 through R9-21-410 do not obviate the need for sys-

tematically reporting, where appropriate, accidents and injuries involving clients.

- B. This grievance and investigation procedure applies to any allegation that a rights violation or a condition requiring investigation, as defined in R9-21-101, has occurred or currently exists.
  1. A grievance may be filed by a client, guardian, human rights advocate, human rights committee, State Protection and Advocacy System, designated representative, or any other concerned person when a violation of the client's rights or of the rights of several clients has occurred.
  2. A request for an investigation may be filed by any person whenever a condition requiring investigation occurs or has occurred.
  3. Allegations about the need for or appropriateness of behavioral health services or community services should generally should be addressed according to the Individual Service Planning Sections R9-21-301 through R9-21-314 and according to R9-21-401, as applicable.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-402 renumbered to R9-21-403; new Section R9-21-402 renumbered from R9-21-401 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-403. Initiating a Grievance or Investigation

- A. Any individual may file a grievance regarding an abridgement by a mental health agency of one or more of a client's rights in Article 2 of this Chapter.
- B. Any individual may request an investigation regarding a condition requiring investigation.
- C. An employee of or individual under contract with one of the following shall file a grievance if the employee has reason to believe that a mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter or that a condition requiring investigation exists, and shall receive disciplinary action for failure to comply with this subsection:
  1. A service provider,
  2. A regional authority,
  3. An inpatient facility, or
  4. The Administration.
- D. A service provider or regional authority shall file a grievance if it:
  1. Receives a non-frivolous allegation that:
    - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
    - b. A condition requiring investigation exists; or
  2. Has reason to believe that there exists or has occurred a condition requiring investigation in a mental health agency or program.
- E. The Administration shall request an investigation if:
  1. The Administration determines that it would be in the best interests of a client, the Administration, or the public; or
  2. The Administration receives a non-frivolous allegation or has reason to believe that:
    - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
    - b. A condition requiring investigation exists.
- F. To file a grievance, an individual shall communicate the grievance orally or submit the grievance in writing to any employee of a mental health agency who shall forward the grievance to

the appropriate person as identified in R9-21-404. If asked to do so by a client, an employee shall assist the client in making an oral or written grievance or shall direct the client to the available supervisory or managerial staff who shall assist the client in making an oral or written grievance.

- G.** Any grievance or request for investigation shall be accurately and completely reduced to writing on an Administration-provided grievance or request for investigation form by:
1. The individual filing the grievance or request for investigation, or
  2. The mental health agency to whom the grievance or request for investigation is made.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-403 renumbered to R9-21-404; new Section R9-21-403 renumbered from R9-21-402 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### **R9-21-404. Persons Responsible for Resolving Grievances and Requests for Investigation**

- A.** Allegations involving rights violations:
1. Of other than physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and initially decided by:
    - a. The appropriate regional authority; or
    - b. If the mental health agency is operated exclusively by a governmental entity the allegation shall be addressed to and initially decided by that agency; or
  2. Of physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the Administration.
- B.** Allegations involving conditions requiring investigation:
1. Of other than a client death, which occurred in a mental health agency, or as a result of a person employed by a mental health agency, shall be addressed to and initially decided by:
    - a. The appropriate regional authority; or
    - b. If the mental health agency is operated exclusively by a governmental entity, the allegation shall be addressed to and initially decided by that agency; or
  2. Of a client death, which occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the Administration.
- C.** Within five days of receipt by a mental health agency of a grievance or request for investigation:
1. The mental health agency shall inform the person filing the grievance or request, in writing, that the grievance or request has been received;
  2. If the mental health agency is operated exclusively by a governmental entity, the mental health agency shall provide a copy of the grievance to the appropriate regional authority; and
  3. If the client is in need of special assistance, the mental health agency shall immediately send a copy of the grievance or request to the Office of Human Rights and the

human rights committee with jurisdiction over the agency.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-404 renumbered to R9-21-405; new Section R9-21-404 renumbered from R9-21-403 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### **R9-21-405. Preliminary Disposition**

- A.** The agency director before whom a grievance or request for investigation has been initiated shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, witness, individual filing the grievance or request for investigation, or individual on whose behalf the grievance or request for investigation is filed.
- B.** Summary disposition.
1. A mental health agency or the Administration may summarily dispose of any grievance or a request for an investigation where the alleged rights violation or condition occurred more than one year immediately prior to the date on which the grievance or request is made.
  2. A mental health agency or the Administration who receives a grievance or request which is primarily directed to the level or type of mental health treatment provided to a client, which can be fairly and efficiently addressed within the procedures set forth in Article 3 and in R9-21-401, and which do not directly or indirectly involve any rights set forth in A.R.S. Title 36 or Article 2, may refer the grievance for resolution through the Individual Service Plan process or the appeal process in R9-21-401.
- C.** Disposition without investigation.
1. Within seven days of receipt of a grievance or request for an investigation, a mental health agency or the Administration may promptly resolve a grievance or request without conducting a full investigation, where the matter:
    - a. Involves no dispute as to the facts;
    - b. Is patently frivolous; or
    - c. Is resolved fairly and efficiently within seven days without a formal investigation.
  2. Within seven days of receipt of the grievance or request described in subsection (C)(1), the mental health agency or the Administration shall prepare a written, dated decision.
    - a. The decision shall explain the essential facts, why the mental health agency or the Administration believes that the matter is appropriately resolved without the appointment of an investigator, and the resolution of the matter.
    - b. The mental health agency or the Administration shall send copies of the decision to the parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03, and to anyone else having a direct interest in the matter.
  3. After the expiration of the appeal period without appeal by any party, or after the exhaustion of all appeals and subject to the final decision on the appeal, the mental health agency or the Administration shall promptly take

appropriate action and prepare and add to the case record a written, dated report of the action taken to resolve the grievance or request.

**D. Matters requiring investigation.**

1. If the matter complained of cannot be resolved without a formal investigation according to the criteria set forth in subsection (C)(1), within seven days of receipt of the grievance or request the mental health agency or the Administration shall prepare a written, dated appointment of an impartial investigator who, in the judgment of the mental health agency or the Administration, is capable of proceeding with the investigation in an objective manner but who shall not be:
  - a. Any of the persons directly involved in the rights violation or condition requiring investigation; or
  - b. A staff person who works in the same administrative unit as, except a person with direct line authority over, any person alleged to have been involved in the rights violation or condition requiring investigation.
2. Immediately upon the appointment of an investigator, the mental health agency or the Administration shall notify the person filing the grievance or request for investigation in writing of the appointment. The notice shall contain the name of the investigator, the procedure by which the investigation will be conducted and the method by which the person may obtain assistance or representation.

- E.** If a client is a client who needs special assistance, the mental health agency or the Administration shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency and shall send a copy of all decisions required by this Chapter made by the mental health agency or the Administration regarding the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-405 renumbered to R9-21-406; new Section R9-21-405 renumbered from R9-21-404 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

**R9-21-406. Conduct of Investigation**

- A.** Within 10 days of the appointment, the investigator shall hold a private, face-to-face conference with the person who filed the grievance or request for investigation to learn the relevant facts that form the grounds for the grievance or request, unless the grievance or request has been initiated by a mental health agency or the Administration according to R9-21-403 (D) or (E).
1. In scheduling such conference, and again at the conference, if the client appears without a designated representative, the investigator shall advise the client that:
    - a. The client may be represented by a designated representative of the client's own choice. The investigator shall also advise the client of the availability of assistance from the State Protection and Advocacy
- System, the Office of Human Rights, and the relevant human rights committee.
- b. The client may make an audio tape of the conference and all future conferences, meetings or hearings to which the client may be a party during the investigation, provided that the client notify all other parties not later than the beginning of the meeting or hearing that the client intends to do so.
  - c. In any case where the person initiating the grievance or request, or the person(s) who is alleged to have been responsible for the rights violation or condition, is a client and is in need of special assistance and is unrepresented, the investigator shall give the Office of Human Rights notice of the need for representation.
2. Where the grievance has been initiated by the mental health agency or the Administration, the investigator shall promptly determine which persons have relevant information concerning the occurrence of the alleged rights violation or condition requiring investigation and proceed to interview such individuals.
- B.** Within 15 days of the appointment, but only after the conference with the person initiating the grievance or request for investigation, the investigator shall hold a private, face-to-face conference with the person(s) complained of or thought to be responsible for the rights violation or condition requiring investigation to discuss the matter and, in scheduling the conference with such person(s) or with any other witness, the investigator shall advise the person(s) or any other witness that:
1. The individual may make a recording of the conference and all future conferences, meetings or hearings during the course of the investigation, provided that the individual must notify all other parties to such meetings or hearings not later than the beginning of the meeting or hearing if the individual intends to so record.
  2. An employee of an inpatient facility, service provider, regional authority or the Administration has an obligation to cooperate in the investigation.
  3. Failure of an employee to cooperate may result in appropriate disciplinary action.
- C.** The investigator shall gather whatever further information may seem relevant and appropriate, including interviewing additional witnesses, requesting and reviewing documents, and examining other evidence or locations.
- D.** Within 10 days of completing all interviews with the parties but not later than 30 days from the date of the appointment, the investigator shall prepare a written, dated report briefly describing the investigation and containing findings of fact, conclusions, and recommendations
- E.** Within five days of receiving the investigator's report, the agency director shall review the report and the case record and prepare a written, dated decision which shall either:
1. Accept the investigator's report in whole or in part, at least with respect to the facts as found, and state a summary of findings and conclusions and the intended action of the agency director; and send:
    - a. A copy of the decision to:
      - i. The investigator;
      - ii. The individual who filed the grievance or request for investigation;
      - iii. The individual who is the subject of the grievance or request for investigation, if applicable;
      - iv. The Office of Human Rights; and
      - v. The appropriate human rights committee.

- b. A notice to the individual who filed the grievance or request for investigation and, if applicable, the client who is the subject of the grievance or request for investigation or, if applicable, the client's guardian, of:
  - i. If the decision is from an agency director, the client's right to appeal to the Administration according to R9-21-406 and to an administrative hearing according to A.R.S. § 41-1092.03; and
  - ii. If the decision is from the Administration, the client's right to an administrative hearing according to A.R.S. § 41-1092.03; or
- 2. Reject the report for insufficiency of facts and return the matter for further investigation. In such event, the investigator shall complete the further investigation and deliver a revised report to the agency director within 10 days. Upon receipt of the report, the agency director shall proceed as provided in subsection (E)(l).
- F. Actions that an agency director may take according to subsection (E)(1) include:
  - 1. Identifying training or supervision for or disciplinary action against an individual responsible for a rights violation or condition requiring investigation identified during the course of investigating a grievance or request for investigation;
  - 2. Developing or modifying a mental health agency's policies and procedures;
  - 3. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or
  - 4. Imposing sanctions, including monetary penalties, according to terms of a contract, if applicable.
- G. After the expiration of the appeal period set forth in R9-21-407, or after the exhaustion of all appeals and subject to the final decision on the appeal, the agency director shall promptly take the action set forth in the decision and add to the case record a written, dated report of the action taken. A copy of the report shall be sent to the Office of Human Rights and the human rights committee if the client is in need of special assistance.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-406 renumbered to R9-21-407; new Section R9-21-406 renumbered from R9-21-405 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-407. Administrative Appeal

- A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the final decision of the agency director may, within 30 days of receipt of the decision, file a notice of appeal with the Administration. The appealing party shall send copies of the notice to the other parties and their representatives and to the agency director who shall forward the full case record to the Administration.
- B. The Administration shall review the notice of appeal and the case record, and may discuss the matter with any of the persons involved or convene an informal conference. Within 15

days of the filing of the appeal, the Administration shall prepare a written, dated decision which shall either:

- 1. Accept the investigator's report, in whole or in part, at least with respect to the facts as found, and affirm, modify or reject the decision of the agency director with a statement of reasons; or
- 2. Reject the investigator's report for insufficiency of facts and return the matter with instructions to the agency director for further investigation and decision. In such event, the further investigation shall be completed and a revised report and decision shall be delivered to the Administration within 10 days. Upon receipt of the report and decision, the Administration shall render a final decision, consistent with the procedures set forth in subsection (B)(1).
- 3. A designated representative shall be afforded the opportunity to be present at any meeting or conference convened by the Administration to which the represented party is invited.
- 4. The Administration shall send copies of the decision to:
  - a. The parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03;
  - b. The agency director; and
  - c. The Office of Human Rights and the applicable human rights committee for all clients, including clients who are in need of special assistance.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-407 renumbered to R9-21-408; new Section R9-21-407 renumbered from R9-21-406 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-408. Further Appeal to Administrative Hearing

- A. Any grievant or the client who is the subject of the grievance who is dissatisfied with the Director's decision of the Administration may request a fair hearing before an Administrative Law Judge.
  - 1. Within 30 days of the date of the Director's decision, the appealing party shall file with the Administration a notice requesting a fair hearing.
  - 2. Upon receipt of the notice, the Administration shall send a copy to the parties, and to the Office of Human Rights and the human rights committee for clients who are in need of special assistance.
- B. The hearing shall be conducted consistent with A.R.S. § 41-1092 et seq., and those portions of 9 A.A.C. 1 which are consistent with this Article.
  - 1. The client shall have the right to be represented at the hearing by an individual chosen by the client at the client's own expense, in accordance with Rule 31, Rules of the Supreme Court. If the client has not designated a representative to assist the client at the hearing and is in need of special assistance, the human rights committee, or the human rights advocate unless refused by the client, shall make all reasonable efforts to represent the client.
  - 2. Any portion of the hearing may be closed to the public if the client requests or if the Administrative Law Judge determines that it is necessary to prevent an unwarranted

invasion of the client's privacy or that public disclosure would pose a substantial risk of harm to the client.

3. The Administration shall explain the Director's decision to the client at the client's request, together with the right to seek rehearing and judicial review.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-408 renumbered from R9-21-407 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-409. Notice and Records

- A. Notice to clients. All clients shall be informed of their right to file a grievance or request for investigation under these rules.
  1. Notice of this grievance and investigation process shall be included in the information posted or otherwise provided to every current and new client and employee. Special efforts shall be made to inform current and new residents of mental health facilities of this process and of the right to file a grievance or request for investigation;
  2. A copy of a brief memorandum explaining these rules shall be given to every current and new resident of an inpatient facility;
  3. Such memorandum and blank copies of the forms for filing a grievance, request for investigation, and appeal shall be posted in a prominent place in plain sight on every unit of an inpatient facility or in a program operated by a service provider; and
  4. Such memoranda, forms and copies of these rules shall be available at each inpatient facility, regional authority and service provider upon request by any person at any time.
- B. Notice and oversight by the Office of Human Rights and human rights committees.
  1. Upon receipt of any grievance or request for investigation involving a client, including a client who is in need of special assistance, the agency director shall immediately forward a copy of such grievance or request to the Office of Human Rights and the appropriate regional human rights committee.
  2. Upon receipt of such a grievance from the agency director, at the request of a client, or on its own initiative, the Office of Human Rights and/or the appropriate human rights committee shall assist a client in filing a grievance or request, if necessary. The Office and/or committee shall use its best efforts to see that such client is represented by an attorney, human rights advocate, committee member, or other person to protect the individual's interests and present information on the client's behalf. The Office and/or committee shall maintain a list of attorneys and other representatives, including the state protection and advocacy system, available to assist clients.
  3. Whenever the human rights committee has reason to believe that a rights violation involving abuse or a dangerous condition requiring investigation, including a client death, has occurred or currently exists, or that any rights violation or condition requiring investigation occurred or exists which involves a client who is in need of special assistance, it may, upon written notice to the official before whom the matter is pending, become a party to the grievance or request. As a party it shall receive copies of all reports, plans, appeals, notices and

other significant documents relevant to the resolution of the grievance or request and be able to appeal any finding or decision.

4. The Office of Human Rights shall assist clients in resolving grievances according to R9-21-104.
- C. Notification of other persons.
  1. Whenever any rule, regulation, statute, or other law requires notification of a law enforcement officer, public official, medical examiner, or other person that an incident involving the death, abuse, neglect, or threat to a client has occurred, or that there exists a dangerous condition or event, such notice shall be given as required by law.
  2. A mental health agency shall immediately notify the Administration when:
    - a. A client brings criminal charges against an employee;
    - b. An employee brings criminal charges against a client;
    - c. An employee or client is indicted or convicted because of any action required to be investigated by this Article;
    - d. A client of an inpatient facility, a mental health agency, or a service provider dies. The agency director shall report such death according to the Administration's policy on the reporting and investigation of deaths.
    - e. A client of an inpatient facility, a mental health agency, or a service provider allegedly is physically or sexually abused.
  3. The investigation by the Administration provided for by this Article is independent of any investigation conducted by police, the county attorney, or other authority.
- D. Case records.
  1. A file, known as the case record, shall be kept for each grievance or request for investigation which is received by the Administration, ASH, regional authority or service provider under contract or subcontract with the Administration. The record shall include the grievance or request, the docket number or matter number assigned, the names of all persons interviewed and the dates of those interviews, either a taped or written summary of those interviews, a summary of documents reviewed, copies of memoranda generated by the investigation, the investigator's report, the agency director's decision, and all documents relating to any appeal.
  2. The investigator shall maintain possession of the case record until the investigation report is submitted. Thereafter, the agency director shall maintain control over the case record, except when the matter is on appeal. During any appeal, the record will be in the custody of the official who hears or decides the appeal.
- E. Public logs.
  1. The Administration and regional authority shall maintain logs of deaths and non-frivolous grievances or requests for investigation for inpatient facilities, agencies, service providers, and mental health agencies which it operates, funds, or supervises.
  2. The log maintained by the Administration shall not include personally identifiable information and shall be a public record, available for inspection and copying by any person.
  3. With respect to each grievance or request for investigation, the Administration's log shall contain:
    - a. A unique docket number or matter number;



- b. A substantive but concise description of the grievance or request for investigation;
- c. The date of the filing of grievance;
- d. The date of the initial decision or appointment of investigator;
- e. The date of the filing of the investigator's final report;
- f. A substantive but concise description of the investigator's final report;
- g. The date of all subsequent decisions, appeals, or other relevant events; and
- h. A substantive but concise description of the final decision and the action taken by the mental health agency or the Administration.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

#### R9-21-410. Miscellaneous

- A. Disqualification of official. The agency director, investigator, or any other official with authority to act on a grievance or request for investigation shall disqualify himself from acting, if such official cannot act on the matter impartially and objectively, in fact or in appearance. In the event of such disqualification, the official shall forthwith prepare and forward a written, dated memorandum explaining the reasons for the decision to the Administration, as appropriate, who shall, within 10 days of receipt of the memorandum, take such steps as are necessary to resolve the grievance in an impartial, objective manner.
- B. Request for extension of time.
  - 1. The investigator or any other official of a mental health agency acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the regional authority.
  - 2. The investigator or any other official of an inpatient facility operated exclusively by a governmental entity acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the CEO of the entity or his designee.
  - 3. The investigator or any other official of the Administration acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the Administration or designee.
  - 4. An extension of time may only be granted upon a showing of necessity and a showing that the delay will not pose a threat to the safety or security of the client.
  - 5. A request for extension shall be in writing, with copies to all parties. The request shall explain why an extension is needed and propose a new time limit which does not unreasonably postpone a final resolution of the matter.
  - 6. Such request shall be submitted to and acted upon prior to the expiration of the original time limit. Failure of the rel-

evant official to act within the time allowed shall constitute a denial of the request for an extension.

#### C. Procedural irregularities.

- 1. Any party may protest the failure or refusal of any official with responsibility to take action in accord with the procedural requirements of this Article, including the time limits, by filing a written protest with the Administration.
- 2. Within 10 days of the filing of such a protest, the Administration shall take appropriate action to ensure that if there is or was a violation of a procedure or timeline, it is promptly corrected, including, if appropriate, disciplinary action against the official responsible for the violation or by removal of an investigator and the appointment of a substitute.

#### D. Special Investigation.

- 1. The Administration may at any time order that a special investigator review and report the facts of a grievance or condition requiring investigation, including a death or other matter.
- 2. The special investigator and the Administration shall comply with the time limits and other procedures for an investigation set forth in this Article.
- 3. Any final decision issued by the Administration based on such an investigation under this rule is appealable as provided in R9-21-408.
- 4. Nothing in this Article shall prevent the Administration from conducting an investigation independent of these rules.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2). Amended by final rulemaking at 22 A.A.R. 2019, effective July 12, 2016 (Supp. 16-4).

### ARTICLE 5. COURT-ORDERED EVALUATION AND TREATMENT

#### R9-21-501. Court-ordered Evaluation

- A. An application for court-ordered evaluation shall, according to A.R.S. § 36-521, be made on Department form MH-100, Titled "Application for Involuntary Evaluation," set forth in Exhibit A.
- B. Any mental health agency or service provider that receives an application for court-ordered evaluation shall immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation, provided for in A.R.S. Title 36, Chapter 5, Article 4, to:
  - 1. A regional authority; or
  - 2. If a county has not contracted with a regional authority for pre-petition screening and petitioning for court-ordered evaluation, the county.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-501 renumbered from R9-21-502 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).



## Arizona Health Care Cost Containment System (AHCCCS) - Behavioral Health Services for Persons with Serious Mental Illness

NAME, ADDRESS AND TELEPHONE NUMBER OF:

- 1) Guardian
- 2) Spouse
- 3) Next of Kin
- 4) Significant Other Persons \_\_\_\_\_

\_\_\_\_\_  
DATE\_\_\_\_\_  
SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant \_\_\_\_\_

Relationship to Proposed Patient \_\_\_\_\_

Applicant's Address \_\_\_\_\_

Applicant's Telephone \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary PublicMy Commission Expires:  
\_\_\_\_\_

ADHS/BHS Form MH-100 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit A repealed, new Exhibit A adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

## Exhibit B. Petition for Court-ordered Evaluation

## PETITION FOR COURT-ORDERED EVALUATION

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF \_\_\_\_\_

In the Matter of )  
 )  
 ) MH  
 )  
 ) PETITION FOR COURT-  
 ) ORDERED EVALUATION  
 ) (Pursuant to A.R.S. § 36-523)  
 )

re: Mental Health Services)  
 \_\_\_\_\_ )

STATE OF ARIZONA )  
 )  
 COUNTY OF )

Petitioner, \_\_\_\_\_  
 (Medical Director)

being first duly sworn/affirmed, alleges that:

1. There is now in this County a person whose name and address are as follows:

\_\_\_\_\_  
 (Name) (Address)

2. The person may presently be found at: \_\_\_\_\_

3. There is reasonable cause to believe that the person has a mental disorder and is as a result:

- ☐ A danger to self; ☐ A danger to others;  
☐ Gravely disabled; ☐ Persistently or acutely disabled and is:

4. The person is unwilling to undergo voluntary evaluation, as evidenced by the following facts: \_\_\_\_\_

5. The person is unable to undergo voluntary evaluation, as demonstrated by the following reasons: \_\_\_\_\_

6. The person is believed to be in need of supervision, care, and treatment because of the following facts: \_\_\_\_\_

7. The conclusion that the person has a mental disorder is based on the following facts: \_\_\_\_\_

8. The conclusion that the person is dangerous or disabled is based on the following facts: \_\_\_\_\_

9. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following facts: \_\_\_\_\_

10. Applicant information: \_\_\_\_\_  
 Name of Applicant: \_\_\_\_\_  
 Address of Applicant: \_\_\_\_\_  
 Relationship to or Interest in the Proposed Patient: \_\_\_\_\_

11. In the opinion of the Petitioner, the person is \_\_\_\_\_ is not \_\_\_\_\_ in such a condition that, without immediate or continuing hospitalization, s/he is likely to suffer serious physical harm or inflict serious physical harm upon another person.
12. In the opinion of the Petitioner, evaluation should \_\_\_\_\_ should not \_\_\_\_\_ take place on an outpatient basis, based upon the following reasons: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## PETITIONER REQUESTS THAT THE COURT:

Issue an Order requiring the person to be given an \_\_\_\_\_ Inpatient \_\_\_\_\_ Outpatient evaluation.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature Of Petitioner

\_\_\_\_\_  
Printed or Typed Name

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

ADHS/BHS Form MH-105 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit B repealed, new Exhibit B adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-502. Emergency Admission for Evaluation**

- A.** An application for emergency evaluation pursuant to A.R.S. § 36-524 may be made to any evaluation agency licensed and approved by the Department to provide such services on Department form MH-104, Titled "Application for Emergency Admission for Evaluation," set forth in Exhibit C.
- B.** Prior to admission of an individual under this rule, the evaluation agency shall notify the appropriate regional authority of the potential admission so that the regional authority may first:
1. Provide services or treatment to the individual as an alternative to admission; or
  2. Authorize admission of the individual.
- C.** If the evaluation agency does not provide notice pursuant to subsection (B) of this rule, the regional authority shall not be obligated to pay for the services provided.

- D.** Only a mental health agency licensed by the Department to provide emergency services according to A.R.S. Title 36, Chapter 4 may provide court-ordered emergency admission services under A.R.S. Title 36, Chapter 5, Article 4.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-502 renumbered to R9-21-501; new Section R9-21-502 renumbered from R9-21-503 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

### Exhibit C. Application for Emergency Admission for Evaluation

**APPLICATION FOR EMERGENCY ADMISSION FOR EVALUATION**  
**(Pursuant to A.R.S. § 36-524)**

STATE OF ARIZONA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )  
 \_\_\_\_\_ )

The undersigned applicant, being first duly sworn/affirmed, hereby requests that \_\_\_\_\_  
(Evaluation Agency)  
admit the person named herein for evaluation.

1. The undersigned applicant alleges that there is now in the County a person whose name and address are:

\_\_\_\_\_  
(Name) \_\_\_\_\_ (Address) \_\_\_\_\_

and that s/he believes that the person has a mental disorder and, as a result of said mental disorder, is:

☐ A danger to self;      ☐ A danger to others;

and that, during the time necessary to complete pre-petition screening under A.R.S. §§ 36-520 and 36-521, the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious physical harm upon another person.

2. The conclusion that the person has a mental disorder is based on the following facts:

---

3. The specific nature of the danger posed by this person is:

---

4. A summary of the personal observations upon which this statement is based is as follows:

---

---

---

---

---

**PERSONAL DATA OF PROPOSED PATIENT:**

Age \_\_\_\_\_ Date of Birth \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_  
 Weight \_\_\_\_\_ Height \_\_\_\_\_ Hair Color \_\_\_\_\_ Eye Color \_\_\_\_\_  
 Marital Status \_\_\_\_\_ Number of Children \_\_\_\_\_  
 Social Security No. \_\_\_\_\_ Religion \_\_\_\_\_  
 Distinguishing Marks \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Present Location \_\_\_\_\_  
 Dates and Places of Previous Hospitalization \_\_\_\_\_  
 How Long in Arizona \_\_\_\_\_ State Last From \_\_\_\_\_  
 Veteran? \_\_\_\_\_ C-No. \_\_\_\_\_ Education \_\_\_\_\_

## NAME, ADDRESS AND TELEPHONE NUMBER OF:

- 1) Guardian \_\_\_\_\_
- 2) Spouse \_\_\_\_\_
- 3) Next of Kin \_\_\_\_\_
- 4) Significant Other Persons \_\_\_\_\_

\_\_\_\_\_  
DATE\_\_\_\_\_  
SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant \_\_\_\_\_

Relationship to Proposed Patient \_\_\_\_\_

Applicant's Address \_\_\_\_\_

Applicant's Telephone \_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary PublicMy Commission Expires:  
\_\_\_\_\_

ADHS/BHS Form MH-104 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit C repealed, new Exhibit C adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-503 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-503. Voluntary Admission for Evaluation**

- A.** An application for voluntary evaluation pursuant to A.R.S. § 36-522 shall be submitted on Department form MH-103, Titled "Application for Voluntary Evaluation," set forth in Exhibit D to a mental health agency.
- B.** If a regional authority receives an application according to subsection (A), the regional authority shall provide for such evaluation under A.R.S. § 36-522 for any individual who:

1. Voluntarily makes application as provided in subsection (A);
2. Gives informed consent; and
3. Has not been adjudicated as an incapacitated person pursuant to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5.
- C.** Any mental health agency, which is not a regional authority under R9-21-501, that receives an application for voluntary evaluation shall immediately refer the individual to:
  1. The county responsible for voluntary evaluations; or

2. If the county has contracted with a regional authority for voluntary evaluations, the appropriate regional authority.
- D.** Any mental health agency providing voluntary evaluation services pursuant to this Article shall place in the medical record of the individual to be evaluated the following:
1. A completed copy of the application for voluntary treatment;
  2. A completed informed consent form pursuant to R9-21-511; and
  3. A written statement of the individual's present mental condition.
- E.** Voluntary evaluation shall proceed only after the individual to be evaluated has given informed consent on Department form MH-103 and received information that the patient-physician

privilege does not apply and that the evaluation may result in a petition for the individual to undergo court-ordered treatment or for guardianship in the method prescribed by A.R.S. § 36-522.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-503 renumbered to R9-21-502; new Section R9-21-503 renumbered from R9-21-504 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).



**Exhibit D. Application for Voluntary Evaluation****APPLICATION FOR VOLUNTARY EVALUATION**

(Pursuant to A.R.S. § 36-522)

The undersigned hereby requests a mental health evaluation to be performed by psychiatrists, psychologists, and social workers at

\_\_\_\_\_  
(Regional Authority)

on the following terms:

INPATIENT. I agree to remain as an inpatient in the above agency for a period of not more than 72 hours. I understand that, at the end of that period, the agency must release me or file a Petition for Court-Ordered Treatment, in which case I may be held until the court holds a hearing, which shall be no longer than six days from the date of filing the petition, excluding weekends and holidays. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

OUTPATIENT. I agree to keep all scheduled appointments required for a complete evaluation, to the best of my ability. I understand that if I fail to appear, a Petition for Court-Ordered Evaluation or Treatment may be filed, in which case I may be detained and required to undergo involuntary evaluation and treatment. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

\_\_\_\_\_ I understand that the physician-patient privilege does not apply, and information I give during this evaluation may be used in court in a civil hearing for court-ordered treatment.

\_\_\_\_\_ I understand that this evaluation may lead to a court hearing to determine if I need further treatment and that such treatment, or an investigation into the need for a guardianship, may be ordered by a court.

\_\_\_\_\_ I understand that an application for my examination has been filed and I choose to be evaluated voluntarily rather than by court order.

\_\_\_\_\_ I understand that my evaluation must take place within five days of my application.

\_\_\_\_\_ I understand that I have a right to require the person who has applied for my evaluation to present evidence of the need for such evaluation to a court of law for approval or disapproval and I waive my right to require prior court review of the application.

\_\_\_\_\_ I understand that I have a right, upon written request, to be discharged within 24 hours of that request (excluding weekends and holidays) unless the medical director of the evaluation agency files a petition for court-ordered evaluation.

\_\_\_\_\_  
Presented By

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Printed or Typed Name of Applicant

\_\_\_\_\_  
Date

ADHS/BHS Form MH-103 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit D repealed, new Exhibit D adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-504 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-504. Court-ordered Treatment**

- A. The regional authority shall perform, either directly or by contract, all treatment required by A.R.S. Title 36, Chapter 5, Article 5 and this Article. In order to perform these functions, the regional authority or its contractor must be licensed by the Department.
- B. A mental health agency may provide court-ordered treatment pursuant to A.R.S. Title 36, Chapter 5, Article 5, other than through contract with the regional authority, provided that:
  1. The mental health agency is licensed by the Department to provide the court-ordered treatment;
  2. The mental health agency complies with all applicable requirements under A.R.S. Title 36, Chapter 5, Article 5; and
  3. The individual ordered to undergo treatment is not a client of the regional authority.
- C. Upon a determination that an individual is a danger to self or others, gravely disabled, or persistently or acutely disabled,

and if no alternatives to court-ordered treatment exist, the medical director of the agency that provided the court-ordered evaluation shall file the appropriate affidavits on Department form MH-112, set forth in Exhibit E, with the court, together with one of the following petitions:

1. A petition for court-ordered treatment for an individual alleged to be gravely disabled, which shall be filed on Department form MH-110, set forth in Exhibit F.
  2. A petition for court-ordered treatment for an individual alleged to be a danger to self or others, which shall be filed on Department form MH-110, set forth in Exhibit F.
  3. A petition for court-ordered treatment for an individual alleged to be persistently or acutely disabled, which shall be filed on Department form MH-110, set forth in Exhibit F.
- D.** Any mental health agency filing a petition for court-ordered treatment of a client pursuant to subsection (A) above shall do

so in consultation with the client's clinical team prior to filing the petition.

- E.** With respect to inpatient and outpatient treatment, the petition filed with the court shall request that the individual be committed to the care and supervision of the regional authority, if the individual is a client, or to an appropriate mental health treatment agency, if the individual is not a client.

#### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-504 renumbered to R9-21-503; new Section R9-21-504 renumbered from R9-21-505 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

## Exhibit E. Affidavit

# AFFIDAVIT

STATE OF ARIZONA )  
 )  
 ) ss  
COUNTY OF )  
 \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says:

1. That affiant is a physician and is experienced in psychiatric matters;
2. That affiant has examined \_\_\_\_\_ and studied information about said person;
3. That affiant finds the person to be suffering from a mental disorder diagnosed as \_\_\_\_\_  
(Probable Diagnosis)

\_\_\_\_\_ and is, as a result thereof,  
(DSM Code)

- ☐ A danger to self                      ☐ A danger to others
- ☐ Gravely disabled                      ☐ Persistently or acutely disabled

4. The conclusion that the person has a mental disorder is based on the following facts:

[illegible]

B. Mental Status:

Emotional Process: \_\_\_\_\_  
\_\_\_\_\_

Thought: \_\_\_\_\_

Cognition:

Memory: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. The conclusion that the person is dangerous or disabled is based on the following: \_\_\_\_\_  
\_\_\_\_\_
6. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Physician's Signature

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

ADHS/BHS Form MH-112 (9/93)

**PERSISTENTLY OR ACUTELY DISABLED (EXHIBIT E, ADDENDUM NO. 1)**

RE: \_\_\_\_\_

**IF PERSISTENTLY OR ACUTELY DISABLED:**

1. Does the person have a severe mental disorder that, if not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality?  
Yes \_\_\_\_ No \_\_\_\_

If yes, provide the facts that support this conclusion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Does the severe mental disorder substantially impair the person's capacity to make an informed decision regarding treatment?  
Yes \_\_\_\_ No \_\_\_\_

If yes, provide the facts that support this conclusion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2a. Does this impairment cause the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment, and understanding and expressing an understanding of the alternatives to the particular treatment offered?  
Yes \_\_\_\_ No \_\_\_\_

If yes, provide the facts that support this conclusion: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2b. Were the advantages and disadvantages of accepting treatment explained to the person?  
Yes \_\_\_\_ No \_\_\_\_

## Arizona Health Care Cost Containment System (AHCCCS) - Behavioral Health Services for Persons with Serious Mental Illness

2c. Were the alternatives to treatment and the advantages and disadvantages of such alternatives explained to the person?

Yes \_\_\_\_\_ No \_\_\_\_\_

2d. Explain the specific reasons why the person is incapable of understanding and expressing an understanding of the explanations described in 2a, 2b, and 2c: \_\_\_\_\_

\_\_\_\_\_

3. Is there a reasonable prospect that the severe mental disorder is treatable by outpatient, inpatient, or combined inpatient and outpatient treatment?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide the facts that support this conclusion: \_\_\_\_\_

\_\_\_\_\_

ADHS/BHS Form MH-112 Addendum No. 1 (9/93)

**GRAVELY DISABLED (EXHIBIT E, ADDENDUM NO. 2)**

RE: \_\_\_\_\_

**IF GRAVELY DISABLED:**

1. Is the person's condition evidenced by behavior in which s/he, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because s/he would be unable to provide for his/her basic physical needs without hospitalization?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. If Yes, explain how his/her mental disability affects his/her ability to do the following and how any inability might harm him/her. Provide examples, if available, to support your conclusion:

\_\_\_\_\_

a. Provide for food: \_\_\_\_\_

\_\_\_\_\_

b. Provide for clothing and maintain hygiene: \_\_\_\_\_

\_\_\_\_\_

c. Provide for shelter: \_\_\_\_\_

\_\_\_\_\_

d. Obtain and maintain steady employment: \_\_\_\_\_

\_\_\_\_\_

e. Respond in an emergency: \_\_\_\_\_

\_\_\_\_\_

f. Care for present or future medical problems: \_\_\_\_\_

\_\_\_\_\_

g. Manage money: \_\_\_\_\_

\_\_\_\_\_

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h. Other:

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ADHS/BHS Form MH-112 Addendum No. 2 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit E repealed, new Exhibit E with Addenda 1 and 2 adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

## Exhibit F. Petition for Court-ordered Treatment

**PETITION FOR COURT-ORDERED TREATMENT**  
**Gravely Disabled Person**

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF**

In the Matter of )  
 ) MH  
 )  
 ) PETITION FOR COURT-  
 ) ORDERED TREATMENT  
 ) (Pursuant to A.R.S. § 36-533)  
 re: Mental Health Services ) Danger to Self/Others or  
 ) Persistently or Acutely Disabled or  
 \_\_\_\_\_ ) Gravely Disabled

STATE OF ARIZONA )  
 ) ss  
 COUNTY OF \_\_\_\_\_ )  
 \_\_\_\_\_ )

Petitioner \_\_\_\_\_, being first duly sworn/affirmed, alleges that:  
 (Medical Director)

1. \_\_\_\_\_ is, as a result of a mental disorder:
  - ☐ danger to self      ☐ danger to others
  - ☐ persistently or acutely disabled
  - ☐ gravely disabled
 and in need of treatment.
2. The court-ordered treatment alternatives that are appropriate and available are:
  - ☐ outpatient treatment [A.R.S. § 36-540(A)(1)].
  - ☐ combined inpatient and outpatient treatment [A.R.S. § 36-540(A)(2)].
  - ☐ inpatient treatment [A.R.S. § 36-540(A)(3)] at.
3. The person is unwilling or is unable to accept treatment voluntarily.
4. A summary of the facts supporting the above allegations is in the attached reports of examining physicians.
5. The person is residing or present in this county, or is admitted to an institution pursuant to an order of a court of competent jurisdiction sitting in this county, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. § 12-1702 et seq.
6. The person is entitled to notice of hearing of the petition and may be found at \_\_\_\_\_  
 (location)
7. Petitioner believes the person requires a: \_\_\_\_\_  
 \_\_\_\_\_ Title 14 guardian; \_\_\_\_\_ Conservator; \_\_\_\_\_ Title 36 guardian  
 and requests the Court to order an investigation and report to be made to the Court regarding this need. Said need exists  
 because: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
8. Petitioner believes the proposed person needs the immediate services of a temporary \_\_\_\_\_ guardian \_\_\_\_\_ conservator  
 and requests that the Court appoint the same because: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Arizona Health Care Cost Containment System (AHCCCS) - Behavioral Health Services for Persons with Serious Mental Illness

9. Petitioner believes that \_\_\_\_\_ address: \_\_\_\_\_, is the person's guardian/conservator, who should receive notice of any hearing.
10. A copy of this Petition has been mailed to the Public Fiduciary of \_\_\_\_\_ County and (other guardian, if any) \_\_\_\_\_

PETITIONER requests that the Court:

1. Set a date for a hearing; and
2. After notice and hearing find that the person is suffering from a mental disorder the result of which renders him/her dangerous to self or others, persistently or acutely disabled, or gravely disabled and order a period of treatment, all as set forth in paragraphs (1) and (2) above.
3. Check if applicable;
  - ☐ Order an independent investigation and report to the Court regarding the need for a Title 14 guardian or conservator or Title 36 guardian.
  - ☐ Appoint the following-named person as temporary guardian and/or conservator of the person, who Petitioner believes to be a fit and proper person to serve in that capacity:

\_\_\_\_\_  
(Proposed Temporary Guardian/Conservator)

\_\_\_\_\_  
(Relation to Patient)

\_\_\_\_\_  
(Address of Proposed Temporary Guardian/Conservator)

- ☐ Impose the duties of a Title 36 guardian upon the person's A.R.S. Title 14 guardian who is \_\_\_\_\_

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Petitioner  
Medical Director

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC OR DEPUTY CLERK OF THE SUPERIOR COURT

My Commission Expires:  
\_\_\_\_\_

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit F repealed, new Exhibit F adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).



**R9-21-505. Coordination of Court-ordered Treatment Plans with ISPs and ITDPs**

- A. All inpatient and outpatient treatment plans prepared for clients according to A.R.S. §§ 36-533, 36-540 and 36-540.01, and any modifications to the treatment plans, shall be developed and implemented according to the individual service planning procedures in Article 3 of this Chapter, including the right of the client to request different services and to appeal the treatment plan.
- B. If a client's ISP or ITDP is inconsistent with an inpatient or outpatient treatment plan ordered by the court, the mental health agency or regional authority, whichever is appropriate, shall recommend to the court that the court-ordered plan be amended so that it is consistent with the client's ISP or ITDP.
- C. If, during the period a client is on outpatient status, an emergency occurs that satisfies the standards for emergency admission under A.R.S. §§ 36-524 and 36-526, and that requires immediate revocation or modification of an outpatient order, a modification may be submitted to the court in consultation with the client's clinical team without complying with the individual service planning procedures, provided that the client and clinical team subsequently review any such modification according to the individual service planning procedures in Article 3 of this Chapter.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-505 renumbered to R9-21-504; new Section R9-21-505 renumbered from R9-21-506 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-506. Review of Court-ordered Individual**

- A. The mental health treatment agency that provides care for an individual ordered by a court to undergo treatment shall:
  1. Assure that an examination and review of a court-ordered individual is accomplished in an effective and timely fashion, but not less than 30 days prior to expiration of any treatment portion of the order.
  2. Require written documentation of the examination and review.
  3. Maintain a special record that shall include:
    - a. The expiration date of any treatment portion of the court-ordered treatment; and
    - b. The date by which the review and examination must be initiated.
  4. Establish specific dates by which the review and examination will be accomplished.
  5. Conduct the review and examination by the specified dates.
- B. In addition to subsection (A), the examination and review process for court-ordered clients shall, at a minimum, include the following:
  1. The client's clinical team shall hold an ISP meeting pursuant to R9-21-307, not less than 30 days prior to the expiration of any treatment portion of the court order, which shall include the treatment team of the treatment agency providing behavioral health services under the court order. The ISP meeting shall include a determination by the clinical team of:
    - a. Whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
    - b. That no alternatives to court-ordered treatment are appropriate; and
    - c. Whether court-ordered treatment should continue.
  2. If, upon conclusion of the ISP meeting, the clinical team determines that the client:
    - a. Continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
    - b. That no alternatives to court-ordered treatment are appropriate; and
    - c. That court-ordered treatment should continue, the medical director of the mental health treatment agency providing care for the client committed by court order shall appoint two physicians (one of whom must be a psychiatrist) and the mental health worker assigned to the case to conduct an examination to determine whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
  3. After such examination, the examining physicians shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
  4. If the medical finding is that the client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavit(s) as provided in R9-21-505.
- C. In addition to subsection (A), the examination and review process for non-clients shall, at a minimum, include the following:
  1. A person designated by the mental health agency providing treatment shall notify the medical director of the agency in writing of the expiration date 30 days prior to expiration of the court-ordered treatment.
  2. The medical director shall within five days notify one or more physicians (at least one of whom must be a psychiatrist) and the mental health worker assigned to the case of the expiration date of the court-ordered treatment and appoint them to determine whether the non-client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
  3. After such examination, the examining physician(s) shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
  4. If the medical finding is that the non-client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavits as provided in R9-21-505.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-506 renumbered to R9-21-505; new Section R9-21-506 renumbered from R9-21-507 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-507. Transfers of Court-ordered Persons**

- A. For the purpose of this Section, "non-client" means an individual who is seriously mentally ill but is not currently being evaluated or treated for a mental disorder by or through a regional authority.
- B. An individual ordered by the court to undergo treatment and without a guardian may be transferred from a mental health agency to another mental health agency, provided that the medical director of the mental health agency initiating the transfer has established that:
  - 1. There is no reason to believe the individual will suffer more serious physical harm or serious illness as a result of the transfer; and
  - 2. The individual is being transferred to a level and kind of treatment more appropriate to the individual's treatment needs and has been accepted for transfer by the medical director of the receiving mental health agency pursuant to subsection (D).
- C. The medical director of the mental health agency initiating the transfer shall:
  - 1. Be the medical director of the mental health agency to which the court committed the individual; or
  - 2. Obtain the court's consent to the transfer as necessary.
- D. All clients shall be transferred according to the procedures in Article 3 of this Chapter. With regard to non-clients, the medical director of the mental health agency initiating the transfer may not transfer a non-client to, or use the services of, any other mental health agency, unless the medical director of the other mental health agency has agreed to provide such services to a non-client to be transferred, and the Department has licensed and approved the mental health agency to provide those services.
- E. The medical director of the mental health agency initiating the transfer shall notify the receiving mental health agency in sufficient time for the intended transfer to be accomplished in an orderly fashion, but not less than three days. This notification shall include:
  - 1. A summary of the individual's needs.
  - 2. A statement that, in the medical director's judgment, the receiving mental health agency can adequately meet the individual's needs.
  - 3. If the individual is a client, a modification of a client's ISP according to R9-21-314, when applicable.
  - 4. Documentation of the court's consent, when applicable.
- F. The medical director of the transferring mental health agency shall present a written compilation of the individual's clinical

needs and suggestions for future care to the medical director of the receiving mental health agency, who shall accept and approve it before an individual can be transferred according to subsection (B).

- G. The transportation of individuals transferred from one mental health agency to another shall be the responsibility of the mental health agency initiating the transfer, irrespective of the allocation of the cost of the transportation defined elsewhere.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-507 renumbered to R9-21-506; new Section R9-21-507 renumbered from R9-21-508 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

#### R9-21-508. Requests for Notification

- A. At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a relative or victim wishing to be notified in the event of a individual being released prior to the expiration of the period of court-ordered treatment shall file a demand, according to A.R.S. § 36-541.01(D), on Department form MH-127 in Exhibit G.
- B. At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a person other than a relative or victim wishing to be notified in the event of an individual being released prior to the expiration of the period of court-ordered treatment shall file a petition and form of order, to A.R.S. § 36-541.01(D) on Department form MH-128 in Exhibit H.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 530, effective January 29, 2003 (Supp. 03-1). Former Section R9-21-508 renumbered to R9-21-507; new Section R9-21-508 renumbered from R9-21-509 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**Exhibit G. Demand for Notice by Relative or Victim****DEMAND FOR NOTICE BY RELATIVE OR VICTIM  
(Pursuant to A.R.S. § 36-541.01)**

REGARDING: \_\_\_\_\_  
(Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of \_\_\_\_\_ County, Case Number \_\_\_\_\_, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. §§ 12-1702 et seq., the undersigned \_\_\_\_\_ relative \_\_\_\_\_ victim does hereby demand that the medical director of \_\_\_\_\_, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01(D).

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Printed or Typed Name of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address to Mail Notice

\_\_\_\_\_  
Telephone Number of Applicant

ADHS/BHS Form MH-127 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit G repealed and a new Exhibit G adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

## Exhibit H. Petition for Notice

## PETITION FOR NOTICE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF \_\_\_\_\_

In the matter of )  
 ) MH \_\_\_\_\_  
 )  
 ) PETITION FOR NOTICE  
 )  
 ) (Pursuant to A.R.S. § 36-541.01)  
 re: Mental Health Services )  
 )  
 \_\_\_\_\_ )

REGARDING: \_\_\_\_\_  
 (Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of \_\_\_\_\_ County, Case Number \_\_\_\_\_, the undersigned, a person other than a relative or victim of the person hereby asserting a legitimate reason for receiving such notice, does hereby petition the Court to require that the medical director of \_\_\_\_\_, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01, and does hereby provide the following information required by A.R.S. § 36-541.01(D):

Legitimate reason for receiving notice: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

\_\_\_\_\_  
 Signature of Person Petitioning

\_\_\_\_\_  
 Printed or Typed Name of Petitioner

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Address to Send Notice

\_\_\_\_\_  
 Telephone Number of Applicant

## IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF \_\_\_\_\_

In the Matter of )  
 ) MH  
 )  
 ) ORDER FOR NOTICE  
 )  
 )  
 )  
 re: Mental Health Services )  
 )  
 )  
 )

1. The Court having received a demand by \_\_\_\_\_, a relative or victim of \_\_\_\_\_, a patient ordered by the Court to undergo treatment for a mental disorder as a danger to others, for written notice from the medical director of \_\_\_\_\_, the mental health treatment agency providing court-ordered treatment for said patient, of intention to release or discharge said patient prior to the expiration of the period ordered by the Court, as provided for in A.R.S. § 36-541.01, which demand included all information required by A.R.S. § 36-541.01(D);
2. The Court having received a petition by \_\_\_\_\_, a person other than a relative or victim of \_\_\_\_\_, a patient ordered by this Court to undergo treatment for a mental disorder as a danger to others, asserting that the petitioner has a legitimate reason for receiving such notice and petitioning the Court to require that the medical director of \_\_\_\_\_, the mental health treatment agency providing court-ordered treatment for said patient, provide the petitioner with written notice of intention to release or discharge said patient prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01, which petition included all information required by A.R.S. § 36-541.01(D); and the Court, after considering said petition, having found that the petitioner has a legitimate reason for receiving prior notice.

THEREFORE IT IS ORDERED that the medical director of \_\_\_\_\_, a mental health treatment agency, shall not release or discharge the above-named patient from court-ordered inpatient treatment without first giving written notice of the intention to do so, in accordance with A.R.S. § 36-541.01(F), to:

- \_\_\_\_\_ The above-named relative of the patient
- \_\_\_\_\_ The above-named victim of the patient
- \_\_\_\_\_ The above-named petitioner found by the Court to have a legitimate reason for receiving prior notice.

IT IS FURTHER ORDERED that a copy of this Order for Notice shall be delivered to the above-named mental health treatment agency and shall be filed with the patient's clinical record, and if the patient is transferred to another agency or institution, any orders for notice shall be transferred with the patient.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
 SUPERIOR COURT JUDGE/COMMISSIONER

ADHS/BHS Form MH-128 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit H repealed, new Exhibit H adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-509. Voluntary Admission for Treatment**

- A.** Application for admission for voluntary treatment according to A.R.S. § 36-518 shall be made to a mental health agency on Department form MH-210, Titled "Application for Voluntary Treatment," in Exhibit I, by any individual who:
1. Voluntarily makes application as provided in subsection (A);
  2. Gives informed consent;
  3. Has not been adjudicated as an incapacitated person according to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5; and
  4. If a minor, is appropriately admitted according to A.R.S. § 36-518.
- B.** Any mental health agency that is not a regional authority under R9-21-501 and that receives an application for voluntary treatment by a client shall immediately refer the client to the appropriate regional authority for treatment as provided under this rule, except that in the case of an emergency, a mental health treatment agency licensed by the Department to provide treatment under A.R.S. § 36-518 may accept an application for voluntary treatment and admit the client for treatment as follows:
1. Prior to admission of a client under this rule, the agency shall notify the appropriate regional authority of the potential admission and treatment so that the regional authority may first:
    - a. Provide other services or treatment to the client as an alternative; or
    - b. Authorize treatment of the client.
2. If the agency does not provide notice according to subsection (B)(1) above, the regional authority shall not be obligated to pay for the treatment provided.
- C.** Any mental health agency providing treatment according to A.R.S. § 36-518 shall place in the medical record of the individual to be treated the following:
1. A completed copy of the application for voluntary treatment;
  2. A completed informed consent form according to R9-21-511; and
  3. A written statement of the individual's present mental condition.
- D.** If the client admitted under this rule does not have an ISP, the regional authority shall prepare one in accordance with Article 3 of this Chapter. If the client already has an ISP, the regional authority shall commence a review of the ISP as provided in R9-21-313 and, if necessary, take steps to modify the ISP in accordance with R9-21-314.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-509 renumbered to R9-21-508; new Section R9-21-509 renumbered from R9-21-510 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**Exhibit I. Application for Voluntary Treatment****APPLICATION FOR VOLUNTARY TREATMENT**

(Pursuant to A.R.S. § 36-518)

I, \_\_\_\_\_, hereby request that the  
(Person's Name)  
\_\_\_\_\_ place me in a program or agency for mental health treatment.  
(Mental Health Agency)

I understand that my capacity to give informed consent to treatment will be determined before I am allowed to voluntarily consent to treatment. My informed consent to treatment will be given on a separate form.

Further, I am aware that I am entitled to:

1. Withdraw or modify my consent to treatment at any time.
2. Receive a booklet explaining my rights under Arizona law and assistance from a human rights advocate if I desire.
3. A fair explanation of the treatment I am to receive and the purposes of that treatment.
4. A description of any material and substantial risk reasonably to be expected as a result of the treatment.
5. An answer to my inquiries concerning treatment.
6. Revoke my consent to treatment at any time.
7. Discharge within 24 hours of my written request (excluding weekends and holidays) unless the medical director of the treatment agency files a petition for court-ordered treatment.

\_\_\_\_\_  
Person's Signature

\_\_\_\_\_  
Date

ADHS/BHS Form MH-210 (9/93)

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit I repealed, new Exhibit I adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-510 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-510. Informed Consent in Voluntary Application for Admission and Treatment**

- A.** Prior to beginning any course of medication or other treatment for an individual who is subject to voluntary admission under A.R.S. §§ 36-518 and 36-522, a mental health agency shall obtain an informed consent to treatment and enter it in the medical record. For all clients, the informed consent shall be obtained according to R9-21-206.01.
- B.** For clients, the mental health agency shall make reasonable inquiry into an individual's capacity to give informed consent, record these findings, and enter these findings in the client's ISP or record pursuant to Articles 2 and 3 of this Chapter. For non-clients, the agency shall adopt admission procedures that shall include the following:
  - 1. The medical director or the medical director's designee shall make reasonable inquiry into an individual's capacity to give informed consent.
  - 2. The medical director or the medical director's designee shall record his findings regarding the individual's capacity to give and of having given informed consent.
  - 3. That the findings of the medical director or the medical director's designee shall be entered into the individual's record.
- C.** Informed consent to treatment may be revoked at any time by a reasonably clear statement in writing.
  - 1. An individual shall receive assistance in writing the revocation as necessary.
  - 2. If informed consent to treatment is revoked, treatment shall be promptly discontinued, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal.
- D.** An informed consent form shall be signed by the individual and shall state that the following information was presented to the individual:
  - 1. A fair explanation of the treatments and their purposes.
  - 2. A description of any material and substantive risk reasonably to be expected.
  - 3. An offer to answer any inquiries concerning the treatments.
  - 4. Notice that the individual is free to revoke informed consent to treatment; and
  - 5. For clients, all information required by R9-21-206.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-510 renumbered to R9-21-509; new Section R9-21-510 renumbered from R9-21-511 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**Exhibit J. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

**Exhibit K. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective

October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

**R9-21-511. Use of Psychotropic Medication**

- A.** Psychotropic medications may only be ordered for individuals undergoing court-ordered evaluation according to R9-21-204 or R9-21-207.
- B.** Psychotropic medications may not be ordered for and administered to individuals undergoing court-ordered treatment, except as follows:
  - 1. In an emergency involving the safety of the individual or another, as documented in the individual's medical record;
  - 2. If the individual or guardian gives an informed consent to use the medication;
  - 3. If provision for use of the medications shall be contained in the individual's treatment plan or ISP. At a minimum, the plan shall specify:
    - a. A description of the circumstances under which the medication may be used.
    - b. A description of the objectives that are expected to be achieved by use of the medication. This description must indicate how the individual's condition would be improved by using the medication and indicate what result would be expected if the medication were not used; or
  - 4. According to R9-21-204 or R9-21-207.
- C.** The agency shall have the capability to detect drug side effects or toxic reactions that may result from the medications used.
- D.** The agency shall have written policies and procedures governing the use of psychotropic medication. These policies and procedures shall specify:
  - 1. Protective measures that will ensure the individual's safety and promote the avoidance or mitigation of short and long-term deleterious effects on the individual.
  - 2. Periodic individual care monitoring, i.e., evaluating and updating the treatment plan and reviewing problem areas such as failure of the individual to achieve treatment plan objectives.
  - 3. Recordkeeping requirements.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-511 renumbered to R9-21-510; new Section R9-21-511 renumbered from R9-21-512 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-512. Seclusion and Restraint**

Individuals undergoing court-ordered evaluation or court-ordered treatment shall not be placed in seclusion or restraint except as permitted by Article 2 of this Chapter, and specifically R9-21-204.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-512 renumbered to R9-21-511; new Section R9-21-512 renumbered from R9-21-513 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**R9-21-513. Renumbered**



**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary

of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-512 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 9. Health Services**

### **Chapter 22. Arizona Health Care Cost Containment System - Administration**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

Article 4, R9-22-401 through R9-22-408, R9-22-701, R9-22-712.35, R9-22-712.60, R9-22-712.61, R9-22-712.66, R9-22-712.67, R9-22-712.71, R9-22-712.75, R9-22-712.90, R9-22-730

REMOVE Supp. 15-4  
Pages: 1 - 116

REPLACE with Supp. 16-4  
Pages: 1 - 120

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 9. HEALTH SERVICES****CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION**

*Editor's Note: The Office of the Secretary of State prints all Code Chapters on white paper (Supp 01-3).*

*Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 301, § 61 and Ch. 302, § 13, and Laws 1993, Ch. 6, § 34. Exemption from A.R.S. Title 41, Chapter 6 means that AHCCCS did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; AHCCCS was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

**ARTICLE 1. DEFINITIONS**

*New Article 1, consisting of Sections R9-22-101 through R9-22-103, R9-22-105, and R9-22-106 through R9-22-112 adopted effective December 8, 1997 (Supp. 97-4).*

*Former Article 1, consisting of Section R9-22-101, repealed effective December 8, 1997 (Supp. 97-4).*

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*Article 3, consisting of Sections R9-22-301 through R9-22-319 and R9-22-321 through R9-22-344, repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section R9-22-320 repealed December 13, 1993 (Supp. 93-4).*

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*Article 6, consisting of Sections R9-22-601 through R9-22-605, repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1).*

*Article 6, consisting of Sections R9-22-601 through R9-22-604, adopted effective July 16, 1985.*

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*Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

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*Article 22, consisting of Sections R9-22-901 through R9-22-909, repealed by final rulemaking at 12 A.A.R. 4484, January 6, 2007 (Supp. 06-4).*

*Article 22, consisting of Sections R9-22-901 through R9-22-908, adopted effective August 29, 1985.*

*Former Article 22, consisting of Section R9-22-901, repealed effective October 1, 1983.*

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*Article 10, consisting of Section R9-22-1001 through R9-22-1002, adopted effective November 7, 1997 (Supp. 97-4).*

*Article 10, consisting of Section R9-22-1001 through R9-22-1002, repealed effective November 7, 1997 (Supp. 97-4).*

*Article 10 consisting of Sections R9-22-1001 and R9-22-1002 adopted effective October 1, 1985.*

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*Article 12, consisting of Sections R9-22-1201 through R9-22-1208, repealed; new Article 12, consisting of Sections R9-22-1201 through R9-22-1208 adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4).*

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*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, adopted effective September 9, 1998 (Supp. 98-3).*

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*Article 14, consisting of Sections R9-22-1401 through R9-22-1436, repealed; new Article 14, consisting of Sections R9-22-1401 through R9-22-1433 made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).*

*Article 14, consisting of Sections R9-22-1401 through R9-22-1436, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).*

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Article 15, consisting of Sections R9-22-1501 through R9-22-1508, repealed; new Article 15, consisting of Sections R9-22-1501 through R9-22-1505 made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

Article 15, consisting of Sections R9-22-1501 through R9-22-1508, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

Section	
R9-22-1501.	General Information .....
R9-22-1502.	Repealed .....
R9-22-1503.	Financial Eligibility Criteria .....
R9-22-1504.	Eligibility For A Person Who is Aged, Blind, or Disabled .....
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R9-22-1507.	Repealed .....
R9-22-1508.	Repealed .....

#### ARTICLE 16. HOSPITAL PRESUMPTIVE ELIGIBILITY

Article 16, consisting of Section R9-22-1601 made by final rulemaking at 20 A.A.R. 3436, effective January 1, 2015 (Supp. 14-4).

Article 16, consisting of Sections R9-22-1601 through R9-22-1612, R9-22-1614 through R9-22-1616, and R9-22-1618 through R9-22-1619, expired at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

Article 16, consisting of Sections R9-22-1601 through R9-22-1636, repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

Article 16, consisting of Sections R9-22-1601 through R9-22-1613, R9-22-1615 through R9-22-1620, R9-22-1622 through R9-22-1631, R9-22-1633, R9-22-1634, and R9-22-1636, adopted by

final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

Section	
R9-22-1601.	General Eligibility Requirements .....
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R9-22-1603.	Expired .....
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R9-22-1633.	Repealed .....
R9-22-1634.	Repealed .....
R9-22-1635.	Reserved .....
R9-22-1636.	Repealed .....

#### ARTICLE 17. ENROLLMENT

Article 17, consisting of Sections R9-22-1701 through R9-22-1704, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

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R9-22-1702.	Enrollment of a Member with an AHCCCS Contractor .....
R9-22-1703.	Effective Date of Enrollment with a Contractor .....
R9-22-1704.	Newborn Enrollment .....
R9-22-1705.	Guaranteed Enrollment Period .....

#### ARTICLE 18. RESERVED

#### ARTICLE 19. FREEDOM TO WORK

Article 19, consisting of Sections R9-22-1901 through R9-22-1922, made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

Section	
R9-22-1901.	General Freedom to Work Requirements .....
R9-22-1902.	General Administration Requirements .....
R9-22-1903.	Application for Coverage .....
R9-22-1904.	Notice of Approval or Denial .....
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#### ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

*Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).*

Section	
R9-22-2101.	General Provisions .....
R9-22-2102.	Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers .....
R9-22-2103.	Distribution of Trauma and Emergency Services Fund: Emergency Services .....
R9-22-2104.	Additional Trauma and Emergency Services Payments under the Section 1115 Waiver .....

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## ARTICLE 1. DEFINITIONS

## R9-22-101. Location of Definitions

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

Definition	Section or Citation
"Accommodation"	R9-22-701
"Active treatment"	R9-22-1301
"ADHS"	R9-22-101
"Administration"	A.R.S. § 36-2901
"Adult behavioral health therapeutic home"	9 A.A.C. 10, Article 1
"Adverse action"	R9-22-101
"Affiliated corporate organization"	R9-22-101
"Aged"	42 U.S.C. 1382c(a)(1)(A) and R9-22-1501
"Agency"	R9-22-1201
"Aggregate"	R9-22-701
"AHCCCS"	R9-22-101
"AHCCCS inpatient hospital day or days of care"	R9-22-701
"AHCCCS registered provider"	R9-22-101
"Ambulance"	A.R.S. § 36-2201
"Ancillary service"	R9-22-101
"Anticipatory guidance"	R9-22-201
"Annual enrollment choice"	R9-22-1701
"APC"	R9-22-701
"Applicant"	R9-22-101 or R9-22-301
"Application"	R9-22-101
"Assessment"	R9-22-1101 or R9-22-1201
"Assignment"	R9-22-101
"Attending physician"	R9-22-101 or R9-22-202
"Authorized representative"	R9-22-101
"Authorization"	R9-22-202
"Auto-assignment algorithm"	R9-22-1701
"AZ-NBCCEDP"	R9-22-2001
"Behavior management services"	R9-22-1201
"Behavioral health therapeutic home care services"	R9-22-1201
"Behavioral health paraprofessional"	R9-22-101
"Behavioral health professional"	R9-22-101
"Behavioral health recipient"	R9-22-201
"Behavioral health services"	R9-22-1201
"Behavioral health technician"	R9-22-1201
"Benefit year"	R9-22-201
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"Billed charges"	R9-22-701
"Blind"	R9-22-1501
"Burial plot"	R9-22-1401
"Business agent"	R9-22-701
"Calculated inpatient costs"	R9-22-712.07
"Capital costs"	R9-22-701
"Capped fee-for-service"	R9-22-101
"Caretaker relative"	R9-22-1401
"Case management"	R9-22-1201
"Case record"	R9-22-101
"Cash assistance"	R9-22-1401
"Certified psychiatric nurse practitioner"	R9-22-1201
"Charge master"	R9-22-712
"Child"	R9-22-1503
"Children's Rehabilitative Services" or "CRS"	R9-22-101 or R9-22-301
"Chronic"	R9-22-1301
"Claim"	R9-22-1101
"Claims paid amount"	R9-22-712.07
"Clean claim"	A.R.S. § 36-2904
"Clinical oversight"	9 A.A.C. 10
"CMDP"	R9-22-1701
"CMS"	R9-22-101
"Continuous stay"	R9-22-101
"Contract"	R9-22-101
"Contract year"	R9-22-101
"Contractor"	A.R.S. § 36-2901 or R9-22-210.01
"Copayment"	R9-22-701
"Cost avoid"	R9-22-1201

"Cost-To-Charge Ratio" or "CCR"	R9-22-701 or R9-22-712
"Court-ordered evaluation"	R9-22-1201
"Court-ordered pre-petition screening"	R9-22-1201
"Court-ordered treatment"	R9-22-1201
"Covered charges"	R9-22-701
"Covered services"	R9-22-101
"CPT"	R9-22-701
"Creditable coverage"	R9-22-2003 and 42 U.S.C. 300gg(c)
"Crisis services"	R9-22-1201
"Critical Access Hospital"	R9-22-701
"CRS application"	R9-22-1301
"CRS condition"	R9-22-1301
"CRS provider"	R9-22-1301
"Cryotherapy"	R9-22-2001
"Customized DME"	R9-22-212
"Day"	R9-22-101 and R9-22-1101
"Date of the Notice of Adverse Action"	R9-22-1441
"DBHS"	R9-22-101
"DCSS"	R9-22-301
"Department"	A.R.S. § 36-2901
"Dependent child"	A.R.S. § 46-101 or R9-22-1401
"DES"	R9-22-101
"Diagnostic services"	R9-22-101
"Direct graduate medical education costs" or "direct program costs"	R9-22-701
"Direct supervision"	R9-22-1201
"Director"	R9-22-101
"Disabled"	R9-22-1501
"Discussion"	R9-22-101
"Disenrollment"	R9-22-1701
"DME"	R9-22-101
"DRI inflation factor"	R9-22-701
"E.P.S.D.T. services"	42 CFR 440.40(b)
"Eligibility posting"	R9-22-701
"Eligible person"	A.R.S. § 36-2901
"Emergency behavioral health condition for a non-FES member"	R9-22-201
"Emergency behavioral health services for a non-FES member"	R9-22-201
"Emergency medical condition for a non-FES member"	R9-22-201
"Emergency medical services for a non-FES member"	R9-22-201
"Emergency medical services provider"	R9-22-1201
"Emergency medical or behavioral health condition for a FES member"	R9-22-217
"Emergency services costs"	A.R.S. § 36-2903.07
"Emergency services for a FES member"	R9-22-217
"Encounter"	R9-22-701
"Enrollment"	R9-22-1701
"Equity"	R9-22-101
"Experimental services"	R9-22-203
"Existing outpatient service"	R9-22-701
"Expansion funds"	R9-22-701
"FAA"	R9-22-301
"Facility"	R9-22-101
"Factor"	R9-22-701 and 42 CFR 447.10
"FBR"	R9-22-101
"Federal financial participation" or "FFP"	42 CFR 400.203
"Federal poverty level" or "FPL"	A.R.S. § 36-2981
"Fee-For-Service" or "FFS"	R9-22-101
"FES member"	R9-22-101
"FESP"	R9-22-101
"First-party liability"	R9-22-1001
"File"	R9-22-1101
"Fiscal agent"	R9-22-210
"Fiscal intermediary"	R9-22-701
"Foster care maintenance payment"	42 U.S.C. 675(4)(A)
"FQHC"	R9-22-101
"Freestanding Children's Hospital"	R9-22-701
"Functionally limiting"	R9-22-1301
"Fund"	R9-22-712.07
"Graduate medical education (GME) program"	R9-22-701

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"GME program approved by the Administration"			"Person"	R9-22-1101
or "approved GME program"			"Pharmaceutical service"	R9-22-201
"Grievance"	A.A.C. Chapter 34		"Physical therapy"	R9-22-201
"GSA"	R9-22-101		"Physician"	R9-22-101
"HCAC"	R9-22-701		"Physician assistant"	R9-22-1201
"HCPCS"	R9-22-701		"Post-stabilization services"	R9-22-201 or 42 CFR 422.113
"Health care institution"	A.R.S. § 36-401		"PPS bed"	R9-22-701
"Health care practitioner"	R9-22-1201		"Practitioner"	R9-22-101
"Hearing aid"	R9-22-201		"Pre-enrollment process"	R9-22-301
"HIPAA"	R9-22-701		"Prescription"	R9-22-101
"Home health services"	R9-22-201		"Primary care provider" or "PCP"	R9-22-101
"Hospital"	R9-22-101		"Primary care provider services"	R9-22-201
"ICU"	R9-22-701		"Prior authorization"	R9-22-101
"IHS"	R9-22-101		"Prior period coverage" or "PPC"	R9-22-101
"IHS enrolled" or "enrolled with IHS"	R9-22-708		"Procedure code"	R9-22-701
"IMD" or "Institution for Mental Diseases"	42 CFR 435.1010 and R9-22-101		"Procurement file"	R9-22-601
"Income"	R9-22-301		"Proposal"	R9-22-101
"Indirect program costs"	R9-22-701		"Prospective rates"	R9-22-701
"Individual"	R9-22-211		"Psychiatrist"	R9-22-1201
"In-kind income"	R9-22-1420		"Psychologist"	R9-22-1201
"Inmate of a public institution"	42 CFR 435.1010		"Psychosocial rehabilitation services"	R9-22-201
"Inpatient covered charges"	R9-22-712.07		"Public hospital"	R9-22-701
"Intermediate Care Facility for the Mentally Retarded" or "ICF-MR"	42 U.S.C. 1396d(d)		"Qualified alien"	A.R.S. § 36-2903.03
"Intern and Resident Information System"	R9-22-701		"Qualified behavioral health service provider"	R9-22-1201
"LEEP"	R9-22-2001		"Quality management"	R9-22-501
"Legal representative"	R9-22-101		"Radiology"	R9-22-101
"Level I trauma center"	R9-22-2101		"RBHA" or "Regional Behavioral Health Authority"	R9-22-201
"License" or "licensure"	R9-22-101		"Reason to know" or "had reason to know"	R9-22-1101
"Licensee"	R9-22-1201		"Rebase"	R9-22-701
"MAGI-based income"	R9-22-1401		"Redetermination"	R9-22-1301
"Mailing date"	R9-22-101		"Referral"	R9-22-101
"Medical education costs"	R9-22-701		"Rehabilitation services"	R9-22-101
"Medical expense deduction" or "MED"	R9-22-1401		"Reinsurance"	R9-22-701
"Medical practitioner"	R9-22-1201		"Remittance advice"	R9-22-701
"Medical record"	R9-22-101		"Resident"	R9-22-701
"Medical review"	R9-22-701		"Residual functional deficit"	R9-22-201
"Medical services"	A.R.S. § 36-401		"Resources"	R9-22-301
"Medical supplies"	R9-22-101		"Respiratory therapy"	R9-22-201
"Medical support"	R9-22-301		"Respite"	R9-22-1201
"Medically eligible"	R9-22-1301		"Responsible offeror"	R9-22-101
"Medically necessary"	R9-22-101		"Responsive offeror"	R9-22-101
"Medicare claim"	R9-22-101		"Revenue Code"	R9-22-701
"Medicare Urban or Rural Cost-to-Charge Ratio (CCR)"	R9-22-701		"Review"	R9-22-101
"Member"	A.R.S. § 36-2901 or R9-22-301		"Review month"	R9-22-101
"Mental disorder"	A.R.S. § 36-501		"RFP"	R9-22-101
"Milliman study"	R9-22-712.07		"Rural Contractor"	R9-22-718
"Monthly equivalent"	R9-22-1401		"Rural Hospital"	R9-22-712.07 and R9-22-718
"Monthly income"	R9-22-1401		"Scope of services"	R9-22-201
"National Standard code sets"	R9-22-701		"Section 1115 Waiver"	A.R.S. § 36-2901
"New hospital"	R9-22-701		"Service location"	R9-22-101
"NICU"	R9-22-701		"Service site"	R9-22-101
"Noncontracted Hospital"	R9-22-718		"SOBRA"	R9-22-101
"Noncontracting provider"	A.R.S. § 36-2901		"Specialist"	R9-22-101
"Non-FES member"	R9-22-101		"Specialty facility"	R9-22-701
"Non-IHS Acute Hospital"	R9-22-701		"Speech therapy"	R9-22-201
"Nursing facility" or "NF"	42 U.S.C. 1396r(a)		"Spendthrift restriction"	R9-22-1401
"Observation day"	R9-22-701		"Sponsor"	R9-22-301
"Occupational therapy"	R9-22-201		"Sponsor deemed income"	R9-22-301
"Offeror"	R9-22-101		"Sponsoring institution"	R9-22-701
"Operating costs"	R9-22-701		"Spouse"	R9-22-101
"OPPC"	R9-22-701		"SSA"	42 CFR 1000.10
"Organized health care delivery system"	R9-22-701		"SSI"	42 CFR 435.4
"Outlier"	R9-22-701		"SSN"	R9-22-101
"Outpatient hospital service"	R9-22-701		"Stabilize"	42 U.S.C. 1395dd
"Ownership change"	R9-22-701		"Standard of care"	R9-22-101
"Ownership interest"	42 CFR 455.101		"Sterilization"	R9-22-201
"Partial Care"	R9-22-1201		"Subcontract"	R9-22-101
"Participating institution"	R9-22-701		"Submitted"	A.R.S. § 36-2904
"Peer group"	R9-22-701		"Substance abuse"	R9-22-201
"Peer-reviewed study"	R9-22-2001		"SVES"	R9-22-301
"Penalty"	R9-22-1101		"Tax dependent"	42 CFR 435.4
			"Taxi"	A.R.S. § 28-101(53)
			"Taxpayer"	R9-22-1401

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"Third-party"	R9-22-1001
"Third-party liability"	R9-22-1001
"Tier"	R9-22-701
"Tiered per diem"	R9-22-701
"Title IV-D"	R9-22-1401
"Title IV-E"	R9-22-1401
"Total Inpatient payments"	R9-22-712.07
"Trauma and Emergency Services Fund" A.R.S. § 36-2903.07	
"TRBHA" or "Tribal Regional Behavioral Health Authority"	R9-22-1201
"Treatment"	R9-22-2004
"Tribal Facility" A.R.S. § 36-2981	
"Unrecovered trauma center readiness costs"	R9-22-2101
"Urban Contractor"	R9-22-718
"Urban Hospital"	R9-22-718
"USCIS"	R9-22-301
"Utilization management"	R9-22-501
"WWHP"	R9-22-2001

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

"ADHS" means the Arizona Department of Health Services.

"Adverse action" means an action taken by the Department or Administration to deny, discontinue, or reduce medical assistance.

"Affiliated corporate organization" means any organization that has ownership or control interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation.

"AHCCCS" means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

"AHCCCS registered provider" means a provider or non-contracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A), and

Meets license or certification requirements to provide covered services.

"Ancillary service" means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

"Applicant" means a person who submits or whose authorized representative submits a written, signed, and dated application for AHCCCS benefits.

"Application" means an official request for AHCCCS medical coverage made under this Chapter.

"Assignment" means enrollment of a member with a contractor by the Administration.

"Attending physician" means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a Fee-For-Service member.

"Authorized representative" means a person who is authorized to apply for medical assistance or act on behalf of another person.

"Behavioral health paraprofessional" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution,

If the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33,

If the behavioral health services were provided in a setting other than a licensed health care institution; and

Are provided under supervision by a behavioral health professional R9-10-101.

"Behavioral Health Professional" has the same meaning as defined A.A.C. R9-10-101 excluding subsection (g).

"Capped fee-for-service" means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific covered service or equipment provided to a member. A payment is made in accordance with an upper or capped limit established by the Director. This capped limit can either be a specific dollar amount or a percentage of billed charges.

"Case record" means an individual or family file retained by the Department that contains all pertinent eligibility information, including electronically stored data.

"Children's Rehabilitative Services" or "CRS" means the program that provides covered medical services and covered support services in accordance with A.R.S. § 36-261.

"CMS" means the Centers for Medicare and Medicaid Services.

"Continuous stay" means a period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

"Contract" means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

"Contract year" means the period beginning on October 1 of a year and continuing until September 30 of the following year.

"Covered services" means the health and medical services described in Articles 2 and 12 of this Chapter as being eligible for reimbursement by AHCCCS.

"Day" means a calendar day unless otherwise specified.

"DBHS" means the Division of Behavioral Health Services within the Arizona Department of Health Services.

"DES" means the Department of Economic Security.

"Diagnostic services" means services provided for the purpose of determining the nature and cause of a condition, illness, or injury.

"Director" means the Director of the Administration or the Director's designee.

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“Discussion” means an oral or written exchange of information or any form of negotiation.

“DME” means durable medical equipment, which is an item or appliance that can withstand repeated use, is designed to serve a medical purpose, and is not generally useful to a person in the absence of a medical condition, illness, or injury.

“Equity” means the county assessor full cash value or market value of a resource minus valid liens, encumbrances, or both.

“Facility” means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related service.

“FBR” means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

“Fee-For-Service” or “FFS” means a method of payment by the AHCCCS Administration to a registered provider on an amount-per-service basis for a member not enrolled with a contractor.

“FES member” means a person who is eligible to receive emergency medical and behavioral health services through the FESP under R9-22-217.

“FESP” means the federal emergency services program under R9-22-217 which covers services to treat an emergency medical or behavioral health condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

“FQHC” means federally qualified health center.

“GSA” means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with the contractor.

“Hospital” means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.

“IHS” means Indian Health Service.

“IMD” or “Institution for Mental Diseases” means an Institution for Mental Diseases as described in 42 CFR 435.1010 that is licensed by ADHS.

“Legal representative” means a custodial parent of a child under 18, a guardian, or a conservator.

“License” or “licensure” means a nontransferable authorization that is granted based on established standards in law by a state or a county regulatory agency or board and allows a health care provider to lawfully render a health care service.

“Mailing date” when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:

Shown on the postmark;

Shown on the postage meter mark of the envelope, if no postmark; or

Entered as the date on the document, if there is no legible postmark or postage meter mark.

“Medical record” means a document that relates to medical or behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that is kept at the site of the provider.

“Medical supplies” means consumable items that are designed specifically to meet a medical purpose.

“Medically necessary” means a covered service is provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.

“Medicare claim” means a claim for Medicare-covered services for a member with Medicare coverage.

“Non-FES member” means an eligible person who is entitled to full AHCCCS services.

“Offeror” means an individual or entity that submits a proposal to the Administration in response to an RFP.

“Physician” means a person licensed as an allopathic or osteopathic physician under A.R.S. Title 32, Chapter 13 or Chapter 17.

“Practitioner” means a physician assistant licensed under A.R.S. Title 32, Chapter 25, or a registered nurse practitioner certified under A.R.S. Title 32, Chapter 15.

“Prescription” means an order to provide covered services that is signed or transmitted by a provider authorized to prescribe the services.

“Primary care provider” or “PCP” means an individual who meets the requirements of A.R.S. § 36-2901 (14), and who is responsible for the management of a member’s health care.

“Prior authorization” means the process by which the Administration or contractor, whichever is applicable, authorizes, in advance, the delivery of covered services based on factors including but not limited to medical necessity, cost effectiveness, compliance with this Article and any applicable contract provisions. Prior authorization is not a guarantee of payment.

“Prior period coverage” means the period prior to the member’s enrollment during which a member is eligible for covered services. PPC begins on the first day of the month of application or the first eligible month, whichever is later, and continues until the day the member is enrolled with a contractor.

“Proposal” means all documents, including best and final offers, submitted by an offeror in response to an RFP by the Administration.

“Radiology” means professional and technical services rendered to provide medical imaging, radiation oncology, and radioisotope services.

“Referral” means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

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“Rehabilitation services” means physical, occupational, and speech therapies, and items to assist in improving or restoring a person’s functional level.

“Responsible offeror” means an individual or entity that has the capability to perform the requirements of a contract and that ensures good faith performance.

“Responsive offeror” means an individual or entity that submits a proposal that conforms in all material respects to an RFP.

“Review” means a review of all factors affecting a member’s eligibility.

“Review month” means the month in which the individual’s or family’s circumstances and case record are reviewed.

“RFP” means Request for Proposals, including all documents, whether attached or incorporated by reference, that are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.

“Service location” means a location at which a member obtains a covered service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

“Service site” means a location designated by a contractor as the location at which a member is to receive covered services.

“S.O.B.R.A.” means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII).

“Specialist” means a Board-eligible or certified physician who declares himself or herself as a specialist and practices a specific medical specialty. For the purposes of this definition, Board-eligible means a physician who meets all the requirements for certification but has not tested for or has not been issued certification.

“Spouse” means a person who has entered into a contract of marriage recognized as valid by this state.

“SSN” means Social Security number.

“Standard of care” means a medical procedure or process that is accepted as treatment for a specific illness, injury, or medical condition through custom, peer review, or consensus by the professional medical community.

“Subcontract” means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member,

A marketing organization, or

Any other organization or person that agrees to perform any administrative function or service for the contractor specifically related to securing or fulfilling the contractor’s obligation to the Administration under the terms of a contract.

“Taxi” is as defined in A.R.S. § 28-101(53).

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-101 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-101 repealed, former Sections R9-22-102 and R9-22-301 renumbered as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency by adding new paragraphs (24), (46), (84) and (91) and renumbering accordingly effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency by adding new paragraphs (2) and (15) and renumbering accordingly effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment added paragraphs (2) and (15) and renumbered accordingly effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended paragraphs (10) and (15) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended by deleting paragraphs (39) and (62) and renumbering accordingly effective July 1, 1988 (Supp. 88-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3830,

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effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-102. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-102 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1092 (Supp. 82-4). Former Section R9-22-102 renumbered together with former Section R9-22-301 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section adopted effective December 8, 1997 (Supp. 97-4). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3).

**R9-22-103. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-104. Reserved****R9-22-105. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-106. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-107. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002

(Supp. 02-3). Section repealed by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-108. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-109. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. effective 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-110. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

**R9-22-111. Reserved****R9-22-112. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

**R9-22-113. Reserved****R9-22-114. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-115. Repealed****Historical Note**

Final Section adopted at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-116. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000



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(Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-117. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-118. Reserved****R9-22-119. Reserved****R9-22-120. Repealed****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**ARTICLE 2. SCOPE OF SERVICES****R9-22-201. Scope of Services-related Definitions**

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

“Anticipatory guidance” means a person responsible for a child receives information and guidance of what the person should expect of the child’s development and how to help the child stay healthy.

“Behavioral health recipient” means a Title XIX or Title XXI acute care member who is eligible for, and is receiving, behavioral health services through ADHS/DBHS.

“Benefit year” means a one-year time period of October 1st through September 30th.

“Emergency behavioral health condition for a non-FES member” means a condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

Placing the health of the person, including mental health, in serious jeopardy;

Serious impairment to bodily functions;

Serious dysfunction of any bodily organ or part; or

Serious physical harm to another person.

“Emergency behavioral health services for a non-FES member” means those behavioral health services provided for the treatment of an emergency behavioral health condition.

“Emergency medical condition for a non-FES member” means treatment for a medical condition, including labor and delivery, which manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

Placing the member’s health in serious jeopardy,

Serious impairment to bodily functions, or

Serious dysfunction of any bodily organ or part.

“Emergency medical services for a non-FES member” means services provided for the treatment of an emergency medical condition.

“Hearing aid” means an instrument or device designed for, or represented by the supplier as aiding or compensating for impaired or defective human hearing, and includes any parts, attachments, or accessories of the instrument or device.

“Home health services” means services and supplies that are provided by a home health agency that coordinates in-home intermittent services for curative, rehabilitative care, including home-health aide services, licensed nurse services, and medical supplies, equipment, and appliances.

“Occupational therapy” means medically prescribed treatment provided by or under the supervision of a licensed occupational therapist, to restore or improve an individual’s ability to perform tasks required for independent functioning.

“Pharmaceutical service” means medically necessary medications that are prescribed by a physician, practitioner, or dentist under R9-22-209.

“Physical therapy” means treatment services to restore or improve muscle tone, joint mobility, or physical function provided by or under the supervision of a registered physical therapist.

“Post-stabilization services” means covered services related to an emergency medical or behavioral health condition provided after the condition is stabilized.

“Primary care provider services” means healthcare services provided by and within the scope of practice, as defined by law, of a licensed physician, certified nurse practitioner, or licensed physician assistant.

“Psychosocial rehabilitation services” means services that provide education, coaching, and training to address or prevent residual functional deficits and may include services that may assist a member to secure and maintain employment. Psychosocial rehabilitation services may include:

Living skills training,

Cognitive rehabilitation,

Health promotion,

Supported employment, and

Other services that increase social and communication skills to maximize a member’s ability to participate in the community and function independently.

“RBHA” or “Regional Behavioral Health Authority” means the same as in A.R.S. § 36-3401.

“Residual functional deficit” means a member’s inability to return to a previous level of functioning, usually after experiencing a severe psychotic break or state of decompensation.

“Respiratory therapy” means treatment services to restore, maintain, or improve respiratory functions that are provided by, or under the supervision of, a respiratory therapist licensed according to A.R.S. Title 32, Chapter 35.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Speech therapy” means medically prescribed diagnostic and treatment services provided by or under the supervision of a certified speech therapist.

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“Sterilization” means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

“Substance abuse” means the chronic, habitual, or compulsive use of any chemical matter that, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological dependence and impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse for adults who are 21 years of age or older

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-201 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

#### R9-22-202. General Requirements

- A.** For the purposes of this Article, the following definitions apply:
1. “Authorization” means written, verbal, or electronic authorization by:
    - a. The Administration for services rendered to a fee-for-service member, or
    - b. The contractor for services rendered to a prepaid capitated member.
  2. Use of the phrase “attending physician” applies only to the fee-for-service population.
- B.** In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
  2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
  3. The Administration or a contractor may waive the covered services referral requirements of this Article.
  4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practi-

tioner, or a dentist shall provide or direct the member’s covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.

5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor’s network without a referral from a primary care provider.
  6. A member may receive physical and behavioral health services as specified in Articles 2 and 12.
  7. The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
  8. An AHCCCS registered provider shall provide covered services within the provider’s scope of practice.
  9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
    - a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
    - b. Services or items furnished gratuitously, and
    - c. Personal care items except as specified under R9-22-212.
  10. Medical or behavioral health services are not covered services if provided to:
    - a. An inmate of a public institution; or
    - b. A person who is in residence at an institution for the treatment of tuberculosis.
- C.** The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.
- D.** Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.
- E.** Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
- F.** A service is not a covered service if provided outside the GSA unless one of the following applies:
1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
  2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member’s family;
  3. The contractor authorizes placement in a nursing facility located out of the GSA; or
  4. Services are provided during prior period coverage or during the prior quarter coverage.
- G.** If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.
- H.** A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

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- I. The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.
- J. The restrictions, limitations, and exclusions in this Article do not apply to a contractor electing to provide noncovered services.
  - 1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
  - 2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
  - 3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.
- K. Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
  - 1. R9-22-205(A)(8),
  - 2. R9-22-206,
  - 3. R9-22-207,
  - 4. R9-22-212(C),
  - 5. R9-22-212(D),
  - 6. R9-22-212(E)(8),
  - 7. R9-22-215(C)(5), (C)(6), and
  - 8. R9-22-215(C)(4).
- A. Experimental services are not covered. A service is not experimental if:
  - 1. It is generally and widely accepted as a standard of care in the practice of medicine in the United States and is a safe and effective treatment for the condition for which it is intended or used.
  - 2. The service does not meet the standard in subsection (A)(1), but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of the evidence in peer-reviewed articles in medical journals published in the United States.
  - 3. The service does not meet the standard in subsection (A)(2) because the condition for which the service is intended or used is rare, but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of opinions from specialists who provide the service or related services.
- B. The following factors shall be considered when evaluating the weight of peer-reviewed articles or the opinions of specialists:
  - 1. The mortality rate and survival rate of the service as compared to the rates for alternative non-experimental services.
  - 2. The types, severity, and frequency of complications associated with the services as compared with the complications associated with alternative non-experimental services.
  - 3. The frequency with which the service has been performed in the past.
  - 4. Whether there is sufficient historical information regarding the service to provide reliable data regarding risks and benefits.
  - 5. The reputation and experience of the authors and/or specialists and their record in related areas.
  - 6. The extent to which medical science in the area develops rapidly and the probability that more definite data will be available in the foreseeable future.
  - 7. Whether the peer reviewed article describes a random controlled trial or an anecdotal clinical case study.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-202 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective December 13, 1993 (Supp. 93-4).

Amended effective July 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 22, 1995 (Supp. 95-3). Amended effective January 10, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-203 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Section amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

**R9-22-204. Inpatient General Hospital Services**

- A. The following limitations apply to inpatient general hospital services that are provided by FFS providers.

**R9-22-203. Experimental Services**

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1. Providers shall obtain prior authorization from the Administration for the following inpatient hospital services:
    - a. Nonemergency and elective admission, including psychiatric hospitalization;
    - b. Elective surgery; and
    - c. Services or items provided to cosmetically reconstruct or improve personal appearance after an illness or injury.
  2. The Administration or a contractor may deny a claim if a provider fails to obtain prior authorization.
  3. Providers are not required to obtain prior authorization from the Administration for the following inpatient hospital services:
    - a. Voluntary sterilization,
    - b. Dialysis shunt placement,
    - c. Arteriovenous graft placement for dialysis,
    - d. Angioplasties or thrombectomies of dialysis shunts,
    - e. Angioplasties or thrombectomies of arteriovenous graft for dialysis,
    - f. Hospitalization for vaginal delivery that does not exceed 48 hours,
    - g. Hospitalization for cesarean section delivery that does not exceed 96 hours, and
    - h. Other services identified by the Administration through the Provider Participation Agreement.
  4. The Administration may perform concurrent review for hospitalizations of non-FES members to determine whether there is medical necessity for the hospitalization. A provider shall notify the Administration no later than 72 hours after an emergency admission.
- C.** Coverage of in-state and out-of-state inpatient hospital services is limited to 25 days per benefit year for members age 21 and older for claims with discharge dates on or before September 30, 2014. The limit applies for all inpatient hospital services with dates of service during the benefit year regardless of whether the member is enrolled in Fee for Service, is enrolled with one or more contractors, or both, during the benefit year.
1. For purposes of calculating the limit:
    - a. Inpatient days are counted towards the limit if paid by the Administration or a contractor;
    - b. Inpatient days will be counted toward the limit in the order of the adjudication date of a paid claim;
    - c. Paid inpatient days are allocated to the benefit year in which the date of service occurs;
    - d. Each 24 hours of paid observation services is counted as one inpatient day if the patient is not admitted to the same hospital directly following the observation services,
    - e. Observation services, which are directly followed by an inpatient admission to the same hospital are not counted towards the inpatient limit; and
    - f. After 25 days of inpatient hospital services have been paid as provided for in this rule Section:
      - i. Outpatient services that are directly followed by an inpatient admission to the same hospital, including observation services, are not covered.
      - ii. Continuous periods of observation services of less than 24 hours that are not directly followed by an inpatient admission to the same hospital are covered.
      - iii. For continuous periods of observation services of 24 hours or more that are not directly followed by an inpatient admission to the same hospital, 23 hours of observations services are covered.
  2. The following inpatient days are not included in the inpatient hospital limitation described in this Section:
    - a. Days reimbursed under specialty contracts between AHCCCS and a transplant facility that are included within the component pricing referred to in the contract;
    - b. Days related to Behavioral Health:
      - i. Inpatient days that qualify for the psychiatric tier under R9-22-712.09 and reimbursed by the Administration or its contractors, or
      - ii. Inpatient days with a primary psychiatric diagnosis code reimbursed by the Administration or its contractors, or
      - iii. Inpatient days paid by the Arizona Department of Health Services Division of Behavioral Health Services or a RBHA or TRBHA.
    - c. Days related to treatment for burns and burn late effects at an American College of Surgeons verified burn center;
    - d. Same Day Admit Discharge services are excluded from the 25 day limit; and
    - e. Subject to approval by CMS, days for which the state claims 100% FFP, such as payments for days provided by IHS or 638 facilities.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-204 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1745, effective October 1, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

**R9-22-205. Attending Physician, Practitioner, and Primary Care Provider Services**

- A.** A primary care provider, attending physician, or practitioner shall provide primary care provider services within the provider's scope of practice under A.R.S. Title 32. A member may receive primary care provider services in an inpatient or outpatient setting including at a minimum:
1. Periodic health examination and assessment;
  2. Evaluation and diagnostic workup;
  3. Medically necessary treatment;
  4. Prescriptions for medication and medically necessary supplies and equipment;
  5. Referral to a specialist or other health care professional if medically necessary;
  6. Patient education;
  7. Home visits if medically necessary; and

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8. Preventive health services, such as, well visits, immunizations, colonoscopies, mammograms and PAP smears.
- B. The following limitations and exclusions apply to attending physician and practitioner services and primary care provider services:
  1. Specialty care and other services provided to a member upon referral from a primary care provider, or to a member upon referral from the attending physician or practitioner are limited to the service or condition for which the referral is made, or for which authorization is given by the Administration or a contractor.
  2. A member's physical examination is not covered if the sole purpose is to obtain documentation for one or more of the following:
    - a. Qualification for insurance,
    - b. Pre-employment physical evaluation,
    - c. Qualification for sports or physical exercise activities,
    - d. Pilot's examination for the Federal Aviation Administration,
    - e. Disability certification to establish any kind of periodic payments,
    - f. Evaluation to establish third-party liabilities, or
    - g. Physical ability to perform functions that have no relationship to primary objectives of the services listed in subsection (A).
  3. Orthognathic surgery is covered only for a member who is less than 21 years of age;
  4. The following services are excluded from AHCCCS coverage:
    - a. Infertility services, reversal of surgically induced infertility (sterilization), and gender reassignment surgeries;
    - b. Pregnancy termination counseling services;
    - c. Pregnancy terminations, unless required by state or federal law.
    - d. Services or items furnished solely for cosmetic purposes; and
    - e. Hysterectomies unless determined medically necessary.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-205 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A), paragraph (15) and added paragraph (20) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(2) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

*Editor's Note: The following Section was renumbered and a new Section adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not published as a proposed rule in the Arizona Administrative Register; the rule was not reviewed or approved by the Governor's Regulatory Review Council; and the agency was not required to hold public hearings on the rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-206. Organ and Tissue Transplant Services**

- A. Organ and tissue transplant services are covered for a member if prior authorized and coordinated with the member's contractor, or the Administration. Only the following transplants are covered for individuals 21 years of age or older:
  1. Heart, including transplants for the treatment of non-ischemic cardiomyopathy;
  2. Liver, including transplants for patients with hepatitis C;
  3. Kidney (cadaveric and live donor),
  4. Simultaneous Pancreas/Kidney (SPK),
  5. Autologous and Allogeneic related and unrelated Hematopoietic Cell transplants;
  6. Cornea;
  7. Bone;
  8. Lung; and
  9. Pancreas after a kidney transplant (PAK).
- B. The following transplants are not covered for members 21 years of age or older:
  1. Pancreas only transplants if it is not performed simultaneously with or following a kidney transplant. Partial pancreas transplants and autologous and allogeneic pancreas islet cell transplants are not covered even if performed simultaneously with or following a kidney transplant,
  2. Intestine transplants, and
  3. Any other type of transplant not specifically listed in subsection (A).
- C. When there is a transplant of multiple organs, reimbursement will only be made for those covered.
- D. Organ and tissue transplant services are not covered for non-qualified aliens or noncitizens members of FESP under A.R.S. § 36-2903.03(D).

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-206 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-206 renumbered to R9-22-218, new Section R9-22-206 adopted effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1386, effective July 15, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1122, April 1, 2011 (Supp. 11-2).

**R9-22-207. Dental Services**

## Arizona Health Care Cost Containment System - Administration

- A. The Administration or a contractor shall cover dental services for a member less than 21 years of age under R9-22-213.
- B. For individuals age 21 years of age or older, the Administration or a contractor shall cover medical and surgical services furnished by a dentist only to the extent such services may be performed under state law either by a physician or by a dentist and such services would be considered a physician service if furnished by a physician.
  - 1. Except as specified in subsection (C), such services must be related to the treatment of a medical condition such as acute pain, infection, or fracture of the jaw. Covered dental services include examination of the oral cavity, radiographs, complex oral surgical procedures such as treatment of maxillofacial fractures, administration of an appropriate level of anesthesia and the prescription of pain medication and antibiotics.
  - 2. Such services do not include services that physicians are not generally competent to perform such as dental cleanings, routine dental examinations, dental restorations including crowns and fillings, extractions, pulpotomies, root canals, and the construction or delivery of complete or partial dentures. Diagnosis and treatment of temporomandibular joint dysfunction are not covered except for the reduction of trauma.
- C. For the purposes of this subsection, simple restorations means silver amalgam or composite resin fillings, stainless steel crowns or preformed crowns. In addition, dental services for an individual 21 years of age or older include:
  - 1. The elimination of oral infections and the treatment of oral disease, which includes dental cleanings, treatment of periodontal disease, medically necessary extractions and the provision of simple restorations as a medically necessary pre-requisite to covered transplantation; and
  - 2. Prophylactic extraction of teeth in preparation for covered radiation treatment of cancer of the jaw, neck or head.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-207 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-207 repealed, new Section R9-22-207 adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

**R9-22-208. Laboratory, Radiology, and Medical Imaging Services**

Laboratory, radiology, and medical imaging services are covered services if:

- 1. Prescribed by the member's attending physician, practitioner, primary care provider or a dentist, or prescribed by a physician or practitioner upon referral from the primary care provider or dentist.
- 2. Provided by licensed health care providers in a:
  - a. Hospital,
  - b. Clinic,
  - c. Physician's office, or
  - d. Other health care facility.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

3). Former Section R9-22-208 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-208 repealed, new Section R9-22-208 adopted effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2).

**R9-22-209. Pharmaceutical Services**

- A. An inpatient or outpatient provider, including a hospital, clinic, other appropriately licensed health care facility, and pharmacy may provide covered pharmaceutical services.
- B. The Administration or a contractor shall require a provider to make pharmaceutical services:
  - 1. Available during customary business hours, and
  - 2. Located within reasonable travel distance of a member's residence.
- C. Pharmaceutical services are covered if:
  - 1. Prescribed for a member by the member's primary care provider, attending physician, practitioner, or dentist;
  - 2. Prescribed by a specialist upon referral from the primary care provider or attending physician; or
  - 3. The contractor or its designee authorizes the service.
- D. The following limitations apply to pharmaceutical services:
  - 1. A medication personally dispensed by a physician, dentist, or a practitioner within the individual's scope of practice is not covered, except in geographically remote areas where there is no participating pharmacy or if accessible pharmacies are closed.
  - 2. A new prescription or refill in excess of a 30 day supply is not covered unless:
    - a. The member will be out of the provider's service area for an extended period of time and the prescription is limited to the extended time period, not to exceed a 90 day supply; or
    - b. The Contractor authorizes the prescription for an extended time period not to exceed a 90-day supply.
  - 3. An over-the-counter medication, in place of a covered prescription medication, is covered only if the over-the-counter medication is appropriate, equally effective, safe, and less costly than the covered prescription medication.
- E. A contractor shall monitor and ensure sufficient services to prevent any gap in the pharmaceutical regimen of a member who requires a continuing or complex regimen of pharmaceutical treatment to restore, improve, or maintain physical well being.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-209 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 24, 1986 (Supp. 86-5). Amended subsections (A) and (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(3), effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000

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(Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

### **R9-22-210. Emergency Medical Services for Non-FES Members**

#### **A. General provisions.**

1. **Applicability.** This Section applies to emergency medical services for non-FES members. Provisions regarding emergency behavioral health services for non-FES members are in R9-22-210.01. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. **Definitions.**
  - a. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS or a subcontractor of ADHS/DBHS.
  - b. For the purposes of this Section and R9-22-210.01, "fiscal agent" means a person who bills and accepts payment for a hospital or emergency room provider.
3. **Verification.** A provider of emergency medical services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor.
4. **Prior authorization.**
  - a. **Emergency medical services.** A provider is not required to obtain prior authorization for emergency medical services.
  - b. **Non-emergency medical services.** If a non-FES member's medical condition does not require emergency medical services, the provider shall obtain prior authorization as required by the terms of the provider agreement under R9-22-714(A) or the provider's subcontract with the contractor, whichever is applicable.
5. **Prohibition against denial of payment.** Neither the Administration nor a contractor shall:
  - a. Limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms,
  - b. Deny or limit payment because the provider failed to obtain prior authorization for emergency services,
  - c. Deny or limit payment because the provider does not have a subcontract.
6. **Grounds for denial.** The Administration and a contractor may deny payment for emergency medical services for reasons including but not limited to:
  - a. The claim was not a clean claim;
  - b. The claim was not submitted timely; and
  - c. The provider failed to provide timely notification under subsection (B)(4) to the contractor or the Administration, as appropriate, and the contractor does not have actual notice from any other source that the member has presented for services.

#### **B. Additional requirements for emergency medical services for non-FES members enrolled with a contractor.**

1. **Responsible entity.** A contractor is responsible for the provision of all emergency medical services to non-FES members enrolled with the contractor.
2. **Prohibition against denial of payment.** A contractor shall not limit or deny payment for emergency medical services when an employee of the contractor instructs the member to obtain emergency medical services.

3. **Contractor notification.** A contractor shall not deny payment to a hospital, emergency room provider, or fiscal agent for an emergency medical service rendered to a non-FES member based on the failure of the hospital, emergency room provider, or fiscal agent to notify the member's contractor within 10 days from the day that the member presented for the emergency medical service.
4. **Contractor notification.** A hospital, emergency room provider, or fiscal agent shall notify the contractor no later than the 11th day after presentation of the non-FES member for emergency inpatient medical services. A contractor may deny payment for a hospital's, emergency room provider's, or fiscal agent's failure to provide timely notice, under this subsection.

#### **C. Post-stabilization services for non-FES members enrolled with a contractor.**

1. After the emergency medical condition of a member enrolled with a contractor is stabilized, a provider shall request prior authorization from the contractor for post-stabilization services.
2. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that have been prior authorized by the contractor.
3. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor for prior authorization of further post-stabilization services;
4. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
  - a. The contractor does not respond to a request for prior authorization within one hour;
  - b. The contractor authorized to give the prior authorization cannot be contacted; or
  - c. The contractor representative and the treating physician cannot reach an agreement concerning the member's care and the contractor physician is not available for consultation. In this situation, the contractor shall give the treating physician the opportunity to consult with a contractor physician. The treating physician may continue with care of the member until the contractor physician is reached or:
    - i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care,
    - ii. A contractor physician assumes responsibility for the member's care through transfer,
    - iii. The contractor's representative and the treating physician reach agreement concerning the member's care, or
    - iv. The member is discharged.
5. **Transfer or discharge.** The attending physician or practitioner actually treating the member for the emergency medical condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor.

#### **D. Additional requirements for FFS members.**

1. **Responsible entity.** The Administration is responsible for the provision of all emergency medical services to non-FES FFS members.

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2. Grounds for denial. The Administration may deny payment for emergency medical services if a provider fails to provide timely notice to the Administration.
3. Notification. A provider shall notify the Administration no later than 72 hours after a FFS member receiving emergency medical services presents to a hospital for inpatient services. The Administration may deny payment for failure to provide timely notice.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-210 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-210 repealed, new Section R9-22-210 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (1) effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

**R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members****A. General provisions.**

1. Applicability. This Section applies to emergency behavioral health services for non-FES members. Provisions regarding emergency medical services for non-FES members are in R9-22-210. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definition. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
3. Responsible entity for inpatient emergency behavioral health services.
  - a. Members enrolled with a contractor. ADHS/DBHS, ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with the contractor.
  - b. FFS members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services for non-FES FFS members with psychiatric or substance abuse diagnoses unless services are provided in an IHS or tribally operated 638 facility.
4. Responsible entity for non-inpatient emergency behavioral health services for non-FES members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all non-inpatient emergency behavioral health services for non-FES members.
5. Verification. A provider of emergency behavioral health services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is a member enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor, and determine whether the member is a behavioral health recipient as defined in R9-22-201.
6. Prior authorization.
  - a. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
  - b. Non-emergency behavioral health services. When a non-FES member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
7. Prohibition against limitation or denial of payment. A contractor, TRBHA, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a non-FES member for the following reasons:
  - a. On the basis of lists of diagnoses or symptoms;
  - b. Prior authorization was not obtained;
  - c. The provider does not have a contract;
  - d. An employee of the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS instructs the member to obtain emergency behavioral health services; or
  - e. The failure of a hospital, emergency room provider, or fiscal agent to notify the member's contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS within 10 days from the day the member presented for the emergency service.
8. Grounds for denial. A contractor, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS may deny payment for emergency behavioral health services for reasons including but not limited to the following:
  - a. The claim was not a clean claim;
  - b. The claim was not submitted timely; or
  - c. The provider failed to provide timely notification under subsection (A)(9) to the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS or the Administration.
9. Notification.
  - a. A hospital, emergency room provider, or fiscal agent shall notify a contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, whichever is appropriate, no later than the 11th day from presentation of the non-FES member for emergency inpatient behavioral health services.
  - b. A hospital, emergency room provider, or fiscal agent shall notify the Administration no later than 72 hours after a FFS member receiving emergency behavioral health services presents to a hospital for inpatient services.
10. Transfer or discharge. The attending physician or the provider actually treating the non-FES member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.

**B. Post-stabilization requirements for non-FES members.**



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1. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have been prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
  2. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor, ADHS/DBHS, or a subcontractor for prior authorization of further post-stabilization services;
  3. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain, improve, or resolve the member's stabilized condition if:
    - a. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, does not respond to a request for prior authorization within one hour;
    - b. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS authorized to give the prior authorization cannot be contacted; or
    - c. The representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician cannot reach an agreement concerning the member's care and the contractor's, ADHS/DBHS' or the subcontractor's physician, is not available for consultation. The treating physician may continue with care of the member until ADHS/DBHS', the contractor's, or the subcontractor's physician is reached, or:
      - i. A contracted physician with privileges at the treating hospital assumes responsibility for the member's care;
      - ii. ADHS/DBHS', a contractor's, or a subcontractor's physician assumes responsibility for the member's care through transfer;
      - iii. A representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician reach agreement concerning the member's care; or
      - iv. The member is discharged.
- in response to a 911 call or other emergency response system:
- a. If the member's medical condition justifies the medical necessity of the type of ambulance transportation received,
  - b. The transport is to the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
  - c. No prior authorization is required for reimbursement of these transports.
3. The member's medical condition at the time of transport determines whether the transport is medically necessary.
  4. A ground or air ambulance provider furnishing transport in response to a 911 call or other emergency response system shall notify the member's contractor within 10 working days from the date of transport. Failure of the provider to provide notification is cause for denial.
  5. Notification to the Administration of emergency transportation provided to a FFS member is not required, but the provider shall submit documentation with the claim that justifies the service.
- B.** The Administration or a contractor covers air ambulance services only if at least one criterion in subsection (B)(1) is met and at least one criterion in subsection (B)(2), or the criterion in subsection (B)(3) is met. The criteria are:
1. The air ambulance transport is initiated at the request of:
    - a. An emergency response unit,
    - b. A law enforcement official,
    - c. A clinic or hospital medical staff member, or
    - d. A physician or practitioner, and
  2. The point of pickup:
    - a. Is inaccessible by ground ambulance, or
    - b. Is a great distance from the nearest hospital or other provider with appropriate facilities to treat the member's condition and ground ambulance service will not suffice, or
  3. The medical condition of the member requires immediate intervention from emergency ambulance personnel or providers with the appropriate facilities to treat the member's condition.
- C.** Coverage of medically necessary nonemergency transportation is limited to the cost of transporting the member to an appropriate provider capable of meeting the member's medical needs.
1. As specified in contract, a contractor shall arrange or provide medically necessary nonemergency transportation services for a member who is unable to arrange transportation to a service site or location.
  2. For a fee-for-service member, the Administration shall authorize medically necessary nonemergency transportation for a member who is unable to arrange transportation to a service site or location.
- D.** For the purposes of this subsection, an individual means a person who is not in the business of providing transportation services such as a family or household member, friend, or neighbor. The Administration or a contractor shall cover expenses for transportation in traveling to and returning from an approved and prior authorized health care service site provided by an individual if:
1. The transportation services are authorized by the Administration or the member's contractor or designee,
  2. The individual is an AHCCCS registered provider, and
  3. No other means of appropriate transportation is available.
- E.** The Administration or a contractor shall cover expenses for meals, lodging, and transportation for a member traveling to

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.

5480, effective December 6, 2005 (Supp. 05-4).

Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-211. Transportation Services****A. Emergency ambulance services.**

1. A member shall receive medically necessary emergency transportation in a ground or air ambulance:
  - a. To the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
  - b. If no other appropriate means of transportation is available.
2. The Administration or a member's contractor shall reimburse a ground or air ambulance transport that originates

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and returning from an approved health care service site outside of the member's service area or county of residence.

- F.** The Administration or a contractor shall cover the expense of meals, lodging, and transportation for:
1. A family member accompanying a member if:
    - a. The member is traveling to or returning from an approved health care service site outside of the member's service area or county of residence; and
    - b. The meals, lodging, and transportation services are authorized by the Administration or the member's contractor or designee.
  2. An escort who is not a family member as follows:
    - a. If the member is travelling to or returning from an approved and prior authorized health care service site, including an inpatient facility, outside of the member's service area or county of residence;
    - b. If the escort services are authorized by the Administration or the member's contractor or designee; and
    - c. Wage paid to an escort as reimbursement shall not exceed the federal minimum wage.
- G.** A provider shall obtain prior authorization from the Administration for transportation services provided for a member for the following:
1. Medically necessary nonemergency transportation services not originated through a 911 call or other emergency response system when the distance traveled exceeds 100 miles (whether one way or round trip); and
  2. All meals, lodging, and services of an escort accompanying the member under this Section.
- H.** A charitable organization routinely providing transportation service at no cost to an ambulatory or chairbound person shall not charge or seek reimbursement from the Administration or a contractor for the provision of the service to a member but may enter into a subcontract with a contractor for medically necessary transportation services provided to a member.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-211 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3).

**R9-22-212. Durable Medical Equipment, Orthotic and Prosthetic Devices, and Medical Supplies**

- A.** Durable medical equipment, orthotic and prosthetic devices, and medical supplies, including incontinence briefs as specified in subsection (E), are covered services to the extent permitted in this Section if provided in compliance with requirements of this Chapter; and
1. Prescribed by the primary care provider, attending physician, or practitioner; or
  2. Prescribed by a specialist upon referral from the primary care provider, attending physician, or practitioner; and
  3. Authorized as required by the Administration, contractor, or contractor's designee.
- B.** Covered medical supplies are consumable items that are designed specifically to meet a medical purpose, are disposable, and are essential for the member's health.
- C.** Covered DME is any item, appliance, or piece of equipment that is not a prosthetic or orthotic; and
1. Is designed for a medical purpose, and is generally not useful to a person in the absence of an illness or injury, and
  2. Can withstand repeated use, and
  3. Is generally reusable by others.
- D.** Prosthetics are devices prescribed by a physician or other licensed practitioner to artificially replace missing, deformed or malfunctioning portion of the body. Only those prosthetics that are medically necessary for rehabilitation are covered, except as otherwise provided in R9-22-215.
- E.** The following limitations on coverage apply:
1. The DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased.
  2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair or adjustment is less than the cost of renting or purchasing another unit.
  3. A change in, or addition to, an original order for DME is covered if approved by the prescriber in subsection (A), or prior authorized by the Administration or contractor, and the change or addition is indicated clearly on the order and initialed by the vendor. No change or addition to the original order for DME may be made after a claim for services is submitted to the member's contractor, or the Administration, without prior written notification of the change or addition to the Administration or the contractor.
  4. Reimbursement for rental fees shall terminate:
    - a. No later than the end of the month in which the prescriber in subsection (A) certifies that the member no longer needs the DME;
    - b. If the member is no longer eligible for AHCCCS services; or
    - c. If the member is no longer enrolled with a contractor, with the exception of transitions of care as specified in R9-22-509.
  5. Except for incontinence briefs for persons over 3 years old and under 21 years old as provided in subsection (E)(6), personal care items including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition. Personal care items are not covered services if used solely for preventive purposes.
  6. Incontinence briefs, including pull-ups are covered to prevent skin breakdown and enable participation in social, community, therapeutic and educational activities under the following circumstances:
    - a. The member is over 3 years old and under 21 years old;
    - b. The member is incontinent due to a documented disability that causes incontinence of bowel or bladder, or both;
    - c. The PCP or attending physician has issued a prescription ordering the incontinence briefs;
    - d. Incontinence briefs do not exceed 240 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 240 briefs per month for a member diagnosed with chronic diarrhea or spastic bladder;
    - e. The member obtains incontinence briefs from providers in the contractor's network;

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- f. Prior authorization has been obtained as required by the Administration, contractor, or contractor's designee. Contractors may require a new prior authorization to be issued no more frequently than every 12 months. Prior authorization for a renewal of an existing prescription may be provided by the physician through telephone contact with the member rather than an in-person physician visit. Prior authorization will be permitted to ascertain that:
  - i. The member is over age 3 and under age 21;
  - ii. The member has a disability that causes incontinence of bladder or bowel, or both;
  - iii. A physician has prescribed incontinence briefs as medically necessary. A physician prescription supporting medical necessity may be required for specialty briefs or for briefs different from the standard briefs supplied by the contractor; and
  - iv. The prescription is for 240 briefs or fewer per month, unless evidence of medical necessity for over 240 briefs is provided.
7. First aid supplies are not covered unless they are provided in accordance with a prescription.
8. The following services are not covered for individuals 21 years of age or older:
  - a. Hearing aids;
  - b. Prescriptive lenses unless they are the sole visual prosthetic device used by the member after a cataract extraction;
  - c. Bone Anchor Hearing Aid (BAHA);
  - d. Cochlear implant;
  - e. Percussive vest;
  - f. Insulin pump;
  - g. Microprocessor-controlled lower limbs or microprocessor-controlled joints for lower limbs; and
  - h. Orthotics, which are defined as devices that are prescribed by a physician or other licensed practitioner of the healing arts to support a weak or deformed portion of the body.
- F. Liability and ownership.**
  1. Purchased DME that is provided to a member and no longer needed by the member may be disposed of in accordance with each contractor's policy.
  2. The Administration shall retain title to purchased DME provided to a member who becomes ineligible or no longer requires use of the DME.
  3. If customized DME is purchased by the Administration or contractor for a member, the equipment shall remain with the person during times of transition to a different contractor, or upon loss of eligibility. For purposes of this subsection, customized DME refers to equipment that is altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.
  4. A member shall return DME obtained fraudulently to the Administration or the contractor.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-212 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-212 repealed, new Section R9-22-212 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), para-

graph (2), and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

**R9-22-213. Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)**

- A.** The following E.P.S.D.T. services are covered for a member less than 21 years of age:
  1. Screening services including:
    - a. Comprehensive health and developmental history;
    - b. Comprehensive unclothed physical examination;
    - c. Appropriate immunizations according to age and health history;
    - d. Laboratory tests; and
    - e. Health education, including anticipatory guidance;
  2. Vision services including:
    - a. Diagnosis and treatment for defects in vision;
    - b. Eye examinations for the provision of prescriptive lenses;
    - c. Prescriptive lenses; and
    - d. Frames.
  3. Hearing services including:
    - a. Diagnosis and treatment for defects in hearing;
    - b. Testing to determine hearing impairment; and
    - c. Hearing aids;
  4. Dental services including:
    - a. Emergency dental services as specified in R9-22-207;
    - b. Preventive services including screening, diagnosis, and treatment of dental disease; and
    - c. Therapeutic dental services including fillings, crowns, dentures, and other prosthetic devices;
  5. Orthognathic surgery;
  6. Medically necessary, nutritional assessment and nutritional therapy as specified in contract to provide complete daily dietary requirements or supplement a member's daily nutritional and caloric intake;
  7. Behavioral health services under 9 A.A.C. 22, Article 12;
  8. Hospice services do not include home-delivered meals or services provided and covered through Medicare. The following hospice services are covered:
    - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
    - b. Services available to a member receiving hospice care are limited to those allowable under 42 CFR 418.202, October 1, 2006, incorporated by reference and on file with the Administration. This incorporation by reference contains no future editions or amendments;
  9. Incontinence briefs as specified under R9-22-212; and
  10. Other necessary health care, diagnostic services, treatment, and measures required by 42 U.S.C. 1396d(r)(5).
- B.** Providers of E.P.S.D.T. services shall meet the following standards:
  1. Ensure that services are provided by or under the direction of the member's primary care provider, attending physician, practitioner, or dentist.
  2. Perform tests and examinations under 42 CFR 441 Subpart B, October 1, 2006, which is incorporated by reference and on file with the Administration. This

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incorporation by reference contains no future editions or amendments.

3. Refer a member as necessary for dental diagnosis and treatment and necessary specialty care.
  4. Refer a member as necessary for behavioral health evaluation and treatment services.
- C. Contractors shall meet other E.P.S.D.T. requirements as specified in contract.
- D. A primary care provider, attending physician, or practitioner shall refer a member with special health care needs under R9-7-301 to CRS.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-213 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-213 repealed, new Section R9-22-213 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

**R9-22-214. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-214 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-214 repealed, new Section R9-22-214 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (4) and added subsection (C), paragraph (2) effective October 1, 1986 (Supp. 86-5). Correction to subsection (C), paragraph (2) (Supp. 87-4). Section repealed effective September 22, 1997 (Supp. 97-3).

**R9-22-215. Other Medical Professional Services**

- A. The following medical professional services are covered services if a member receives these services in an inpatient, outpatient, or office:
1. Dialysis;
  2. The following family planning services if provided to delay or prevent pregnancy:
    - a. Medications,
    - b. Supplies,
    - c. Devices, and
    - d. Surgical procedures;
  3. Family planning services are limited to:
    - a. Contraceptive counseling, medications, supplies, and associated medical and laboratory examinations, including HIV blood screening as part of a package of sexually transmitted disease tests provided with a family planning service;
    - b. Sterilization; and
    - c. Natural family planning education or referral;
  4. Midwifery services provided by a certified nurse practitioner in midwifery;

5. Midwifery services for low-risk pregnancies and home deliveries provided by a licensed midwife;
6. Respiratory therapy;
7. Ambulatory and outpatient surgery facilities services;
8. Home health services under A.R.S. § 36-2907(D);
9. Private or special duty nursing services;
10. Rehabilitation services including physical therapy, occupational therapy, speech therapy, and audiology within limitations in subsection (C);
11. Total parenteral nutrition services, which are the provision of total caloric needs by intravenous route for individuals with severe pathology of the alimentary tract; and
12. Chemotherapy.

- B. Prior authorization from the Administration for a member is required for services listed in subsections (A)(3)(b), and (A)(4) through (11); except for:
1. Voluntary sterilization;
  2. Dialysis shunt placement;
  3. Arteriovenous graft placement for dialysis;
  4. Angioplasties or thrombectomies of dialysis shunts;
  5. Angioplasties or thrombectomies of arteriovenous grafts for dialysis;
  6. Eye surgery for the treatment of diabetic retinopathy;
  7. Eye surgery for the treatment of glaucoma;
  8. Eye surgery for the treatment of macular degeneration;
  9. Home health visits following an acute hospitalization (limited up to five visits);
  10. Hysteroscopies (up to two, one before and one after) when associated with a family planning diagnosis code and done within 90 days of hysteroscopic sterilization;
  11. Physical therapy subject to the limitation in subsection (C);
  12. Facility services related to wound debridement,
  13. Apnea management and training for premature babies up to the age of 1; and
  14. Other services identified by the Administration through the Provider Participation Agreement.
- C. The following are not covered services:
1. Occupational and speech therapies provided on an outpatient basis for a member age 21 or older;
  2. Abortion counseling;
  3. Services or items furnished solely for cosmetic purposes;
  4. Services provided by a podiatrist; or
  5. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of restoring a skill or level of function and maintaining that skill or level of function once restored.
  6. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of acquiring a new skill or a new level of function and maintaining that skill or level of function once acquired.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-215 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final

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rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

**R9-22-216. NF, Alternative HCBS Setting, or HCBS**

- A.** Services provided in a NF, including room and board, an alternative HCBS setting as defined in R9-28-101, or a HCBS as defined in A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
- B.** Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
  1. Nursing services, including:
    - a. Administering medication;
    - b. Tube feedings;
    - c. Personal care services, including but not limited to assistance with bathing and grooming;
    - d. Routine testing of vital signs; and
    - e. Maintenance of a catheter;
  2. Basic patient care equipment and sickroom supplies, including:
    - a. First aid supplies such as bandages, tape, ointments, peroxide, alcohol, and over-the-counter remedies;
    - b. Bathing and grooming supplies;
    - c. Identification device;
    - d. Skin lotion;
    - e. Medication cup;
    - f. Alcohol wipes, cotton balls, and cotton rolls;
    - g. Rubber gloves (non-sterile);
    - h. Laxatives;
    - i. Bed and accessories;
    - j. Thermometer;
    - k. Ice bags;
    - l. Rubber sheeting;
    - m. Passive restraints;
    - n. Glycerin swabs;
    - o. Facial tissue;
    - p. Enemas;
    - q. Heating pad; and
    - r. Incontinence briefs.
  3. Dietary services including preparation and administration of special diets, and adaptive tools for eating;
  4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal or state licensure standard or county certification requirement;
  5. Physician visits made solely for the purpose of meeting state licensure standards or county certification requirements;
  6. Physical therapy prescribed only as a maintenance regimen; and
  7. Assistive devices and non-customized durable medical equipment.
- C.** A provider shall obtain prior authorization from the Administration for a NF admission for a FFS member.

**Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Subsection (C) amended to correct a typographical error (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at

13 A.A.R. 4122, effective November 6, 2007 (Supp. 07-4).

**R9-22-217. Services Included in the Federal Emergency Services Program**

- A.** Definition. Notwithstanding the definition in R9-22-201, for the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
  1. Placing the member's health in serious jeopardy,
  2. Serious impairment to bodily functions,
  3. Serious dysfunction of any bodily organ or part, or
  4. Serious physical harm to another person.
- B.** Services. "Emergency services for a FES member" mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for a FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician's opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
  1. Placing the member's health in serious jeopardy, or
  2. Serious impairment of bodily function, or
  3. Serious dysfunction of a bodily organ or part.
- C.** Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.
- D.** Prior authorization. A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).
- E.** Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.

**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1868, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-218. Repealed**

**Historical Note**

Section R9-22-218 renumbered from R9-22-206 effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3).

**ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS****R9-22-301. Reserved****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-301 renumbered together with former Section R9-22-102 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section R9-22-301 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (8), subsection (E), paragraph (3), and subsection (J), paragraph (5) effective October 1, 1986 (Supp. 86-5). Amended subsections (C) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective October 1, 1987; amended subsection (D) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-302. Reserved****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-302 repealed, new Section R9-22-302 adopted effective November 20, 1984 (Supp. 84-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-303. Prior Quarter Eligibility**

- A.** Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:
1. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and
  2. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.
- B.** The Prior Quarter requirements do not apply to:
1. Qualified Medicare Beneficiaries
  2. KidsCare

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-303 repealed, new Section R9-22-303 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective

February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-304. Verification of Eligibility Information**

- A.** Except as provided in subsection (E), if information provided by or on behalf of an applicant or member on an application, renewal form or otherwise does not conflict with information obtained by the agency through an electronic data match, the Administration or its designee shall determine or renew eligibility based on such information.
- B.** The Administration or its designee shall not require an applicant, member, or representative to provide additional verification unless the verification cannot be obtained electronically or the verification obtained electronically conflicts with information provided by or on behalf of the applicant or member.
- C.** If information provided by or on behalf of an applicant or member does conflict with information obtained through an electronic data match, the applicant or member shall provide the Administration or its designee with information or documentation necessary to verify eligibility, including evidence originating from an agency, organization, or an individual with actual knowledge of the information.
- D.** Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both meet or both exceed the applicable income limit.
- E.** The Administration or its designee shall not accept the applicant's or member's statement by itself as verification of:
1. SSN;
  2. Qualified alien status, except as described under 42 USC 1320b-7(d)(4)(A); or
  3. Citizenship, except as described under 42 USC 1396a(ee)(1).
- F.** The Administration or its designee shall give an applicant or member at least 10 days from the date of a written or electronic request for information to provide required verification. The Administration or its designee may deny the application or discontinue eligibility if an applicant or a member does not provide the required information timely.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-304 repealed, new Section R9-22-304 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-304 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-305. Eligibility Requirements**

As a condition of eligibility, the Administration or its designee must require applicants, and members to do the following:

1. Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.
2. Furnish a SSN under 42 CFR 435.910 and 435.920, or in the absence of an SSN, provide proof of a submitted application of SSN. The Administration or its designee will assist in obtaining or verifying the applicant's SSN under 42 CFR 435.910 if an applicant cannot recall the applicant's SSN or has not been issued a SSN. An applicant is not required to furnish an SSN if the applicant is not able to legally obtain a SSN. The Administration or its designee shall determine eligibility notwithstanding the applicant's lack of a SSN, if the applicant is cooperat-

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- ing with the Administration or its designee to obtain a SSN and obtain a SSN prior to the next scheduled review of eligibility.
3. Provide proof of residency of Arizona. An applicant or a member is not eligible unless the applicant or member is a resident of Arizona under 42 CFR 435.403 effective October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
  4. A written declaration, signed under penalty of perjury, must be provided for each person for whom benefits are being sought stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by the individual for whom eligibility is being sought or an adult member of the individual's family or household.
  5. Each applicant who claims qualified alien status must provide either:
    - a. Alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or
    - b. Other documents that the Administration or its designee accepts as evidence of immigration status, such as:
      - i. a Form I-94 Departure Record issued by the USCIS,
      - ii. a Foreign Passport,
      - iii. a USCIS Parole Notice,
      - iv. a Victim of Trafficking Certification or Eligibility Letter issued by the US DHHS Office of Refugee Resettlement,
      - v. other documentation consistent with 42 CFR 435.406 or 435.407.
    - c. Sufficient information for the Administration or its designee to obtain electronic verification of immigration status from the USCIS.
  6. If a person for whom eligibility is being sought, states that they are an alien, that person is not required to comply with subsections (4) and (5); however, if they do not comply with those sections, and if they meet all other eligibility criteria, benefits will be limited to those necessary to treat an emergency medical condition.
  1. The Administration or its designee shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants, unless:
    - a. The agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action, or
    - b. When there is an administrative or other emergency beyond the agency's control.
  2. If an applicant dies while an application is pending, the Administration or its designee shall complete an eligibility determination for the deceased applicant.
  3. The Administration or its designee shall complete an eligibility determination on an application filed on behalf of a deceased applicant.
  4. During the application process the Administration or its designee shall provide information to the applicant or member explaining the requirements to:
    - a. Cooperate with DCSS in establishing paternity and enforcing medical support, except in circumstances when good cause under 42 CFR 433.147 exists for not cooperating;
    - b. Establish good cause for not cooperating with DCSS in establishing paternity and enforcing medical support, when applicable;
    - c. Report a change listed under subsection (B)(3)(c) no later than 10 days from the date the applicant or member knows of the change;
    - d. Send to the Administration or its designee any medical support payments resulting from a court order;
    - e. Cooperate with the Administration or its designee's assignment of rights and securing payments received from any liable party for a member's medical care.
  5. Offer to help the applicant or member to complete the application form and to obtain the required verification;
  6. Provide the applicant or member with information explaining:
    - a. The eligibility and verification requirements for AHCCCS medical coverage;
    - b. The requirement that the applicant or member obtain and provide a SSN to the Administration or its designee;
    - c. How the Administration or its designee uses the SSN;
  7. Explain to the applicant or member the practice of exchange of eligibility and income information through the electronic service established by the Secretary;
  8. Explain to the applicant and member the right to appeal an adverse action under R9-22-315;
  9. Use any information provided by the member to complete data matches with potentially liable parties;
  10. Explain the eligibility review process;
  11. Explain the AHCCCS pre-enrollment process;
  12. Use the Systematic Alien Verification for Entitlements (SAVE) process to verify qualified alien status;
  13. Provide information regarding the penalties for perjury and fraud on the application;
  14. Review any verification items provided by the applicant or member and inform the member of any additional verification items and time-frames within which the applicant or member shall provide information to the Administration or its designee;
  15. Explain to the applicant or member the applicant's and member's responsibilities under subsection (B);
  16. Transfer the applicant's information to other insurance affordability programs as described under 42 CFR

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-305 repealed, new Section R9-22-305 adopted effective November 20, 1984 (Supp. 84-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-305 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-306. Administration, Administration's designee or Member Responsibilities**

- A. The Administration or its designee is responsible for the following:

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- 435.1200(e) when the applicant does not qualify for Medicaid;
17. Attain a written record of a collateral contact: such as a verbal statement from a representative of an agency or organization, or an individual with actual knowledge of the information;
  18. Complete a review of eligibility:
    - a. Any time there is a change in a member's circumstance that may affect eligibility,
    - b. For a member approved for the MED program under R9-22-1435 through R9-22-1440 before the end of the six-month eligibility period,
    - c. Of each member's continued eligibility for AHCCCS medical coverage once every 12 months;
  19. The Administration or its designee shall discontinue eligibility and notify the member of the discontinuance under R9-22-307 if the member:
    - a. Fails to comply with the review of eligibility,
    - b. Fails to comply under 42 CFR 433.148 with the requirements and conditions of eligibility under this Article regarding assignment of rights and cooperation of establishing paternity and obtaining medical support, or
    - c. Does not meet the eligibility requirements; and
  20. Redetermine eligibility for a person terminated from the SSI cash program.
    - a. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility is completed.
    - b. Coverage group screening. Before terminating a person from the SSI cash program, the Administration shall determine if the person is eligible for coverage as a person described in A.R.S. §§ 36-2901(6)(a)(i) through (vi) or 36-2934.
    - c. Eligibility decision.
      - i. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice informing the applicant that AHCCCS medical coverage is approved.
      - ii. If a person is ineligible, the Administration shall send a notice to deny AHCCCS medical coverage.
- B. Applicant and Member Responsibilities.**
1. An applicant or a member shall authorize the Administration or its designee to obtain verification for initial eligibility or continuation of eligibility.
  2. As a condition of eligibility, an applicant or a member shall:
    - a. Provide the Administration or its designee with complete and truthful information. The Administration or its designee may deny an application or discontinue eligibility if:
      - i. The applicant or member fails to provide information necessary for initial or continuing eligibility;
      - ii. The applicant or member fails to provide the Administration or its designee with written authorization or electronic authorization to permit the Administration or its designee to obtain necessary initial or continuing eligibility verification;
      - iii. The applicant or member fails to provide verification under R9-22-304 after the Administration or its designee made an effort to obtain the necessary verification but has not obtained the necessary information; or
    - iv. The applicant or member does not assist the Administration or its designee in resolving incomplete, inconsistent, or unclear information that is necessary for initial or continuing eligibility;
    - b. Cooperate with the Division of Child Support Services (DCSS) in establishing paternity and enforcing medical support obligations when requested unless good cause exists for not cooperating under 42 CFR 433.147 as of October 1, 2012, which is incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol St., NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. The Administration or its designee shall not deny AHCCCS eligibility to an applicant who would otherwise be eligible, is a minor child, and whose parent or legal representative does not cooperate with the medical support requirements or first- and third-party liability requirements under Article 10 of this Chapter; and
    - c. Provide the information needed to pursue third party coverage for medical care, such as:
      - i. Name of policyholder,
      - ii. Policyholder's relationship to the applicant or member,
      - iii. Name and address of the insurance company, and
      - iv. Policy number.
  3. A member or an applicant shall:
    - a. Send to the Administration or its designee any medical support payments received while the member is eligible that result from a medical support order;
    - b. Cooperate with the Administration or its designee regarding any issues arising as a result of Eligibility Quality Control described under A.R.S. § 36-2903.01; and
    - c. Inform the Administration or its designee of the following changes within 10 days from the date the applicant or member knows of a change:
      - i. In address;
      - ii. In the household's composition;
      - iii. In income;
      - iv. In resources, when required under the Medical Expense Deduction (MED) program;
      - v. In Arizona state residency;
      - vi. In citizenship or immigrant status;
      - vii. In first- or third-party liability that may contribute to the payment of all or a portion of the person's medical costs;
      - viii. That may affect the member's or applicant's eligibility, including a change in a woman's pregnancy status;
      - ix. Death;
      - x. Change in marital status; or
      - xi. Change in school attendance.
  4. As a condition of eligibility, an applicant or a member shall cooperate with the assignment of rights as required by R9-22-311. If the applicant or member receives medical care and services for which a first or third party is or may be liable, the applicant or member shall cooperate with the Administration or its designee in assisting, identifying and providing information to assist the Adminis-



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tration or its designee in pursuing any first or third party who is or may be liable to pay for medical care and services.

5. A pregnant woman under A.R.S. § 36-2901(6)(a)(ii) is not required to provide the Administration or its designee with information regarding paternity or medical support from a father of a child born out of wedlock.

**C. Administration or its designee responsibilities at Eligibility Renewal.**

1. The Administration or its designee shall renew eligibility without requiring information from the individual if able to do so based on reliable information available to the agency, including through an electronic data match. If able to renew eligibility based on such information, the Administration or its designee shall send the member notice of:
  - a. The eligibility determination; and
  - b. The member's requirement to notify the Administration or its designee if any of the information contained in the renewal notice is inaccurate.
2. If unable to renew eligibility, the Administration or its designee shall:
  - a. Send a pre-populated renewal form listing the information needed to renew eligibility,
  - b. Give the member 30 days from the date of the renewal form to submit the signed renewal form and the information needed,
  - c. Send the member notice of the renewal decision under R9-22-312 or R9-22-1413(B) as applicable.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-306 repealed, new Section R9-22-306 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5).

Amended subsection (B), paragraphs (1) and (6) effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) and added a new subsection (N) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6).

Amended subsection (B) effective October 1, 1987; amended subsection (N) effective December 22, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-306 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-307. Approval or Denial of Eligibility**

- A. Approval.** If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
  1. The name of each approved applicant,
  2. The effective date of eligibility for each approved applicant,
  3. The reason and the legal citations if a member is approved for only emergency medical services, and
  4. The applicant's right to appeal the decision.
- B. Denial.** If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration

or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:

1. The name of each ineligible applicant,
2. The specific reason why the applicant is ineligible,
3. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
4. The legal citations supporting the reason for the ineligibility,
5. The location where the applicant can review the legal citations,
6. The date of the application being denied; and
7. The applicant's right to appeal the decision and request a hearing.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4).

Amended subsections (A) and (C), added subsection (G) and (H) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-307 repealed, new Section R9-22-307 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5).

Amended subsection (A) as an emergency effective December 4, 1985 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-6). Permanent amendment to subsection (A) effective February 5, 1986 (Supp. 86-1).

Amended subsections (E) and (F) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-307 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-308. Reinstating Eligibility**

The Administration or its designee shall reopen an application or reinstate eligibility of a member when any of the following conditions are met:

1. The denial or discontinuance of eligibility was due to an administrative error,
2. The discontinuance of eligibility was due to noncompliance with a condition of eligibility and the applicant or member complies prior to the effective date of the discontinuance,
3. The member informs the Administration or its designee of a change of circumstances prior to the effective date of the discontinuance, that would allow for continued eligibility, or
4. Following a discontinuance, the member qualifies for continuation of medical coverage pending an appeal.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4).

Amended effective October 1, 1983 (Supp. 83-5).

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Amended by adding subsection (C) effective March 2, 1984 (Supp. 84-2). Former Section R9-22-308 repealed, new Section R9-22-308 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-308 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-309. Confidentiality and Safeguarding of Information**

The Administration or its designee shall maintain the confidentiality of an applicant or member's records and limit the release of safeguarded information under R9-22-512 and 6 A.A.C. 12, Article 1. In the event of a conflict between R9-22-512 and 6 A.A.C. 12, Article 1, R9-22-512 prevails.

**Historical Note**

Adopted effective August 30, 1984 (Supp. 82-4). Amended (D)(1)(d) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-309 repealed, new Section R9-22-309 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (A), (B) and (C) effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-309 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-310. Ineligible Person**

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution, or
2. Over age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except as allowed in 42 USC 1396d(h) or as allowed under the Administration's Section 1115 waiver.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended (B)(7) and added subsections (C) and (D) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-310 repealed, new Section R9-22-310 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (7) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5

A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-310 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-311. Assignment of Rights Under Operation of Law**

By operation of law and under A.R.S. § 36-2903, a person determined eligible assigns rights to the system medical benefits to which the person is entitled.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-311 repealed, new Section R9-22-311 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-311 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-312. Member Notices**

- A. Contents of notice. The Administration or its designee shall issue a notice by mail, personal delivery, or electronic means when an action is taken regarding a person's eligibility or premiums. The notice shall contain the following information:
  1. The date of the notice issued;
  2. A statement of the action being taken;
  3. The effective date of the action;
  4. The specific reason for the intended action;
  5. If eligibility is being discontinued due to income in excess of the income standards, the actual figures used in the eligibility determination and the amount by which the person exceeds income standards;
  6. If a premium is imposed or increased, the actual figures used in determining the premium amount;
  7. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
  8. An explanation of the member's rights to an appeal and continued benefits.
- B. Advance notice of changes in eligibility or premiums. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of the change. Except as specified in subsection (C), advance notice shall be issued whenever the following adverse action is taken:
  1. To discontinue or suspend or reduce eligibility or covered services; or
  2. To impose a premium or increase a person's premium.
- C. The Administration or its designee shall issue a Notice of Adverse Action to a member no later than the effective date of action if:
  1. The Administration or its designee receives a request to withdraw;
  2. A person provides information that requires termination of eligibility or an increase or imposition of the premium and the person signs a clear written statement waiving advance notice;
  3. A person cannot be located and mail sent to that person has been returned as undeliverable;
  4. A person has been admitted to a public institution where the person is ineligible under R9-22-310;
  5. A person has been approved for Medicaid or CHIP in another state; or
  6. The Administration or its designee has information that confirms the death of the person.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsections (A) and (B), added subsection (D) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-312 repealed, new Section R9-22-312 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-312 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-313. Withdrawal of Application**

- A.** An applicant may withdraw an application at any time before the Administration or its designee completes an eligibility determination by making an oral or written request for withdrawal to the Administration or its designee and stating the reason for withdrawal.
- B.** If an applicant orally requests withdrawal of the application, the Administration or its designee shall document the:
  - 1. Date of the request,
  - 2. Name of the applicant for whom the withdrawal applies, and
  - 3. Reason for the withdrawal.
- C.** An applicant may withdraw an application in writing by:
  - 1. Completing an Administration-approved voluntary withdrawal form; or
  - 2. Submitting a written, signed, and dated request to withdraw the application.
- D.** The effective date of the withdrawal is the date of the application.
- E.** If an applicant requests to withdraw an application, the Administration or its designee shall:
  - 1. Deny the application, and
  - 2. Notify the applicant of the denial following the notice requirements under R9-22-307.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsections (C) and (D) as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended subsections (D) and (E) as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-313 repealed, new Section R9-22-313 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (B), (C), (E) and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Pro-

cedure Act, effective October 26, 1993 (Supp. 93-4).

Amended effective December 13, 1993 (Supp. 93-4).

Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-313 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-314. Withdrawal from AHCCCS Medical Coverage**

- A.** A member may withdraw from AHCCCS medical coverage at any time by giving oral or written notice of withdrawal to the Administration or its designee. The member or the member's legal or authorized representative shall provide the Administration or its designee with:
  - 1. The reason for the withdrawal,
  - 2. The date the notice is effective, and
  - 3. The name of the member for whom AHCCCS medical coverage is being withdrawn.
- B.** If a notice of withdrawal does not identify specific members the Administration or its designee shall discontinue eligibility for any members that the person submitting the withdrawal has legal authority to act on behalf of.
- C.** The Administration or its designee shall notify the member of the discontinuance as required by R9-22-312.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsection (A) and added subsection (F) as an emergency effective February 28, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended subsection (A) and added subsection (F) as a permanent rule effective May 16, 1983; text of the amended rule identical to the emergency (Supp. 83-3). Former Section R9-22-314 repealed, new Section R9-22-314 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-314 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-315. Notice of Adverse Action**

- A.** Adverse actions. An applicant or member may appeal, as described under Chapter 34, by requesting a hearing from the Administration or its designee concerning any of the following adverse actions:
  - 1. Complete or partial denial of eligibility under R9-22-307 and R9-22-313(E);
  - 2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-307, R9-22-312 and R9-22-314;
  - 3. Delay in the eligibility determination beyond the timeframes under this Article;
  - 4. The imposition of or increase in a premium or copayment; or
  - 5. The effective date of eligibility.
- B.** Notice of Adverse Action. The Administration or its designee shall personally deliver or send, by mail, or electronic means a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.

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**C. Automatic change and hearing rights.**

1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-315 repealed, new Section R9-22-315 adopted effective November 20, 1984 (Supp. 84-6). Repealed effective October 1, 1985 (Supp. 85-5). New Section R9-22-315 adopted effective February 5, 1986 (Supp. 86-1). Amended effective February 26, 1988 (Supp. 88-1). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-315 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-316. Exemptions from Sponsor Deemed Income**

- A.** An applicant shall provide proof to the Administration or its designee when claiming an exemption from sponsor deemed income.
- B.** The Administration or its designee shall grant an exemption from deeming a sponsor's income for a Lawful Permanent Resident applicant if the applicant:
  1. Adjusted immigration status to Lawful Permanent Resident from status as a refugee or asylee;
  2. Is the spouse or dependent child of the sponsor and lives with the sponsor;
  3. Is indigent as specified in subsection (C);
  4. Is a victim of domestic violence or extreme cruelty as specified in subsection (D); or
  5. Has acquired 40 qualified quarters of work credit based on earnings as specified in subsection (E).
- C.** Exemption from sponsor deeming based on indigence.
  1. The Administration or its designee shall consider the applicant indigent and grant an exemption from sponsor deemed income for an applicant, for a period of 12 months beginning with the first month of eligibility if all the following are met:
    - a. An applicant is indigent if all of the following are met:
      - i. The applicant does not reside with the applicant's sponsor;
      - ii. The applicant does not receive free room and board; and
      - iii. The applicant's total gross income including monies received from the sponsor and the value of any vendor payments received for food, utilities, or shelter does not exceed 100% of the FPL for the size of the income group.
  2. The Administration or its designee shall send a notice under 8 U.S.C. 1631(e)(2) to the Attorney General's Office when approving an applicant who is exempt from sponsor deemed income due to indigence.
- D.** The Administration or its designee shall grant an exemption from sponsor deemed income for an applicant who is a victim of domestic violence or extreme cruelty under 8 CFR 204.2 for a period of 12 months beginning with the first month of eligibility. The Administration or its designee shall redetermine the exemption status at each renewal.

1. The Administration or its designee considers an applicant to be a victim of domestic violence or extreme cruelty when all of the following are met:
  - a. The applicant is the victim, the parent of a child victim, or the child of a parent victim;
  - b. The perpetrator of the domestic violence or extreme cruelty was the spouse or parent of the victim or other family member related by blood, marriage or adoption to the victim;
  - c. The perpetrator was residing in the same household as the victim when the abuse occurred;
  - d. The abuse occurred in the United States;
  - e. The applicant did not participate in the domestic violence or cruelty; and
  - f. The victim does not currently live with the perpetrator.
2. The applicant shall provide proof that the applicant or the applicant's child is a victim of domestic violence or extreme cruelty by presenting one of the following:
  - a. USCIS form I-360 Petition for Amerasian, Widow, or Special Immigrant;
  - b. USCIS form I-797 USCIS approval of the I-360 petition;
  - c. Reports or affidavits concerning the domestic violence or cruelty documented by police, judges, or other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, or other social service agency personnel;
  - d. Legal documentation, such as an order of protection against the perpetrator or an order convicting the perpetrator of committing an act of domestic violence or extreme cruelty that chronicles the existence of domestic violence or extreme cruelty;
  - e. Evidence that indicates that the applicant sought safe haven in a battered women's shelter or similar refuge because of the domestic violence or extreme cruelty against the applicant or the applicant's child; or
  - f. Photographs of the applicant or applicant's child showing visible injury.
- E.** The Administration or its designee shall grant an exemption from sponsor deemed income for an applicant who has reached 40 qualifying quarters of work credit.
  1. The Administration or its designee shall not count quarters credited after January 1, 1997 that were earned while the applicant was receiving any federal means-tested benefits.
  2. The Administration or its designee shall not count the 40 qualifying quarters of work credit unless the credited quarters are:
    - a. Quarters that the applicant worked;
    - b. Quarters worked by the applicant's spouse or deceased spouse during their marriage; or
    - c. Quarters worked by the applicant's parents when the applicant was under age 18.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as an emergency effective February 9, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as a permanent rule effective May 16, 1983; text of permanent rule identical to the emergency (Supp. 83-3). Amended effective October 1, 1983 (Supp. 83-5). Correction subsection (A), paragraph (1) amended effective October 1, 1983, (Supp. 83-6). Amended as an

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emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-316 repealed, new Section R9-22-316 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective October 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-316 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-317. Sponsor Deemed Income**

- A.** The Administration or its designee shall use income of a USCIS sponsor to determine eligibility for a non-citizen applicant, whether or not the income is available, to the non-citizen applicant unless exempt under R9-22-316.
- B.** Counting the income from a sponsor.
  1. This Section applies to non-citizen applicants who:
    - a. Are Lawful Permanent Residents under 8 CFR 101.3;
    - b. Applied for Lawful Permanent Resident Status on or after December 19, 1997;
    - c. Are sponsored by an individual who signed a USCIS I-864 Affidavit of Support; and
    - d. Are eligible for full AHCCCS medical coverage.
  2. Sponsor deemed income shall be considered the income of the non-citizen applicant only.
  3. The Administration or its designee shall not use the provisions of this Section when:
    - a. The applicant becomes a naturalized U.S. citizen;
    - b. The applicant qualifies for an exemption listed in R9-22-316; or
    - c. The sponsor dies.
- C.** Determining income from a sponsor.
  1. For an applicant who is exempt from sponsor deeming under R9-22-316, only cash contributions actually received from the sponsor are countable income to the applicant.
  2. For an applicant to whom the sponsor's income is deemed, the Administration or its designee shall exclude any cash contributions received from the sponsor.
- D.** Calculation of income from a sponsor.
  1. The Administration or its designee shall include the total gross income of the sponsor and the sponsor's spouse, when living with the sponsor;
  2. The Administration or its designee shall subtract an amount equal to 100% of the FPL for the sponsor's household size from the total gross income under (D)(1); and
  3. The amount calculated under subsection (D)(2) is deemed as income to the applicant for purposes of determining eligibility.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-317 repealed, new Section R9-22-317 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1986 (Supp. 86-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-317

made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-318. Repealed****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-318 repealed, new Section R9-22-318 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) and added subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective October 1, 1987; amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective December 13, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-319. Repealed****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-319 repealed, new Section R9-22-319 adopted effective November 20, 1984 (Supp. 84-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-320. Repealed****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-320 repealed, new Section R9-22-320 adopted effective November 20, 1984 (Supp. 84-6). Amended effective April 13, 1990 (Supp. 90-2). Repealed effective December 13, 1993 (Supp. 93-4).

**R9-22-321. Repealed****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-321 repealed, new Section R9-22-321 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (B) through (E) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended

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effective October 1, 1987 (Supp. 87-4). Amended subsections (B) and (D) effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective September 29, 1992 (Supp. 92-3).

Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended December 13, 1993 (Supp. 93-4).

Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-322. Repealed****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4).

Amended as an emergency effective May 27, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R9-22-322 repealed, new Section R9-22-322 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-322 repealed, new Section R9-22-322 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-323. Repealed****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-323 repealed, new Section R9-22-323 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-323 repealed, new Section R9-22-323 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (B) and (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B), (D) and (E) effective October 1, 1987 (Supp. 87-4). Amended subsections (B) and (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-324. Repealed****Historical Note**

Adopted as an emergency effective July 27, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R9-22-324 adopted as an emergency renumbered as Section R9-22-327. New Section R9-22-324 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-324 repealed, former Section R9-22-323 renumbered as Section R9-22-324 and adopted as an emergency effective May 18, 1984, pursuant to A.R.S. §

41-1003, valid for only 90 days (Supp. 84-3). Former Section R9-22-324 repealed, new Section R9-22-324 adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-324 repealed, new Section R9-22-324 adopted effective November 20, 1984 (Supp. 84-6). Change in heading only effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-325. Repealed****Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-325 repealed, new Section R9-22-325 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-326. Repealed****Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-326 repealed, new Section R9-22-326 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Change in heading only effective October 1, 1987 (Supp. 87-4). Amended subsection (A) effective May 30, 1989 (Supp. 89-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-327. Repealed****Historical Note**

Former Section R9-22-324 adopted as an emergency effective July 27, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days renumbered as Section R9-22-327 and adopted as a permanent rule effective October 1, 1983 (Supp. 83-5). Former Section R9-22-327 repealed, new Section R9-22-327 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (A), (D), (E), (G), (H), and (I) effective October 1, 1986 (Supp. 86-5). Amended subsection (D) and added a new subsection (J) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (A) and (E) effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-328. Repealed****Historical Note**

Adopted as an emergency effective October 6, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

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83-5). Emergency Expired. New Section R9-22-328 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5).

Amended subsections (A) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (D) effective October 1, 1987 (Supp. 87-4). Amended subsection (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-329. Repealed****Historical Note**

Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. New Section R9-22-329 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-330. Repealed****Historical Note**

Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. New Section R9-22-330 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended subsection (A) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-331. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-332. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-333. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5).

Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-334. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-335. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-336. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective September 16, 1987 (Supp. 87-3). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-337. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Correction to subsection (B), paragraph (1) (Supp. 87-3). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-338. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Heading changed effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-339. Repealed****Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective October 1, 1987

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(Supp. 87-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-340. Repealed****Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-341. Repealed****Historical Note**

Adopted effective March 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-342. Repealed****Historical Note**

Adopted effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-343. Repealed****Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-344. Repealed****Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**ARTICLE 4. PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD****R9-22-401. Definitions**

Definitions. The following definitions apply specifically to terms used within this Article:

“Amounts incurred by the system” include capitation payments, costs incurred by any contractor in excess of capitation, reinsurance, and other administrative, legal or investigative costs associated with a person who obtained eligibility contrary to A.R.S. §§ 36-2905.04 and/or A.R.S. § 36-2991.

“Application for eligibility” means any request for benefits administered by AHCCCS under the authority of A.R.S. Title 36, Chapter 29, including applications for presumptive eligibility submitted to hospitals as described under Article 16 of this Chapter.

“Penalty” means an amount not to exceed the amounts incurred by the system during any time period that the person would have been ineligible for benefits but for the false or fraudulent information provided on the application for eligibility. A penalty does not include, and does not need to be reduced by, the amount of any overpayments that AHCCCS may be entitled to recoup from a person who violated A.R.S. § 36-2905.04 and/or A.R.S. § 36-2991.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-401 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 31, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-402. Determining the Amount of the Penalty**

- A. AHCCCS shall determine the amount of a penalty according to A.R.S. § 36-2905.04(B) or A.R.S. § 36-2991(B), whichever is applicable, and this Article.
- B. In addition to any penalty imposed pursuant to ARS §§ 36-2905.04 or 36-2991, and this Article, the Administration may also recoup from the person the amounts incurred by the system as a part of the notice and appeal process described in this Article.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-402 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-403. Mitigating and Aggravating Circumstances**

- A. AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.
  1. Degree of culpability. The degree of culpability of a person is a mitigating circumstance if the person did not intend to provide or cause to be provided false information on the application for eligibility but was negligent as to the truthfulness of the information provided.
  2. Prior Offenses. At the time of the submittal of the application the person:
    - a. Did not have any prior criminal convictions; and
    - b. Had not been held civilly liable for defrauding a public assistance program.
  3. Financial condition. The financial condition of a person who violates A.R.S. §§ 36-2905.04 or 36-2991 is a mitigating circumstance if the imposition of a penalty without reduction will render the person incapable of obtaining necessities of life such as food, clothing, and shelter. AHCCCS may consider the resources available to the person when determining the amount of the penalty.
  4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice; the circumstances require a reduction of the penalty.
- B. AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.
  1. Degree of culpability. The degree of culpability of a person who provides or causes to be provided false informa-



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tion on the application for eligibility is an aggravating circumstance if the person knows or had reason to know that the information provided on the application for eligibility was false, or the person failed to correct the false information prior to AHCCCS incurring a financial loss as a result of the application for eligibility.

2. Prior offenses. At any time before the submittal of the application for eligibility, the person was held criminally or civilly liable for committing any fraud, waste, or abuse against any public assistance program.
3. Financial Loss. The person's violation of A.R.S. §§ 36-2905.04 or 36-2991 caused a loss to the system equal to or exceeding \$5,000.00.
4. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice; the circumstances require an increase of the penalty.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-403 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-404. Notice of Intent**

- A. If AHCCCS imposes a penalty pursuant to this Article, AHCCCS shall hand deliver or send by certified mail, return receipt requested, or Federal Express to the person, a written Notice of Intent to impose a penalty.
- B. The Notice of Intent shall include:
  1. The legal and factual basis for AHCCCS' determination that there has been a violation of A.R.S. §§ 36-2905.04 and/or 36-2991;
  2. The penalty;
  3. The amounts incurred by the system as a result of the violation of A.R.S. §§ 36-2905.04 and/or 36-2991, if AHCCCS intends to recoup those amounts through this process; and
  4. The procedure for requesting a State Fair Hearing.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-404 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-405. Failure to Respond to the Notice of Intent**

If a person fails to respond to the Notice of Intent within the time-frame described in A.A.C. § R9-22-406(A), AHCCCS shall uphold the penalty and recoupment amounts described in the Notice of Intent.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

3). Former Section R9-22-405 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the amended rule similar to the emergency (Supp. 83-3).

Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-406. Request for State Fair Hearing**

- A. To dispute the agency action described in the Notice of Intent, the person shall file a written Request for State Fair Hearing with AHCCCS within sixty (60) days from the date of receipt of the Notice of Intent.
- B. If AHCCCS receives a timely request for a State Fair Hearing from the person, AHCCCS shall mail a Notice of Hearing pursuant to the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.
- C. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under the Uniform Administrative Hearing Procedures described in A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-406 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-406 repealed, new Section R9-22-406 adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as a permanent rule effective May 16, 1983; text of the Section identical to the emergency (Supp. 83-3). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-407. Burden of Proof**

- A. In any State Fair Hearing conducted under this Article, AHCCCS shall prove a violation of A.R.S. §§ 36-2905.04 and/or 36-2991, and any aggravating circumstances by a preponderance of the evidence.
- B. AHCCCS does not have to prove any specific intent to defraud.
- C. A person shall bear the burden of producing and proving by a preponderance of the evidence any affirmative defense or any circumstance that would justify reducing the amount of the penalty.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**R9-22-408. Rescission of the Notice of Intent**

AHCCCS may rescind the Notice of Intent at any time prior to the State Fair Hearing without prejudice.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

**ARTICLE 5. GENERAL PROVISIONS AND STANDARDS****R9-22-501. General Provisions and Standards - Related Definitions**

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

“Quality management” means a process used by professional health personnel through a formal program involving multiple organizational components and committees to:

Assess the degree to which services provided conform to desired medical standards and practices; and

Quality improvement or maintenance of care and services.

“Quality Improvement” means a process designed to achieve, through ongoing measurements and intervention, significant improvement that is sustained over time, in the areas of clinical care and non-clinical care and is expected to have a favorable effect on health outcomes and member satisfaction. Quality Improvement includes focusing organizational efforts on improving performance and utilizing data to develop intervention strategies to improve performance and outcomes.

“Utilization management/review” means a methodology used by professional health personnel to assess the medical indications, appropriateness, and efficiency of care provided. Utilization management applies to a contractor’s process to evaluate and approve or deny the medical necessity, appropriateness, efficacy and efficiency of health care services, procedures, or settings. Utilization review includes processes for prior authorization, concurrent review, retrospective review, and case management.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-501 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-501 repealed, former Section R9-22-502 renumbered and adopted without change as Section R9-22-501 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-501 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-502. Pre-existing Conditions**

- A.** A contractor shall not impose a pre-existing condition exclusion with respect to covered services.
- B.** A contractor or subcontractor shall not adopt or use any procedure to identify a person who has an existing or anticipated medical or psychiatric condition in order to discourage or exclude the person from enrolling in the contractor’s health plan or encourage the person to enroll in another health plan.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-502 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-502 renumbered without change as Section R9-22-501, former Sec-

tion R9-22-503 renumbered and amended as Section R9-22-502 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-502 repealed, new Section R9-22-502 adopted effective October 1, 1985 (Supp. 85-5).

Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-503. Provider Requirements Regarding Records**

The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date. A provider shall maintain and upon request, make available to a contractor and to the Administration, financial and medical records relating to payment for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. Providers shall provide one copy of a medical record at no cost if requested by the member.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-503 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-503 renumbered and amended as Section R9-22-502, new Section R9-22-503 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective May 30, 1986 (Supp. 86-3). Amended subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (F) and (G) effective December 22, 1987 (Supp. 87-4). Amended subsection (I) effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-504. Marketing; Prohibition Against Inducements; Misrepresentations; Discrimination; Sanctions**

- A.** A contractor or the contractor’s marketing representative shall not offer or give any form of compensation or reward, or engage in any behavior or activity that may be reasonably construed as coercive, to induce or procure AHCCCS enrollment with the contractor. Any marketing solicitation offering a benefit, good, or service in excess of the covered services in Article 2 is deemed an inducement.
- B.** A marketing representative shall not misrepresent itself, the contracting health plan represented, or the AHCCCS program, through false advertising, false statements, or in any other manner to induce a member of another contractor to enroll in the represented health plan. Violations of this subsection include, but are not limited to, false or misleading claims, inferences, or representations such as:
  1. A member will lose benefits under the AHCCCS program or lose any other health or welfare benefits to which a member is legally entitled, if the member does not enroll in the represented contracting health plan;

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2. Marketing representatives are employees of the state or representatives of the Administration, a county, or any health plan other than the health plan by which they are employed, or by which they are reimbursed; and
  3. The represented health plan is recommended or endorsed as superior to its competition by any state or county agency, or any organization, unless the organization has certified its endorsement in writing to the health plan and the Administration.
- C.** A marketing representative shall not engage in any marketing or pre-enrollment practice that discriminates against a member because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental disability, or health status.
- D.** The Administration shall hold a contractor responsible for a violation of this Section resulting from the performance of any marketing representative, subcontractor, agent, program, or process under the contractor's employ or direction and shall impose contract sanctions on the contractor as specified in contract.
- E.** A contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled member or designated representative after the contractor receives notification of enrollment from the Administration. The contractor shall ensure that the informational materials include, at a minimum:
1. A description of all covered services as specified in contract;
  2. An explanation of service limitations and exclusions;
  3. An explanation of the procedure for obtaining services;
  4. An explanation of the procedure for obtaining emergency services;
  5. An explanation of the procedure for filing a grievance and appeal; and
  6. An explanation of when plan changes may occur as specified in contract.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-504 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-504 repealed, former Section R9-22-505 renumbered and adopted without change as Section R9-22-504 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-504 repealed, former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services**

A provider shall not provide hospital or medical services to a member unless the provider is licensed by the Arizona Department of Health Services and meets the requirements in 42 CFR 441 and 482, as of October 1, 2007, and 42 CFR 456 Subpart C, as of October 1, 2007, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-505 adopted as an emergency expired, former Section R9-22-506 adopted as an emergency now adopted, amended and renumbered as Section R9-22-505 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-505 renumbered without change as Section R9-22-504, new Section R9-22-505 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-505 renumbered and amended as Section R9-22-509, former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5). Editorial correction, spelling of "paraphernalia" in subsection (A) (Supp. 87-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). New Section made by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-506. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-506 adopted as an emergency adopted, amended and renumbered as Section R9-22-505, former Section R9-22-507 adopted as an emergency now adopted, amended and renumbered as Section R9-22-506 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-506 repealed, new Section R9-22-506 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-506 repealed, new Section R9-22-506 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (D) effective December 22, 1987 (Supp. 87-4). Repealed effective April 13, 1990 (Supp. 90-2). New Section adopted effective December 13, 1993 (Supp. 93-4). Repealed effective December 8, 1997 (Supp. 97-4).

**R9-22-507. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-507 adopted as an emergency adopted, amended and renumbered as Section R9-22-506, former Section R9-22-508 adopted as an emergency now adopted, amended and renumbered as Section R9-22-507 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-507 repealed, new Section R9-22-507 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-508. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-508 adopted as an emergency adopted, amended and renumbered as Section R9-22-507, former Section R9-22-509 adopted as an emergency now adopted, amended and renumbered as Section R9-22-508 as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective December 8, 1997 (Supp. 97-4).

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Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-509. Transition and Coordination of Member Care**

**A.** A contractor shall assist in the transition of members to and from other AHCCCS contractors.

1. Both the receiving and relinquishing contractor shall:
  - a. Coordinate with the other contractor to facilitate and schedule appointments for medically necessary services for the transitioned member within the Administration's timelines specified in the contract. If requested by the Administration, a contractor shall submit the policies and procedures regarding transition of members to the Administration for review and approval;
  - b. Assist in the referral of transitioned members to other community health agencies or county medical assistance programs for medically necessary services not covered by the Administration, as appropriate; and
  - c. Develop policies and procedures to be followed when transitioning members who have significant medical conditions; are receiving ongoing services; or have, at the time of the transition, received prior authorization or approval for undelivered, specific services.
2. The relinquishing contractor shall notify the receiving contractor of relevant information about the member's medical condition and current treatment regimens within the timelines defined in contract;
3. The relinquishing contractor shall forward medical records and other relevant materials to the receiving contractor. The relinquishing contractor shall bear the cost of reproducing and forwarding medical records and other relevant materials;
4. Within the timelines specified in contract, the receiving contractor shall ensure that the member selects or is assigned to a primary care provider, and provide the member with:
  - a. Information regarding the contractor's providers,
  - b. Emergency numbers, and
  - c. Instructions about how to obtain services.

**B.** A contractor shall not use a county or noncontracting provider health resource alternative to diminish the contractor's contractual responsibility or accountability for providing the full scope of covered services. The Administration may impose sanctions as described in contract if a contractor makes referrals to other agencies or programs to reduce expenses incurred by the contractor on behalf of its members.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-509 adopted as an emergency adopted, amended and renumbered as Section R9-22-508, former Section R9-22-510 adopted as an emergency now adopted and renumbered as Section R9-22-509 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-509 repealed, former Section R9-22-505 renumbered and amended as Section R9-22-509 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-510. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-510 adopted as an emergency adopted and renumbered as Section R9-22-509, former Section R9-22-511 adopted as an emergency now adopted, amended and renumbered as Section R9-22-510 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-510 repealed, new Section R9-22-510 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-511. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-511 adopted as an emergency adopted, amended and renumbered as Section R9-22-510, former Section R9-22-512 adopted as an emergency now adopted, amended and renumbered as Section R9-22-511 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-511 repealed, new Section R9-22-511 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-512. Release of Safeguarded Information**

**A.** The Administration, contractors, providers, and noncontracting providers shall limit the release of safeguarded information to persons or agencies for the following purposes in accordance with 45 CFR 160 and 45 CFR 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments:

1. Official purposes directly related to the administration of the AHCCCS program including:
  - a. Establishing eligibility and post-eligibility treatment of income, as applicable;
  - b. Determining the amount of medical assistance;
  - c. Providing services for members;
  - d. Performing evaluations and analysis of AHCCCS operations;
  - e. Filing liens on property as applicable;
  - f. Filing claims on estates, as applicable; and
  - g. Filing, negotiating, and settling medical liens and claims.
2. Law enforcement. The Administration may release safeguarded information without the applicant's or member's written or verbal consent, for the purpose of conducting or assisting an investigation, prosecution, or criminal or civil proceeding related to the administration of the AHCCCS program.
3. The Administration may release safeguarded member information to a review committee in accordance with the provisions of A.R.S. § 36-2917, without the consent of the applicant or member.

**B.** Except as provided in subsection (A), the Administration, contractors, providers, and noncontracting providers shall disclose safeguarded information only to:

1. An applicant;
2. A member;

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3. An unemancipated minor, with written permission of a parent, custodial relative, or designated representative, if:
    - a. An Administration employee, authorized representative, or responsible caseworker is present during the examination of the safeguarded information; or
    - b. After written notification to the provider, and at a reasonable time and place.
  4. Persons authorized by the applicant or member; or
  5. A court order or subpoena compliant with 45 CFR 164.512(e), October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C.** The Administration, contractors, providers, and noncontracting providers shall safeguard identifiable information, protected health information as specified in 45 CFR 160, and information obtained in the course of application for or re-determination of eligibility concerning an applicant or member, that includes, but is not limited to the following:
1. Name and address;
  2. Social Security number;
  3. Social and economic conditions or circumstances;
  4. Agency evaluation of personal information;
  5. Medical data and information concerning medical services received, including diagnosis and history of disease or disability;
  6. State Data Exchange (SDX) tapes, and other types of information received from outside sources for the purpose of verifying income eligibility and amount of medical assistance payments; and
  7. Any information received in connection with the identification of legally liable third-party resources.
- D.** The restriction upon disclosure of information in this Section does not apply to:
1. De-identified information as described by 45 CFR 164.514, October 1, 2004, incorporated by reference in subsection (A); or
  2. A disclosure, in response to a request for information, that complies with 45 CFR 160 and 45 CFR 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference in subsection (A).
- E.** A provider shall furnish records requested by the Administration or a contractor to the Administration or the contractor at no charge.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-512 adopted as an emergency adopted, amended and renumbered as Section R9-22-511, former Section R9-22-513 adopted as an emergency now adopted and renumbered as Section R9-22-512 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-512 repealed, new Section R9-22-512 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-513. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-513 adopted as an emergency adopted and renumbered as Section R9-22-512, former Section R9-22-514 adopted as an emergency now adopted, amended and renumbered as Section R9-22-513 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-513 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-513 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-514. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-514 adopted as an emergency adopted, amended and renumbered as Section R9-22-513, former Section R9-22-515 adopted as an emergency now adopted, amended and renumbered as Section R9-22-514 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-514 repealed, former Section R9-22-517 renumbered and amended as Section R9-22-514 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-515. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-515 adopted as an emergency adopted, amended and renumbered as Section R9-22-514, former Section R9-22-517 adopted as an emergency now adopted, amended and renumbered as Section R9-22-515 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-515 repealed, former Section R9-22-522 renumbered and amended as Section R9-22-515 effective October 1, 1985 (Supp. 85-5). Repealed effective December 8, 1997 (Supp. 97-4).

**R9-22-516. Renumbered****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-516 adopted as an emergency expired, former Section R9-22-518 adopted as an emergency now adopted, amended and renumbered as Section R9-22-516 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-516 renumbered as Section R9-22-513 effective October 1, 1985 (Supp. 85-5).

**R9-22-517. Renumbered****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-517 adopted as an emergency adopted, amended and renumbered as Section R9-22-515, former Section R9-22-519 adopted as an emergency now adopted and renumbered and amended as Section R9-22-

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517 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-517 renumbered and amended as Section R9-22-514 effective October 1, 1985 (Supp. 85-5).

**R9-22-518. Information to Enrolled Members**

- A. Each contractor shall produce and distribute printed informational materials to each member or family unit no later than 10 days of receipt of notification of enrollment from the Administration. The contractor shall ensure that the informational materials meet the requirements specified in the contractor's current contract.
- B. A contractor shall provide a member with the name, address, and telephone number of the member's primary care provider no later than 10 days from the date of enrollment. The contractor shall include information on how the member may change primary care providers.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-518 adopted as an emergency adopted, amended and renumbered as Section R9-22-516, former Section R9-22-520 adopted as an emergency now adopted, amended and renumbered as Section R9-22-518 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-518 repealed, new Section R9-22-518 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-519. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-519 adopted as an emergency adopted, amended and renumbered as Section R9-22-517, former Section R9-22-521 adopted as an emergency now adopted, amended and renumbered as Section R9-22-519 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-519 repealed, new Section R9-22-519 adopted effective October 1, 1985 (Supp. 85-5). Repealed effective December 8, 1997 (Supp. 97-4).

**R9-22-520. Expired****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-520 adopted as an emergency adopted, amended and renumbered as Section R9-22-518, former Section R9-22-522 adopted as an emergency now adopted, amended and renumbered as Section R9-22-520 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-520 repealed, new Section R9-22-520 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

**R9-22-521. Program Compliance Audits**

- A. The Administration shall conduct an onsite program compliance audit of a contractor at least once every three years during the term of the Administration's contract with the contractor.

The Administration may conduct, without prior notice, inspections of contractor facilities or perform other elements of a program compliance audit.

- B. An audit team may perform any or all of the following procedures:

1. Conduct private interviews and group conferences with members, physicians, other health professionals, and members of the contractor's administrative staff including, but not limited to, the contractor's principal management persons;
2. Examine records, books, reports, and papers of the contractor and any management company, and all providers or subcontractors providing health care and other services. The examination may include, but need not be limited to: minutes of medical staff meetings, peer review and quality of care review records, duty rosters of medical personnel, appointment records, written procedures for the internal operation of the health plan, contracts and correspondence with members and with providers of health care services and other services to the plan, and additional documentation deemed necessary by the Administration to review the quality of medical care.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-521 adopted as an emergency adopted, amended and renumbered as Section R9-22-519, former Section R9-22-523 adopted as an emergency now adopted, amended and renumbered as Section R9-22-521 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-521 repealed, new Section R9-22-521 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General has not certified this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-522. Quality Management/Utilization Management (QM/UM) Requirements**

- A. A contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements specified in this Section and in contract. The contractor shall ensure compliance with QM/UM requirements that are accomplished through delegation or subcontract with another party.
- B. In addition to any requirements specified in contract, a contractor shall:
  1. Submit to the Administration a written QM/UM plan that includes a description of the systems, methodologies, protocols, and procedures to be used in:
    - a. Monitoring and evaluating the types of services provided,
    - b. Identifying the numbers and costs of services provided,
    - c. Assessing and improving the quality and appropriateness of care and services,

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- d. Evaluating the outcome of care provided to members, and
- e. Determining the actions necessary to improve service delivery;
2. Submit the QM/UM plan to the Administration on an annual basis within timelines specified in contract. If the QM/UM plan is changed during the year, the contractor shall submit the revised plan to the Administration before implementation;
3. Receive approval from the Administration before implementing the initial or revised QM/UM plan;
4. Ensure that a QM/UM committee operates under the control of the contractor's medical director and includes representation from medical and executive management personnel. The committee shall:
  - a. Oversee the development, revision, and implementation of the QM/UM plan; and
  - b. Ensure that there are qualified QM/UM personnel and sufficient resources to implement the contractor's QM/UM activities; and
5. Ensure that the QM/UM activities include at least:
  - a. Prior authorization for non-emergency or scheduled hospital admissions;
  - b. Concurrent review of inpatient hospitalization;
  - c. Retrospective review of hospital claims;
  - d. Program and provider audits designed to detect over- or under-utilization, service delivery effectiveness, and outcome;
  - e. Medical records audits;
  - f. Surveys to determine satisfaction of members;
  - g. Assessment of the adequacy and qualifications of the contractor's provider network;
  - h. Review and analysis of QM/UM data;
  - i. Measurement of performance using objective quality indicators;
  - j. Ensuring individual and systemic quality of care;
  - k. Integrating quality throughout the organization;
  - l. Process improvement;
  - m. Credentialing a provider network;
  - n. Resolving quality of care grievances; and
  - o. Quality improvement activities focused on improving the quality of care and the efficient, cost-effective delivery and utilization of services.
- C. A member's primary care provider shall maintain medical records that:
  1. Conform to professional medical standards and practices for documentation of medical diagnostic and treatment data;
  2. Facilitate follow-up treatment; and
  3. Permit professional medical review and medical audit processes.
- D. Within 30 days following termination of the contract between a subcontractor and a contractor, the subcontractor or the subcontractor's designee shall forward to the primary care provider medical records or copies of medical records of all members assigned to the subcontractor or for whom the subcontractor has provided services.
- E. The Administration shall monitor each contractor and the contractor's providers to ensure compliance with Administration QM/UM requirements and adherence to the contractor's QM/UM plan.
  1. A contractor and the contractor's providers shall cooperate with the Administration in the performance of the Administration's QM/UM monitoring activities; and
  2. A contractor and the contractor's providers shall develop and implement mechanisms for correcting deficiencies identified through the Administration's QM/UM monitoring.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-522 adopted as an emergency adopted, amended and renumbered as Section R9-22-520, former Section R9-22-524 adopted as an emergency now adopted and renumbered as Section R9-22-522 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-522 renumbered and amended as Section R9-22-515, new Section R9-22-522 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-523. Expired****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-523 adopted as an emergency adopted, amended and renumbered as Section R9-22-521, former Section R9-22-525 adopted as an emergency now adopted, amended and renumbered as Section R9-22-523 as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

**R9-22-524. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-524 adopted as an emergency adopted and renumbered as Section R9-22-522, former Section R9-22-526 adopted as an emergency now adopted, amended and renumbered as Section R9-22-524 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-524 repealed, new Section R9-22-524 adopted effective October 1, 1985 (Supp. 85-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-525. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-525 adopted as an emergency adopted, amended and renumbered as Section R9-22-523, former Section R9-22-527 adopted as an emergency now adopted, amended and renumbered as Section R9-22-525 as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1985 (Supp. 85-5).

**R9-22-526. Renumbered**

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**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of the permanent rule identical to the emergency (Supp. 83-3). Former Section R9-22-526 repealed, new Section R9-22-526 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-1).

**R9-22-527. Renumbered****Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5).

**R9-22-528. Renumbered****Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5).

**R9-22-529. Renumbered****Historical Note**

Adopted as Section R9-22-529 effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5).

**ARTICLE 6. RFP AND CONTRACT PROCESS****R9-22-601. General Provisions**

- A.** The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
- B.** This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of public monies by the Administration pertaining to covered services when the procurement so states. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).
- C.** The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- D.** The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
- E.** The following terms are defined as related to this Article: "Procurement file" means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-601 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424,

effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**R9-22-602. RFP**

- A.** RFP content. The Administration shall include the following items in any RFP under this Article:
  1. Instructions and information to an offeror concerning the proposal submission including:
    - a. The deadline for submitting a proposal,
    - b. The address of the office at which a proposal is to be received,
    - c. The period during which the RFP remains open, and
    - d. Any special instructions and information;
  2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
  3. The contract terms and conditions, including bonding or other security requirements, if applicable;
  4. The factors used to evaluate a proposal;
  5. The location and method of obtaining documents that are incorporated by reference in the RFP;
  6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
  7. The type of contract to be used and a copy of a proposed contract form or provisions;
  8. The length of the contract service;
  9. A requirement for cost or pricing data;
  10. The minimum RFP requirements; and
  11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.
- B.** Proposal process.
  1. After the deadline for submitting proposals, the Administration may open a proposal publicly and announce and record the name of the offeror. The Administration shall keep all other information contained in a proposal confidential. The Administration shall open a proposal for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
  2. The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP.
  3. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with respect to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.
  4. The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state.
  5. The Administration may conduct an investigation of a person or organization who has ownership or management interests in corporate offerors or affiliated corporate organizations of an offeror.
  6. The Administration may issue a written request for best and final offers. The Administration shall state in the request the date, time, and place for the submission of best and final offers.
  7. The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best



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and final offers. The Administration shall state in the written request for best and final offers that if the offeror does not submit a notice of withdrawal or a best and final offer, the Administration shall take the most recent offer as the offeror's best and final offer.

**C. Proposal rejection.**

1. The Administration may reject an offeror's proposal if the offeror fails to supply the information requested by the Administration.
2. The offeror shall not disclose information pertaining to its proposal to any other offeror prior to contract award. The offeror may disclose proposal information to a person other than another offeror if the recipient agrees to keep the information confidential until contract award. Disclosure in violation of this subsection may be grounds for rejecting a proposal.
3. The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and a public record.
4. If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a proposal is rejected in whole or in part.

**D. Proposal cancellation.** If the Administration determines that it is in the best interest of the state, the Administration may cancel a RFP. The reasons for cancellation shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a RFP is cancelled.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-602 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

**R9-22-603. Contract Award**

The Administration shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-603 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by

final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

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

- A.** Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by 9 A.A.C. 34.
- B.** Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.
- C.** Filing of a protest.
1. A person may file a protest with the procurement officer regarding:
    - a. A RFP issued by the Administration,
    - b. A proposed award, or
    - c. An award of a contract.
  2. A protester shall submit a written protest and include the following information:
    - a. The name, address, and telephone number of the protester;
    - b. The signature of the protester or protester's representative;
    - c. Identification of a RFP or contract number;
    - d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
    - e. The relief requested.
- D.** Time for filing a protest.
1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
  2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.
  3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest no later than 10 days after the procurement officer makes the procurement file available for public inspection.
- E.** Stay of procurement during the protest. If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement officer shall consider but is not limited to considering whether:
1. A reasonable probability exists that the protest will be sustained, and
  2. The stay of the contract award is in the best interest of the state.
- F.** Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
1. An appeal is filed before a contract award, and
  2. The procurement officer issues a stay of the contract award under subsection (E), unless
  3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G.** Decision by the procurement officer.
1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
  2. The procurement officer shall furnish a copy of the decision to the protester by:
    - a. Certified mail, return receipt requested; or

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- b. Any other method that provides evidence of receipt.
  - 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
  - 4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.**
- 1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
  - 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
    - a. Seriousness of the procurement deficiency,
    - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
    - c. Good faith of the parties,
    - d. Extent of performance,
    - e. Costs to the state, and
    - f. Urgency of the procurement.
    - g. Best interest of the state.
  - 3. An appropriate remedy may include one or more of the following:
    - a. Terminating the contract;
    - b. Reissuing the RFP;
    - c. Issuing a new RFP;
    - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
    - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.**
- 1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
  - 2. The appeal shall contain:
    - a. The information required in subsection (C)(2),
    - b. A copy of the procurement officer's decision,
    - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
    - d. A request for hearing unless the person requests that the Director's decision be based solely upon the procurement file.
- J. Dismissal.** The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
- 1. The appeal does not state a basis for protest,
  - 2. The appeal is untimely under subsection (I)(1), or
  - 3. The appeal is moot.
- K. Hearing.** Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.

**Historical Note**

Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final

rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**R9-22-605. Waiver of Contractor's Subcontract with Hospitals**

If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.

**Historical Note**

Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**R9-22-606. Contract Compliance Sanction**

- A.** The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
  - 1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
  - 2. Imposition of a monetary sanction.
- B.** The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C.** The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D.** Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**ARTICLE 7. STANDARDS FOR PAYMENTS****R9-22-701. Standard for Payments Related Definitions**

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

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

"Aggregate" means the combined amount of hospital payments for covered services provided within and outside the GSA.

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

"Ancillary service" means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room

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(including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

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

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

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

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

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

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

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

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g). “Direct graduate medical education costs” or “direct program costs” means the costs that are incurred by a hospital for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

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

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

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

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36-2903.01(G)(9)(b) and (c)(i).

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

“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to provide the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

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

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

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

“Indirect program costs” means the marginal increase in operating costs that a hospital experiences as a result of having an approved graduate medical education program and that is not accounted for by the hospital’s direct program costs.

“Intern and Resident Information System” means a software program used by teaching hospitals and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

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

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review,

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or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

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

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

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

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

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

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

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

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

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

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

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

“Participating institution” means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

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

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

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

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

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

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

“Qualifying health information exchange organization” means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

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

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

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.

“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB-04 forms.

“Sub-acute services” means inpatient care for a patient with an acute illness, injury or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.

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

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of

academic quality and compliance with the terms of accreditation.

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

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

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-701 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-701 repealed, new Section R9-22-701 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014; amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

#### R9-22-701.01. Reserved

#### R9-22-701.02. Reserved

#### R9-22-701.03. Reserved

#### R9-22-701.04. Reserved

#### R9-22-701.05. Reserved

#### R9-22-701.06. Reserved

#### R9-22-701.07. Reserved

#### R9-22-701.08. Reserved

#### R9-22-701.09. Reserved

#### R9-22-701.10 Scope of the Administration's and Contractor's Liability

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member's eligibility or during the member's enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

#### R9-22-702. Charges to Members

- A. For purposes of this subsection, the term “member” includes the member's financially responsible representative as described under A.R.S. § 36-2903.01.
- B. Registered providers must accept payment from the Administration or a contractor as payment in full.
- C. Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.
- D. An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:
  1. To collect the copayment described in R9-22-711;
  2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;
  3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member's AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;
  4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
  5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;
  6. For services requested for a member enrolled with a contractor, and rendered by a noncontracting provider under circumstances where the member's contractor is not responsible for payment of “out of network” services under R9-22-705(A), if the member signs a document in advance of receiving the service stating that the member understands the provider is out of network, that the member's contractor is not responsible for payment, and that the member will be financially responsible for payment for the excluded service;
  7. For services rendered to a person eligible for the FESP if the provider submits a claim to the Administration in the reasonable belief that the service is for treatment of an emergency medical condition and the Administration denies the claim because the service does not meet the criteria of R9-22-217; or
  8. If the provider has received verification from the Administration that the person was not an eligible person on the date of service.
- E. The signature requirement of subsections (D)(4), (D)(5), and (D)(6) do not apply if:
  1. The member is unable or incompetent to sign such a document, or

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2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member's health.
- F.** Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider's failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.
- Historical Note**
- Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-702 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text identical to the emergency (Supp. 83-3). Former Section R9-22-702 repealed, new Section R9-22-702 adopted effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (B) effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).
- R9-22-703. Payments by the Administration**
- A.** General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, the Administration shall deem a paper or electronic claim to be submitted on the date that it is received by the Administration. The Administration shall do one or more of the following for each claim it receives:
    - a. Place a date stamp on the face of the claim,
    - b. Assign a system-generated claim reference number, or
    - c. Assign a system-generated date-specific number.
  2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
    - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
    - b. Six months from the date of eligibility posting.
  3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
    - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
    - b. Twelve months from the date of eligibility posting.
  4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an IHS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C.** Claims processing.
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
  2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
    - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
    - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
    - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
  3. A claim is paid on the date indicated on the disbursement check.
  4. A claim is denied as of the date of the remittance advice.
  5. The Administration shall process a hospital claim under this Article.
- D.** Prior authorization.
1. An AHCCCS-registered provider shall:
    - a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
    - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
    - c. Make records available for review by the Administration upon request.
  2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).
  3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E.** Review of claims and coverage for hospital supplies.
1. The Administration may conduct prepayment and post-payment review of any claims, including but not limited to hospital claims.
  2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
    - a. Patient care kit,
    - b. Toothbrush,
    - c. Toothpaste,

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- d. Petroleum jelly,
    - e. Deodorant,
    - f. Septi soap,
    - g. Razor or disposable razor,
    - h. Shaving cream,
    - i. Slippers,
    - j. Mouthwash,
    - k. Shampoo,
    - l. Powder,
    - m. Lotion,
    - n. Comb, and
    - o. Patient gown.
  - 3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
    - a. Arm board,
    - b. Diaper,
    - c. Underpad,
    - d. Special mattress and special bed,
    - e. Gloves,
    - f. Wrist restraint,
    - g. Limb holder,
    - h. Disposable item used instead of a durable item,
    - i. Universal precaution,
    - j. Stat charge, and
    - k. Portable charge.
  - 4. The Administration shall determine in a hospital claims review whether services rendered were:
    - a. Covered services as defined in Article 2;
    - b. Medically necessary;
    - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
    - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
  - 5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.
- F. Overpayment for AHCCCS services.**
- 1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
  - 2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
  - 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
  - 4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.
- G. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.**
- H. Prior quarter reimbursement. A provider shall:**
- 1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.
  - 2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.
  - 3. Accept payment received by the Administration as payment in full.

- I.** Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
- J.** Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- K.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.
- L.** The Administration may enter into contracts for the provisions of transplant services.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R-22-703 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-703 repealed, new Section R9-22-703 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective September 16, 1987 (Supp. 87-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-704. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-704 adopted as an emergency now adopted and amended as a permanent rule effective August 30 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsection A., Paragraph 2, effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-705. Payments by Contractors**

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- A.** General requirements. A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for reimbursing providers and coordinating care for services provided to a member. Except as provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.
1. Providers. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
  2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:
    - a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
    - b. The service is emergent under Article 2 of this Chapter.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
    - a. Place a date stamp on the face of the claim,
    - b. Assign a system-generated claim reference number, or
    - c. Assign a system-generated date-specific number.
  2. Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
    - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
    - b. Six months from the date of eligibility posting.
  3. Unless a shorter time period is specified in subcontract, a contractor shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
    - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
    - b. Twelve months from the date of eligibility posting.
- C.** Date of claim.
1. A contractor's date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor.
  2. A hospital claim is considered paid on the date indicated on the disbursement check.
  3. A denied hospital claim is considered adjudicated on the date of the claim's denial.
  4. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation.
  5. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt.
  6. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D.** Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. A contractor shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.
- E.** Payment for Inpatient out-of-state hospital payments for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- F.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- G.** Payment for in-state outpatient hospital services.  
A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- H.** Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the contractor shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
- I.** Payment for observation days. A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-712, R9-22-712.10, and R9-22-712.45.
- J.** Review of claims and coverage for hospital supplies.
1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.
  2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost effectiveness of an alternative treatment.



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- Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and shall make the hospital's medical records pertaining to a member enrolled with a contractor available for review.
3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post-payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the contractor shall adjust the claim payment.
  4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures if the subcontract meets the requirements of R9-22-715.
  5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
    - a. Patient care kit,
    - b. Toothbrush,
    - c. Toothpaste,
    - d. Petroleum jelly,
    - e. Deodorant,
    - f. Septi soap,
    - g. Razor,
    - h. Shaving cream,
    - i. Slippers,
    - j. Mouthwash,
    - k. Disposable razor,
    - l. Shampoo,
    - m. Powder,
    - n. Lotion,
    - o. Comb, and
    - p. Patient gown.
  6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
    - a. Arm board,
    - b. Diaper,
    - c. Underpad,
    - d. Special mattress and special bed,
    - e. Gloves,
    - f. Wrist restraint,
    - g. Limb holder,
    - h. Disposable item used instead of a durable item,
    - i. Universal precaution,
    - j. Stat charge, and
    - k. Portable charge.
  7. The contractor shall determine in a hospital claims review whether services rendered were:
    - a. Covered services as defined in R9-22-201;
    - b. Medically necessary;
    - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
    - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.
  8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.
  - K. Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration's capped fee-for-service schedule or at a lower rate if negotiated between the two parties.
  - L. Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:
    1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
    2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
    3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a 1 percent penalty of the rate for each month or portion of the month following the 60th day of receipt of the bill until date of payment.
  - M. Interest payment. In addition to the requirements in subsection (L), a contractor shall pay interest for late claims as defined by contract.
  - N. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-705 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the amended rule identical to emergency (Supp. 83-3). Former Section R9-22-705 repealed, new Section R9-22-705 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (C) effective October 1, 1987; amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R.

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1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-706. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-706 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-706 repealed, new Section R9-22-706 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5).

Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (D), (E), (F), and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (F) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (F) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4).

**R9-22-707. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-707 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Repealed as a permanent action effective May 16, 1983 (Supp. 83-3). New Section R9-22-707 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1985 (Supp. 85-5). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

**R9-22-708. Payments for Services Provided to Eligible American Indians**

- A. For purposes of this Article “IHS enrolled” or “enrolled with IHS” means an American Indian who has elected to receive covered services through IHS instead of a contractor.
- B. For an American Indian who is enrolled with IHS, AHCCCS shall pay IHS the most recent all-inclusive inpatient, outpatient or ambulatory surgery rates published by Health and Human Services (HHS) in the Federal Register, or a separately contracted rate with IHS, for AHCCCS-covered services provided in an IHS facility. AHCCCS shall reimburse providers for the Medicare coinsurance and deductible amounts required to be paid by the Administration or contractor in Chapter 29, Article 3 of this Title.
- C. When IHS refers an American Indian enrolled with IHS to a provider other than an IHS or tribal facility, the provider to whom the referral is made shall obtain prior authorization from AHCCCS for services as required under Articles 2, 7 or 12 of this Chapter.
- D. For an American Indian enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.
- E. Once an American Indian enrolls with a contractor, AHCCCS shall not reimburse any provider other than IHS or a Tribal facility.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-708 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-708 repealed, new Section R9-22-708 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-708 renumbered and amended as Section R9-22-709, new Section R9-22-708 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-709. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care**

A contractor is liable for emergency hospitalization and post-stabilization care as described in R9-22-210 and R9-22-210.01.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-709 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-709 repealed, new Section R9-22-709 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-709 renumbered and amended as Section R9-22-713, former Section R9-22-708 renumbered and amended as Section R9-22-709 effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

*Editor’s Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor’s Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publi-*

*cation in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

#### **R9-22-710. Payments for Non-hospital Services**

**A.** Capped fee-for-service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

1. Non-contracted services. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration's capped-fee-for-service schedule.
2. Procedure codes. The Administration shall maintain a current copy of the National Standard Code Sets mandated under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004), incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
  - a. A person shall submit an electronic claim consistent with 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
  - b. A person shall submit a paper claim using the National Standard Code Sets as described under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
  - c. The Administration may deny a claim for failure to comply with subsection (A) (2) (a) or (b).
3. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(3)(a) through (A)(3)(d) unless a different fee is specified in a contract between the Administration and the provider, or is otherwise required by law.
  - a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.
  - b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.
  - c. Transportation services. Fee schedules for payment for transportation services are on file at the central office of the Administration for reference use during customary business hours. For dates of service beginning:
    - i. October 1, 2012 through September 30, 2013, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2012.
    - ii. October 1, 2013 through September 30, 2014, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2013.

iii. October 1, 2014 through September 30, 2015, the Administration and its contractors shall reimburse ambulance services at 74.74 percent of the ADHS rates that are in effect as of August 2, 2014.

d. Medical supplies and durable medical equipment (DME). Fee schedules for payment for medical supplies and DME are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse a provider once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless prior authorized by the Administration, no more than one repair and adjustment of DME shall be reimbursed during any two-year period.

**B.** Pharmacy services. The Administration shall not reimburse pharmacy services unless the services are provided by a pharmacy having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. Except as specified in subsection (C), the Administration shall reimburse pharmacy services according to the terms of the contract.

**C.** FQHC Pharmacy reimbursement.

1. For purposes of this Section the following terms are defined:
  - a. "340B Drug Pricing Program" means the discount drug purchasing program described in 42 U.S.C. 256b.
  - b. "340B Ceiling Price" means the maximum price that drug manufacturers can charge covered entities participating in the 340B Drug Pricing Program as reported by the drug manufacturer to HRSA.
  - c. "340B entity" means a covered entity, eligible to participate in the 340B Drug Pricing Program, as defined by the Health Resources and Human Services Administration.
  - d. "Actual Acquisition Cost (AAC)" means the purchase price of a drug paid by a pharmacy net of discounts, rebates, chargebacks and other adjustments to the price of the drug. The AAC excludes dispensing fees.
  - e. "Contracted Pharmacy" means an arrangement through which a 340B entity may contract with an outside pharmacy to provide comprehensive pharmacy services utilizing medications subject to 340B pricing.
  - f. "Dispensing Fee" means the amount paid for the professional services provided by the pharmacist for dispensing a prescription. The Dispensing Fee does not include any payment for the drugs being dispensed.
  - g. "Federally Qualified Health Center" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the criteria under sections 1861(aa)(4) and 1905(l)(2)(B) of the Social Security Act and receives funds under section 330 of the Public Health Service Act.
  - h. "Federally Qualified Health Center Look-Alike" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the definition of "health center" under section 330 of the Public Health Service Act, but does not receive grant funding under section 330.

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- i. "FQHC or FQHC Look-Alike pharmacy" means a pharmacy that dispenses drugs to FQHC or FQHC-LA patients and that is owned and/or operated by an FQHC/FQHC-LA or by an entity that reports the costs of an FQHC/FQHC-LA on its Medicare Cost Report, whether or not collocated with an FQHC or an FQHC Look-Alike.
2. Effective the later of February 1, 2012, or CMS approval of a State Plan Amendment, an FQHC or FQHC Look-Alike shall:
  - a. Notify the AHCCCS provider registration unit of its status as a 340B covered entity no later than:
    - i. 30 days after the effective date of this Section;
    - ii. 30 days after registration with the Health Resources and Services Administration (HRSA) for participation in the 340B program, or
    - iii. The time of application to become an AHCCCS provider.
  - b. Provide the 340B pricing file to the AHCCCS Administration upon request. The 340B pricing file shall be provided in the file format as defined by AHCCCS.
  - c. Identify 340B drug claims submitted to the AHCCCS FFS PBM or the Managed Care Contractors' PBMs for reimbursement. The 340B drug claim identification and claims processing for a drug claim submission shall be consistent with claim instructions issued and required by AHCCCS to identify such claims.
3. The FQHC and the FQHC Look-Alike pharmacies shall submit claims for AHCCCS members for drugs that are identified in the 340B pricing file, whether or not purchased under the 340B pricing file, with the lesser of:
  - a. The actual acquisition cost, or
  - b. The 340B ceiling price.
4. The AHCCCS Fee-for-Service and Managed Care Contractors' PBMs shall reimburse claims for drugs which are identified in the 340B pricing file dispensed by FQHC and FQHC Look -Alike pharmacies, whether or not purchased under the 340B pricing file, at the amount submitted under subsection (C)(3) plus a dispensing fee listed in the AHCCCS Capped Fee-For-Service Schedule unless a contract between the 340B entity and a Managed Care Contractor's PBM specifies a different dispensing fee.
5. Contracted pharmacies shall not submit claims for drugs dispensed under an agreement with the 340B entity as part of the 340B drug pricing program, and the AHCCCS Administration and Managed Care Contractors shall not reimburse such claims.
6. The AHCCCS Administration and Managed Care Contractors shall reimburse contracted pharmacies for drugs not dispensed under an agreement with the 340B entity as part of the 340B program at the price and dispensing fee set forth in the contract between the contracted pharmacy and the AHCCCS or its Managed Care Contractors' PBMs. Neither the Administration nor its Managed Care Contractors will reimburse a contracted pharmacy that does not have a contract with the Administration or MCO's PBM.
7. The AHCCCS Administration and its Managed Care Contractors shall reimburse FQHC and FQHC Look-Alike pharmacies for drugs that are not eligible under the 340B Drug Pricing Program at the price and dispensing fee set forth in their contract with the AHCCCS or its Managed Care Contractors' PBMs.

8. AHCCCS may periodically conduct audits to ensure compliance with this Section.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-710 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of amended rule identical to emergency (Supp. 83-3). Former Section R9-22-710 repealed, new Section R9-22-710 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985. The capped fee-for-service schedules, deleted from Section R9-22-710, are now on file at the central office of the Administration (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective July 1, 1988 (Supp. 88-3). Amended subsection (B) effective April 27, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3830, effective November 12, 2005 (Supp. 05-3). Amended by exempt rulemaking at 18 A.A.R. 212, effective February 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 18 A.A.R. 1971, effective August 1, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2630, effective October 1, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 1681, effective August 9, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3525, effective October 18, 2013 (Supp. 13-4).

**R9-22-711. Copayments****A.** For purposes of this Article:

1. A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.
2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
3. No refunds shall be made for a retroactive period if there is a change in an individual's status that alters the amount of a copayment.

**B.** The following services are exempt from AHCCCS copayments for all members:

1. Family planning services and supplies,
2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman,
3. Emergency services as described in 42 CFR 447.56(2)(i),
4. All services paid on a fee-for-service basis,
5. Preventive services, such as well visits, immunizations, pap smears, colonoscopies, and mammograms,
6. Provider preventable services.

**C.** The following individuals are exempt from AHCCCS copayments:

1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
3. An individual eligible for the Arizona Long-Term Care Program in A.R.S. § 36-2931;

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4. An individual eligible for QMB under Chapter 29;
  5. An individual eligible for the Children's Rehabilitative Services program under A.R.S. § 36-2906(E);
  6. An individual receiving nursing facility or HCBS services under R9-22-216;
  7. An individual receiving hospice care as defined in 42 U.S.C. 1396d(o);
  8. An American Indian individual enrolled in a health plan and has received services through an IHS facility, tribal 638 facility or urban Indian health program;
  9. An individual eligible in the Breast and Cervical Cancer program as described under Article 20;
  10. An individual who is pregnant and through the postpartum period following the pregnancy;
  11. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age;
  12. An individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age; and
  13. An adult eligible under R9-22-1427(E), with income at or below 106% of the FPL.
- D. Non-mandatory copayments.** Unless otherwise listed in subsection (B) or (C), individuals under subsections (D)(1) through (6) are subject to the copayments listed in this subsection. A provider shall not deny a service when a member states to the provider an inability to pay a copayment.
1. A caretaker relative eligible under R9-22-1427(A);
  2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(a)(iii);
  3. An individual eligible for State Adoption Assistance in R9-22-1433;
  4. An individual eligible for Supplemental Security Income (SSI);
  5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in Article 15; and
  6. An individual eligible for the Freedom to Work program in A.R.S. § 36-2901(6)(g).
  7. Copayment amount per service:
    - a. \$2.30 per prescription drug.
    - b. \$3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.
    - c. \$2.30 per visit, if a copayment is not being imposed under subsection (D)(7)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
- E. Mandatory copayments.**
1. Copayments for individuals eligible for Transitional Medical Assistance (TMA) under R9-22-1427(B)(1)(c)(i). Unless otherwise listed in subsection (C), an individual is required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
    - a. \$2.30 per prescription drug.
    - b. \$4.00 per outpatient visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
    - c. If a copayment is not being imposed under subsection (E)(1)(b), \$3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
    - d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), \$3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets.
  2. Copayments for persons eligible under R9-22-1427(E) with income above 106% of the FPL and for persons eligible under A.R.S. §§ 36-2907.10 and 36-2907.11. Subject to CMS approval, unless otherwise listed in subsection (C), these individuals are required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
    - a. \$4.00 per prescription drug.
    - b. \$5.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate from \$50 to less than \$100, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
    - c. \$10.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate of \$100 or greater, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
    - d. If a copayment is not being imposed under subsection (E)(2)(b) or (E)(2)(c), for services coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
      - i. \$2.00 if the rate on the fee schedule is \$20 to \$39.99,
      - ii. \$4.00 if the rate on the fee schedule is \$40 to \$49.99, or
      - iii. \$5.00 if the rate on the fee schedule is \$50 and above per visit.
    - e. If a copayment is not being imposed under subsection (E)(2)(b) – (E)(2)(d), for services coded as non-emergent surgical procedures according to the National Standard Code Sets,
      - i. \$30.00 if the rate on the fee schedule is \$300 to \$499.99, or
      - ii. \$50.00 if the rate on the fee schedule is \$500 and above per visit.
    - f. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$2.00 per trip for non-emergency transportation in an urban area.
    - g. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$8.00 for non-emergency use of the emergency room.

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- h. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$75 for an Inpatient stay.
- 3. The provider may deny a service if the member does not pay the copayment required by subsection (E), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.
- F. A provider is responsible for collecting any copayment imposed under this Section.
- G. The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family's income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member's copayment obligation has reached 5% of the family's income.
- H. Reduction in payments to providers. The Administration and its contractors shall reduce the payment it makes to any provider by the amount of a member's copayment obligation under subsection (E), regardless of whether the provider successfully collects the copayments described in this Section.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Sections R9-22-711 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-711 repealed, new Section R9-22-711 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 4557, effective October 1, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 2194, effective May 3, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 4266, effective October 1, 2004 (Supp. 04-3). Amended by final rulemaking at 16 A.A.R. 1449, effective October 1, 2010 (Supp. 10-3). Section amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 2954, effective November 11, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 128, effective December 30, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3).

*Editor's Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subse-*

*quently amended through the regular rulemaking process.*

**R9-22-712. Reimbursement: General**

- A. Inpatient and outpatient discounts and penalties. If a claim is pending for additional documentation required under A.R.S. § 36-2903.01(G)(4), the period during which the claim is pending is not used in the calculation of the quick-pay discounts and slow-pay penalties under A.R.S. § 36-2903.01(G)(5).
- B. Inpatient and outpatient in-state or out-of-state hospital payments.
  - 1. Payment for inpatient out-of-state hospital services for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(d).
  - 2. Payment for inpatient in-state hospital services for claims with discharge dates on or before September 30, 2014. AHCCCS shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
  - 3. Payment for inpatient in-state or out-of-state hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in the absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
  - 4. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse an out-of-state hospital for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the Administration shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
  - 5. Outpatient in-state hospital payments. A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- C. Access to records. Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall allow the Administration access to medical records regarding eligible persons and shall in all other ways fully cooperate with the Administration or the Administration's designated representative in performance of the Administration's utilization control activities. The Administration shall deny a claim for failure to cooperate.
- D. Prior authorization. The Administration or contractor may deny a claim if a provider fails to obtain prior authorization as required under R9-22-210.
- E. Review of claims. Regardless of prior authorization or concurrent review activities, the Administration may subject all hospital claims, including outliers, to prepayment medical review or post-payment review, or both. The Administration shall

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conduct post-payment reviews consistent with A.R.S. § 36-2903.01 and may recoup erroneously paid claims.

**F. Claim receipt.**

1. The Administration's date of receipt of inpatient or outpatient hospital claims is the date the claim is received by the Administration as indicated by the date stamp on the claim and the system-generated claim reference number or system-generated date-specific number.
2. Hospital claims are considered paid on the date indicated on disbursement checks.
3. A denied claim is considered adjudicated on the date the claim is denied.
4. Claims that are denied and are resubmitted are assigned new receipt dates.
5. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the Administration shall assign a new date of receipt upon receipt of the additional documentation.
6. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the Administration shall not assign a new date of receipt.

**G. Outpatient hospital reimbursement.** The Administration shall pay for covered outpatient hospital services provided to eligible persons with dates of service from March 1, 1993 through June 30, 2005, at the AHCCCS outpatient hospital cost-to-charge ratio, multiplied by the amount of the covered charges.

1. Computation of outpatient hospital reimbursement. The Administration shall compute the cost-to-charge ratio on a hospital-specific basis by determining the covered charges and costs associated with treating eligible persons in an outpatient setting at each hospital. Outpatient operating and capital costs are included in the computation but outpatient medical education costs that are included in the inpatient medical education component are excluded. To calculate the outpatient hospital cost-to-charge ratio annually for each hospital, the Administration shall use each hospital's Medicare Cost Reports and a database consisting of outpatient hospital claims paid and encounters processed by the Administration for each hospital, subjecting both to the data requirements specified in R9-22-712.01. The Administration shall use the following methodology to establish the outpatient hospital cost-to-charge ratios:

- a. Cost-to-charge ratios. The Administration shall calculate the costs of the claims and encounters for outpatient hospital services by multiplying the ancillary line item cost-to-charge ratios by the covered charges for corresponding revenue codes on the claims and encounters. Each hospital shall provide the Administration with information on how the revenue codes used by the hospital to categorize charges on claims and encounters correspond to the ancillary line items on the hospital's Medicare Cost Report. The Administration shall then compute the overall outpatient hospital cost-to-charge ratio for each hospital by taking the average of the ancillary line items cost-to-charge ratios for each revenue code weighted by the covered charges.
- b. Cost-to-charge limit. To comply with 42 CFR 447.325, the Administration may limit cost-to-charge ratios to 1.00 for each ancillary line item from the Medicare Cost Report. The Administration shall remove ancillary line items that are non-covered or not applicable to outpatient hospital services from the Medicare Cost Report data for purposes of

computing the overall outpatient hospital cost-to-charge ratio.

2. New hospitals. The Administration shall reimburse new hospitals at the weighted statewide average outpatient hospital cost-to-charge ratio multiplied by covered charges. The Administration shall continue to use the statewide average outpatient hospital cost-to-charge ratio for a new hospital until the Administration rebases the outpatient hospital cost-to-charge ratios and the new hospital has a Medicare Cost Report for the fiscal year being used in the rebasing.
3. Specialty outpatient services. The Administration may negotiate, at any time, reimbursement rates for outpatient hospital services in a specialty facility.
4. Reimbursement requirements. To receive payment from the Administration, a hospital shall submit claims that are legible, accurate, error free, and have a covered charge greater than zero. The Administration shall not reimburse hospitals for emergency room treatment, observation hours or days, or other outpatient hospital services performed on an outpatient basis, if the eligible person is admitted as an inpatient to the same hospital directly from the emergency room, observation area, or other outpatient department. Services provided in the emergency room, observation area, and other outpatient hospital services provided before the hospital admission are included in the tiered per diem payment.
5. Rebasing. The Administration shall rebase the outpatient hospital cost-to-charge ratios at least every four years but no more than once a year using updated Medicare Cost Reports and claim and encounter data.
6. If a hospital files an increase in its charge master for an existing outpatient service provided on or after July 1, 2004, and on or before June 30, 2005, which represents an aggregate increase in charges of more than 4.7%, the Administration shall adjust the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) by applying the following formula:  

$$CCR * [1.047 / (1 + \% \text{ increase})]$$

Where "CCR" means the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) and "% increase" means the aggregate percentage increase in charges for outpatient services shown on the hospital charge master.

"Charge master" means the schedule of rates and charges as described under A.R.S. § 36-436 and the rules that relate to those rates and charges that are filed with the Director of the Arizona Department of Health Services.

**Historical Note**

Adopted as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to emergency (Supp. 83-3). Former Section R9-22-712 repealed, new Section R9-22-712 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). New Section R9-22-712 adopted under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993

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(Supp. 93-3). Amended effective January 14, 1997 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 3831, effective August 25, 2004 (Supp. 04-3). Amended by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.01. Inpatient Hospital Reimbursement for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014**

Inpatient hospital reimbursement. The Administration shall pay for covered inpatient acute care hospital services provided to eligible persons for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014, on a prospective reimbursement basis. The prospective rates represent payment in full, excluding quick-pay discounts, slow-pay penalties, and third-party payments for both accommodation and ancillary department services. The rates include reimbursement for operating and capital costs. The Administration shall make reimbursement for direct graduate medical education as described in A.R.S. § 36-2903.01. For payment purposes, the Administration shall classify each AHCCCS inpatient hospital day of care into one of several tiers appropriate to the services rendered. The rate for a tier is referred to as the tiered per diem rate of reimbursement. The number of tiers is seven and the maximum number of tiers payable per continuous stay is two. Payment of outlier claims, transplant claims, or payment to out-of-state hospitals, freestanding psychiatric hospitals, and other specialty facilities may differ from the inpatient hospital tiered per diem rates of reimbursement described in this Section.

1. Tier rate data. The Administration shall base tiered per diem rates effective on and after October 1, 1998 on Medicare Cost Reports for Arizona hospitals for the fiscal year ending in 1996 and a database consisting of inpatient hospital claims and encounters for dates of service matching each hospital's 1996 fiscal year end.
  - a. Medicare Cost Report data. Because Medicare Cost Report years are not standard among hospitals and were not audited at the time of the rate calculation, the Administration shall inflate all the costs to a common point in time as described in subsection (2) for each component of the tiered per diem rates. The Administration shall not make any changes to the tiered per diem rates if the Medicare Cost Report data are subsequently updated or adjusted. If a single Medicare Cost Report is filed for more than one hospital, the Administration shall allocate the costs to each of the respective hospitals. A hospital shall submit information to assist the Administration in this allocation.
  - b. Claim and encounter data. For the database, the Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were accepted and processed by the Administration at the time the database was developed for rates effective on and after October 1, 1998. The Administration shall subject the claim and encounter data to a series of data quality, reasonableness, and integrity edits and shall exclude from the database or adjust claims and encounters that fail these edits.

The Administration shall also exclude from the database the following claims and encounters:

- i. Those missing information necessary for the rate calculation,
  - ii. Medicare crossovers,
  - iii. Those submitted by freestanding psychiatric hospitals, and
  - iv. Those for transplant services or any other hospital service that the Administration would pay on a basis other than the tiered per diem rate.
2. Tier rate components. The Administration shall establish inpatient hospital prospective tiered per diem rates based on the sum of the operating and capital components. The rate for the operating component is a statewide rate for each tier except for the NICU and Routine tiers, which are based on peer groups. The rate for the capital component is a blend of statewide and hospital-specific values, as described in A.R.S. § 36-2903.01. The Administration shall use the following methodologies to establish the rates for each of these components.
    - a. Operating component. Using the Medicare Cost Reports and the claim and encounter database, the Administration shall compute the rate for the operating component as follows:
      - i. Data preparation. The Administration shall identify and group into department categories, the Medicare Cost Report data that provide ancillary department cost-to-charge ratios and accommodation costs per day. To comply with 42 CFR 447.271, the Administration shall limit cost-to-charge ratios to 1.00 for each ancillary department.
      - ii. Operating cost calculation. To calculate the rate for the operating component, the Administration shall derive the operating costs from claims and encounters by combining the Medicare Cost Report data and the claim and encounter database for all hospitals. In performing this calculation, the Administration shall match the revenue codes on the claims and encounters to the departments in which the line items on the Medicare Cost Reports are grouped. The ancillary department cost-to-charge ratios for a particular hospital are multiplied by the covered ancillary department charges on each of the hospital's claims and encounters. The AHCCCS inpatient days of care on the particular hospital's claims and encounters are multiplied by the corresponding accommodation costs per day from the hospital's Medicare Cost Report. The ancillary cost-to-charge ratios and accommodation costs per day do not include medical education and capital costs. The Administration shall inflate the resulting operating costs for the claims and encounters of each hospital to a common point in time, December 31, 1996, using the DRI inflation factor and shall reduce the operating costs for the hospital by an audit adjustment factor based on available national data and Arizona historical experience in adjustments to Medicare reimbursable costs. The Administration shall further inflate operating costs to the midpoint of the rate year (March 31, 1999).
      - iii. Operating cost tier assignment. After calculating the operating costs, the Administration



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- shall assign the claims and encounters used in the calculation to tiers based on diagnosis, procedure, or revenue codes, or NICU classification level, or a combination of these. For the NICU tier, the Administration shall further assign claims and encounters to NICU Level II or NICU Level III peer groups, based on the hospital's certification by the Arizona Perinatal Trust. For the Routine tier, the Administration shall further assign claims and encounters to the general acute care hospital or rehabilitation hospital peer groups, based on state licensure by the Department of Health Services. For claims and encounters assigned to more than one tier, the Administration shall allocate ancillary department costs to the tiers in the same proportion as the accommodation costs. Before calculating the rate for the operating component, the Administration shall identify and exclude any claims and encounters that are outliers as defined in subsection (6).
- iv. Operating rate calculation. The Administration shall set the rate for the operating component for each tier by dividing total statewide or peer group hospital costs identified in this subsection within the tier by the total number of AHCCCS inpatient hospital days of care reflected in the claim and encounter database for that tier.
  - b. Capital component. For rates effective October 1, 1999 the capital component is calculated as described in A.R.S. § 36-2903.01.
  - c. Statewide inpatient hospital cost-to-charge ratio. For dates of service prior to October 1, 2007, the statewide inpatient hospital cost-to-charge ratio is used for payment of outliers, as described in subsections (4), (5), and (6), and out-of-state hospitals, as described in R9-22-712(B). The Administration shall calculate the AHCCCS statewide inpatient hospital cost-to-charge ratio by using the Medicare Cost Report data and claim and encounter database described in subsection (1) and used to determine the tiered per diem rates. For each hospital, the covered inpatient days of care on the claims and encounters are multiplied by the corresponding accommodation costs per day from the Medicare Cost Report. Similarly, the covered ancillary department charges on the claims and encounters are multiplied by the ancillary department cost-to-charge ratios. The accommodation costs per day and the ancillary department cost-to-charge ratios for each hospital are determined in the same way described in subsection (2)(a) but include costs for operating and capital. The Administration shall then calculate the statewide inpatient hospital cost-to-charge ratio by summing the covered accommodation costs and ancillary department costs from the claims and encounters for all hospitals and dividing by the sum of the total covered charges for these services for all hospitals.
  - d. Unassigned tiered per diem rates. If a hospital has an insufficient number of claims to set a tiered per diem rate, the Administration shall pay that hospital the statewide average rate for that tier.
3. Tier assignment. The Administration shall assign AHCCCS inpatient hospital days of care to tiers based on information submitted on the inpatient hospital claim or encounter including diagnosis, procedure, or revenue codes, peer group, NICU classification level, or a combination of these.
    - a. Tier hierarchy. In assigning claims for AHCCCS inpatient hospital days of care to a tier, the Administration shall follow the Hierarchy for Tier Assignment through September 30, 2014 in R9-22-712.09. The Administration shall not pay a claim for inpatient hospital services unless the claim meets medical review criteria and the definition of a clean claim. The Administration shall not pay for a hospital stay on the basis of more than two tiers, regardless of the number of interim claims that are submitted by the hospital.
    - b. Tier exclusions. The Administration shall not assign to a tier or pay AHCCCS inpatient hospital days of care that do not occur during a period when the person is eligible. Except in the case of death, the Administration shall pay claims in which the day of admission and the day of discharge are the same, termed a same day admit and discharge, including same day transfers, as an outpatient hospital claim. The Administration shall pay same day admit and discharge claims that qualify for either the maternity or nursery tiers based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
    - c. Seven tiers. The seven tiers are:
      - i. Maternity. The Administration shall identify the Maternity Tier by a primary diagnosis code. If a claim has an appropriate primary diagnosis, the Administration shall pay the AHCCCS inpatient hospital days of care on the claim at the maternity tiered per diem rate.
      - ii. NICU. The Administration shall identify the NICU Tier by a revenue code. A hospital does not qualify for the NICU tiered per diem rate unless the hospital is classified as either a NICU Level II or NICU Level III perinatal center by the Arizona Perinatal Trust. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meet the medical review criteria for the NICU tier and have a NICU revenue code at the NICU tiered per diem rate. The Administration shall pay any remaining AHCCCS inpatient hospital day on the claim that does not meet NICU Level II or NICU Level III medical review criteria at the nursery tiered per diem rate.
      - iii. ICU. The Administration shall identify the ICU Tier by a revenue code. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meets the medical review criteria for the ICU tier and has an ICU revenue code at the ICU tiered per diem rate. The Administration may classify any AHCCCS inpatient hospital days on the claim without an ICU revenue code, as surgery, psychiatric, or routine tiers.
      - iv. Surgery. The Administration shall identify the Surgery Tier by a revenue code and a valid surgical procedure code that is not on the AHCCCS excluded surgical procedure list. The excluded surgical procedure list identifies minor procedures such as sutures that do not require the same hospital resources as other

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- procedures. The Administration shall only split a surgery tier with an ICU tier. AHCCCS shall pay at the surgery tier rate only when the surgery occurs on a date during which the member is eligible.
- v. Psychiatric. The Administration shall identify the Psychiatric Tier by either a psychiatric revenue code and a psychiatric diagnosis or any routine revenue code if all diagnosis codes on the claim are psychiatric. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the psychiatric tier with any tier other than the ICU tier.
  - vi. Nursery. The Administration shall identify the Nursery Tier by a revenue code. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the nursery tier with any tier other than the NICU tier.
  - vii. Routine. The Administration shall identify the Routine Tier by revenue codes. The routine tier includes AHCCCS inpatient hospital days of care that are not classified in another tier or paid under any other provision of this Section. The Administration shall not split the routine tier with any tier other than the ICU tier.
4. Annual update. The Administration shall annually update the inpatient hospital tiered per diem rates through September 30, 2011.
  5. New hospitals. For rates effective on and after October 1, 1998, the Administration shall pay new hospitals the statewide average rate for each tier, as appropriate. The Administration shall update new hospital tiered per diem rates through September 30, 2011.
  6. Outliers. The Administration shall reimburse hospitals for AHCCCS inpatient hospital days of care identified as outliers under this Section by multiplying the covered charges on a claim by the Medicare Urban or Rural Cost-to-Charge Ratio. The Urban cost-to-charge ratio will be used for hospitals located in a county of 500,000 residents or more. The Rural cost-to-charge ratio will be used for hospitals located in a county of fewer than 500,000 residents.
    - a. Outlier criteria. For rates effective on and after October 1, 1998, the Administration set the statewide outlier cost threshold for each tier at the greater of three standard deviations from the statewide mean operating cost per day within the tier, or two standard deviations from the statewide mean operating cost per day across all the tiers. If the covered costs per day on a claim exceed the urban or rural cost threshold for a tier, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the applicable Medicare Urban or Rural CCR. The resulting amount will be the outlier payment. If there are two tiers on a claim, the Administration shall determine whether the claim is an outlier by using a weighted threshold for the two tiers. The weighted threshold is calculated by multiplying each tier rate by the number of AHCCCS inpatient hospital days of care for that tier and dividing the product by the total tier days for that hospital. Routine maternity stays shall be excluded from outlier reimbursement. A routine maternity is any one-day stay with a delivery of one or two babies. A routine maternity stay will be paid at tier.
    - b. Update. The CCR is updated annually by the Administration for dates of service beginning October 1, using the most current Medicare cost-to-charge ratios published or placed on display by CMS by August 31 of that year. The Administration shall update the outlier cost thresholds for each hospital through September 30, 2011 as described under A.R.S. § 36-2903.01. For inpatient hospital admissions with begin dates of service on and after October 1, 2011, AHCCCS will increase the outlier cost thresholds by 5% of the thresholds that were effective on September 30, 2011.
    - c. Medicare Cost-to-Charge Ratio Phase-In. AHCCCS shall phase in the use of the Medicare Urban or Rural Cost-to-Charge Ratios for outlier determination, calculation and payment. The three-year phase-in does not apply to out-of-state or new hospitals.
      - i. Medicare Cost-to-Charge Ratio Phase-In outlier determination and threshold calculation. For outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. For outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. The adjusted hospital specific inpatient cost-to-charge ratios shall be used for all calculations using the Medicare Urban or Rural Cost-to-Charge Ratios, including outlier determination, and threshold calculation.
      - ii. Medicare Cost-to-Charge Ratio Phase-In calculation for payment. For payment of outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio. For payment of outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio.
      - iii. Medicare Cost-to-Charge Ratio for outlier determination, threshold calculation, and payment. For outlier claims with dates of service on or after October 1, 2009, the full Medicare Urban or Rural Cost-to-Charge Ratios shall be utilized for all outlier calculations.

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- d. Cost-to-Charge Ratio used for qualification and payment of outlier claims.
  - i. For qualification and payment of outlier claims with begin dates of service on or after April 1, 2011 through September 30, 2011, the CCR will be equal to 95% of the ratios in effect on October 1, 2010.
  - ii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011, the CCR will be equal to 90.25% of the most recent published Urban or Rural Medicare CCR as described in subsection (6)(b).
  - iii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011 through September 30, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after April 1, 2011 by an additional percentage equal to the total percent increase reported on the charge master.
  - iv. Subject to approval by CMS, for qualification and payment of outlier claims with begin dates of service on or after October 1, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.
7. Transplants. The Administration shall reimburse hospitals for an AHCCCS inpatient stay in which a covered transplant as described in R9-22-206 is performed through the terms of the relevant contract. If the Administration and a hospital that performs transplant surgery on an eligible person do not have a contract for the transplant surgery, the Administration shall not reimburse the hospital more than what would have been paid to the contracted hospital for that same surgery.
8. Ownership change. The Administration shall not change any of the components of a hospital's tiered per diem rates upon an ownership change.
9. Psychiatric hospitals. The Administration shall pay free-standing psychiatric hospitals an all-inclusive per diem rate based on the contracted rates used by the Department of Health Services.
10. Specialty facilities. The Administration may negotiate, at any time, reimbursement rates for inpatient specialty facilities or inpatient hospital services not otherwise addressed in this Section as provided by A.R.S. § 36-2903.01. For purposes of this subsection, "specialty facility" means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.
11. Outliers for new hospitals. Outliers for new hospitals will be calculated using the Medicare Urban or Rural Cost-to-Charge Ratio times covered charges. If the resulting cost is equal to or above the cost threshold, the claim will be paid at the Medicare Urban or Rural Cost-to-Charge ratio.
12. Reductions to tiered per diem payment for inpatient hospital services. Inpatient hospital admissions with begin dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the tiered per diem rates in effect on September 30, 2011.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.02. Reserved****R9-22-712.03. Reserved****R9-22-712.04. Reserved****R9-22-712.05. Graduate Medical Education Fund Allocation**

- A. Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(G)(9)(a).
- B. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).
  1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
    - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
    - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
    - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
  2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
    - a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
    - b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.
  3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
    - a. A GME program shall provide all of the following:

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- i. The program name and number assigned by the accrediting organization;
    - ii. The original date of accreditation;
    - iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
    - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
    - v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
  - b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
    - i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
    - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
    - iii. At the request of the Administration, a copy of the hospital's Medicare Cost Report or any part of the report for the most recently completed cost reporting year.
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
- a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
  - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
    - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
    - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
  - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
    - i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
    - ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
  - d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per resident conversion factor shall be determined as follows:
    - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
    - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
    - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
- a. The allocated amounts shall be distributed in the following order of priority:
    - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
    - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;

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- b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
  - c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).
  - 1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
  - 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
    - a. All filled resident positions in approved programs established on or after July 1, 2006; and
    - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
  - 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
    - a. A GME program shall provide all of the following:
      - i. The requirements of subsections (B)(3)(a)(i) through (iv);
      - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
      - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
    - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
  - 4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
    - a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
- b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.
  - c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
  - d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
  - e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
- 5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each within that program under subsection (C)(4)(d).
- D. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
  - 1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
    - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
    - b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital's Medicare Cost Report or are reimbursable under the Children's Hospitals Graduate Medical Education Payment Program administered by HRSA;
    - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
  - 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
    - a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the

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- residency rotation was added to the academic year rotation schedule;
- b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
    - a. A GME program shall provide all of the following:
      - i. The requirements of subsections (B)(3)(a)(i) through (iv);
      - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
      - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
    - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
  4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
    - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
    - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
      - i. Calculate each hospital's Medicaid share by dividing the AHCCCS inpatient hospital days of care by the total inpatient hospital days from the Medicare Cost Report. For this purpose, the Administration shall use the information described by subsection (B)(4)(c) for adjusting allocated residents for Arizona Medicaid utilization.
      - ii. Calculate each hospital's Medicare share by dividing the Medicare inpatient days on the Medicare Cost Report by the total inpatient hospital days on the Medicare Cost Report.
      - iii. Divide the Medicaid share by the Medicare share and multiply the resulting ratio by the indirect medical education payment calculated on the Medicare Cost Report.
      - iv. Total the results for all hospitals, divide the result by the total allocated residents determined under subsection (B)(4)(b)(ii) for these hospitals, and divide that result by 12.
  5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).
- E. Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.
  - F. The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):
    1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(b)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);
    2. The amount calculated for the hospital at subsection (D)(4)(b)(iii); or
    3. The median of all amounts calculated at subsection (D)(4)(b)(iii) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 21 A.A.R. 3469, effective January 30, 2016 (Supp. 15-4).

**R9-22-712.06. Reserved****R9-22-712.07. Rural Hospital Inpatient Fund Allocation**

- A. For purposes of this Section, the following words and phrases have the following meanings unless the context specifically requires another meaning:
  1. "Calculated inpatient costs" means the sum of inpatient covered charges multiplied by the Milliman study's implied cost-to-charge ratio of .8959.
  2. "Claims paid amount" means the sum of all claims paid by the Administration and contractors, as reported by the

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contractor to the Administration, to a rural hospital for covered inpatient services rendered for dates of service during the previous state fiscal year.

3. "Fund" means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching the state funds.
  4. "Inpatient covered charges" means the sum of all covered charges billed by a hospital to the Administration or contractors, as reported by the contractors to the Administration, for inpatient services rendered during the previous state fiscal year.
  5. "Milliman study" means the report issued by Milliman USA on March 11, 2004, to the Arizona Hospital and Healthcare Association that updated a portion of a cost study entitled "Evaluation of the AHCCCS Inpatient Hospital Reimbursement System" prepared by Milliman USA for AHCCCS on November 15, 2002. A copy of each report is on file with the Administration.
  6. "Rural hospital" means a health care institution that is licensed as an acute care hospital by the Arizona Department of Health Services for the previous state fiscal year and is not an IHS hospital or a tribally owned or operated facility and:
    - a. Has 100 or fewer PPS beds, not including beds reported as sub provider beds on the hospital's Medicare Cost Report, and is located in a county with a population of less than 500,000 persons, or
    - b. Is designated as a critical access hospital for the majority of the previous state fiscal year.
- B.** Each February, the Administration shall allocate the Fund to the following three pools for the fiscal year:
1. Rural hospitals with 25 or fewer PPS beds not including sub provider beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital;
  2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds not including sub provider beds; and
  3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds not including sub provider beds.
- C.** The Administration shall allocate the Fund to each pool according to the ratio of claims paid amount for all hospitals

assigned to the pool to total claims paid amount for all rural hospitals.

- D.** The Administration shall determine each hospital's claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of each hospital's claims paid amount to the sum of the claims paid amount for all hospitals assigned to the pool.
- E.** The Administration shall not make a Fund payment to a hospital that will result in the hospital's claims paid amount plus that hospital's Fund payment being greater than that hospital's calculated inpatient costs.
  1. If a hospital's claims paid amount plus the hospital's Fund payment would be greater than the hospital's calculated inpatient costs, the Administration shall make a Fund payment to the hospital equal to the difference between the hospital's calculated inpatient costs and the hospital's claims paid amount.
  2. The Administration shall reallocate any portion of a hospital's Fund allocation that is not paid to the hospital due to the reason in subsection (E)(1) to the other eligible hospitals in the pool based upon the ratio of the claims paid amount for each hospital remaining in the pool to the sum of the claims paid amount for each hospital remaining in the pool.
- F.** If funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), the Administration shall reallocate the remaining funds to the other pools based upon the ratio of each pool's original allocation of the Fund as determined under subsection (C) to the sum of the remaining pools' original Fund allocations under subsection (C). The Administration shall allocate remaining funds to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.
- G.** Subject to CMS approval of the method and distribution of the Fund, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 22 A.A.R. 3476, effective January 30, 2016 (Supp. 15-4).

**Exhibit 1. Pool Example**

Pool A receives \$2,000,000. Pool B receives \$7,000,000. Pool C receives \$3,000,000.

If all of the funds in Pool B are paid to eligible hospitals and there is \$1,000,000 remaining, the remaining funds would be allocated to Pool A and Pool C based on the ratio of each pool's original allocation (original allocations of \$2,000,000 and \$3,000,000) to the total of their original allocation (\$2,000,000 + \$3,000,000 = \$5,000,000).

Pool A would receive 2/5 of the remaining funds (\$400,000) and Pool C would receive 3/5 of the remaining funds (\$600,000).

**Historical Note**

Exhibit 1 made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2).

**R9-22-712.08. Reserved****R9-22-712.09. Hierarchy for Tier Assignment through September 30, 2014**

TIER	IDENTIFICATION CRITERIA	ALLOWED SPLITS
MATERNITY	A primary diagnosis defined as maternity 640.xx - 643.xx, 644.2x - 676.xx, v22.xx - v24.xx or v27.xx.	None
NICU	Revenue Code of 174 and the provider has a Level II or Level III NICU.	Nursery

ICU	Revenue Codes of 200-204, 207-212, or 219.	Surgery Psychiatric Routine
SURGERY	Surgery is identified by a revenue code of 36x. To qualify in this tier, there must be a valid surgical procedure code that is not on the excluded procedure list.	ICU

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PSYCHIATRIC	Psychiatric Revenue Codes of 114, 124, 134, 144, or 154 AND primary Psychiatric Diagnosis = 290.xx - 316.xx. If a routine revenue code is present and all diagnoses codes on the claim are equal to 290.xx - 316.xx, classify as a psychiatric claim.	ICU
NURSERY	Revenue Code of 17x, not equal to 174.	NICU
ROUTINE	Revenue Codes of 100 - 101, 110-113, 116 - 123, 126 - 133, 136 - 143, 146 - 153, 156 - 159, 16x, 206, 213, or 214.	ICU

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.10. Outpatient Hospital Reimbursement: General**

- A. Effective rule. The outpatient hospital reimbursement rules apply to dates of service beginning July 1, 2005, subject to Laws 2004, Ch. 279, § 19.
- B. Basis For Payment. Except as provided under R9-22-712.30, AHCCCS shall pay for designated outpatient procedures provided to AHCCCS members according to the AHCCCS Outpatient Capped Fee-For-Service Schedule as defined in R9-22-712.20.
- C. Data. AHCCCS shall use Medicare Cost Report and adjudicated claim and encounter data from non-IHS acute care hospitals located in the state of Arizona to develop fees for the AHCCCS Outpatient Capped Fee-For-Service Schedule.
- D. Hospital Services Subject To Fees. AHCCCS shall reimburse services, in the following outpatient hospital categories under the AHCCCS Outpatient Capped Fee-For-Service Schedule:
  1. Surgery,
  2. Emergency Department,
  3. Laboratory,
  4. Radiology,
  5. Clinic, and
  6. Other services.
- E. Reimbursement. AHCCCS shall reimburse outpatient hospital services by procedure codes, in proper combination with revenue codes, as prescribed by AHCCCS.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.11. Reserved****R9-22-712.12. Reserved****R9-22-712.13. Reserved****R9-22-712.14. Reserved****R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals**

Except as provided in R9-22-712(G), the AHCCCS Outpatient Capped Fee-For-Service Schedule shall apply to AHCCCS payments for outpatient services in all non-IHS acute hospitals.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.16. Reserved****R9-22-712.17. Reserved****R9-22-712.18. Reserved****R9-22-712.19. Reserved****R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule**

- A. To establish the AHCCCS Outpatient Capped Fee-for-service Schedule for all claims with a begin date of service on or before September 30, 2011, AHCCCS shall:
  1. Define the dataset of claims and encounters that shall be used to establish the AHCCCS Outpatient Capped Fee-for-service Schedule.
  2. Identify all the claims and encounters from non-IHS acute hospitals located in Arizona for services to be paid under the AHCCCS Outpatient Capped Fee-for-service Schedule.
  3. Match the revenue code on each detail of each claim and encounter to the ancillary line item CCR as reported on hospital-specific mapping documents and hospital-specific Medicare Cost Report for those hospitals that have submitted Medicare Cost Reports FYE 2002.
  4. Multiply the line item CCR from subsection (A)(3) by the covered billed charge for that revenue code to establish the cost for the service.
  5. Inflate the cost for the service from subsection (A)(4) using Global Insight Health-care Cost Review inflation factors from date of service month to the midpoint of the rate year in which the fees are initially effective.
  6. Include associated costs under R9-22-712.25 to calculate the rates for emergency room and surgery services.
  7. Combine data from all Arizona hospitals identified in subsection (A)(3) for each procedure code to establish the statewide median cost for each procedure.
  8. Group procedure codes according to the Ambulatory Payment Classification (APC) System groups as listed in 69 FR 65682, November 15, 2004, and establish a statewide median cost for each APC. Multiply each statewide median APC cost by 116 percent to establish the AHCCCS-based fee for each procedure in that specific APC group. AHCCCS shall assign each procedure in the group the same fee.
  9. For those procedure codes that are not grouped into any APC, establish a procedure-specific fee using either:
    - a. The AHCCCS Non-hospital Capped Fee-for-service Fee Schedule,
    - b. 116 percent of the procedure-specific median cost AHCCCS-based fee, or
    - c. The Medicare Clinical Laboratory Fee Schedule for laboratory services.
  10. Compare the AHCCCS-based fee established in subsections (A)(8) and (9) against the comparable Medicare fee established for the Medicare APC group as listed in the 69 FR 65682, November 15, 2004. The fee for each procedure shall be the greater of the AHCCCS-based fee or the Medicare fee but no more than 150 percent of the AHCCCS-based fee; however, for those laboratory services for which a limit is established in the Medicare Clinical Laboratory Fee Schedule, the fee shall not exceed that limit.



11. Assign the 2005 Medicare fee in the AHCCCS Outpatient Capped Fee-for-service Schedule for those procedures for which there are fewer than 20 occurrences of the procedure code in the dataset, either independently, or, if applicable, for all procedure codes within an APC Group.
- B. For all claims with a begin date of service on or after October 1, 2011, the AHCCCS Outpatient Capped Fee-for-Service Schedule shall be derived from the CMS Medicare Outpatient Prospective Payment System (OPPS) fee schedule modified by an Arizona conversion factor determined annually.
  1. When clinic services are billed using 51X revenue codes, the reimbursement to the hospital is the difference between the facility and non-facility rates payable to the practitioner for the procedures listed in the Administration's Capped Fee-for-service Schedule under R9-22-710.
  2. Observation services, when not billed in conjunction with a service for which a single payment is made under R9-22-712.25, are reimbursed at an hourly rate published in the Outpatient Capped Fee-for-service Schedule. This hourly rate includes reimbursement for associated services.
- C. The AHCCCS Outpatient Capped Fee-for-service Schedule including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

#### R9-22-712.21. Reserved

#### R9-22-712.22. Reserved

#### R9-22-712.23. Reserved

#### R9-22-712.24. Reserved

#### R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs

- A. AHCCCS shall include the costs of associated services, as defined by revenue codes and procedure codes, when determining the specific fees for the outpatient hospital procedures for emergency department and surgery services.
- B. Payment made under subsection (A) or R9-22-712.20(B)(2) is inclusive of all services on the claim regardless of whether the services are provided on one or more days.
- C. A complete listing of the revenue codes and procedure codes for associated costs included in the payment for emergency and surgery services including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).

#### R9-22-712.26. Reserved

#### R9-22-712.27. Reserved

#### R9-22-712.28. Reserved

#### R9-22-712.29. Reserved

#### R9-22-712.30. Outpatient Hospital Reimbursement: Payment

#### for a Service Not Listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule

- A. AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
- B. For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under subsection (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).
- C. For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the *Federal Register* on or before August 1st of that year.
- D. To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
- E. Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

#### R9-22-712.31. Reserved

#### R9-22-712.32. Reserved

#### R9-22-712.33. Reserved

#### R9-22-712.34. Reserved

#### R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees

- A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
  1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
  2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been design-

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- nated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
  6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.
- B.** For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
1. By 73 percent for public hospitals;
  2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
  3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
  4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
  5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
  6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.
- C.** In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.
- D.** Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).
- E.** For outpatient services with dates of service from October 1, 2016 through September 30, 2017, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2016. To qualify, a hospital providing outpatient hospital services must meet the following criteria:
1. By June 1, 2016, the hospital must have executed an agreement with and electronically submitted admission, discharge, and transfer information, as well as data from the hospital emergency department, to a qualifying health information exchange organization, and
  2. No sooner than January 4, 2016, and no later than February 29, 2016, CMS must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015; or, for a children's hospital that does not participate in the Medicare electronic health record incentive program, no sooner than January 4, 2016, and no later than the date established by CMS, the administration must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015.
- F.** Fee adjustments made under subsection (A), (B), (C), (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS' web site.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

**R9-22-712.36. Reserved****R9-22-712.37. Reserved****R9-22-712.38. Reserved****R9-22-712.39. Reserved****R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update**

- A.** Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.
- B.** APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.
- C.** Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:
1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
  2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.
- D.** Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.
- E.** Rebase. AHCCCS shall rebase the outpatient fees every five years.
- F.** Statewide CCR.:

1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).

- G. Other Updates.** In addition to the other updates provided for in this section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.41. Reserved

#### R9-22-712.42. Reserved

#### R9-22-712.43. Reserved

#### R9-22-712.44. Reserved

#### R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions

- A.** AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.
- B.** AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.
- C.** Same day admit and discharge.
  1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
  2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.46. Reserved

#### R9-22-712.47. Reserved

#### R9-22-712.48. Reserved

#### R9-22-712.49. Reserved

#### R9-22-712.50. Outpatient Hospital Reimbursement: Billing

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

#### R9-22-712.51. Reserved

#### R9-22-712.52. Reserved

#### R9-22-712.53. Reserved

#### R9-22-712.54. Reserved

#### R9-22-712.55. Reserved

#### R9-22-712.56. Reserved

#### R9-22-712.57. Reserved

#### R9-22-712.58. Reserved

#### R9-22-712.59. Reserved

#### R9-22-712.60. Diagnosis Related Group Payments

- A.** Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this section and sections R9-22-712.61 through R9-22-712.81.
- B.** Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.
- C.** Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. If version 31 of the APR-DRG classification system will no longer support assigning DRG codes and relative weights to claims, and 3M Health Information Systems issues a newer version of the APR-DRG classification system using updated DRG codes and/or updated relative weights, then an updated version established by 3M Health Information Systems will be used; however, if the version employs updated relative weights, those weights will be adjusted using a single adjustment factor applied to all relative weights to ensure that the statewide weighted average of the updated relative weights does not increase or decrease from the statewide weighted average of the relative weights used under version 31.
- D.** Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.

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- E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.
- F. For purposes of this section and sections R9-22-712.61 through R9-22-712.81:
  1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
  2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
  3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*
  4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

**R9-22-712.61. DRG Payments: Exceptions**

- A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).
  1. Hospitals designated as type: hospital, subtype: rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
  2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
  3. Hospitals designated as type: hospital, subtype: psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
- B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate

described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.

- C. Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.
- D. Notwithstanding section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.
- E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

**R9-22-712.62. DRG Base Payment**

- A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjusters.
- B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index, where the standardized amount is \$5,295.40, and the hospital's labor share and the hospital's wage index are those used in the Medicare inpatient prospective payment system for the fiscal year beginning October 1, 2013.
- C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount**

Notwithstanding section R9-22-712.62, the amount of \$3,436.08 shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:

1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.64.DRG Base Payments and Outlier CCR for Out-of-State Hospitals****A. DRG Base payment:**

1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be \$5,184.75.

**B. Outlier CCR:**

1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.

**C. A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2010.****D. Other than as required by this section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.****Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.65.DRG Provider Policy Adjustor****A. After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor of 1.055.****B. A hospital is a high-utilization hospital if the hospital had:**

1. At least 46,112 AHCCCS-covered inpatient days using adjudicated claim and encounter data during the fiscal year beginning October 1, 2010, which is equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals of 11,528 days; and,
2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending 2011.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.66.DRG Service Policy Adjustor**

In addition to subsection R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the following service policy adjustors:

1. Normal newborn DRG codes: 1.55
2. Neonates DRG codes: 1.10

3. Obstetrics DRG codes: 1.55
4. Psychiatric DRG codes: 1.65
5. Rehabilitation DRG codes: 1.65
6. Claims for members under age 19 assigned DRG codes other than listed above:
  - a. 1.25 for dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
  - b. 1.25 for dates of discharge on or after January 1, 2016 for severity of illness levels 1 and 2,
  - c. 1.60 for dates of discharge on or after January 1, 2016 for severity of illness levels 3 and 4.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

**R9-22-712.67.DRG Reimbursement: Transfers**

- A.** For purposes of this Section a "transfer" means the transfer of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children's hospital, or a critical access hospital except when a member is moved for the purpose of receiving sub-acute services.
- B.** Designated cancer center or children's hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.
- C.** The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.
- D.** The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustors, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.
- E.** The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.
- F.** Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustors, or the transfer DRG base payment, whichever is less.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

**R9-22-712.68.DRG Reimbursement: Unadjusted Outlier Add-on Payment**

- A.** Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.
- B.** The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:
  1. For hospitals designated as type: hospital, subtype: children's in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
  2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio

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in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.

3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.
- C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used For claims with dates of discharge on or after October 1 of that year.
- D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount is \$5,000 for critical access hospitals and \$65,000 for all other hospitals.
- E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage is 90% for claims assigned DRG codes associated with the treatment of burns and 80% for all other claims.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.69.DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment**

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:

1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCCS covered days by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.70.Covered Day Adjusted DRG Base Payment and****Covered Day Adjusted Outlier Add-on Payment for FES members**

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.
2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.71.Final DRG Payment**

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Inpatient Value Based Purchasing (VBP) Differential Adjusted Payment.

1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson Street, Phoenix, Arizona.
4. For inpatient services with a date of discharge from October 1, 2016 through September 30, 2017, the Inpatient VBP Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2016. To qualify for the Inpatient VBP

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Differential Adjusted Payment, a hospital providing inpatient hospital services must meet the following criteria:

- a. By June 1, 2016, the hospital must have executed an agreement with and electronically submitted admission, discharge, and transfer information, as well as data from the hospital emergency department, to a qualifying health information exchange organization, and
- b. No sooner than January 4, 2016, and no later than February 29, 2016, CMS must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015; or, for a children's hospital that does not participate in the Medicare electronic health record incentive program, no sooner than January 4, 2016, and no later than the date established by CMS, the administration must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

#### R9-22-712.72.DRG Reimbursement: Enrollment Changes During an Inpatient Stay

- A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.
- B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission. The claim may include all surgical procedures performed during the entire inpatient stay, but the hospital shall only include revenue codes, service units, and charges for services performed on or after the date of enrollment.
- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.73.DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue

codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.74.DRG Reimbursement: Third Party Liability

DRG payments are subject to reduction based on cost avoidance under section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.75.DRG Reimbursement: Payment for Administrative Days

- A. Administrative days are days in which a member is admitted as an inpatient to an acute care hospital, does not meet the criteria for an acute inpatient stay, but is admitted or not discharged because (1) an appropriate placement outside the hospital is not available, (2) the member cannot be safely discharged or transferred, or (3) the Administration or the contractor failed to provide for the appropriate placement outside the hospital in a timely manner.
  1. Administrative days may occur prior to an acute care episode, for example, when a woman with a high-risk pregnancy is admitted to a hospital while awaiting delivery.
  2. Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a nursing facility or other sub-acute or post-acute setting.
  3. Administrative days may also include days in a receiving hospital when the member has been discharged from one acute care hospital for the purpose of receiving sub-acute services at the receiving hospital.
- B. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has not transferred or discharged the member because of the hospital's administrative or operational delays.
- C. Prior authorization is required for administrative days.
- D. A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.
- E. Administrative days are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care (e.g., as nursing facility days).

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

#### R9-22-712.76.DRG Reimbursement: Interim Claims

- A. For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.
- B. Hospitals shall be reimbursed for interim claims at a per diem rate of \$500 per day.
- C. Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the

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payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.77.DRG Reimbursement: Admissions and Discharges on the Same Day**

- A. Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.
- B. Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired on the date of discharge shall be reimbursed under the DRG methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.78.DRG Reimbursement: Readmissions**

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.79.DRG Reimbursement: Change of Ownership**

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.80.DRG Reimbursement: New Hospitals**

- A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in section R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in section R9-22-712.62(B) shall be calculated as the statewide standardized amount of \$5,295.40 after adjusting that amount for the labor-related share and the wage index published by CMS as described in section R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in section R9-22-712.62(B).
- B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in section R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and

the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in section R9-22-712.68(C).

- C. In addition to the requirement of this section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.81.DRG Reimbursement: Updates**

In addition to the other updates provided for in sections R9-22-712.60 through R9-22-712.80, the Administration may adjust the statewide standardized amount in section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available to the general population in the geographic area.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.90. Reimbursement of Hospital-based Free-standing Emergency Departments**

- A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.
- B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.
- C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with sections R9-22-712.20 through R9-22-712.30 without a percentage reduction.
  1. 60% for a level 1 emergency department visit as indicated by CPT 99281.
  2. 80% for a level 2 emergency department visit as indicated by CPT 99282.
  3. 90% for a level 3 emergency department visit as indicated by CPT 99283.
  4. 100% for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.
- D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the



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city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.

- E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.
- F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 22, February 11, 2017 (Supp. 16-4).

**R9-22-713. Overpayment and Recovery of Indebtedness**

- A. If a contractor or a subcontracting provider receives an overpayment from the Administration or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the AHCCCS fund.
- B. If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
  1. A repayment agreement executed with the Administration;
  2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
  3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Former Section R9-22-713 repealed, new Section R9-22-713 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714, former Section R9-22-709 renumbered and amended as Section R9-22-713 effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

**R9-22-714. Payments to Providers**

- A. Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B. Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
  1. The provider personally furnishes the service to a specific member. For purposes of this Section, services personally furnished by a provider include:
    - a. Services provided by medical residents or dental students in a teaching environment; or
    - b. Services provided by a licensed or certified assistant under the general supervision of a licensed practitioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;
  2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
  3. The service contributes directly to the diagnosis or treatment of the member; and
  4. The service ordinarily requires performance by the type of provider seeking reimbursement.

- C. The Administration or a contractor may make a payment for covered services only:
  1. To the provider;
  2. To anyone specified in a reassignment from the provider to a government agency or reassignment by a court order;
  3. To a business agent, if the agent's compensation for the service is:
    - a. Related to the cost of processing the billing;
    - b. Not related on a percentage or other basis to the amount that is billed or collected; and
    - c. Not dependent upon collection of the payment;
  4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider's fees to the employer;
  5. To the inpatient facility in which the service is provided, if the provider has a contract under which the inpatient facility submits the claim; or
  6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the foundation, plan or similar organization submits the claim.
- D. The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.
- E. Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
  1. A surgical pathology service;
  2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
  3. A clinical consultation service that:
    - a. Is requested by the member's attending physician or primary care physician,
    - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
    - c. Results in a written narrative report included in the member's medical record,
    - d. Requires the exercise of medical judgment by the consultant pathologist, and
    - e. Is listed in the capped fee-for-service schedule; or
  4. A clinical laboratory interpretative service that:
    - a. Is requested by the member's attending physician or primary care physician,
    - b. Results in a written narrative report included in the member's medical record,

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- c. Requires the exercise of medical judgment by the consultant pathologist, and
- d. Is listed in the capped fee-for-service schedule.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule is similar to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714 effective October 1, 1985 (Supp. 85-5). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 3800, effective October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-715. Hospital Rate Negotiations**

- A. A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for services rendered on or after March 1, 1993, as described in A.R.S. § 36-2903.01 and this Article, or at the negotiated rate that, in the aggregate, does not exceed reimbursement levels that would have been paid under A.R.S. § 36-2903.01, and this Article. This subsection does not apply to urban hospitals described under R9-22-718. Contractors may engage in rate negotiations with a hospital at any time during the contract period.
- B. The Administration may negotiate or contract with a hospital on behalf of a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in a subcontract between the contractor and hospital.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). New Section R9-22-715 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently*

*amended through the regular rulemaking process.*

**R9-22-716. Repealed****Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-717. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing.*

**R9-22-718. Urban Hospital Inpatient Reimbursement Program****A. Definitions.** The following definitions apply to this Section:

1. "Noncontracted Hospital" means an urban hospital which does not have a contract under this Section with an urban contractor in the same county.
2. "Rural Contractor" means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29 that does not provide services to members residing in either Maricopa or Pima County.
3. "Urban Contractor" means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29, that provides services to members residing in Maricopa or Pima County and may also provide services to members who reside in other counties. An urban contractor does not include ADHS/BHS, or a TRBHA.
4. "Rural Hospital" means a hospital, as defined in R9-22-712.07, that is physically located in Arizona but in a county other than Maricopa and Pima County.
5. "Urban Hospital" means a hospital that is not a rural hospital and is physically located in Maricopa or Pima County.

**B. General Provisions.**

1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
4. An urban contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the urban contractor.
5. A noncontracted urban hospital shall be reimbursed for inpatient services by an urban contractor at 95% of the

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amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.

- C. Contract Begin Date. A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.
- D. Outpatient urban hospital services. Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.
- E. Urban Hospital Contract.
  - 1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
    - a. Required provisions as described in the Request for Proposals (RFP);
    - b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
    - c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
      - i. The parties' agreement on arbitrating claims arising from the contract,
      - ii. Whether arbitration is nonbinding or binding,
      - iii. Timeliness of arbitration,
      - iv. What contract provisions may be appealed,
      - v. What rules will govern arbitrations,
      - vi. The number of arbitrators that shall be used,
      - vii. How arbitrators shall be selected, and
      - viii. How arbitrators shall be compensated.
    - d. Timeliness of claims submission and payment;
    - e. Prior authorization;
    - f. Concurrent review;
    - g. Electronic submission of claims;
    - h. Claims review criteria;
    - i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
    - j. Payment of outliers;
    - k. Claim documentation specifications under A.R.S. § 36-2904.
    - l. Treatment and payment of emergency room services; and
    - m. Provisions for rate changes and adjustments.
  - 2. AHCCCS review and approval of urban hospital contracts:
    - a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
    - b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
      - i. Availability and accessibility of services to members,
      - ii. Related party interests,
      - iii. Inclusion of required terms pursuant to this Section, and
      - iv. Reasonableness of the rates.
- F. Quick-Pay/Slow-Pay. A payment made by urban contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective January 29, 1997; pursuant to Laws 1996, Ch. 288, § 24 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 500, effective February 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-719. Contractor Performance Measure Outcomes**

The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if this methodology is implemented. The Administration shall specify the details of the reimbursement methodology in contract.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

**R9-22-720. Reinsurance**

- A. Reinsurance is a stop-loss program provided by the Administration to a contractor for partial reimbursement of the cost of covered services for a member with an acute medical condition when the cost of covered services exceeds a pre-determined deductible level amount within a contract year. The Administration self-insures the reinsurance program through a reduction to capitation rates. The reinsurance program also includes a catastrophic reinsurance program for members diagnosed with specific medical conditions.
- B. The Administration shall specify in contract guidelines for claims submission, processing, payment, and the types of care and services that are provided to a member whose care is covered by reinsurance.
- C. When the Administration determines that a contractor does not follow the specified guidelines for care or services and the care or services could have been provided at a lower cost according to the guidelines, the Administration shall reimburse the contractor as if the care or services had been provided as specified in the guidelines.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

**R9-22-721. Reserved**

**R9-22-722. Reserved**

**R9-22-723. Reserved**

**R9-22-724. Reserved**

**R9-22-725. Reserved**

**R9-22-726. Reserved**

**R9-22-727. Reserved**

**R9-22-728. Reserved**

**R9-22-729. Reserved**

*Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 1041 (Supp. 15-3).*

*Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 491 (Supp. 15-2).*

#### **R9-22-730. Hospital Assessment**

- A.** For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:
1. "2011 Medicare Cost Report" means:
    - a. The Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated December 31, 2012; or
    - b. For hospitals not included in that CMS HCRIS report, the "as filed" Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 submitted by the hospital to the Administration.
  2. "2011 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 19, 2012.
  3. "2012 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of August 2, 2013.
  4. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
- B.** Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning July 1, 2016, the assessment shall be calculated by multiplying the number of discharges reported on the hospital's 2011 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges" by the following rates based on the hospital's peer group:
1. \$440.00 per discharge for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. \$440.00 per discharge for hospitals designated as type: hospital, subtype: critical access hospital.
  3. \$110.00 per discharge for hospitals designated as type: hospital, subtype: long term.
  4. \$110.00 per discharge for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2011 Medicare Cost Report.
  5. \$352.00 per discharge for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
  6. \$396.00 per discharge for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2012 Uniform Accounting Report.
  7. \$440.00 per discharge for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning July 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website April 1, 2016.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of \$110.00 for each discharge from the psychiatric sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2011 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 28,800 discharges on the hospital's 2011 Medicare Cost Report, discharges in excess of 28,800 are assessed a rate of \$44.00 for each discharge in excess of 28,800. The initial 28,800 discharges are assessed at the rate required by subsection (B).
- G.** Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The assessment must be received by the Administration no later than:
1. The 15th day of the second month of the quarter or
  2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the assessment invoice is available.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2011 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for April 1, 2016:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
  3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2011 Medicare Cost Report.
  4. Hospitals designated as type: hospital, subtype; rehabilitation.
  5. Hospitals designated as type: hospital, subtype: children's.
  6. Hospitals designated as type: med-hospital, subtype: special hospitals.
  7. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
- J.** New hospitals. For hospitals that did not file a 2011 Medicare Cost Report because of the date the hospital began operations:

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1. If the hospital was open on the April 1 preceding the July assessment start date, the hospital assessment will begin on July 1 following the date the hospital began operating.
2. If the hospital began operating between April 2 and June 30, the assessment will begin on July 1 of the following calendar year.
3. A hospital is not considered a new hospital based on a change in ownership.
4. Until the first full year of data is available, the assessment will be based on the annualized number of discharges from the date hospital operations began through April 30 preceding the July assessment start date. The hospital shall submit the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than May 15 preceding the assessment start date for the new hospitals. Thereafter, the assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report which includes 12 months worth of data; however, when a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
5. For hospitals providing self-reported data:
  - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
  - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- K. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- L. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- M. Required information. For any hospital that has not filed a 2011 Medicare Cost report, or if the 2011 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the assessment, the Administration shall use data reported on the 2011 Uniform Accounting Report filed by the hospital in place of the 2011 Medicare Cost report to calculate the assessment. If the 2011 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2011 Medicare Cost report to calculate the assessment.
- N. The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in 36-2901.08.
- O. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or

revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

**Historical Note**

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1). Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 637, effective April 15, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 21 A.A.R. 1486, effective July 16, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 2050, effective July 14, 2016 (Supp. 16-4).

**ARTICLE 8. REPEALED**

*Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-22-801. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-802. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-802 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 29, 1985 (Supp. 85-5). Amended subsections (A), (B), (C) and (D) effective October 14, 1988 (Supp. 88-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-802 repealed, new Section R9-22-802 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-803. Repealed**

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**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-803 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-803 repealed, new Section R9-22-803 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-803 renumbered and amended as Section R9-22-804. Adopted effective January 31, 1986 (Supp. 86-1). Amended effective September 29, 1992 (Supp. 92-3). Former Section R9-22-803 repealed, new Section R9-22-803 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-804. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-804 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Former Section R9-22-804 repealed, former Section R9-22-803 renumbered and amended as Section R9-22-804 effective October 29, 1985 (Supp. 85-5). Amended effective October 14, 1988 (Supp. 88-4). Amended subsections (B) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-804 repealed, new Section R9-22-804 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**Exhibit A. Repealed****Historical Note**

New Exhibit adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Exhibit repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-805. Repealed****Historical Note**

Former Section R9-22-805 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective January 31, 1986 (Supp. 86-1).

**ARTICLE 9. REPEALED****R9-22-901. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-901 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective August 29, 1985 (Supp. 85-4). Amended effective October 1, 1986 (Supp. 86-5). Amended effective May 30,

1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-902. Repealed****Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-902 renumbered and amended as Section R9-22-904, former Section R9-22-903 renumbered and amended as Section R9-22-902 effective October 1, 1986 (Supp. 86-5). Former Section R9-22-902 repealed, new Section R9-22-902 adopted effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-903. Repealed****Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-903 renumbered and amended as Section R9-22-902, former Section R9-22-904 renumbered and amended as Section R9-22-903 effective October 1, 1986 (Supp. 86-5). Former Section R9-22-903 repealed, new Section R9-22-903 adopted effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-904. Repealed****Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-904 renumbered and amended as Section R9-22-903, former Section R9-22-902 renumbered and amended as Section R9-22-904 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-905. Repealed**

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**Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-905 renumbered without change as Section R9-22-908, former Section R9-22-907 renumbered and amended as Section R9-22-905 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-906. Repealed****Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Amended effective October 1, 1986 (Supp. 86-5). Amended effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-907. Repealed****Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-907 renumbered and amended as Section R9-22-905, former Section R9-22-908 renumbered and amended as Section R9-22-907 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-908. Repealed****Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-908 renumbered and amended as Section R9-22-907, former Section R9-22-905 renumbered without change as Section R9-22-908 effective October 1, 1986 (Supp. 86-5). Former R9-22-908 repealed effective May 30, 1989 (Supp. 89-2). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-909. Repealed****Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

**ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES****R9-22-1001. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C. 22, Article 1, the following definitions apply to this Article:

“Absent parent” means an individual who is absent from the home and is legally responsible for providing financial and/or medical support for a dependent child.

“Cost avoid” means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

“First-party liability” means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

“Third-party” means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

“Third-party liability” means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a state plan.

**Historical Note**

Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). Amended subsections (E) through (H) effective October 1, 1986 (Supp. 86-5). Amended subsections (B), (C), (E), and (F) effective December 22, 1987 (Supp. 87-4). Section repealed; new Section adopted effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 21 A.A.R. 1237, effective July 7, 2015 (Supp. 15-3).

**R9-22-1002. General Provisions**

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. AHCCCS is not the payor of last resort when the following entities are the third-party:

1. Indian Health Services (IHS/638), contract health,
2. Title IV-E,
3. Arizona Early Intervention Program (AZEIP),
4. Local educational agencies providing services under the Individuals with Disabilities Education Act under 34 CFR Part 300,
5. Entities and contractors of entities providing services under grants awarded as part of the HIV Health Care Services Program under 42 USC 300ff et seq., and
6. The Arizona Refugee Resettlement Program operated under 45 CFR Part 400, Subpart (G).

**Historical Note**

Section R9-22-529 adopted effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5). Amended subsections (C) and (D) effective October 1, 1986 (Supp. 86-5). Amended effective December 22, 1987 (Supp. 87-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 21 A.A.R. 1237, effective July 7, 2015 (Supp. 15-3).

**R9-22-1003. Cost Avoidance**

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- A. The Administration's reimbursement responsibility.
  - 1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
  - 2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment, coinsurance, and deductible regardless of the Capped Fee-For-Service Schedule, as described under 9 A.A.C. 29, Article 3.
- B. The Contractor's reimbursement responsibility.
  - 1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
  - 2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.
- C. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
  - 1. AHCCCS, the Administration, or a contractor;
  - 2. A provider;
  - 3. A noncontracting provider; and
  - 4. A member.
- D. Except as specified under subsection (E), the Administration or a contractor shall cost avoid a claim for AHCCCS covered services under Article 2 if the Administration or a contractor has established the probable existence of a liable party at the time the claim is filed. Establishing liability takes place when the Administration or the contractor receives confirmation that another party is legally responsible for payment of a health care service under Article 2.
- E. The Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule or the contracted rate as described under subsection (B), and then seek reimbursement from any liable parties if the claim is for:
  - 1. Prenatal care for pregnant women,
  - 2. Preventive pediatric services, including E.P.S.D.T. and administration of vaccines to children under the Vaccines for Children (VFC) program; or
  - 3. Services covered by third-party liability that is derived from an absent parent whose obligation to pay support is being enforced by the Division of Child Support Enforcement.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3012, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 21 A.A.R. 1237, effective July 7, 2015 (Supp. 15-3).

**R9-22-1004. Member Participation**

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist the Administration and a contractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

**R9-22-1005. Collections**

- A. Parties that notify AHCCCS. A provider or noncontracting provider shall cooperate with AHCCCS by identifying all potential sources of first- or third-party liability and notify AHCCCS of these sources.
- B. Parties that pursue collection or reimbursement. AHCCCS, a provider, or noncontracting provider shall pursue collection or reimbursement from all potential sources of first- or third-party liability.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

**R9-22-1006. AHCCCS Monitoring Responsibilities**

AHCCCS shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

- 1. Private health insurance;
- 2. Employment-related disability and health insurance;
- 3. Long-term care insurance;
- 4. Other federal programs not excluded by statute from recovery;
- 5. Court ordered or non-court ordered medical support from an absent parent;
- 6. State worker's compensation;
- 7. Automobile insurance, including underinsured and uninsured motorists insurance;
- 8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
- 9. First-party probate estate recovery;
- 10. Adoption-related payment; or
- 11. A tortfeasor.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

**R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens**

- A. Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:
  - 1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
  - 2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.
- B. Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS via facsimile or mail under R9-22-1008 within 30 days after providing the service.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

**R9-22-1008. Notification Information for Liens**

- A. Except as provided in subsection (B), a hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:
  - 1. Name of the hospital, provider or noncontracting provider;
  - 2. Address of the hospital, provider or noncontracting provider;



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3. Name of member;
  4. Member's Social Security Number or AHCCCS identification number;
  5. Address of member;
  6. Date of member's admission or date service is provided;
  7. Amount estimated to be due for care of member;
  8. Date of discharge, if member has been discharged;
  9. Name of county in which injuries were sustained; and
  10. Name and address of all persons, firms, and corporations and their insurance carriers identified by the member or legal representative as being liable for damages.
- B.** If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

**R9-22-1009. Notification of Health Insurance Information**

A provider or noncontracting provider shall notify AHCCCS, in writing, of the following health insurance information within 10 days of receipt of the health insurance information:

1. Name of member,
2. Member's Social Security Number or AHCCCS identification number,
3. Insurance carrier name,
4. Insurance carrier address,
5. Policy number or insurance holder's Social Security Number,
6. Policy begin and end dates, and
7. Insurance holder's name.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

**ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS****R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims; Definitions**

- A.** Scope. This Article applies to prohibited acts as described under A.R.S. § 36-2918(A), and submissions of encounters to the Administration. The Administration considers a person who aids and abets a prohibited act affecting any of the AHCCCS programs or Health Care Group to be engaging in a prohibited act under A.R.S. § 36-2918(A).
- B.** Purpose. This Article describes the circumstances AHCCCS considers and the process that AHCCCS uses to determine the amount of a penalty, assessment, or penalty and assessment as required under A.R.S. § 36-2918. This Article includes the process and time-frames used by a person to request a State Fair Hearing.
- C.** Definitions. The following definitions apply to this Article:
1. "Assessment" means a monetary amount that does not exceed twice the dollar amount claimed by the person for each service.
  2. "Claim" means a request for payment submitted by a person for payment for a service or line item of service, including a submission of an encounter.
  3. "Day" means calendar day unless otherwise specified.
  4. "File" means the date that AHCCCS receives a written acceptance, request for compromise, request for a counter proposal, or a request for a State Fair Hearing as estab-

lished by a date stamp on the written document or other record of receipt.

5. "Penalty" means a monetary amount, based on the number of items of service claimed or reported, that does not exceed \$2,000 times the number of line items of service.
6. "Person" means an individual or entity as described under A.R.S. § 1-215.
7. "Reason to know" or "had reason to know" means that a person, acts in deliberate ignorance of the truth or falsity of, or with reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5).  
Amended subsection A. effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective June 9, 1998 (Supp. 98-2).  
Amended by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1102. Determining the Amount of a Penalty and an Assessment**

- A.** AHCCCS shall determine the amount of a penalty and assessment according to A.R.S. § 36-2918(B) and (C), R9-22-1104, and R9-22-1105.
- B.** AHCCCS shall include in the amount of the penalty and assessment the cost incurred by AHCCCS for conducting the following:
1. An investigation,
  2. Audit, or
  3. Inquiry.

**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5).  
Amended effective December 13, 1993 (Supp. 93-4).  
Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1103. Repealed****Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5).  
Amended effective December 13, 1993 (Supp. 93-4).  
Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Section repealed by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1104. Mitigating Circumstances**

AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of a claim. The following are mitigating circumstances:
  - a. All the services are of the same type,
  - b. All the dates of services occurred within six months or less,
  - c. The number of claims submitted is less than 25,
  - d. The nature and circumstances do not indicate a pattern of inappropriate claims for the services, and
  - e. The total amount claimed for the services is less than \$1,000.

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2. Degree of culpability. The degree of culpability of a person who presents or causes to present a claim is a mitigating circumstance if:
  - a. Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present the service,
  - b. Corrective steps were taken promptly by the person after the error was discovered, and
  - c. The person had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.
3. Financial condition. The financial condition of a person who presents or causes to present a claim is a mitigating circumstance if the imposition of a penalty, assessment, or penalty and assessment without reduction will render the provider incapable to continue providing services. AHCCCS shall consider the resources available to the person when determining the amount of the penalty, assessment, or penalty and assessment.
4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice, the circumstances require a reduction of the penalty, assessment, or penalty and assessment.
3. Prior offenses. The prior offenses of a person who presents or causes to present each claim are an aggravating circumstance if:
  - a. At any time before the submittal of the claim the person was held criminally or civilly liable for any act, or
  - b. The person had received an administrative sanction in connection with:
    - i. A Medicaid program,
    - ii. A Medicare program, or
    - iii. Any other public or private program of reimbursement for medical services.
4. Effect on patient care. The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim.
5. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice, the circumstances require an increase of the penalty, assessment, or penalty and assessment.

**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5).  
 Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
 Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1105. Aggravating Circumstances**

AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of each claim. The nature and circumstances of each claim and the circumstances under which the claim is presented or caused to be presented are aggravating circumstances if:
  - a. A person has forged, altered, recreated, or destroyed records;
  - b. The person refuses to provide pertinent documentation to AHCCCS for a claim or refuses to cooperate with investigators;
  - c. The services are of several types;
  - d. All the dates of services did not occur within six months or less;
  - e. The number of claims submitted is greater than 25;
  - f. The nature and circumstances indicate a pattern of inappropriate claims for the services; and
  - g. The total amount claimed for the services is \$5,000 or greater.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance if:
  - a. The person knows or had reason to know that each service was not provided as claimed,
  - b. The person knows or had reason to know that no payment could be made because the person had been excluded from reimbursement by AHCCCS, or
  - c. The person knows or had reason to know that the payment would violate the terms of an agreement between the person and AHCCCS system.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
 Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1106. Notice of Intent**

If AHCCCS imposes a penalty, assessment, or a penalty and assessment, AHCCCS shall hand deliver or send by certified mail return receipt requested or Federal Express to the person, a written Notice of Intent to impose a penalty, assessment, or a penalty and assessment. The Notice of Intent shall include:

1. The statutory basis for the penalty, assessment, or the penalty and assessment;
2. Identification of the state or federal regulation and state or federal law that AHCCCS alleges has been violated;
3. The factual basis for AHCCCS' determination that the penalty, assessment, or the penalty and assessment should be imposed;
4. The amount of the penalty, assessment, or penalty and assessment;
5. The process for the person to accept or request a compromise of the penalty, assessment, or penalty and assessment; and
6. The process for requesting a State Fair Hearing.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
 Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1107. Reserved****R9-22-1108. Request for a Compromise**

- A. To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.
- B. Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.

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1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1109. Failure to Respond to the Notice of Intent**

If a person fails to respond timely to the Notice of Intent, AHCCCS shall uphold the original penalty, assessment, or penalty and assessment.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1110. Request for State Fair Hearing**

- A. To request a State Fair Hearing regarding a dispute concerning a penalty, assessment, or penalty and assessment, the person shall file a written request for a State Fair Hearing with AHCCCS within 60 days from the date of the receipt of the Notice of Intent under R9-22-1106 or within 30 days from the date of receipt of the Notice of Compromise Decision under R9-22-1108, if applicable.
- B. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the person.
- C. AHCCCS shall mail a Director's Decision to the person no later than 30 days after the date the Administrative Law Judge sends the decision of the Office of Administrative Hearings (OAH) to AHCCCS.
- D. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a person may withdraw the hearing request only by sending a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1111. Issues and Burden of Proof**

- A. Preponderance of evidence. In any State Fair Hearing conducted under R9-22-1110, AHCCCS shall prove by a preponderance of the evidence that a person presented or caused to be presented each claim in violation of this Article and any aggravating circumstances under R9-22-1105. A person shall bear the burden of producing and proving by a preponderance of the evidence any circumstance that would justify reducing the amount of the penalty, assessment, or penalty and assessment.
- B. Statistical sampling.
  1. In meeting the burden of proof described in subsection (A), AHCCCS may introduce the results of a statistical sampling study as evidence of the number and amount of claims that were presented or caused to be presented by

the person. A statistical sampling study constitutes prima facie evidence of the number and amount of claims if computed by valid statistical methods.

2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once AHCCCS has made a prima facie case as described in subsection (B)(1). AHCCCS shall be given the opportunity to rebut this evidence.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1112. Withdrawal and Continuances**

AHCCCS may withdraw the Notice of Intent at any time. Prior to referring a matter to the Office of Administrative Hearings the parties may mutually agree to a continuance.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).

**ARTICLE 12. BEHAVIORAL HEALTH SERVICES****R9-22-1201. Definitions**

Definitions. The following definitions apply to this Article:

"Adult behavioral health therapeutic home" as defined in 9 A.A.C. 10, Article 1.

"Agency" for the purposes of this Article means a behavioral health facility, a classification of a health care institution, including a mental health treatment agency defined in A.R.S. § 36-501, that is licensed to provide behavioral health services according to A.R.S. Title 36, Chapter 4.

"Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.

"Behavior management services" means services that assist the member in carrying out daily living tasks and other activities essential for living in the community, including personal care services.

"Behavioral health therapeutic home care services" means interactions that teach the client living, social, and communication skills to maximize the client's ability to live and participate in the community and to function independently, including assistance in the self-administration of medication and any ancillary services indicated by the client's treatment plan, as appropriate.

"Behavioral health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's behavioral health issue.

"Behavioral health technician" means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution's policies and procedures that:

If the behavioral health services were provided in a setting other than a licensed health care institution, the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33; and

Are provided with clinical oversight by a behavioral health professional.

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“Case management” for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.

“Certified psychiatric nurse practitioner” means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).

“Clinical oversight” means as described under 9 A.A.C. 10.

“Cost avoid” means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).

“Court-ordered evaluation” has the same meaning as “evaluation” in A.R.S. § 36-501.

“Court-ordered pre-petition screening” has the same meaning as “pre-petition screening” in A.R.S. § 36-501.

“Court-ordered treatment” means treatment provided according to A.R.S. Title 36, Chapter 5.

“Crisis services” means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.

“Direct supervision” has the same meaning as “supervision” in A.R.S. § 36-401.

“Emergency medical services provider” has the same meaning as in A.R.S. § 36-2201.

“Health care institution” has the same meaning as defined in A.R.S. § 36-401.

“Health care practitioner” means a:

Physician;

Physician assistant;

Nurse practitioner; or

Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.

“Licensee” means the same as in 9 A.A.C. 10, Article 1.

“Medical practitioner” means a physician, physician assistant, or nurse practitioner.

“Partial care” means a day program of services provided to individual members or groups that is designed to improve the ability of a person to function in a community, and includes basic, therapeutic, and medical day programs.

“Physician assistant” means the same as in A.R.S. § 32-2501 except that when providing a behavioral health service, the physician assistant shall be supervised by an AHCCCS-registered psychiatrist.

“Psychiatrist” means a physician who meets the licensing requirements under A.R.S. § 32-1401 or a doctor of osteopathy who meets the licensing requirements under A.R.S. § 32-1800, and meets the additional requirements of a psychiatrist under A.R.S. § 36-501.

“Psychologist” means a person who meets the licensing requirements under A.R.S. §§ 32-2061 and 36-501.

“Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-22-1206.

“Respite” means a period of care and supervision of a member to provide rest or relief to a family member or other person

caring for the member. Respite provides activities and services to meet the social, emotional, and physical needs of the member during respite.

“TRBHA” or “Tribal Regional Behavioral Health Authority” means a Native American tribe under contract with ADHS/DBHS to coordinate the delivery of behavioral health services to eligible and enrolled members of the federally-recognized tribal nation.

### Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4).

Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

### R9-22-1202. ADHS, Contractor, Administration and CRS Responsibilities

- A. ADHS responsibilities. ADHS is responsible for payment of behavioral health services provided to members, except as specified under subsection (D). ADHS’ responsibility for payment of behavioral health services includes claims for inpatient hospital services, which may include physical health services, when the principal diagnosis on the hospital claim is a behavioral health diagnosis. Behavioral health diagnoses are identified as “mental disorders” in the latest International Classification of Diseases (ICD) code set as required by AHC-CCS claims and encounters.
- B. ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for American Indian members. American Indian members may receive covered behavioral health services:
  1. From an IHS or tribally operated 638 facility,
  2. From a TRBHA, or
  3. From a RBHA.
- C. Contractor responsibilities. A contractor shall:
  1. Refer a member to a RBHA under the contract terms;
  2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
  3. Coordinate a member’s transition of care and medical records; and
  4. Be responsible for providing covered inpatient hospital services, which may include behavioral health inpatient hospital services, when the principal diagnosis on the hospital claim is not a behavioral health diagnosis.
- D. Administration and CRS responsibilities.
  1. The Administration shall be responsible for payment of behavioral health services provided to an ALTCS FES or an FES member and for behavioral health services provided by IHS and tribally operated 638 facilities. The Administration is also responsible for payment of behavioral health services provided to these members during prior quarter coverage.
  2. CRS shall be responsible for payment of behavioral health services provided to members enrolled with CRS.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct typographical errors, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

**R9-22-1203. Eligibility for Covered Services**

Title XIX members. A member determined eligible under A.R.S. § 36-2901(6)(a) or (g) except for the failure to meet U.S. citizenship or qualified alien status requirements, shall receive medically necessary covered services under Article 12 and Article 2.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1204. General Service Requirements**

- A.** Services. Behavioral health services include mental health, substance abuse, and physical services. Medically necessary services shall be covered and service requirements met as described under Article 2 and Article 5.
- B.** Notification to Administration for American Indians enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after an American Indian member enrolled with a tribal contractor presents to a behavioral health hospital for inpatient emergency behavioral health services.
- C.** Restrictions and limitations. Room and board is not a covered service unless provided in a behavioral health inpatient facility under R9-22-1205.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1205. Scope and Coverage of Behavioral Health Services**

- A.** Inpatient behavioral health services. The following inpatient services are covered subject to the limitations and exclusions in this Article and Article 2.
  - 1. Covered inpatient behavioral health services include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment, if the service is provided under the direction of a physician in a Medicare-certified:
    - a. General acute care hospital,
    - b. Inpatient psychiatric unit in a general acute care hospital, or
    - c. Behavioral health hospital.
  - 2. Inpatient service limitations:
    - a. Inpatient services, other than emergency services specified in this Section, are not covered unless prior authorization is obtained.
    - b. Inpatient services and room and board are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A licensed physician assistant,
      - iv. A licensed psychologist,
      - v. A licensed clinical social worker,
      - vi. A licensed marriage and family therapist,
      - vii. A licensed professional counselor,
      - viii. A licensed independent substance abuse counselor, and
      - ix. A medical practitioner.
- B.** Behavioral Health Inpatient facility for children. Services provided in a Behavioral Health Inpatient facility for children as defined in 9 A.A.C. 10, Article 3 are covered subject to the limitations and exclusions under this Article.
  - 1. Behavioral Health Inpatient facility for children services are not covered unless provided under the direction of a licensed physician in a licensed Behavioral Health Inpatient facility for children accredited by an AHCCCS-approved accrediting body as specified in contract.
  - 2. Covered Behavioral Health Inpatient facility for children services include room and board and treatment services for behavioral health and substance abuse conditions.
  - 3. Inpatient Behavioral Health Inpatient facility for children service limitations.

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- a. Services are not covered unless prior authorized, except for emergency services as specified in this Section.
    - b. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A licensed physician assistant,
      - iv. A licensed psychologist,
      - v. A licensed clinical social worker,
      - vi. A licensed marriage and family therapist,
      - vii. A licensed professional counselor,
      - viii. A licensed independent substance abuse counselor, and
      - ix. A medical practitioner.
  - 4. The following may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:
    - a. Laboratory services, and
    - b. Radiology services.
- C. Covered Inpatient sub-acute agency services.** Services provided in a inpatient sub-acute facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.
- 1. Inpatient sub-acute facility services are not covered unless provided under the direction of a licensed physician in a licensed inpatient sub-acute facility that is accredited by an AHCCCS-approved accrediting body.
  - 2. Covered Inpatient sub-acute facility services include room and board and treatment services for behavioral health and substance abuse conditions.
  - 3. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
    - i. A medical practitioner.
  - 4. The following may be billed independently if prescribed by a provider specified in this Section who is operating within the scope of practice:
    - a. Laboratory services, and
    - b. Radiology services.
- D. Behavioral health residential facility services.** Services provided in a licensed behavioral health residential facility as defined in 9 A.A.C. 10, Article 1 are covered subject to the limitations and exclusions under this Article.
- 1. Behavioral health residential facility services are not covered unless provided by a licensed behavioral health residential facility.
  - 2. Covered services include all non-prescription drugs as defined in A.R.S. § 32-1901, non-customized medical supplies, and clinical oversight or direct supervision of the behavioral health residential facility staff, whichever is applicable. Room and board are not covered services.
  - 3. The following licensed and certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
- E. Partial care.** Partial care services are covered subject to the limitations and exclusions in this Article.
- 1. Partial care services are not covered unless provided by a licensed and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and medical day programs.
  - 2. Partial care services. Educational services that are therapeutic and are included in the member's behavioral health treatment plan are included in per diem reimbursement for partial care services.
- F. Outpatient services.** Outpatient services are covered subject to the limitations and exclusions in this Article and Article 2.
- 1. Outpatient services include the following:
    - a. Screening provided by a behavioral health professional or a behavioral health technician as defined in R9-22-1201;
    - b. A behavioral health assessment provided by a behavioral health professional or a behavioral health technician;
    - c. Counseling including individual therapy, group therapy, and family therapy provided by a behavioral health professional or a behavioral health technician;
    - d. Behavior management services as defined in R9-22-1201; and
    - e. Psychosocial rehabilitation services as defined in R9-22-201.
  - 2. Outpatient service limitations.
    - a. The following licensed or certified providers may bill independently for outpatient services:
      - i. A licensed psychiatrist;
      - ii. A certified psychiatric nurse practitioner;
      - iii. A licensed physician assistant as defined in R9-22-1201;
      - iv. A licensed psychologist;
      - v. A licensed clinical social worker;
      - vi. A licensed professional counselor;
      - vii. A licensed marriage and family therapist;
      - viii. A licensed independent substance abuse counselor;
      - ix. A medical practitioner; and
      - x. An outpatient treatment center or substance abuse transitional facility licensed under 9 A.A.C. 10, Article 14, that is an AHCCCS-registered provider.
    - b. A behavioral health practitioner not specified in subsections (F)(2)(a)(i) through (x), who is contracted with or employed by an AHCCCS-registered behavioral health agency shall not bill independently.
- G. Emergency behavioral health services** are covered subject to the limitations and exclusions under this Article. In order to be covered, behavioral health services shall be provided by qualified service providers under R9-22-1206. ADHS/DBHS shall ensure that emergency behavioral health services are available 24 hours per day, seven days per week in each GSA for an

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emergency behavioral health condition for a non-FES member as defined in R9-22-201.

- H.** Other covered behavioral health services. Other covered behavioral health services include:
1. Case management as defined in 9 A.A.C. 10, Article 1;
  2. Laboratory and radiology services for behavioral health diagnosis and medication management;
  3. Medication;
  4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
  5. Respite care as described within subsection (J);
  6. Behavioral health therapeutic home care services provided by a RBHA in a professional foster home defined in 6 A.A.C. 5, Article 58 or in an adult behavioral health therapeutic home as defined in 9 A.A.C. 10, Article 1;
  8. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.
- I.** Transportation services. Transportation services are covered under R9-22-211.
- J.** Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 17 A.A.R. 1870, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1206. Repealed****Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007

(Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1207. General Provisions for Payment**

- A.** Claims submissions.
1. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member to the appropriate RBHA.
  2. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member to the appropriate RBHA.
  3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
  4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
  5. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).
  6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
  7. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.
- B.** Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, the Administration or a contractor.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

**R9-22-1208. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

**ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)**

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).*

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Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).

Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).

### **R9-22-1301. Children's Rehabilitative Services (CRS) related Definitions**

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

"Active treatment" means there is a current need for treatment of the CRS qualifying condition(s) or it is anticipated that treatment or evaluation for continuing treatment of the CRS qualifying condition(s) will be needed within the next 18 months from the last date of service for treatment of any CRS qualifying condition.

"CRS application" means a submitted form with any additional documentation required by the Administration to determine whether an individual is medically eligible for CRS.

"CRS condition" means a list of medical condition(s) in R9-22-1303 and which are referred to as covered conditions in A.R.S. § 36-2912.

"Functionally limiting" means a restriction having a significant effect on an individual's ability to perform an activity of daily living as determined by a provider.

"Medically eligible" means meeting the medical eligibility requirements of R9-22-1303.

"Redetermination" means a decision made by the Administration regarding whether a member continues to meet the requirements in R9-22-1302.

#### **Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

### **R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements**

Beginning October 1, 2013, an AHCCCS member who needs active treatment for one or more of the qualifying medical condition(s) in R9-22-1303 shall be enrolled with the CRS contractor. An American Indian member shall obtain CRS services through the CRS contractor. A member enrolled in CMDP shall also obtain CRS services through the CRS contractor. Initial enrollment with the CRS contractor is limited to individuals under the age of 21. The CRS contractor shall provide covered services necessary to treat the CRS condition(s) and other services described within the CRS contract. The effective date of enrollment in CRS shall be as specified in contract.

#### **Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective

August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

### **R9-22-1303. Medical Eligibility**

The following lists identify those medical condition(s) that do qualify for the CRS program as well as those that do not qualify for the CRS program. The list of condition(s) that qualify for CRS medical eligibility is all inclusive. The list of condition(s) that do not qualify for CRS medical eligibility is not an all-inclusive list.

1. Cardiovascular System
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Arrhythmia,
    - ii. Arteriovenous fistula,
    - iii. Cardiomyopathy,
    - iv. Conduction defect,
    - v. Congenital heart defect other than isolated small Ventricular Septal Defects (VSD), Patent Ductus Arteriosus (PDA), Atrial Septal Defects (ASD),
    - vi. Coronary artery and aortic aneurysm,
    - vii. Renal vascular hypertension,
    - viii. Rheumatic heart disease, and
    - ix. Valvular disorder.
  - b. Condition(s) not medically eligible for CRS:
    - i. Arteriovenous fistula that is not expected to cause cardiac failure or threaten loss of function;
    - ii. Benign heart murmur;
    - iii. Branch artery pulmonary stenosis;
    - iv. Essential hypertension;
    - v. Patent foramen ovale (PFO);
    - vi. Peripheral pulmonary stenosis;
    - vii. Postural orthopedic tachycardia; and
    - viii. Premature atrial, nodal or ventricular contractions that are of no hemodynamic significance.
2. Endocrine system:
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Addison's disease,
    - ii. Adrenogenital syndrome,
    - iii. Cystic fibrosis (including atypical cystic fibrosis),
    - iv. Diabetes insipidus,
    - v. Hyperparathyroidism,
    - vi. Hyperthyroidism,
    - vii. Hypoparathyroidism, and
    - viii. Panhypopituitarism.
  - b. Condition(s) not medically eligible for CRS:
    - i. Diabetes mellitus,
    - ii. Hypopituitarism associated with a malignancy and requiring treatment of less than 90 days,
    - iii. Isolated growth hormone deficiency, and
    - iv. Precocious puberty.
3. Genitourinary system medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Ambiguous genitalia,
    - ii. Bladder extrophy,



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- iii. Deformity and dysfunction of the genitourinary system secondary to trauma 90 days or more after the trauma occurred,
    - iv. Ectopic ureter,
    - v. Hydronephrosis, that is not resolved with antibiotics,
    - vi. Polycystic and multicystic kidneys,
    - vii. Pyelonephritis when treatment with drugs or biologicals has failed to cure or ameliorate and surgical intervention is required,
    - viii. Ureteral stricture, and
    - ix. Vesicoureteral reflux, at a grade 3 or higher.
  - b. Condition(s) not medically eligible for CRS:
    - i. Enuresis,
    - ii. Hydrocele,
    - iii. Hypospadias,
    - iv. Meatal stenosis,
    - v. Nephritis, infectious or noninfectious,
    - vi. Nephrosis,
    - vii. Phimosis, and
    - viii. Undescended testicle.
- 4. Ear, nose, or throat medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Cholesteatoma,
    - ii. Congenital/Craniofacial anomaly that is functionally limiting,
    - iii. Deformity and dysfunction of the ear, nose, or throat secondary to trauma, 90 days or more after the trauma occurred,
    - iv. Mastoiditis that continues 90 days or more after the first diagnosis of the condition,
    - v. Microtia that requires multiple surgical interventions,
    - vi. Neurosensory hearing loss, and
    - vii. Significant conductive hearing loss due to an anomaly in one ear or both ears equal to or greater than a pure tone average of 30 decibels that despite medical treatment, requires a hearing aid.
  - b. Condition(s) not medically eligible for CRS:
    - i. A craniofacial anomaly that is not functionally limiting,
    - ii. Adenoiditis,
    - iii. Cranial or temporal mandibular joint syndrome,
    - iv. Hypertrophic lingual frenum,
    - v. Isolated preauricular tag or pit,
    - vi. Nasal polyp,
    - vii. Obstructive apnea,
    - viii. Perforation of the tympanic membrane,
    - ix. Recurrent otitis media,
    - x. Simple deviated nasal septum,
    - xi. Sinusitis,
    - xii. Tonsillitis, and
    - xiii. Uncontrolled salivation.
- 5. Musculoskeletal system medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Achondroplasia,
    - ii. Arthrogryposis (multiple joint contractures),
    - iii. Bone infection that continues 90 days or more after the initial diagnosis,
    - iv. Chondrodysplasia,
    - v. Chondroectodermal dysplasia,
    - vi. Clubfoot,
    - vii. Collagen vascular disease, including but not limited to, ankylosis spondylitis, polymyositis, dermatomyositis, polyarteritis nodosa, psoriatic arthritis, scleroderma, rheumatoid arthritis and lupus,
    - viii. Congenital or developmental cervical spine abnormality,
    - ix. Congenital spinal deformity,
    - x. Diastrophic dysplasia,
    - xi. Enchondromatosis,
    - xii. Femoral anteversion and tibial torsion,
    - xiii. Fibrous dysplasia,
    - xiv. Hip dysplasia,
    - xv. Hypochondroplasia,
    - xvi. Joint infection that continues 90 days or more after the initial diagnosis,
    - xvii. Juvenile rheumatoid arthritis,
    - xviii. Kyphosis (Scheurmann's Kyphosis) 50 degrees or over,
    - xix. Larsen syndrome,
    - xx. Leg length discrepancy of two centimeters or more,
    - xxi. Legg-Calve-Perthes disease,
    - xxii. Limb amputation or limb malformation,
    - xxiii. Metaphyseal and epiphyseal dysplasia,
    - xxiv. Metatarsus adductus,
    - xxv. Muscular dystrophy,
    - xxvi. Orthopedic complications of hemophilia,
    - xxvii. Osgood Schlatter's disease that requires surgical intervention,
    - xxviii. Osteogenesis imperfecta,
    - xxix. Rickets,
    - xxx. Scoliosis when 25 degrees or greater, or when there is a need for bracing or surgery,
    - xxxi. Seronegative spondyloarthropathy such as Reiter's, psoriatic arthritis, and ankylosing spondylitis,
    - xxxii. Slipped capital femoral epiphysis,
    - xxxiii. Spinal muscle atrophy,
    - xxxiv. Spondyloepiphyseal dysplasia, and
    - xxxv. Syndactyly.
  - b. Condition(s) not medically eligible for CRS:
    - i. Back pain with no structural abnormality,
    - ii. Benign bone tumor,
    - iii. Bunion,
    - iv. Carpal tunnel syndrome,
    - v. Deformity and dysfunction secondary to trauma or injury,
    - vi. Ehlers Danlos,
    - vii. Flat foot,
    - viii. Fracture,
    - ix. Ganglion cyst,
    - x. Ingrown toenail,
    - xi. Kyphosis under 50 degrees,
    - xii. Leg length discrepancy of less than two centimeters at skeletal maturity,
    - xiii. Polydactyly without bone involvement,
    - xiv. Popliteal cyst,
    - xv. Trigger finger, and
    - xvi. Varus and valgus deformities.
- 6. Gastrointestinal system medical condition(s):
  - a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Anorectal atresia,
    - ii. Biliary atresia,
    - iii. Cleft lip,

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- iv. Cleft palate,
  - v. Congenital atresia, stenosis, fistula, or rotational abnormalities of the gastrointestinal tract,
  - vi. Deformity and dysfunction of the gastrointestinal system secondary to trauma, 90 days or more after the trauma occurred,
  - vii. Diaphragmatic hernia,
  - viii. Gastroschisis,
  - ix. Hirschsprung's disease,
  - x. Omphalocele, and
  - xi. Tracheoesophageal fistula.
  - b. Condition(s) not medically eligible for CRS:
    - i. Celiac disease,
    - ii. Crohn's disease,
    - iii. Hernia other than a diaphragmatic hernia,
    - iv. Intestinal polyp,
    - v. Malabsorption syndrome, also known as short bowel syndrome,
    - vi. Pyloric stenosis,
    - vii. Ulcer disease, and
    - viii. Ulcerative colitis.
7. Nervous system medical condition(s):
- a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Benign intracranial tumor,
    - ii. Benign intraspinal tumor,
    - iii. Central nervous system degenerative disease,
    - iv. Central nervous system malformation or structural abnormality,
    - v. Cerebral palsy,
    - vi. Craniosynostosis requiring surgery,
    - vii. Deformity and dysfunction secondary to trauma in an individual that continues 90 days or more after the incident,
    - viii. Hydrocephalus,
    - ix. Muscular dystrophy or other myopathy,
    - x. Myelomeningocele, also known as spina bifida,
    - xi. Myoneural disorder, including but not limited to, amyotrophic Lateral Sclerosis or ALS, myasthenia gravis, Eaton-Lambert syndrome, muscular dystrophy, troyer sclerosis, polymyositis, dermamyositis, progressive bulbar palsy, polio,
    - xii. Neurofibromatosis,
    - xiii. Neuropathy/polyneuropathy, hereditary or idiopathic,
    - xiv. Residual dysfunction that continues 90 days or more after a vascular accident, inflammatory condition, or infection of the central nervous system,
    - xv. Residual dysfunction that continues 90 days or more after near drowning,
    - xvi. Residual dysfunction that continues 90 days or more after the spinal cord injury, and
    - xvii. Uncontrolled seizure disorder, in which there have been more than two seizures with documented compliance of one or more medications.
  - b. Condition(s) not medically eligible for CRS:
    - i. Central apnea secondary to prematurity,
    - ii. Febrile seizures,
    - iii. Headaches,
    - iv. Near sudden infant death syndrome,
    - v. Plagiocephaly, and
    - vi. Spina bifida occulta.
8. Ophthalmology:
- a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Cataracts,
    - ii. Disorder of the iris, ciliary bodies, retina, lens, or cornea,
    - iii. Disorder of the optic nerve,
    - iv. Glaucoma,
    - v. Non-malignant enucleation and post-enucleation reconstruction, and
    - vi. Retinopathy of prematurity.
  - b. Condition(s) not medically eligible for CRS:
    - i. Astigmatism,
    - ii. Ptosis,
    - iii. Simple refraction error, and
    - iv. Strabismus.
9. Respiratory system medical condition(s):
- a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. Anomaly of the larynx, trachea, or bronchi that requires surgery, and
    - ii. Nonmalignant obstructive lesion of the larynx, trachea, or bronchi.
  - b. Condition(s) not medically eligible for CRS:
    - i. Allergies,
    - ii. Asthma,
    - iii. Bronchopulmonary dysplasia,
    - iv. Chronic obstructive pulmonary disease,
    - v. Emphysema, and
    - vi. Respiratory distress syndrome.
10. Dermatological system medical condition(s):
- a. CRS condition(s) that qualify for CRS medical eligibility:
    - i. A burn scar that is functionally limiting,
    - ii. A hemangioma that is functionally limiting that requires laser or surgery,
    - iii. Complicated nevi requiring multiple procedures,
    - iv. Cystic hygroma such as lymphangioma, and
    - v. Malocclusion that is functionally limiting.
  - b. Condition(s) not medically eligible for CRS:
    - i. A deformity that is not functionally limiting,
    - ii. Ectodermal dysplasia,
    - iii. Isolated malocclusion that is not functionally limiting,
    - iv. Pilonidal cyst,
    - v. Port wine stain,
    - vi. Sebaceous cyst,
    - vii. Simple nevi, and
    - viii. Skin tag.
11. Metabolic CRS condition(s) that qualify for CRS medical eligibility:
- i. Amino acid or organic acidopathy,
  - ii. Biotinidase deficiency,
  - iii. Homocystinuria,
  - iv. Inborn error of metabolism,
  - v. Maple syrup urine disease,
  - vi. Phenylketonuria, and
  - vii. Storage disease.
12. Hemoglobinopathies CRS condition(s) that qualify for CRS medical eligibility:
- a. Sickle cell anemia, and
  - b. Thalassemia.
13. Additional medical/behavioral condition(s) which are not medically eligible for CRS:
- a. Allergies,

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- b. Anorexia nervosa or obesity,
- c. Attention deficit disorder,
- d. Autism,
- e. Cancer,
- f. Depression or other mental illness,
- g. Developmental delay,
- h. Dyslexia or other learning disabilities,
- i. Failure to thrive,
- j. Hyperactivity, and
- k. Immunodeficiency, such as AIDS and HIV.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

**R9-22-1304. Referral and Disposition of CRS Medical Eligibility Determination**

- A.** To refer an individual for a CRS medical eligibility determination a person shall submit to the Administration the following information:
- 1. CRS application;
  - 2. Documentation from a specialist who diagnosed the individual, stating the individual's diagnosis;
  - 3. Diagnostic test results that support the individual's diagnosis; and
  - 4. Documentation of the individual's need for specialized treatment of the CRS condition through medical, surgical, or therapy modalities.
- B.** The Administration shall notify the CRS applicant, member or authorized representative of the outcome of the determination within 60 days of receipt of information required under subsection (A). The member may appeal the determination under Chapter 34.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

**R9-22-1305. CRS Redetermination**

- A.** Continued eligibility for the CRS program shall be redetermined by verifying active treatment status of the CRS qualifying medical condition(s) as follows:
- 1. The CRS Contractor is responsible for notifying the AHCCCS Administration of the date when a CRS member is no longer in active treatment for the CRS qualifying condition(s).
  - 2. The Administration may request, at any time, that the CRS contractor submit the medical documentation requested in the CRS medical redetermination form within the specified time-frames in contract.

- 3. The Administration shall notify the CRS member or authorized representative of the redetermination process.
- B.** If the Administration determines that a CRS member is no longer medically eligible for CRS, the Administration shall provide the CRS member or authorized representative a written notice that informs the CRS member that the Administration is transitioning the CRS member's enrollment according to R9-22-1306. The member may appeal the redetermination under Chapter 34.
- C.** Upon reaching his or her 21st birthday, the CRS member will be enrolled with a non-CRS contractor unless the member requests to continue enrollment with the CRS contractor.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1306. Transition or Termination**

- A.** The Administration shall transition a CRS member from the CRS contractor when the Administration determines the CRS member does not meet the medical eligibility requirements under this Article.
- B.** The Administration shall terminate a CRS member from the CRS contractor and the AHCCCS program when the Administration determines the CRS member does not meet the AHCCCS eligibility requirements. The member may appeal the termination under Chapter 34.
- C.** If the Administration transitions a CRS member from the CRS contractor, the Administration shall provide the CRS member, or authorized representative a written notice of transition. The member may appeal the transition under Chapter 34.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1307. Covered Services**

The Administration will cover medically necessary services as described within Article 2 unless otherwise specified in contract.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1308. Repealed**

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**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).  
Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-1309. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).  
Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS****R9-22-1401. General Information**

- A.** Scope. This Article contains eligibility criteria to determine whether a household or individual is eligible for AHCCCS medical coverage. Eligibility criteria described under Article 3 applies to this Article.
- B.** Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article, Article 3 and Article 15 have the following meanings unless the context explicitly requires another meaning:

“Burial plot” means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.

Caretaker relative” means:

A parent of a dependent child with whom the child is living;

When the dependent child does not live with a parent or the parent in the home is incapacitated, another relative of the child by blood, adoption, or marriage in the home who assumes primary responsibility for the child’s care; or

A woman in her third trimester of pregnancy with no other dependent children.

“Cash assistance” means a program administered by the Department that provides assistance to needy families with dependent children under 42 U.S.C. 601 et seq.

“Dependent child” means a child under the age of 18, or if age 18 is a full-time student in secondary school or equivalent vocational or technical training, if reasonably expected to complete such school or training before turning age 19.

“MAGI – based income” means Modified Adjusted Gross Income as defined under 42 CFR 435.603(e).

“Medical expense deduction” or “MED” means the cost of the following expenses if incurred in the United States:

A medical service or supply that would be covered if provided to an AHCCCS member of any age under Articles 2 and 12 of this Chapter;

A medical service or supply that would be covered if provided to an Arizona Long-term Care System member under 9 A.A.C. 28, Articles 2 and 11;

Other necessary medical services provided by a licensed practitioner or physician;

Assistance with daily living if the assistance is documented in an individual plan of care by a nurse, social service worker, registered therapist, or dietitian

under the supervision of a physician except when provided by the spouse of an applicant or the parent of a minor child;

Medical services provided in a licensed nursing home or in an alternative HCBS setting under R9-28-101;

Purchasing and maintaining an animal guide or service animal for the assistance of a member of the MED family unit under R9-22-1436; and

Health insurance premiums, deductibles, and coinsurance, if the insured is a member of the MED family unit.

“Monthly income” means the gross countable income received or projected to be received during the month or the monthly equivalent.

“Monthly equivalent” means a monthly countable income amount established by averaging, prorating, or converting a person’s income.

“Spendthrift restriction” means a legal restriction on the use of a resource that prevents a payee or beneficiary from alienating the resource.

“Tax dependent” is described under 42 CFR 435.4.

“Taxpayer” means a person who expects to file a tax return, and does not expect to be claimed as a tax dependent by another person.

“Title IV-D” means Title IV-D of the Social Security Act, 42 U.S.C. 651-669, the statutes establishing the child support enforcement and paternity program.

“Title IV-E” means Title IV-E of the Social Security Act 42 U.S.C. 670-679, the statutes establishing the foster care and adoption assistance programs.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1402. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1403. Agency Responsible for Determining Eligibility**

The Administration or its designee shall determine eligibility under the provisions of this Article. The Administration or its designee shall not discriminate against an applicant or member because of race, color, creed, religion, ancestry, national origin, age, sex, or physical or mental disability.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section

repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1404. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1405. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1406. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1407. Deceased Applicants**

- A. If an applicant dies while an application is pending, the Administration or Administration's designee shall complete an eligibility determination for all applicants listed on the application, including the deceased applicant.
- B. The Administration or Administration's designee shall complete an eligibility determination on an application filed on behalf of a deceased applicant.

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4).

#### **R9-22-1408. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1409. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1410. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1411. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1412. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1413. Time-frames, Reinstatement of an Application**

- A. The Administration or its designee shall complete an eligibility determination under R9-22-306(A)(1) unless:

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1. The applicant is pregnant. The Administration or its designee shall complete an eligibility determination for a pregnant woman within 20 days after the application date unless additional information is required to determine eligibility; or
2. The applicant is in a hospital as an inpatient at the time of application. Within seven days of the Administration or its designee's receipt of a signed application the Administration or its designee shall complete an eligibility determination if the Administration or its designee does not need additional information or verification to determine eligibility.

- B.** The Administration or its designee shall reopen or reinstate eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1414. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1415. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1416. Effective Date of Eligibility**

- A.** Except as provided in R9-22-303 and subsections (B), (C) and (D), the effective date of eligibility is the first day of the month that the applicant files an application if the applicant is eligible that month, or the first day of the first eligible month following the application month except for:
1. The MED program under R9-22-1439, and
  2. Eligibility for a newborn under R9-22-1429.
- B.** The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
- C.** The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

- D.** The effective date of eligibility for a newborn is no sooner than the date of birth.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1417. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1418. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1419. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1419.01. Repealed****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1419.02. Repealed****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1419.03. Repealed****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed

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by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1419.04. Repealed****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1420. Income Eligibility Criteria**

**A.** Evaluation of income. In determining eligibility, the Administration or its designee shall evaluate the following types of income received by a person identified in subsection (B):

1. Earned income, including in-kind income, before any deductions. For purposes of this Section, in-kind income means room, board, or provision for other needs in exchange for work performed. The person identified in subsection (B) shall ensure that the provider of the in-kind income establishes and verifies the monetary value of the item provided. The provider may be, but is not limited to:
  - a. A landlord who provides all or a portion of rent or utilities in exchange for services;
  - b. A store owner who gives goods such as groceries, clothes, or furniture in exchange for services; or
  - c. An individual who trades goods such as a car, tools, trailer, building material, or gasoline in exchange for services;
2. Self-employment income under R9-22-1424, including gross business receipts minus business expenses; and
3. Unearned income, including deemed income under R9-22-317 from the sponsor of a non-citizen applicant.

**B.** MAGI income group. The Administration or its designee shall include the following persons in the MAGI income group:

1. When the applicant is a taxpayer include:
  - a. The applicant,
  - b. Everyone the applicant expects to claim as a tax dependent for the current year, and
  - c. The applicant's spouse, when living with the applicant.
2. Except as provided in subsection (B)(3), when the applicant expects to be claimed as a tax dependent for the current year include:
  - a. The taxpayer claiming the applicant,
  - b. Everyone else the taxpayer expects to claim as a tax dependent,
  - c. The taxpayer's spouse when living with the taxpayer, and
  - d. The applicant's spouse, when living with the applicant.
3. When any of the following apply, determine the persons whose income is included as described in subsection (4)(a) or (4)(b) based on the applicant's age:
  - a. The applicant expects to be claimed as a tax dependent by someone other than a spouse or natural, adopted or step-parent;
  - b. The applicant is under age 19, expects to be claimed as a tax dependent by a natural, adopted or step-parent, lives with more than one such parent and the parents do not expect to file a joint tax return; or
  - c. The applicant is under age 19 and expects to be claimed as a tax dependent by a non-custodial parent.

4. When the applicant is not a taxpayer, does not expect to be claimed as a tax dependent and is:

- a. Under age 19. Include the income of the applicant and when living with the applicant, the applicant's:
  - i. Spouse;
  - ii. Natural, adopted and step-children;
  - iii. Natural, adopted and step-parents;
  - iv. Natural, adopted and step-siblings; and
- b. Age 19 or older. Include the income of the applicant and when living with the applicant, the applicant's:
  - i. Spouse;
  - ii. Natural, adopted and step-children under age 19.

5. When the applicant is a pregnant woman, the Administration or its designee shall also include the number of expected babies only for the pregnant woman's income group.

6. When the taxpayer cannot reasonably establish that a person is the taxpayer's tax dependent, inclusion of the person in the taxpayer's MAGI income group is determined as provided in subsection (B)(4).

**C.** A person whose income is counted. The Administration or its designee shall count the MAGI-based income of all members of an applicant's MAGI income group with the following exceptions:

1. The income of an individual who is included in the MAGI income group of his or her natural, adoptive or step parent and is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined, is not counted whether or not the individual files a tax return.
2. The income of a tax dependent other than the taxpayer's spouse or biological, adopted or stepchild who is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined is not counted when the tax dependent is included in the taxpayer's MAGI income group, whether or not the tax dependent files a tax return.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1421. MAGI based Income Eligibility**

**A.** In determining eligibility, if an individual would otherwise be ineligible under this Article due to excess income, the Administration or its designee shall subtract an amount equivalent to five percentage points of the Federal Poverty Level (FPL) from the household income.

**B.** A person is eligible under this Article when:

1. Subject to subsection (A), the monthly household income does not exceed the appropriate FPL;
2. If ineligible under (B)(1), the household income determined in accordance with 26 CFR 1.36B-1(e) is below 100 percent FPL; or
3. For eligibility under R9-22-1437, the person's income during the period defined in R9-22-1437(C) does not exceed the FPL under R9-22-1437(B).

**C.** The Administration or its designee shall consider the following factors when determining the income period to use to determine monthly income:

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1. Type of income,
2. Frequency of income,
3. If source of income is new or terminated, or
4. Income fluctuation.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1422. Methods for Calculating Monthly Income****A. Projecting income.**

1. Description. Projecting income is a method of determining the amount of income that a person will receive.
2. Calculation. The Administration or its designee shall project income by:
  - a. Converting income to a monthly equivalent,
  - b. Using unconverted income, or
  - c. Prorating income to determine a monthly equivalent.
3. Exclusion. When calculating projected monthly income, the Administration or its designee shall exclude an unusual variation in income under R9-22-1424(E), except for a month in which the variation is anticipated to occur.

**B. Averaged income.**

1. Description. Averaging income proportionally distributes the person's income received on a regular basis.
2. Calculation. To average income, the Administration or its designee shall add the amount of the income and divide by the total number of pay periods. If the amount of income received per pay period fluctuates, and the fluctuation is expected to continue, the Administration or its designee shall:
  - a. Use the averaged weekly or bi-weekly amounts to convert weekly or bi-weekly income to a monthly equivalent;
  - b. Use the averaged monthly or semi-monthly amounts to project monthly income; and
  - c. Use the averaged hours worked and multiply the average by the current rate of pay. If there is a change in the rate of pay, use the new rate of pay when calculating projected income under subsection (A).

**C. Prorated income.**

1. Description. Prorated income evenly distributes a person's income over the period the income is intended to cover to calculate a monthly equivalent.
2. Calculation. To prorate income, the Administration or its designee shall divide the total amount of the person's income received during the period by the number of months that the income is intended to cover.

**D. Converted income.**

1. Description. Converted income is income received weekly or biweekly that is changed to a monthly equivalent.
2. Calculation.
  - a. The Administration or its designee shall average the weekly or bi-weekly income amounts before converting to the monthly equivalent if the person's past income fluctuates and the fluctuation is expected to recur.

- b. To convert income paid weekly to a monthly equivalent, the Administration or its designee shall multiply the weekly average by 4.3 weeks.
- c. To convert income paid bi-weekly to a monthly equivalent, the Administration or its designee shall multiply the bi-weekly average by 2.15 weeks.

**E. Unconverted income.**

1. Description. Unconverted income is the actual amount of income received or projected to be received during a month.
2. Calculation. The Administration or its designee shall sum the actual amount of income received or projected to be received during a month.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1423. Calculations and Use of Methods Listed in R9-22-1422 Based on Frequency of Income**

- A. Monthly income.** If otherwise countable income is received monthly or in a lump sum, the Administration or its designee shall use the unconverted method for calculating monthly income.
  1. Lump sum means a nonrecurring payment that serves as a complete payment.
  2. Lump sum payments include but are not limited to: rebates or credits; inheritances; insurance settlements; and payments for prior months from such sources as Social Security, Railroad Retirement, or other benefits.
  3. A lump sum payment may include a portion intended for the current month.
- B. Weekly income.** If income is received weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).
- C. Bi-weekly income.** If income is received bi-weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).
- D. Semi-monthly or daily income.** If income is received semi-monthly or daily, the Administration or its designee shall use the unconverted method for calculating monthly income under R9-22-1422(E).
- E. Bimonthly, quarterly, semi-annual, or annual income.** If income is received bimonthly, quarterly, semi-annually, or annually, the Administration or its designee shall prorate the income received or projected to be received under R9-22-1422(C).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1424. Use of Methods Listed in R9-22-1423 Based on Type of Income**

- A. New income.**



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1. Description. New income is income received from a new source during the first calendar month that the income is received from the source.
  2. Calculating monthly income.
    - a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
    - b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.
- B. Terminated income.**
1. Terminated income is income received during the last calendar month when no more income is expected to be received from that source.
  2. Calculating monthly income.
    - a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
    - b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.
- C. Break in income.**
1. Description. A break in income is a break in established frequency of income of one calendar month or more.
  2. Calculating monthly income.
    - a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
    - b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.
- D. Contract or regular seasonal income.**
1. Descriptions.
    - a. Contract income is income a person earns under a contract that specifies a length of time the contract covers, the amount of income to be paid, and the frequency of payment.
    - b. Regular seasonal income is income that fluctuates based on season or is only received during a certain season, and can reasonably be anticipated based on history or other verification.
  2. Calculating monthly income.
    - a. When the contract or regular seasonal income will not fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall use the appropriate income calculation method in R9-22-1423 for the frequency of receipt.
    - b. When the contract or regular seasonal income is anticipated to fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall calculate the monthly income as follows:
      - i. For a one-time contract that ends between the month the application or renewal is submitted and the end of the calendar year, divide the income that will be received from the application or renewal month through the end of the calendar year by the number of months in that period to get a monthly equivalent;
      - ii. For contracts that extend into the next calendar year, contracts that are anticipated to be renewed and regular seasonal income, the Administration or its designee shall divide the income that will be received in the 12-month period beginning with the application or renewal month by 12 to get the monthly equivalent.
- E. Unusual variation in the amount of income.**
1. Description. Unusual variation is an amount of income that is different from the established amount received and is not projected to continue or recur.
  2. Calculating monthly income.
    - a. When calculating income for the month in which an unusual variation in income occurs, the Administration or its designee shall include the unusual variation in the income calculation.
    - b. When an unusual variation in income occurs during the month, the Administration or its designee shall use the converted method for calculating monthly income if income is received weekly or bi-weekly.
    - c. When projecting income for the months following the month in which the unusual variation occurs, the Administration or its designee shall exclude the unusual variation in income from the income calculation.
- F. Self-employment income.**
1. Description. Self-employment income is income a person earns from the person's own trade or business less allowable expenses.
  2. Calculating monthly income. The Administration or its designee shall prorate the income under R9-22-1422.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1425. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1426. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1427. Eligibility Under MAGI**

- A. Caretaker Relatives.** An individual is eligible for AHCCCS medical coverage as a Caretaker Relative when the individual meets the following requirements:
1. Is a caretaker relative as defined in R9-22-1401.

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2. The total countable income under R9-22-1420(B) does not exceed 106 percent of the FPL for the number of people in the MAGI income group.
- B. Continued medical coverage.**
1. A caretaker relative eligible under subsection (A) and all dependent children eligible under subsection (D) in the caretaker relative's MAGI income group are entitled to continued AHCCCS coverage for up to 12 months if eligible under subsection (B)(1)(c)(i) and up to four months if eligible under subsection (B)(1)(c)(ii) if the MAGI income group's income exceeds the limit for the income group's size and the following conditions are met:
    - a. The caretaker relative still lives with a dependent child;
    - b. A caretaker relative in the income group received AHCCCS medical coverage under this Section for three calendar months out of the most recent six months; and
    - c. The loss of AHCCCS coverage under this Section is due to:
      - i. Increased earned income of a caretaker relative, or
      - ii. Increased spousal support.
  2. An applicant may be added to the continued medical coverage under subsection (B)(1), if the applicant did not reside in the household at the time continued medical coverage under this Section was determined and the applicant is:
    - a. The spouse or dependent child of a caretaker relative receiving continued medical coverage, or
    - b. The parent of a dependent child who is receiving continued medical coverage.
- C. Pregnant Women.** A pregnant woman is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed 156 percent of the FPL for the number of people in the MAGI income group. A pregnant woman who applies for AHCCCS medical coverage during the pregnancy or postpartum period and is determined eligible, remains eligible throughout the postpartum period. The postpartum period begins the day the pregnancy terminates and ends the last day of the month in which the 60th day following pregnancy termination occurs.
- D. Children.** A child less than 19 years of age is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed the following percentage of the FPL for the number of people in the MAGI income group:
1. 147 percent for a child under one year of age,
  2. 141 percent for a child age one through five years of age, or
  3. 133 percent for all other persons.
- E. Adults.** An individual is eligible for AHCCCS medical coverage when the individual meets the following eligibility requirements:
1. Is 19 years of age or older but less than 65 years of age;
  2. Is not pregnant;
  3. Is not eligible for AHCCCS Medical Coverage under any other coverage group listed in 42 U.S.C. 1396a(a)(10)(A)(i);
  4. Is not entitled to or enrolled for Medicare benefits under Part A or Part B;
  5. The total countable income under R9-22-1420(B) does not exceed 133 percent of the FPL for the number of people in the MAGI income group; and
  6. When the individual is a caretaker relative, but has income exceeding the limit in subsection (A)(2), each child under age 19 living with the individual is receiving

AHCCCS medical coverage or KidsCare, or is enrolled in minimum essential coverage as defined in 42 CFR 435.4.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section R9-22-1427 repealed; new Section R9-22-1427 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1428. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1429. Eligibility for a Newborn**

A child born to a mother eligible for and receiving medical coverage under this Article, Article 15 of the Chapter, or 9 A.A.C. 28, is automatically eligible for AHCCCS medical coverage for a period not to exceed 12 months. Automatic eligibility begins on the child's date of birth and ends with the last day of the month in which the child turns age one.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1430. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1431. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R.

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2633, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Repealed by final rulemaking at 21 A.A.R. 1241, effective September 5, 2015 (Supp. 15-3).

**R9-22-1432. Young Adult Transitional Insurance**

An individual is eligible for AHCCCS medical coverage when the individual meets all of the following eligibility requirements:

1. Is 18 through 25 years of age;
2. Was in the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10 on the individual's 18th birthday;
3. Was eligible for and receiving AHCCCS Medical Coverage on the individual's 18th birthday; and
4. Is not eligible for AHCCCS Medical Coverage under 42 U.S.C. 1396a(a)(10)(A)(i)(I) - (VII).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1433. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1434. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Section repealed by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4).

**R9-22-1435. Eligibility for a Person With Medical Expenses Whose Income is Over 100 Percent FPL**

An applicant who is not eligible for AHCCCS medical coverage due to excess income may become AHCCCS eligible by deducting medical expenses from the applicant's income. This coverage is called Medical Expense Deduction (MED).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1436. MED Family Unit**

- A. For the purpose of this Section, a child is an unmarried person under age 18.
- B. The Department shall consider each of the following to be a family when living together:
  1. A parent and the parent's children;
  2. A married couple without children;
  3. A married couple and the children of either or both spouses;
  4. Unmarried parents who live with at least one child in common, and the parents' other children, whether in common or not; and
  5. A person without children.
- C. If an applicant is pregnant, the family unit includes the number of unborn children.
- D. A child of the children included in subsections (B)(1), (B)(3), or (B)(4) is considered part of the family unit when living together.
- E. The Department shall not include a SSI-cash recipient in the MED family unit even if the SSI-cash recipient is a parent, spouse, or child.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1437. MED Income Eligibility Requirements**

- A. Income exclusions. The exclusions in R9-22-1420(C) apply to the MED family unit.
- B. Income standard.
  1. The Department shall divide the annual FPL for the MED family unit that is in effect during each month of the income period by 12 to determine the monthly FPL.
  2. The Department shall add the monthly FPLs for the income period and multiply the resulting amount by 40 percent.
  3. Changes to the annual FPL are implemented in April of each year.
- C. Income period. The income period is the month of application and the next two months. The Department shall add together the three months' income to establish the MED family unit's income amount.
- D. Medical expense deduction period. The medical expense deduction period is a three-month period consisting of:
  1. For a new application, the month before the application month, the month of application, and month following the application month; or
  2. For a MED eligibility review, the last month of the prior MED eligibility period and the following two months.
- E. The Department shall calculate the amount of countable monthly income as follows:
  1. Subtract a \$90 cost of employment allowance from the gross amount of earned income for each person whose earned income is counted;
  2. Disregard from the remaining earned income an amount billed by the provider for the care of each dependent child under age 18 or incapacitated adult member of the MED family unit if the care is for the purpose of allowing the person to work. If more than one person in the household is responsible for and billed for the care of a dependent child, the disregard may be split between the wage earners if splitting the disregard is to the benefit of the family, but shall not exceed the maximum disregards as follows:

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- a. A maximum of \$200 for a child under age two and \$175 for other dependents for a wage-earner employed full-time (86 or more hours per month); and
  - b. A maximum of \$100 for a child under age two, and \$88 for other dependents for a wage earner employed part-time (less than 86 hours a month);
  3. Add the remaining earned income for each MED family member to the unearned income of all MED family members;
  4. Compare the MED family's unit countable income amount to the income standard in subsection (B). The difference is the amount of medical expenses the family shall incur during the medical expense deduction period to become eligible;
  5. Subtract allowable medical expense deductions that were incurred by:
    - a. A member of the MED family unit;
    - b. A deceased spouse or minor child of a MED family unit if this person would have been a member of the MED unit during the MED expense deduction period;
    - c. A person who was a minor child of a MED family unit member when the expense was incurred but who is no longer a minor child; or
    - d. A minor child, including a child who is a runaway, who left home before the date of application to live with someone other than a parent; and
  6. Compare the net MED family income to the income standard listed in subsection (B).
  - F. The family is eligible if the net income in subsection (E)(6) does not exceed the income standard in subsection (B).
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).
- R9-22-1438. MED Resource Eligibility Requirements**
- A. Including countable resources. The Department shall include the resources not excluded that belong to and are available to members of the family of a qualified alien under A.R.S. § 36-2903.03 and the sponsor and sponsor's spouse of a person who is a qualified alien.
  - B. Ownership and availability. The Department shall evaluate the ownership of resources to determine the availability of resources to a person listed in subsection (A).
    1. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names are available to each owner except if one of the owners refuses to sell. A consent to sale is not required if all owners are members of the MED family unit.
    2. Jointly owned resources with ownership records containing the word "or" between the owners' names are presumed to be available in full to each owner. The applicant or member may rebut the presumption by providing clear and convincing evidence of intent to establish a different type of ownership. If the presumption is rebutted, the resource is available to the owners:
      - a. Consistent with the intent of the owners, or
      - b. Based on each owner's proportionate net contribution if there is not clear and convincing evidence of a different allocation.
    3. The Department shall establish availability of a trust under 42 U.S.C. 1396p(d)(4)(A) or (C).
  - C. Unavailability. The Department shall consider the following resources unavailable:
    1. Property subject to spendthrift restriction, such as:
      - a. Accounts established by the SSA, Veteran's Administration, or similar sources that mandate that the funds in the account be used for the benefit of a person not residing with the MED family unit; or
      - b. Trusts established by a will or funded solely by the income and resources of someone other than a member of the MED family unit.
    2. A resource being disputed in a divorce proceeding or probate matter;
    3. Real property located on a Native American reservation;
    4. A resource held by a conservator to the extent court-imposed restrictions make the resource unavailable to the applicant, member, or member of the family unit for:
      - a. Medical care,
      - b. Food,
      - c. Clothing, or
      - d. Shelter.
  - D. Resource exclusion. The Department shall exclude the following resources from the calculation of resources under subsection (E):
    1. One burial plot for each person listed in R9-22-1436;
    2. Household furnishings and personal items that are necessary for day-to-day living;
    3. Up to \$1500 of the value of one prepaid funeral plan for each person listed in R9-22-1436 that specifically covers only funeral-related expenses as evidenced by a written contract;
    4. The value of one motor vehicle regularly used for transportation. If the MED family unit owns more than one vehicle, the exclusion is applied to the vehicle with the highest equity value;
    5. The value of a vehicle used to earn income and not used simply for transportation to and from employment;
    6. The value of a vehicle in which a SSI-cash recipient has an ownership interest; and
    7. The value of any vehicle used for medical treatment, employment, or transportation of a SSI-cash disabled child, and that is excluded by SSI for that reason.
    8. Funds set aside in an Individual Development Account under 6 A.A.C. 12, Article 4; and
    9. Any other resource specifically excluded by federal law.
  - E. Calculation of resources. The Department shall determine the value of all household resources as follows:
    1. Calculate the total amount of countable liquid resources;
    2. Calculate the equity value of each countable non-liquid resource. The Department shall determine the equity value of a countable non-liquid resource by subtracting the amount of valid encumbrances on that resource from:
      - a. The market value of real property if there is no assessor's evaluation of the property,
      - b. The market value of real property if the assessor's value of the real property does not include the value of permanent structures on that property,
      - c. The assessor's full cash value if subsections (E)(2)(a) and (E)(2)(b) do not apply, and
      - d. The market value of a non-liquid resource that is not real property;
    3. Not assign an equity value to a resource that is less than zero; and
    4. Determine the MED family unit's resources by adding the totals determined in subsections (1) and (2).
  - F. Resource standard to be eligible for MED. A person is not eligible for MED if the resources determined in subsection (E) exceed \$100,000 or if more than \$5,000 are liquid resources.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1439. MED Effective Date of Eligibility**

- A. A MED family unit is eligible on the day the income and resource eligibility requirements are met but no earlier than the first day of the month of application. If the family unit meets the income requirements in the application month but does not meet the resource limit until the following month, the family unit's effective date of eligibility is the first day of the month following the month of application.
- B. The Department shall adjust the effective date of eligibility under subsection (A) to an earlier date if:
  - 1. A member presents verification of additional allowable medical expenses incurred on an earlier date during the medical expense deduction period that allow the member to meet the income requirements, and
  - 2. The member presents the verification within 60 days of approval of eligibility under this Section.
- C. The Department shall not adjust an effective date of eligibility more than one time per application.
- D. The Department shall adjust the effective date no later than 30 days after the end of the 60-day period under subsection (B)(2).
- E. The Department shall deny an application and provide the applicant a denial notice when the applicant does not meet the MED requirements under this Article during the month of application or the month following the month of application.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1440. MED Eligibility Period**

The Department shall approve eligibility for six months. Changes in circumstances do not affect eligibility for the first three months.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1441. Eligibility Appeals**

- A. Adverse actions. An applicant or member may appeal by requesting a hearing from the Department concerning any of the following adverse actions:
  - 1. Complete or partial denial of eligibility under R9-22-1413;
  - 2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-1415;
  - 3. Delay in the eligibility determination beyond the timeframes under this Article;
  - 4. The imposition of or increase in a premium or copayment; or
  - 5. The effective date of eligibility.
- B. Notice of Adverse Action. The Department shall personally deliver or send, by regular mail, a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.
- C. Automatic change and hearing rights.
  - 1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
  - 2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the

applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1442. Cessation of MED Coverage**

The Department shall not approve any individual or family who has applied on or after May 1, 2011 as eligible for MED coverage. With respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1028, effective May 1, 2011 (Supp. 11-2).

**R9-22-1443. Closing New Eligibility for Persons Not Covered under the State Plan**

- A. Definition. For purposes of this Section, "AHCCCS Care" refers to the eligibility category that includes individuals encompassed within the expanded definition of "eligible person" under A.R.S. § 36-2901.01 and R9-22-1428(4), but who do not meet eligibility criteria for an optional or mandatory Title XIX coverage group described in the Arizona State Plan for Medicaid.
- B. General Rule. Except as provided by this Section, neither the Department nor the Administration shall approve an individual for AHCCCS Care with an effective date of eligibility on or after July 8, 2011.
- C. Exception for pending applications. With respect to any applications that are pending as of July 8, 2011, the Department and the Administration shall approve any individual as eligible for AHCCCS Care who has met all eligibility requirements for AHCCCS Care during or after the month of application but prior to July 8, 2011, and has continuously met all eligibility requirements for AHCCCS Care since that date.
- D. Exception for children. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
  - 1. Was determined eligible under the Arizona State Plan for Medicaid based on being under the age of 19;
  - 2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B) of this Section; and
  - 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- E. Exception for KidsCare. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
  - 1. Was determined eligible under 9 A.A.C. 31 based on being under the age of 19;
  - 2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B) of this Section; and
  - 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- F. Exception for Young Adult Transitional Insurance (YATI). The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
  - 1. Was determined eligible for YATI under R9-22-1432;
  - 2. Would otherwise be discontinued due to reaching the age of 21 on or after July 8, 2011 under subsection (A) of this Section; and
  - 3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 21.

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- G.** Exception for certain SSI-MAO. The Department and the Administration shall approve as eligible for AHCCCS Care, on or after July 8, 2011, an individual who:
1. Was determined eligible for AHCCCS Care; and
  2. Whose eligibility category is changed on or after June 28, 2011, from AHCCCS Care to eligibility based on R9-22-1501(A)(1) (SSI Medical Assistance Only) because the individual, at the time of the change in eligibility category, is age 65 or over, under the age of 65 with Medicare coverage, or who has been determined by ADHS to have a Serious Mental Illness; but who
  3. Subsequent to the change in eligibility category, is determined not to meet eligibility requirements under Article 15; but only if
  4. The individual meets all eligibility requirements for AHCCCS Care on and after the date the individual is determined not to meet eligibility requirements under Article 15.
- H.** Exception for redeterminations. This Section does not prohibit the redetermination of an individual as eligible for AHCCCS Care on or after July 8, 2011, if the individual was determined eligible for AHCCCS Care prior to July 8, 2011 and has remained continuously eligible for AHCCCS Care since July 8, 2011 or the date on which the individual was determined eligible for AHCCCS Care under subsections (C), (D), and (E) of this Section.
- I.** Discontinuance for other reasons. Nothing in this Section prohibits or restricts the Department or the Administration from discontinuing AHCCCS Care for an individual who does not meet any other eligibility criteria set forth elsewhere in this Chapter including but not limited to discontinuance based on the individual's failure to verify eligibility information upon an application or redetermination.
- J.** Review of anticipated expenditures. At least monthly, the Director shall review the most recent estimate of the anticipated expenditures for the remainder of the state fiscal year as compared to funds remaining in the appropriations made to the agency for the state fiscal year as well as any other known or reasonably anticipated sources of other funding. Based on that review the Director may, subject to approval by the Center for Medicare and Medicaid Services, re-open the AHCCCS Care program to new enrollment otherwise prohibited by this Section.
- K.** At least 30 days prior to the effective date of any changes to eligibility for the AHCCCS Care program as described in this Section, public notice shall be provided via publication on the AHCCCS web site unless shorter notice is necessary to maintain a program that is reasonably anticipated to remain within available funding.
- Historical Note**
- New Section made by exempt rulemaking at 17 A.A.R. 1345, effective July 8, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2624, effective July 8, 2011 (Supp. 11-4).
- ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED**
- R9-22-1501. General Information**
- A.** General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article:
1. A person who is aged, blind, or disabled and does not receive SSI cash; and
  2. A person terminated from the SSI cash program under R9-22-1505.
- B.** Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
- "Aged" means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).
- "Blind" means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2).
- "Disabled" means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E).
- C.** Confidentiality. The Administration shall maintain the confidentiality of an applicant's or member's records and limit the release of safeguarded information under R9-22-512.
- D.** Application process.
1. A person may apply for AHCCCS medical coverage by submitting a signed application to any Administration office or outstation location under R9-22-1406.
  2. The provisions in R9-22-1406(B), (C), and (E) apply to this Section.
  3. The application date is the date a signed application is received at any Administration office or outstation location approved by the Director.
  4. An applicant who files an application may withdraw the application, either orally or in writing. If an applicant withdraws an application, the Administration shall send the applicant a denial notice under subsection (G).
  5. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants.
  6. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
  7. The Administration shall complete an eligibility determination on an application filed on behalf of a deceased applicant, if the application is filed in the month of the applicant's death.
- E.** Redetermination of eligibility for a person terminated from the SSI cash program.
1. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility under subsection (E)(2) is completed.
  2. Coverage group screening. The Administration shall screen a person for eligibility under any coverage group under A.R.S. §§ 36-2901(6)(a)(i), (ii), (iii), (iv), and (v) and 36-2934.
    - a. If a person files an application for Arizona Long-Term Care System (ALTCS) coverage, the Administration shall determine eligibility under 9 A.A.C. 28, Article 4.
    - b. If an applicant or member is aged, blind, or disabled, but not in need of long-term care services, the Administration shall determine eligibility under this Article.
    - c. For all other persons, the Administration shall refer the applicant's case to the Department for an eligibility decision under Article 14.
  3. Eligibility decision.
    - a. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice

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- as under subsection (G) informing the applicant that AHCCCS medical coverage is approved.
- b. If a person is ineligible, the Administration shall send a notice as under subsection (G) to deny AHCCCS medical coverage.
- F.** Eligibility effective date. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
- G.** Notice for approval or denial. The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the intended action, and:
1. If approved, the notice shall contain the effective date of eligibility.
  2. If approved under FESP, the notice shall also contain:
    - a. The emergency services certification end date,
    - b. A statement detailing the reason for the denial of full services,
    - c. The legal authority supporting the decision,
    - d. Where the legal authority supporting the decision can be found,
    - e. An explanation of the right to request a hearing, and
    - f. The date by which a request for hearing shall be received by the Administration.
  3. If denied, the notice shall contain:
    - a. The effective date of the denial;
    - b. The reason for the denial, including specific financial calculations and the financial eligibility standard, if applicable;
    - c. Legal authority supporting the decision;
    - d. Where the legal authority supporting the decision can be found;
    - e. An explanation of the right to request a hearing; and
    - f. The date by which a request for hearing shall be received by the Administration.
- H.** Reporting and verifying changes.
1. An applicant or a member shall report to the Administration the following changes for the applicant or member, the applicant's or member's spouse, and the applicant or member's dependent children:
    - a. Change of address;
    - b. Change in the household's members;
    - c. Change in income;
    - d. Death;
    - e. Change in marital status;
    - f. Change in school attendance;
    - g. Change in Arizona state residency; and
    - h. Any other change that may affect the member's or applicant's eligibility.
  2. A member shall report to the Administration the following changes:
    - a. Admission to a penal institution,
    - b. Change in U.S. citizenship or immigrant status,
    - c. Receipt of a Social Security number, and
    - d. Change in first- or third-party liability that may contribute to the payment of all or a portion of the person's medical costs.
  3. A person other than a member or an applicant who reports a change to the Administration either orally or in writing shall include the:
    - a. Name of the affected applicant or member;
    - b. Description of the change;
    - c. Date the change occurred;
    - d. Name of the person reporting the change; and
    - e. Social Security or case number of the applicant or member, if known.
  4. An applicant or a member shall provide verification of changes if requested by the Administration.
  5. An applicant or a member shall report anticipated changes in eligibility to the Administration as soon as the person knows that the change will occur.
  6. An applicant or a member shall report an unanticipated change to the Administration within 10 days following the date the change occurred.
- I.** Processing of changes and redeterminations. If a member receives AHCCCS medical coverage under subsection (A), the Administration shall redetermine the member's eligibility at least once every 12 months or more frequently when changes occur that may affect eligibility.
- J.** Actions that may result from a redetermination or change. In processing a redetermination or change, the Administration shall determine whether there should be:
1. No change in eligibility,
  2. Discontinuance of eligibility if a condition of eligibility is no longer met, or
  3. A change in the program under which a person receives AHCCCS medical coverage.
- K.** Notice of discontinuance.
1. Contents of notice. The Administration shall issue a notice when it takes action to discontinue a member's eligibility. The notice shall contain the following information:
    - a. A statement of the action that is being taken;
    - b. The effective date of the action;
    - c. The reason for the discontinuance, including specific financial calculations and the financial eligibility standard if applicable;
    - d. The legal authority that supports the action proposed by the Administration;
    - e. Where the legal authority supporting the decision can be found;
    - f. An explanation of the right to request a hearing; and
    - g. The date by which a hearing request shall be received by the Administration and the right to continue medical coverage pending appeal.
  2. Advance notice of changes in eligibility. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (K)(3), the Administration shall issue an advance notice when an adverse action is taken to suspend, reduce or discontinue eligibility.
  3. Exceptions from advance notice. The Administration shall issue a notice to a member to discontinue eligibility no later than the effective date of the action if:
    - a. The member provides to the Administration a clearly written statement, signed by that member, that:
      - i. Services are no longer wanted; or
      - ii. Gives information that requires a discontinuance or reduction of services and indicates that the member understands that this is the result of supplying the information;
    - b. The member provides information to the Administration that requires a discontinuance of eligibility and a member signs a written statement waiving advance notice;
    - c. The member cannot be located and mail sent to the member's last known address has been returned as undeliverable under 42 CFR 431.213(d) subject to reinstatement of discontinued eligibility;

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- d. The member has been admitted to a public institution where a member is ineligible for coverage;
  - e. The member has been approved for Medicaid in another state; or
  - f. The Administration receives information confirming the death of the member.
- L.** Request for hearing. An applicant or member may request a hearing under Chapter 34 for any of the following adverse actions:
- 1. Complete or partial denial of eligibility,
  - 2. Discontinuance or reduction of AHCCCS medical coverage, or
  - 3. Delay in the eligibility determination beyond the timeframes listed in R9-22-1501(D).
- M.** Assignment of rights. A person determined eligible assigns rights to all types of medical benefits to which the person is entitled under operation of law under A.R.S. § 36-2903.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-1502. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1503. Financial Eligibility Criteria**

- A.** General income eligibility. Except as provided under subsection (B) of this rule, the Administration or its designee shall count the identified income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K.
- B.** Exceptions.
- 1. In-kind support and maintenance under 42 U.S.C. 1382a(a)(2)(A) is excluded.
  - 2. For a person living with a spouse, the Administration or its designee calculates net income for an eligible couple under 20 CFR 416.1160 as of April 1, 2013, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments, even if the spouse is not eligible for or applying for SSI or coverage under this Article.
  - 3. In determining the net income of a married couple living with a child or the net income of a person who is not living with a spouse but living with a child, a child allocation is allowed as a deduction from the combined net

income of the couple for each child regardless of whether the child is ineligible or eligible. For the purposes of this Section, a child means a person who is unmarried, natural or adopted, and under age 18 or under age 22 if a full-time student. Each child's allocation deduction is reduced by that child's income, including public income maintenance payments, using the methodology under 20 CFR 416.1163(b)(1) and (2) as of April 1, 2013, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

- 4. In determining the income deemed available to an applicant who is a child from an ineligible parent or parents, an allocation for each eligible or ineligible child of the parent is allowed as a deduction from the parent's income under 20 CFR 416.1165(b). The child's allocation is reduced by that child's income, including public income maintenance payments.
- 5. In determining the income of a person who receives an annual Title II Cost of Living Allowance (COLA) increase, the COLA amount is disregarded from January until the Administration applies the effective income limits under R9-22-1504 based on the FPL for the calendar year.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1504. Eligibility For A Person Who is Aged, Blind, or Disabled**

- A.** To be eligible for AHCCCS medical coverage, an applicant shall meet the conditions of eligibility and requirements in this Article and:
- 1. Meet one of the income tests described in subsection (B) or (C), or
  - 2. The special requirements in R9-22-1505.
- B.** The Administration shall determine whether the applicant's countable income, as described in R9-22-1503, is less than or equal to 100 percent of the SSI FBR, as adjusted annually.
- C.** The Administration shall determine whether the applicant's countable income, as described in R9-22-1503, without deducting the amount from earned income under 42 U.S.C. 1382a(b)(4)(B)(iii), is less than or equal to 100 percent FPL as adjusted annually.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1505. Eligibility for Special Groups**

- A.** The following are considered special groups:
- 1. A person meeting the requirements in A.R.S. § 36-2903.03 who:
    - a. Is aged, blind, or disabled under 42 CFR 435.520, 42 CFR 435.530, or 42 CFR 435.540 as of October 1,



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2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

- b. Received SSI cash or AHCCCS medical coverage under this subsection, or subsections (A)(2), (A)(3), or (A)(4) on or before August 21, 1996;
- c. Was residing in the United States under color of law on or before August 21, 1996; and
- d. Meets the requirements under this Article;
2. A disabled child (DC) under 42 U.S.C. 1396a(a)(10)(A)(i)(II). A disabled child is a child who:
  - a. Was receiving SSI cash benefits as a disabled child on August 22, 1996;
  - b. Lost SSI cash benefits effective July 1, 1997, or later, due to a disability determination under Section 211(d) of Subtitle B of P.L. 104-193;
  - c. Continues to meet the disability requirements for a child that were in effect on August 21, 1996; and
  - d. Meets the requirements under this Article;
3. A disabled adult child (DAC), under 42 U.S.C. 1383c(c) who:
  - a. Was determined disabled by the Social Security Administration before attaining the age of 22 years,
  - b. Became entitled to or received an increase in child's insurance benefits under Title II of the Act on the basis of blindness or disability,
  - c. Was terminated from SSI cash benefits due to entitlement to or an increase in income under Title II of the Act,
  - d. Meets the requirements under this Article, and
  - e. Is 18 years of age or older;
4. A disabled widow or widower (DWW) under 42 U.S.C. 1383c(b) and (d) who:
  - a. Is blind or disabled,
  - b. Is ineligible for Medicare Part A benefits,
  - c. Received SSI cash benefits the month before Title II of the Act benefit payments began,
  - d. Meets the requirements under this Article;
  - e. Is at least 50 years of age but under age 65; and
  - f. Is unmarried.
5. Under 42 CFR 435.135, a person who:
  - a. Is aged, blind, or disabled;
  - b. Receives benefits under Title II of the Act;
  - c. Received SSI cash benefits in the past;
  - d. Received SSI cash benefits and Title II of the Social Security Act benefits concurrently for at least one month anytime after April 1977;
  - e. Became ineligible for SSI cash benefits while receiving SSI and benefits under Title II of the Act concurrently; and
  - f. Meets the requirements under this Article.
- B. Income for special groups.**
  1. Except as provided in subsection (B)(2), income eligibility is determined using the income criteria in R9-22-1503.
  2. Exceptions to income for special groups.
    - a. For a person in the DAC coverage group under subsection (A)(3), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(c).
    - b. For a person in the DWW coverage group, under subsection (A)(4), the applicant's Title II of the Social Security Act benefits are disregarded in deter-

mining income eligibility under 42 U.S.C. 1383c(b) and (d).

- c. For an applicant or member in the coverage group under subsection (A)(5), the portion of the applicant's or member's Title II of the Social Security Act benefits attributed to cost-of-living adjustments received by the applicant since the effective date of SSI ineligibility is disregarded in determining income eligibility under 42 CFR 435.135.

- C. 100 percent FBR.** As a condition of eligibility for all special groups, countable income shall be equal to or less than 100 percent of the SSI FBR, as adjusted annually.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1506. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1507. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1508. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**ARTICLE 16. HOSPITAL PRESUMPTIVE ELIGIBILITY****R9-22-1601. General Eligibility Requirements**

- A.** Notwithstanding Article 3, a qualified hospital may determine Hospital Presumptive Eligibility (HPE), on the basis of preliminary information, that an individual is eligible for AHCCCS medical coverage during the presumptive eligibility period described in this section, if the individual is a United States citizen or eligible qualified alien, and the individual is:
  1. Pregnant with gross household income that does not exceed 156% of the FPL;
  2. An adult who meets the requirements of R9-22-1427(E);
  3. A caretaker relative as defined in R9-22-1401(B) with gross household income that does not exceed 106% of the FPL;
  4. Under age 19 with gross household income that does not exceed the limit set in R9-22-1427(D) for the child's age;
  5. A woman screened for breast or cervical cancer by an Arizona program of the National Breast and Cervical Cancer Early Detection Program who meets the requirements of R9-22-2003(A); or
  6. A former foster care child who meets the requirements of R9-22-1432.

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- B.** Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning: "Qualified hospital" means a hospital that has signed an agreement with the Administration to process HPE applications and has not been disqualified.
- C.** Application Process:
1. Right to apply. A person may apply for presumptive eligibility for AHCCCS medical coverage by submitting an Administration-approved application to the qualified hospital.
  2. Application. To initiate the application process, the qualified hospital will accept an application from the applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Internal Revenue Service (IRS) Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant by submitting a written or online application under 42 CFR 435.907.
- D.** To establish presumptive eligibility, an applicant must complete and submit an AHCCCS-approved presumptive eligibility application signed under penalty of perjury to a qualified hospital. The applicant must attest to the name(s), relationship(s), and income of all persons in the household. In addition, the applicant must provide and attest to the following information regarding each household member on whose behalf AHCCCS medical coverage is sought:
1. The individual's date of birth;
  2. Whether the individual is pregnant;
  3. Whether the individual has been determined eligible for Breast and Cervical Cancer Treatment Program, described under Article 20;
  4. Whether the individual is a former foster child, described under R9-22-1432;
  5. The U.S. citizenship status or eligible qualified alien status under A.R.S. 36-2903.03 of the individual; and
  6. The individual's permanent and mailing addresses;
  7. The individual's Arizona residency status; and
  8. Whether the individual has Medicare coverage.
- E.** Presumptive eligibility begins on the date the hospital determines an individual's presumptive eligibility and ends with the earlier of:
1. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
  2. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.
- F.** An individual may not be determined presumptively eligible more often than once every two years.
- G.** Coverage and reimbursement of services.
1. The Administration shall provide coverage of medically necessary services described under Article 2 to persons determined eligible for HPE on a fee-for-service basis.
  2. Providers shall submit claims for services provided to persons determined eligible for HPE to the Administration as described under Article 7.
- H.** A member may withdraw from HPE coverage by notifying the Administration or its designee.
- I.** Upon determining an individual presumptively eligible, the qualified hospital shall:
1. Notify the applicant at the time a determination regarding presumptive eligibility is made, in writing and orally if appropriate, of the determination for each individual on whose behalf presumptive eligibility was requested and the effective date of the presumptive eligibility;
  2. Provide the applicant with a regular AHCCCS-approved application form and inform the applicant that the applicant may file an application for Medicaid with the Administration or its designee;
  3. Notify AHCCCS of the presumptive eligibility determination;
  4. Notify the applicant at the time the determination is made that presumptive eligibility ends with the earlier of:
    - a. In the case of an individual on whose behalf an application has been submitted to AHCCCS or its designee under Article 3, the day on which AHCCCS or its designee makes a determination on that application; or
    - b. In the case of an individual on whose behalf an application has not been submitted to AHCCCS or its designee under Article 3, on the last day of the following month in which the determination of presumptive eligibility was made by the qualified hospital.
- J.** A determination by a qualified hospital that an individual is not presumptively eligible is not appealable under Chapter 34. If a qualified hospital denies an individual presumptive eligibility, the individual may apply for coverage by submitting an application to the Administration or its designee.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4). New Section made by final rulemaking at 20 A.A.R. 3436, effective January 1, 2015 (Supp. 14-4).

**R9-22-1602. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1603. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1604. Expired**



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**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1617. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1618. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1619. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1620. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1621. Reserved****R9-22-1622. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1623. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1624. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1625. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1626. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1627. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1628. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1629. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1630. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1631. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1632. Reserved****R9-22-1633. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1634. Repealed**

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**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1635. Reserved****R9-22-1636. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**ARTICLE 17. ENROLLMENT****R9-22-1701. Enrollment-Related Definitions**

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

“Annual enrollment choice” means the annual opportunity for a person to change contractors.

“Auto-assignment algorithm” or “Algorithm” means a formula used by the Administration to assign to a contractor a member who did not make a timely choice under R9-22-1702.

“CMDP” means Comprehensive Medical and Dental Program.

“Disenrollment” means the discontinuance of a person’s entitlement to receive covered services from a contractor of record.

“Enrollment” means the process by which an eligible person becomes a member of a contractor’s plan.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1702. Enrollment of a Member with an AHCCCS Contractor**

**A.** General enrollment requirements. The Administration shall enroll a member with a contractor as described in this Section, unless the member has pre-selected a contractor on the application:

1. Except as provided in subsections (A)(3), (A)(5), and (C), a member who is determined to be eligible under this Chapter and resides in an area served by more than one contractor, may choose an available contractor serving the member’s GSA within 30 days from the date of notice of enrollment. A Native American member may select IHS or another available contractor.
2. If the member does not make a choice under subsection (A)(1), the Administration shall immediately auto-assign the member to:
  - a. IHS if the member is a Native American living on a reservation,

- b. A contractor based on family continuity, or
  - c. A contractor by using the auto-assignment algorithm.
3. If the member’s period of ineligibility and disenrollment from the contractor of record is for a period of less than 90 days, the Administration shall enroll the member with the member’s most recent contractor of record, if available, except if:
  - a. The member no longer resides in the contractor’s GSA;
  - b. The contractor’s contract is suspended or terminated;
  - c. The member was previously enrolled with CMDP but at the time of re-enrollment the member is not a foster care child;
  - d. The member chooses another contractor or chooses IHS, if available to the member, during the annual enrollment choice period; or
  - e. The member was previously enrolled with a contractor but at the time of re-enrollment the member is a foster care child.
4. When the member’s disenrollment period is more than 90 days, the member may select a contractor as described in subsection (A)(1).
5. The Administration shall not enroll a member with a contractor if a member:
  - a. Is eligible for the FESP under R9-22-1419;
  - b. Is eligible for less than 30 days from the date the Administration receives notification of a member’s eligibility, except for a member who is enrolled with CMDP or IHS;
  - c. Is eligible only for a retroactive period of eligibility, except for a member who is enrolled with CMDP or IHS; or
  - d. Resides in an area not served by a contractor.
- B.** Fee-for-service coverage. A member not enrolled with a contractor under subsection (A)(5) shall obtain covered medical services from an AHCCCS-registered provider on a fee-for-service basis under Article 7.
- C.** Foster care child. The Administration shall enroll a member with CMDP if the member is a foster care child under A.R.S. § 8-512.
- D.** Family Planning Services Extension Program. A member eligible for the Family Planning Services Extension Program under R9-22-1431, shall remain enrolled with the member’s contractor of record or IHS.
- E.** Contractor or IHS enrollment change for a member.
  1. The Administration shall change a member’s enrollment if the member requests a change to an available contractor or IHS during an annual enrollment period. A Native American may change from an available contractor to IHS or from IHS to an available contractor at any time.
  2. The Administration shall approve a change in enrollment for any member if the change is a result of the final outcome of a grievance under 9 A.A.C. 34.
  3. A member may choose a different contractor if the member moves into a GSA not served by the current contractor or if the contractor is no longer available. If the member does not select a contractor, the Administration shall auto-assign the member as provided in subsection (A)(2).
  4. The Administration shall provide the member 60-day advance notice of the member’s option to change plans by the member’s annual enrollment date.
  5. A member may disenroll from a plan if:
    - a. The member moves out of the GSA;

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- b. The plan does not, because of moral or religious objections, cover the service a member seeks; or
  - c. The member needs related services to be performed at the same time; not all related services are available within the network; and the member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.
6. For exceptions to this Article, the Administration shall approve a change for an enrolled member as determined by the Director.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1703. Effective Date of Enrollment with a Contractor**

- A. Effective date of enrollment. A member's date of enrollment is the date enrollment action is taken by the Administration. However, if a plan change occurs for an annual enrollment choice, the effective date is the month of the member's enrollment anniversary date.
- B. Financial liability of the contractor. The contractor shall be financially liable for an enrolled member's care as specified in contract.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1704. Newborn Enrollment**

- A. General.
  - 1. The Administration shall enroll a newborn child of an eligible mother with an available contractor or IHS, based on the mother's enrollment.
  - 2. The Administration shall auto-assign a newborn child of an eligible mother who is not enrolled with a contractor or IHS or who is enrolled with CMDP. When a mother enrolled in CMDP has a newborn and the newborn is surrendered to Administration on Children, Youth and Families (ACYF), the newborn is then enrolled with CMDP.
  - 3. The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 30 days from the date of notice of enrollment.
- B. Financial liability for newborns. The contractor shall be financially liable for the medical care of a newborn as specified in contract.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Section repealed; new Section made by final

rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1705. Guaranteed Enrollment Period**

- A. General. Except for members enrolled with IHS or CMDP, the Administration shall provide a guaranteed enrollment period for a one-time period that begins on the effective date of the member's initial enrollment with a contractor and ends on the last day of the fifth full calendar month after the date of the member's initial enrollment.
- B. Exceptions to guaranteed period. The Administration shall not grant a guaranteed enrollment period or shall terminate a guaranteed enrollment period as provided in subsection (C), if the member:
  - 1. Did not meet the conditions of eligibility when initially enrolled with the contractor;
  - 2. Except as provided in 9 A.A.C. 22, Article 12, is an inmate of a public institution as defined in 42 CFR 435.1010;
  - 3. Dies;
  - 4. Moves out-of-state;
  - 5. Voluntarily withdraws from the AHCCCS program;
  - 6. Is adopted; or
  - 7. Has whereabouts that are unknown.
- C. Disenrollment effective date. The Administration shall terminate any guaranteed enrollment period to which the member is not entitled effective on:
  - 1. The date the member is admitted to a public institution under subsection (B);
  - 2. The member's date of death;
  - 3. The last day of the month in which the Administration receives notification that a member moved out-of-state;
  - 4. The date the Administration receives written notification of the member's voluntary withdrawal from the AHCCCS program;
  - 5. The last day of the month in which the Administration receives notification that a member's adoption proceedings are finalized; or
  - 6. The last day of the month in which the Administration receives notification that a member's whereabouts are unknown.
- D. Retroactive adjustments. The Administration shall adjust the member's eligibility and enrollment retroactively under subsection (C).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**ARTICLE 18. RESERVED****ARTICLE 19. FREEDOM TO WORK**

*Article 19, consisting of Sections R9-22-1901 through R9-22-1922, made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).*

**R9-22-1901. General Freedom to Work Requirements**

Under 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and (XVI), the Administration shall determine eligibility for AHCCCS medical services, under Article 2 of this Chapter, using the eligibility criteria and requirements under this Article for an applicant or member who is:

- 1. At least 16 years of age, but less than 65 years of age,
- 2. Employed, and
- 3. Not income eligible under A.R.S. § 36-2901(6)(a).

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**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1902. General Administration Requirements**

The Administration shall comply with the confidentiality rule under R9-22-512(C).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1903. Application for Coverage**

- A. A person may apply by submitting an application to an Administration office.
- B. The application date is the date the application is received at an Administration office or outstation location approved by the Director as described under R9-22-1406(A).
- C. The provisions in R9-22-1406(B) and (D) apply to this Section.
- D. The applicant or representative who files the application may withdraw the application for coverage either orally or in writing. An applicant withdrawing an application shall receive a denial notice under R9-22-1904.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1904. Notice of Approval or Denial**

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action, and:

1. If approved, the notice shall contain:
  - a. The effective date of eligibility,
  - b. The amount the person shall pay, and
  - c. An explanation of the person's hearing rights specified in 9 A.A.C. 34.
2. If denied, R9-22-1501(G)(3) applies.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1905. Reporting and Verifying Changes**

An applicant or member shall report and verify changes, as described under R9-22-1501(H), to the Administration.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1906. Actions that Result from a Redetermination or Change**

The processing of a redetermination or change shall result in one of the following actions:

1. No change in eligibility or premium,
2. Discontinuance of eligibility if a condition of eligibility is no longer met,

3. A change in premium amount, or
4. A change in the coverage group under which a person receives AHCCCS medical coverage.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1907. Notice of Adverse Action Requirements**

- A. The requirements under R9-22-1501(K)(1) apply.
- B. Advance notice of a change in eligibility or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to discontinue eligibility, or increase the premium amount.
- C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
  1. A member provides a clearly written statement, signed by that member, that services are no longer wanted.
  2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that this must be the result of supplying that information, and the member signs a written statement waiving advance notice;
  3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable subject to reinstatement of discontinued services under 42 CFR 431.231(d);
  4. A member has been admitted to a public institution where a person is ineligible for coverage;
  5. A member has been approved for Medicaid in another state; or
  6. The Administration receives information confirming the death of a member.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1908. Request for Hearing**

An applicant or member may request a hearing under 9 A.A.C. 34.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1909. Conditions of Eligibility**

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count the income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
  - a. The unearned income of the applicant or member shall be disregarded,
  - b. The income of a spouse or other family member shall be disregarded, and
  - c. The deduction for a minor child shall not apply;

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6. Comply with the member responsibility provisions under R9-22-1502(D) and (F).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). Section repealed; new Section made by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1910. Prior Quarter Eligibility**

A person may be made eligible during a prior quarter period when applying for the Freedom to Work program, as described under Article 3.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-1911. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1912. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1913. Premium Requirements**

- A.** As a condition of eligibility, an applicant or member shall:
1. Pay the premium required under subsection (B).
  2. Not have any unpaid premiums for more than one month's premium amount.
- B.** The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
1. A member who has countable income:
    - a. Under \$500, the monthly premium payment shall be \$0.
    - b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
  2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1914. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1915. Institutionalized Person**

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution if federal financial participation (FFP) is not available, or
2. Age 21 through age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1916. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1917. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1918. Additional Eligibility Criteria for the Basic Coverage Group**

An applicant or member shall meet the following eligibility criteria:

1. Disabled. As a condition of eligibility, an applicant or member shall be disabled. Disabled means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E), except employment activity, earnings, and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability.
2. Employed. As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant or member's work.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1919. Additional Eligibility Criteria for the Medically Improved Group**

As a condition of eligibility for the Medically Improved Group, a member shall:

1. Be employed. Under this Section, employed means an individual who:
  - a. Earns at least the minimum wage and works at least 40 hours per month, or
  - b. Has gross monthly earnings at least equal to those earned by an individual who is earning the minimum wage working 40 hours per month.
2. Cease to be eligible for medical coverage under R9-22-1918 or a similar Basic Coverage Group program administered by another state because the member, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be disabled; and



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3. Continues to have a severe medically determinable impairment, as determined under Social Security Act section 1902(a)(10)(A)(ii)(XVI).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1920. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1921. Enrollment**

The Administration shall enroll members under Article 17 of this Chapter. If a member has not paid a required premium, the Administration shall not grant a guaranteed enrollment period.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1922. Redetermination of Eligibility**

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under R9-22-1918, the Administration shall determine if the member is eligible under other coverage groups including the medically improved group.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

## ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

**R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions**

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

"AZ-NBCCEDP" means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

"Cryotherapy" means the destruction of abnormal tissue using an extremely cold temperature.

"LEEP" means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

"Peer-reviewed study" means that, prior to publication, a medical study has been subjected to the review of medical experts who:

- Have expertise in the subject matter of the study,
- Evaluate the science and methodology of the study,
- Are selected by the editorial staff of the publication, and
- Review the study without knowledge of the identity or qualifications of the author.

"WWHP" means the Well Women Healthcheck Program administered by the Arizona Department of Health Services.

The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2002. General Requirements**

- A. Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.
- B. Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.
- C. Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.
- D. A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.
- E. A woman qualified under this Article shall pay co-pays as described in R9-22-711.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2003. Eligibility Criteria**

- A. General. To be eligible under this Article, a woman shall meet the requirements of this Article and:
  1. Be screened for breast and cervical cancer through AZ-NBCCEDP;
  2. Be less than 65 years of age;
  3. Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;
  4. Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a precancerous cervical lesion, as specified in R9-22-2004;
  5. Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2002; and
  6. Meet the requirements under R9-22-1417 and R9-22-1418.
- B. Ineligible woman. A woman is ineligible under this Article if the woman:
  1. Is an inmate of a public institution and federal financial participation (FFP) is not available,
  2. Is at least age 21 but less than age 65 and resides in an Institution for Mental Disease (IMD) as defined in R9-22-112, except if allowed under the Administration's Section 1115 waiver, or
  3. No longer meets an eligibility requirement under this Article.
- C. Metastasized cancer. The AHCCCS Chief Medical Officer may continue a woman's eligibility under this Article if a metastasized cancer is found in another part of the woman's

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body and that metastasized cancer is a known or a presumed complication of the breast or cervical cancer as determined by the treating physician.

- D. Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the AZ-NBCCEDP program and additional breast cancer or cervical cancer, including a pre-cancerous cervical lesion, is found.
- E. Ineligible male. A male is precluded from receiving screening and diagnostic services under the AZ-NBCCEDP program and is ineligible under this Article.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2004. Treatment**

- A. Breast cancer. Coverage for treatment for breast cancer under this Article shall conclude on the last provider visit for the specific treatment of the cancer or at the end of hormonal therapy for the cancer, whichever is later. For purposes of this subsection treatment means:
  - 1. Lumpectomy or surgical removal of breast cancer;
  - 2. Chemotherapy;
  - 3. Radiation therapy; and
  - 4. A treatment for breast cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- B. Pre-cancerous cervical lesion. Coverage for treatment for a pre-cancerous cervical lesion under this Article, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude on the last provider visit for specific treatment for the pre-cancerous lesion. For purposes of this subsection treatment means:
  - 1. Conization;
  - 2. LEEP;
  - 3. Cryotherapy; and
  - 4. A treatment for pre-cancerous cervical lesion that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- C. Cervical cancer. Coverage for treatment for cervical cancer under this Article shall conclude on the last provider visit for the specific treatment for the cancer. For purposes of this subsection treatment means:
  - 1. Surgery;
  - 2. Radiation therapy;
  - 3. Chemotherapy; and
  - 4. A treatment for cervical cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2005. Application Process**

- A. Application. A woman may apply for eligibility under this Article by submitting a complete application as specified in R9-22-1406.
- B. Submitting the application. The woman may complete and submit an application at the time of the AZ-NBCCEDP

screening. The AZ-NBCCEDP staff may mail or fax the application directly to the Administration.

- C. Date of application. The date of the application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer or cervical cancer, including a pre-cancerous cervical lesion.
- D. Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:
  - 1. Provide medical insurance information, including any changes in medical insurance; and
  - 2. Inform the Administration about a change in address, residence, and alienage status.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2006. Approval, Denial, or Discontinuance of Eligibility**

- A. Eligibility determination. The Administration shall determine eligibility under this Article and send the notice under subsection (B) or (C) within seven days of receiving a complete application.
- B. Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:
  - 1. The name of the eligible woman, and
  - 2. The effective date of eligibility.
- C. Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:
  - 1. The name of the ineligible woman,
  - 2. The specific reason why the woman is ineligible,
  - 3. The legal citations supporting the reason for the denial,
  - 4. The location where the woman can review the legal citations, and
  - 5. Information regarding the woman's appeal and request for hearing rights.
- D. Discontinuance.
  - 1. Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman a Notice of Action no later than 10 days before the effective date of the discontinuance.
  - 2. The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:
    - a. Receives a written statement from the woman voluntarily withdrawing from AHCCCS,
    - b. Receives information confirming the death of the woman,
    - c. Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or
    - d. Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.
  - 3. The Notice of Action shall contain the:
    - a. Name of the ineligible woman,
    - b. Effective date of the discontinuance,
    - c. Specific reason why the woman is discontinued,
    - d. Legal citations supporting the reason for the discontinuance,
    - e. Location where the woman can review the legal citations, and

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- f. Information regarding the woman's appeal and request for hearing rights.
- E. Request for hearing. A woman who is denied, or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Chapter 34.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2007. Effective and End Date of Eligibility**

- A. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
- B. The end date of eligibility:
1. For breast cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer or at the end of hormonal therapy for the cancer, whichever is later.
  2. For pre-cancerous cervical lesion, is four months after the last provider visit for a treatment specified in R9-22-2004 for the pre-cancerous lesion.
  3. For cervical cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4). Section amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-2008. Redetermination of Eligibility**

- A. Redetermination. Except as provided in subsection (B), the Administration shall redetermine eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBC-CEDP at redetermination.
- B. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND**

*Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).*

**R9-22-2101. General Provisions**

- A. A.R.S. § 36-2903.07 establishes the Administration as the authority to administer the Trauma and Emergency Services Fund.
- B. The Administration shall distribute 90% of monies from the trauma and emergency services fund to a level I trauma center, as defined in subsection (F) of this Section, for unrecovered trauma center readiness costs as defined in subsection (F) of this Section. Reimbursement is limited to no more than the

amount of unrecovered trauma center readiness costs as determined in subsections (D) and (E) of this Section. Unexpended funds may be used to reimburse unrecovered emergency room costs under subsection (C) of this Section.

- C. The Administration shall distribute 10% of monies from the trauma and emergency services fund, for unrecovered emergency services costs, to a hospital having an emergency department, using criteria under R9-22-2103. Reimbursement is limited to no more than the amount of unrecovered emergency services costs as determined in R9-22-2103. The Administration may distribute more than 10% of the monies for unrecovered emergency room costs when there are unexpended monies under subsection (B) of this Section.
- D. The Administration shall distribute a reporting tool and guidelines to level I trauma centers to determine, on an annual basis, the unrecovered trauma center readiness costs for level I trauma centers as defined in subsection (F) of this Section. The reporting time-frame is July 1 of the prior year through June 30 of the reporting year. A level I trauma center shall submit the requested data and a copy of the most recently completed uniform accounting report under A.R.S. § 36-125.04 to the Administration no later than October 31 of each reporting year.
- E. When a level I trauma center closes in a county where there are one or more level I trauma center(s) remaining in operation, the following shall occur:
1. The closing level I trauma center shall submit the requested data under subsection (D) of this Section for the months of the reporting time-frame in which it met the definition of a level I trauma center, and
  2. The data under subsection (D) of this Section, which is submitted by the closing level I trauma center, shall be added to the remaining level I trauma center(s) in that county for the current reporting time-frame only.
- F. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
1. "Level I trauma center" means any acute care hospital that:
    - a. Provides in-house 24-hour daily dedicated trauma surgical services as defined in A.R.S. § 36-2201(26) pertaining to a trauma center, or
    - b. Is recognized as a rural regional trauma center that was providing formal organized trauma services on or before January 1, 2003.
  2. On or after January 1, 2005, "level I trauma center" means any acute care hospital designated by the Arizona Department of Health Services as a level I trauma center.
  3. "Unrecovered trauma center readiness costs" means losses incurred treating trauma patients:
    - a. Determined in accordance with Generally Accepted Accounting Principles,
    - b. Based on both clinical and professional costs incurred by a level I trauma center necessary for the provision of level I trauma care, and
    - c. Based on administrative and overhead costs directly associated with providing level I trauma care.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

**R9-22-2102. Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers**

- A. On or after November 1, 2003, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall take

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into consideration the proportion of those hospitals' trauma case volume. The Administration shall:

1. Recalculate the November 2003 payments in July 2004 using the formula in subsection (B) of this Section;
  2. Recoup November 2003 overpayments by reducing the July 2004 distributions under subsection (C) as appropriate; and
  3. Redistribute recouped funds, with the July 2004 payment, to level I trauma centers underpaid in November 2003.
- B.** On or after January 31 of each year, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall determine each hospital's unrecovered trauma center readiness costs for the current fiscal year using data from the most recent reporting year as provided under R9-22-2101(D) and (E). The proportion of each hospital's share of the fund for unrecovered trauma center readiness costs is determined after considering:
1. The professional, clinical, administrative, and overhead costs directly associated with providing level I trauma care, and
  2. The volume and acuity of trauma care provided by each hospital.
- C.** On or after July 31 of each year, the Administration shall distribute monies to level I trauma centers using monies, under R9-22-2101(B), available in the trauma and emergency services fund at the time of payment according to the proportions calculated and used for the January payments in the same year, under subsection (B) of this Section.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

**R9-22-2103. Distribution of Trauma and Emergency Services Fund: Emergency Services**

On or after June 30 of each year, the Administration shall distribute monies available in the trauma and emergency services fund at the time of payment as follows:

1. As allocated under R9-22-2101(C),
2. To hospitals that had an emergency department from July 1 through June 30 of the prior year, and
3. On a pro rata share of each hospital's cost of uncompensated emergency care as a percentage of the total statewide cost of uncompensated emergency care provided by hospitals under subsection (2) as reported in the uniform accounting reports to the Arizona Department of Health Services under A.R.S. § 36-125.04.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 1748, effective July 1, 2012 (Supp. 12-2).

**R9-22-2104. Additional Trauma and Emergency Services Payments under the Section 1115 Waiver**

- A.** Notwithstanding R9-22-2101(D), for the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the balance of the Trauma and Emergency Services fund in the following manner:

1. Ninety percent of the amount shall be distributed to Level I trauma centers based upon each center's pro rata share of each center's acuity-adjusted volume as a percentage of the total acuity-adjusted volume for all centers in the state. The acuity-adjusted volume is calculated by multiplying the Injury Severity Score employed by trauma.org by the number of trauma cases at that level treated at the center during the reporting year. Hospitals shall report trauma scores and case volume on a worksheet prescribed by the Administration.
  2. Ten percent of the amount shall be distributed proportionately to hospitals that had an emergency department from July 1 through June 30 of the reporting year based the pro rata share of each hospital's cost of emergency care as a percentage of the total statewide cost of emergency care provided by hospitals as reported on the Worksheet B, column 27, line 61 of the hospital's most current Medicare Cost Report as of January 31 following the end of each reporting year.
- B.** For the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the federal financial participation made available under the section 1115 waiver for the purpose of making payments for unrecovered trauma and emergency services as follows:
1. Thirty percent of such funds to a Level I trauma center, in amounts calculated in the same manner as described in subsection (A)(1) of this Section, for any unrecovered trauma center readiness costs not reimbursed under subsection (A) of this Section;
  2. Thirty percent of such funds to a hospital having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsection (A) of this Section; and
  3. Forty percent of such funds to rural hospitals, as defined in R9-22-718 that are not Level I trauma centers as defined in R9-22-2101(F), having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsections (A) and (B)(2) of this Section.
- C.** For the reporting years ending June 30, 2011 and June 30, 2012, payments made under this Article shall not be made in an amount that results in aggregate payments to the hospital by the Administration and contractors exceeding of the upper payment limit for the hospital services as calculated in accordance with 42 CFR 447.
- D.** For the reporting years ending June 30, 2011 and June 30, 2012, to ensure compliance with subsection (C), payments under this Article shall be reconciled to the federal fiscal year that is two years subsequent to the payment.
- E.** Any payments that are determined under subsection (D) to exceed the limit in subsection (C) shall be distributed as described in this Article to hospitals that have not received payments in excess of the limit in subsection (C).

**Historical Note**

New Section made by exempt rulemaking at 18 A.A.R. 1748, effective July 1, 2012 (Supp. 12-2).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 9. Health Services**

### **Chapter 28. Arizona Health Care Cost Containment System –**

#### **Arizona Long-term Care System**

##### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

**R9-28-702**

REMOVE Supp. 15-3  
Pages: 1 - 42

REPLACE with Supp. 16-4  
Pages: 1 - 43

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 9. HEALTH SERVICES****CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ARIZONA LONG-TERM CARE SYSTEM**

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-3).*

*Editor's Note: This Chapter contains rules which were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, §§ 1001 et seq.) as specified in Laws 1992, Ch. 301, § 61 and Ch. 302, § 13, and Laws 1994, Ch. 322, § 21. Exemption from A.R.S. Title 41, Chapter 6 means that AHCCCS did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; AHCCCS did not submit these rules to the Governor's Regulatory Review Council; AHCCCS was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.*

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*Former Section R9-28-101 repealed; new Sections R9-28-101 thru R9-28-111 adopted effective December 8, 1997 (Supp. 97-4).*

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*Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).*

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*Article 8, consisting of Sections R9-28-801 through R9-28-807, made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).*

*Article 8, consisting of Sections R9-28-801 through R9-28-803, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

## Section

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*Article 11, consisting of Sections R9-28-1101 through R9-28-1106, repealed; new Article 11, consisting of Sections R9-28-1101 through R9-28-1108, adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).*

## Section

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**ARTICLE 12. REPEALED**

*Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).*

*Article 12, consisting of Section R9-28-1201, adopted effective September 9, 1998 (Supp. 98-3).*

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**ARTICLE 13. FREEDOM TO WORK**

*Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).*

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**ARTICLE 1. DEFINITIONS****R9-28-101. General Definitions**

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

DefinitionSection or Citation

“210” 42 CFR 435.211

“217” 42 CFR 435.217

“236” 42 CFR 435.236

“Acute”R9-28-301

“ADHS”R9-22-101

“ADL” R9-28-101

“Administration”A.R.S. § 36-2931

“Advance notice” R9-28-411

“Aged” R9-28-402

“Aggregate”R9-22-701

“Aggression”R9-28-301

“AHCCCS”R9-22-101

“AHCCCS registered provider”R9-22-101

“ALTCS”R9-28-101

“ALTCS acute care services”R9-28-401

“Alternative HCBS setting”R9-28-101

“Ambulance”A.R.S. § 36-2201

“Ambulation”R9-28-301

“Applicant”R9-22-101

“Assessor”R9-28-301

“Auto-assignment algorithm” or “Algorithm”R9-22-1701

“Bathing”R9-28-301

“Bathing or showering”R9-28-301

“Bed hold”R9-28-102

“Behavior intervention”R9-28-102

“Behavior management services”R9-22-1201

“Behavioral health evaluation”R9-22-1201

“Behavioral health medical practitioner”R9-22-1201

“Behavioral health professional”R9-20-101

“Behavioral health service”R9-20-101

“Behavioral health technician”R9-20-101

“Billed charges”R9-22-701

“Blind”42 U.S.C. 1382c(a)(2)

“Capped fee-for-service”R9-22-101

“Case management plan”R9-28-101

“Case management”R9-28-1101

“Case manager”R9-28-101

“Case record”R9-22-101

“Categorically-eligible”R9-22-101

“Certification”R9-28-501

“Certified psychiatric nurse practitioner”R9-22-1201

“CFR”R9-28-101

“Child”R9-22-1503

“Clarity of communication”R9-28-301

“Clean claim”A.R.S. § 36-2904

“Clinical supervision”R9-22-201

“CMS”R9-22-101

“Community mobility”R9-28-301

“Community spouse”R9-28-401

“Consecutive days” R9-28-801

“Continence”R9-28-301

“Contract”R9-22-101

“Contract year”R9-22-101

“Contractor”A.R.S. § 36-2901

“Cost avoid” R9-22-1201 or R9-22-1001

“County of fiscal responsibility”R9-28-701

“Covered services”R9-28-101

“CPT”R9-22-701

“Crawling and standing”R9-28-301

“CSRD”R9-28-401

“Current”R9-28-301

“Day” R9-22-101 or R9-22-1101

“De novo hearing”42 CFR 431.201

“Department”A.R.S. § 36-2901

“Developmental disability” or “DD”A.R.S. § 36-551

“Diagnostic services”R9-22-101

“Director”R9-22-101

“Disabled”R9-28-402

“Disenrollment”R9-22-1701

“Disruptive behavior”R9-28-301

“DME”R9-22-101

“Dressing”R9-28-301

“Eating”R9-28-301

“Eating or drinking”R9-28-301

“Emergency medical services for the

non-FES member”R9-22-201

“Emotional and cognitive functioning”R9-28-301

“Employed”R9-28-1320

“Encounter”R9-22-701

“Enrollment”R9-22-1701

“EPD”

“E.P.S.D.T. services”

440.40(b)

“Estate”A.R.S. § 14-1201

“Experimental services” R9-22-203

“Expressive verbal communication”R9-28-301

“Facility”R9-22-101

“Factor”42 CFR 447.10

“Fair consideration”R9-28-401

“FBR”R9-22-101

“Federal financial participation” or “FFP”42 CFR 400.203

“Fee-For-Service” or “FFS”R9-22-101

“File”R9-28-801“First continuous period of institutionaliza-  
tion”R9-28-401

“Food preparation”R9-28-301

“Frequency”R9-28-301

“Functional assessment”R9-28-301

“Grievance”R9-34-202

“Grooming”R9-28-301

“GSA”R9-22-101

“Guardian”A.R.S. § 14-5311

“Hand use”R9-28-301

“HCBS” or “Home and community based  
services”A.R.S. § 36-2931

“Health care practitioner”R9-22-1201

“History”R9-28-301

“Home” R9-28-101 and R9-28-801

“Home health services”R9-22-201

“Hospice”A.R.S. § 36-401

“Hospital”R9-22-101

“ICF-MR” or “Intermediate care facility for the  
mentally retarded”42 U.S.C. 1396d(d)

“IADL”R9-28-101

“IHS”R9-22-101

“IMD” or “Institution for mental  
diseases”42 CFR 435.1010

“Immediate risk of institutionalization”R9-28-301

“Individual Representative”R9-28-509

“Institutionalized”R9-28-401

“Institutionalized spouse”R9-28-101

“Interested Party”R9-28-106

“Intergovernmental agreement” or “IGA”R9-28-1101

“Intervention”R9-28-301

“JCAHO”R9-28-101

“License” or “licensure”R9-22-101

“Medical assessment”R9-28-301

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“Medical or nursing services and treatments”  
 or “services and treatments” R9-28-301  
 “Medical record” R9-22-101  
 “Medical services” A.R.S. § 36-401  
 “Medically eligible” R9-28-401  
 “Medically necessary” R9-22-101  
 “Member” A.R.S. § 36-2931 and R9-28-901  
 “Mental disorder” A.R.S. § 36-501  
 “MMMNA” R9-28-401  
 “Mobility” R9-28-301  
 “Natural Support Services” R9-28-101  
 “Noncontracting provider” A.R.S. § 36-2931  
 “Nursing facility” or “NF” 42 U.S.C. 1396r(a)  
 “Occupational therapy” R9-22-201  
 “Orientation” R9-28-301  
 “Partial care” R9-22-1201  
 “PAS” R9-28-103  
 “Personal hygiene” R9-28-301  
 “Pharmaceutical service” R9-22-201  
 “Physical therapy” R9-22-201  
 “Physically disabled” R9-28-301  
 “Physician” R9-22-101  
 “Physician consultant” R9-28-301  
 “Post-stabilization care services” 42 CFR 438.114  
 “Practitioner” R9-22-101  
 “Primary care provider” or “(PCP)” R9-22-101  
 “Primary care provider services” R9-22-201  
 “Prior authorization” R9-22-101  
 “Prior period coverage” or “PPC” R9-22-101  
 “Program contractor” A.R.S. § 36-2931  
 “Provider” A.R.S. § 36-2931  
 “Psychiatrist” R9-22-1201  
 “Psychologist” R9-22-1201  
 “Psychosocial rehabilitation services” R9-22-201  
 “Qualified behavioral health service provider” R9-28-1101  
 “Quality management” R9-22-501  
 “Radiology” R9-22-101  
 “Reassessment” R9-28-103  
 “Recover” R9-28-901  
 “Redetermination” R9-28-401  
 “Referral” R9-22-101  
 “Regional behavioral health authority”  
 or “RBHA” A.R.S. § 36-3401  
 “Reinsurance” R9-22-701  
 “Representative” R9-28-401  
 “Resistiveness” R9-28-301  
 “Respiratory therapy” R9-22-201  
 “Respite care” R9-28-102  
 “RFP” R9-22-101  
 “Room and board” R9-28-102  
 “Rolling and sitting” R9-28-301  
 “Running or wandering away” R9-28-301  
 “Scope of services” R9-28-102  
 “Section 1115 Waiver” A.R.S. § 36-2901  
 “Self-injurious behavior” R9-28-301  
 “Sensory” R9-28-301  
 “Seriously mentally ill” or “SMI” A.R.S. § 36-550  
 “Social worker” R9-28-301  
 “Special diet” R9-28-301  
 “Speech therapy” R9-22-201  
 “Spouse” R9-28-401  
 “SSA” 42 CFR 1000.10  
 “SSI” 42 CFR 435.4  
 “Subcontract” R9-22-101  
 “TEFRA lien” R9-28-801  
 “Therapeutic leave” R9-28-501

“Toileting” R9-28-301  
 “Transferring” R9-28-301  
 “TRBHA” R9-22-1201  
 “Tribal contractor” R9-28-1101  
 “Tribal facility” A.R.S. § 36-2981  
 “Utilization management/review” R9-22-501  
 “Ventilator dependent” R9-28-102  
 “Verbal or physical threatening” R9-28-301  
 “Vision” R9-28-301  
 “Wandering” R9-28-301  
 “Wheelchair mobility” R9-28-301

- B.** General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

“ADL” or “Activities of Daily Living” mean activities a member must perform daily for the member’s regular day-to-day necessities, including but not limited to mobility, transferring, bathing, dressing, grooming, eating, and toileting.

“ALTCS” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS, including:

For a person with a developmental disability specified in A.R.S. § 36-551:

Community residential setting defined in A.R.S. § 36-551;  
 Group home defined in A.R.S. § 36-551;  
 State-operated group home under A.R.S. § 36-591;  
 Group foster home under R6-5-5903;  
 Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;  
 Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;  
 Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and  
 Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is Elderly and Physically Disabled (EPD) under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;  
 Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;  
 Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;  
 Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;  
 Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and  
 Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.

“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.

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“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

“CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;  
Residential care institution under A.R.S. § 36-401;  
Community residential setting under A.R.S. § 36-551; or  
Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IADL” or “Instrumental Activities of Daily Living” mean activities related to independent living that a member must perform, including but not limited to:

Preparing meals,  
Managing money,  
Shopping for groceries or personal items,  
Performing light or heavy housework, and  
Use of the telephone.

“IHS” means the Indian Health Service.

“Institutionalized spouse” means the same as defined in 42 U.S.C. 1396r-5.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Natural Support Services” are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Subsection (A)(69) amended to correct a printing error, filed in the Office of the Secretary of State August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 3810, effective

October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

#### R9-28-102. Covered Services Related Definitions

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

“Bed hold” means a 24 hour per day unit of service that is authorized by an ALTCS case manager or designee during a period of short-term hospitalization or therapeutic leave that meets the requirement specified in 42 CFR 483.12.

“Behavior intervention” means the planned interruption of a member’s inappropriate behavior using techniques such as reinforcement, training, behavior modification, and other systematic procedures intended to result in more acceptable behavior.

“Respite care” means a short-term service provided in a NF or a home and community based service setting to an individual if necessary to relieve a family member or other person caring for the individual.

“Room and board” means lodging and meals.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Ventilator dependent,” for purposes of ALTCS eligibility, means an individual is medically dependent on a ventilator for life support at least six hours per day and has been dependent on ventilator support as an inpatient in a hospital, NF, or ICF-MR for at least 30 consecutive days.

#### Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

#### R9-28-103. Preadmission Screening Related Definitions

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

“Developmental disability” is defined in A.R.S. § 36-551.

“PAS” means preadmission screening, which is the process of determining an individual’s risk of institutionalization at a NF or ICF-MR level of care, as specified in Article 3 of this Chapter.

“Reassessment” means the process of redetermining PAS eligibility for ALTCS services as appropriate, for all members.

#### Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

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Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

**R9-28-104. Repealed**

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Repealed by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

**R9-28-105. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-106. Request for Proposals and Contract Process Related Definitions**

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22 Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Interested Party” means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**R9-28-107. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3). Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

**R9-28-108. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

**R9-28-109. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-110. Reserved****R9-28-111. Behavioral Health Services Related Definitions**

Definitions. The words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, have the same meaning as specified in 9 A.A.C. 22, Article 1.

**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).

**ARTICLE 2. COVERED SERVICES****R9-28-201. General Requirements**

In addition to the exclusions and limitations specified in this Article, services provided to a member are covered services if:

1. Medically necessary, cost effective, and federally reimbursable;
2. Coordinated by a case manager in accordance with requirements specified in R9-28-510;
3. The provider obtains prior authorization as required by a member's program contractor or by the Administration:
  - a. Failure of the provider to obtain prior authorization is cause for denial.
  - b. Services provided during prior period coverage are exempt from prior authorization requirements;
4. Provided in facilities or areas of facilities that are licensed or certified under Article 5 of this Chapter, or meet other requirements described in Article 5 of this Chapter;
5. Rendered by AHCCCS registered providers as permitted under this Chapter and within their scope of practice; and
6. Provided at an appropriate level of care, as determined by the case manager or the primary care provider.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

**R9-28-202. Scope of Services**

- A. The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.
- B. In addition, for members living in an HCBS setting, incontinence briefs for a member 21 years of age and older, including pull-ups, are covered in order to:
  1. Treat a medical condition; and
  2. Prevent skin breakdown when all the following are met:
    - a. The member is incontinent due to a documented medical condition that causes incontinence of bowel and/or bladder,
    - b. The PCP or attending physician has issued a prescription ordering the incontinence briefs,
    - c. Incontinence briefs do not exceed 180 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 180 briefs per month,
    - d. The member obtains incontinence briefs from vendors within the Contractor's network, and
    - e. Prior authorization has been obtained if required by the Administration, Contractor, or Contractor's designee, as appropriate. Contractors shall not require prior authorization more frequently than every twelve months.
- C. Incontinence brief coverage for a member under age 21 is described under R9-22-212.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective

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March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 21 A.A.R. 1243, effective July 7, 2015 (Supp. 15-3).

**R9-28-203. Coverage for CRS Services**

- A. Beginning October 1, 2013, ALTCS DD members who need active treatment for one or more of the qualifying medical condition(s) in A.A.C. R9-22-1303 shall receive CRS services through the CRS contractor as described under Chapter 22, Article 13.
- B. Beginning October 1, 2013, AHCCCS ALTCS EPD members who need active treatment for one or more of the qualifying medical conditions in A.A.C. R9-22-1303 shall not receive CRS services through the CRS contractor as described under Chapter 22, Article 13. These members shall receive treatment for those conditions through their assigned ALTCS EPD contractor. However, an American Indian member with a CRS condition(s) who is enrolled with a tribal contractor or Native American Community Health (NACH) shall obtain CRS services through the CRS contractor.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Repealed effective September 22, 1997 (Supp. 97-3). New Section R9-28-203 made by final rulemaking at 19 A.A.R. 2963, effective November 10, 2013 (Supp. 13-3).

**R9-28-204. Institutional Services**

- A. Institutional services are provided in:
  1. A NF;
  2. An ICF-MR; or
  3. A facility identified in R9-28-1105(A)(1)(b), (B), or (C).
- B. The Administration and a contractor shall include the following services in the per diem rate for a facility listed in subsection (A):
  1. Nursing care services;
  2. Rehabilitative services prescribed as a maintenance regimen;
  3. Restorative services, such as range of motion;
  4. Social services;
  5. Nutritional and dietary services;
  6. Recreational therapies and activities;
  7. Medical supplies and non-customized durable medical equipment under 9 A.A.C. 22, Article 2;
  8. Overall management and evaluation of a member's care plan;
  9. Observation and assessment of a member's changing condition;
  10. Room and board services, including supporting services such as food and food preparation, personal laundry, and housekeeping;
  11. Non-prescription and stock pharmaceuticals; and
  12. Respite care services not to exceed 600 hours per benefit year.
- C. Each facility listed in subsection (A) is responsible for coordinating the delivery of at least the following auxiliary services:
  1. Under 9 A.A.C. 22, Article 2:

- a. Attending physician, practitioner, and primary care provider services;
- b. Pharmaceutical services;
- c. Diagnostic services under A.A.C. R9-22-208;
- d. Emergency medical services; and
- e. Emergency and medically necessary transportation services.

2. Therapy services under R9-28-206.

**D. Limitations. The following limitations apply:**

1. A private room in a NF, ICF-MR, or facility identified in R9-28-1105(A)(1)(b), (B), or (C) is covered only if:
  - a. The member or has a medical condition that requires isolation, and
  - b. The member's primary care provider or attending physician provides written authorization;
2. Each ICF-MR shall meet the standards in A.R.S. § 36-2939(B)(1), and in 42 CFR 483, Subpart I, February 28, 1992, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments;
3. Bed hold days as authorized by the Administration or its designee for a fee-for-service provider shall meet the following criteria:
  - a. Short-term hospitalization leave for a member age 21 and over is limited to 12 days per AHCCCS benefit year, and is available if a member is admitted to a hospital for a short stay. After the short-term hospitalization, the member is returned to the institutional facility from which leave is taken, and to the same bed if the level of care required can be provided in that bed; and
  - b. Therapeutic leave for a member age 21 and older is limited to nine days per AHCCCS benefit year. A physician order is required for therapeutic leave from the facility for one or more overnight stays to enhance psycho-social interaction, or as a trial basis for discharge planning. After the therapeutic leave, the member is returned to the same bed within the institutional facility;
  - c. Therapeutic leave and short-term hospitalization leave are limited to any combination of 21 days per benefit year for a member under age 21;
4. The Administration or a contractor shall cover services that are not part of a per diem rate but are ALTCS covered services included in this Article, and deemed necessary by a member's case manager or the case manager's designee if:
  - a. The services are ordered by the member's primary care provider; and
  - b. The services are specified in a case management plan under R9-28-510;
5. A member age 21 through 64 is eligible for behavioral health services provided in a facility under subsection (A)(3) that has more than 16 beds, for up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS and except as specified by 42 CFR 441.151, May 22, 2001, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments; and
6. The limitations in subsection (D)(5) do not apply to a member:

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- a. Under age 21 or age 65 or over, or
- b. In a facility with 16 beds or less.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

**R9-28-205. Home and Community Based Services (HCBS)**

- A. Subject to the availability of federal funds, HCBS are covered services if provided to a member residing in the member's own home or an alternative residential setting. Room and board services are not covered in a HCBS setting.
- B. The case manager shall authorize and specify in a case management plan any additions, deletions, or changes in home and community based services provided to a member or in accordance with R9-28-510.
- C. Home and community based services include the following:
  - 1. Home health services provided on a part-time or intermittent basis. These services include:
    - a. Nursing care;
    - b. Home health aide;
    - c. Medical supplies, equipment, and appliances;
    - d. Physical therapy;
    - e. Occupational therapy;
    - f. Respiratory therapy; and
    - g. Speech and audiology services;
  - 2. Private duty nursing services;
  - 3. Medical supplies and durable medical equipment, including customized DME, as described in 9 A.A.C. 22, Article 2;
  - 4. Transportation services to obtain covered medically necessary services;
  - 5. Adult day health services provided to a member in an adult day health care facility licensed under 9 A.A.C. 10, Article 5, including:
    - a. Supervision of activities specified in the member's care plan;
    - b. Personal care;
    - c. Personal living skills training;
    - d. Meals and health monitoring;
    - e. Preventive, therapeutic, and restorative health related services; and
    - f. Behavioral health services, provided either directly or through referral, if medically necessary;
  - 6. Personal care services;
  - 7. Homemaker services;
  - 8. Home delivered meals, that provide at least one-third of the recommended dietary allowance, for a member who does not have a developmental disability under A.R.S. § 36-551;
  - 9. Respite care services for no more than 600 hours per benefit year;
  - 10. Habilitation services including:
    - a. Physical therapy;
    - b. Occupational therapy;

- c. Speech and audiology services;
  - d. Training in independent living;
  - e. Special development skills that are unique to the member;
  - f. Sensory-motor development;
  - g. Behavior intervention; and
  - h. Orientation and mobility training;
- 11. Developmentally disabled day care provided in a group setting during a portion of a 24-hour period, including:
    - a. Supervision of activities specified in the member's care plan;
    - b. Personal care;
    - c. Activities of daily living skills training; and
    - d. Habilitation services;
  - 12. Supported employment services provided to a member in the ALTCS transitional program under R9-28-306 who is developmentally disabled under A.R.S. § 36-551.

**Historical Note**

Adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

**R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting**

The Administration shall cover the following services if the services are provided to a member within the limitations listed:

- 1. Occupational and physical therapies, speech and audiology services, and respiratory therapy:
  - a. The duration, scope, and frequency of each therapeutic modality or service is prescribed by the member's primary care provider or attending physician;
  - b. The therapy or service is authorized by the member's contractor or the Administration; and
  - c. The therapy or service is included in the members case management plan;
  - d. AHCCCS will not cover more than 15 outpatient physical therapy visits for the contract year with the exception of the required Medicare coinsurance and deductible payment as described in 9 A.A.C. 29, Article 3.
- 2. Medical supplies, durable medical equipment, and customized durable medical equipment, which conform with the requirements and limitations of 9 A.A.C. 22, Article 2 and as described under R9-28-202 for persons in HCBS settings;
- 3. Ventilator dependent services:
  - a. Inpatient or institutional services are limited to services provided in a general hospital, special hospital, NF, or ICF-MR. Services provided in a general or special hospital are included in the hospital's unit tier rate under 9 A.A.C. 22, Article 7;
  - b. A ventilator dependent member may receive the array of home and community based services under R9-28-205 as appropriate.
- 4. Hospice services:
  - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
  - b. Covered hospice services for a member are those allowable under 42 CFR 418.202, December 20, 1994, incorporated by reference and on file with the

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Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and

- c. Covered hospice services do not include:
  - i. Medical services provided that are not related to the terminal illness, or
  - ii. Home delivered meals.
- d. Medicare is the primary payor of hospice services for a member if applicable.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1664, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 1243, effective July 7, 2015 (Supp. 15-3).

**ARTICLE 3. PREADMISSION SCREENING (PAS)****R9-28-301. Definitions**

- A. Common definitions. In addition to definitions contained in A.R.S. Title 36, Chapter 29, and 9 A.A.C. 28, Article 1, the words and phrases in this Article have the following meanings for an individual who is elderly or physically disabled (EPD) or developmentally disabled (DD) unless the context explicitly requires another meaning:

“Applicant” is defined in A.A.C. R9-22-101.

“Assessor” means a social worker as defined in this subsection or a licensed registered nurse (RN) who:

- Is employed by the Administration to conduct PAS assessments,
- Completes a minimum of 30 hours of classroom training in both EPD and DD PAS for a total of 60 hours, and
- Receives intensive oversight and monitoring by the Administration during the first 30 days of employment and ongoing oversight by the Administration during all periods of employment.

“Current” means belonging to the present time.

“Disruptive behavior” means inappropriate behavior by the applicant or member including urinating or defecating in inappropriate places, sexual behavior inappropriate to time, place, or person or excessive whining, crying, or screaming that interferes with an applicant’s or member’s normal activities or the activities of others and requires intervention to stop or interrupt the behavior.

“Frequency” means the number of times a specific behavior occurs within a specified interval.

“Functional assessment” means an evaluation of information about an applicant’s or member’s ability to perform activities related to:

- Developmental milestones,
- Activities of daily living,
- Communication, and
- Behavior.

“Immediate risk of institutionalization” means the status of an applicant or member under A.R.S. § 36-2934(A)(5) and as specified in A.R.S. § 36-2936 and in the Administration’s Section 1115 Waiver with Centers for Medicare and Medicaid Services (CMS).

“Intervention” means therapeutic treatment, including the use of medication, behavior modification, and physical

restraints to control behavior. Intervention may be formal or informal and includes actions taken by friends or family to control the behavior.

“Medical assessment” means an evaluation of an applicant’s or member’s medical condition and the applicant’s or member’s need for medical services.

“Medical or nursing services and treatments” or “services and treatments” means specific, ongoing medical, psychiatric, or nursing intervention used actively to resolve or prevent deterioration of a medical condition. Durable medical equipment and activities of daily living assistive devices are not treatment unless the equipment or device is used specifically and actively to resolve the existing medical condition.

“Physician consultant” means a physician who contracts with the Administration.

“Social worker” means an individual with two years of case management-related experience or a baccalaureate or master’s degree in:

- Social work,
- Rehabilitation,
- Counseling,
- Education,
- Sociology,
- Psychology, or
- Other closely related field.

“Special diet” means a diet planned by a dietitian, nutritionist, or nurse that includes high fiber, low sodium, or pureed food.

“Toileting” means the process involved in an applicant’s or member’s managing of the elimination of urine and feces in an appropriate place.

“Vision” means the ability to perceive objects with the eyes.

- B. EPD. In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is EPD:

“Aggression” means physically attacking another, including:

- Throwing an object,
- Punching,
- Biting,
- Pushing,
- Pinching,
- Pulling hair,
- Scratching, and
- Physically threatening behavior.

“Bathing” means the process of washing, rinsing, and drying all parts of the body, including an applicant’s or member’s ability to transfer to a tub or shower and to obtain bath water and equipment.

“Continence” means the applicant’s or member’s ability to control the discharge of body waste from bladder and bowel.

“Dressing” means the physical process of choosing, putting on, securing fasteners, and removing clothing and footwear. Dressing includes choosing a weather-appropriate article of clothing but excludes aesthetic concerns. Dressing includes the applicant’s or member’s ability to put on artificial limbs, braces, and other appliances that are needed daily.

“Eating” means the process of putting food and fluids by any means into the digestive system.

“Emotional and cognitive functioning” means an applicant’s or member’s orientation and mental state, as evi-



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denced by aggressive, self-injurious, wandering, disruptive, and resistive behaviors.

“EPD” means an applicant or member who is elderly and physically disabled.

“Grooming” means an applicant’s or member’s process of tending to appearance. Grooming includes: combing or brushing hair; washing face and hands; shaving; oral hygiene (including denture care); and menstrual care. Grooming does not include aesthetics such as styling hair, skin care, nail care, and applying cosmetics.

“Mobility” means the extent of an applicant’s or member’s purposeful movement within a residential environment.

“Orientation” means an applicant’s or member’s awareness of self in relation to person, place, and time.

“Physically disabled” means an applicant or member who is determined to be physically impaired by the Administration through the PAS assessment as allowed under the Administration’s Section 1115 Waiver with CMS.

“Resistiveness” means inappropriately obstinate and uncooperative behaviors, including passive or active obstinate behaviors, or refusing to participate in self-care or to take necessary medications. Resistiveness does not include difficulties with auditory processing or reasonable expressions of self-advocacy.

“Self-injurious behavior” means repeated self-induced, abusive behavior that is directed toward infliction of immediate physical harm to the body.

“Sensory” means of or relating to the senses.

“Transferring” means an applicant’s or member’s ability to move horizontally or vertically between two surfaces within a residential environment, excluding transfer for toileting or bathing.

“Wandering” means an applicant’s or member’s moving about with no rational purpose and with a tendency to go beyond the physical parameter of the residential environment.

C. DD. In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is DD:

“Acute” means an active medical condition having a sudden onset, lasting a short time, and requiring immediate medical intervention.

“Aggression” means physically attacking another, including:

- Throwing objects,
- Punching,
- Biting,
- Pushing,
- Pinching,
- Pulling hair, and
- Scratching.

“Ambulation” means the ability to walk and includes quality of the walking and the degree of independence in walking.

“Bathing or showering” means an applicant’s or member’s ability to complete the bathing process including drawing the bath water, washing, rinsing, and drying all parts of the body, and washing the hair.

“Clarity of communication” means an ability to speak in recognizable language or use a formal symbolic substitution, such as American-Sign Language.

“Community mobility” means the applicant’s or member’s ability to move about a neighborhood or community independently, by any mode of transportation.

“Crawling and standing” means an applicant’s or member’s ability to crawl and stand with or without support.

“DD” means developmentally disabled.

“Developmental milestone” means a measure of an applicant’s or member’s functional abilities, including:

- Fine motor skills,
- Gross motor skills,
- Communication,
- Socialization,
- Daily living skills, and
- Behaviors.

“Dressing” means the ability to put on and remove an article of clothing. Dressing does not include the ability to put on or remove braces nor does it reflect an applicant’s or member’s ability to match colors or choose clothing appropriate for the weather.

“Eating or drinking” means the process of putting food and fluid by any means into the digestive system.

“Expressive verbal communication” means an applicant’s or member’s ability to communicate thoughts with words or sounds.

“Food preparation” means the ability to prepare a simple meal including a sandwich, cereal, or a frozen meal.

“Hand use” means the applicant’s or member’s ability to use both hands, or one hand if an applicant or member has only one hand or has the use of only one hand.

“History” means a medical condition that occurred in the past, regardless of whether the medical condition required treatment in the past, and is not now active.

“Personal hygiene” means the process of tending to one’s appearance. Personal hygiene may include: combing or brushing hair, washing face and hands, shaving, performing routine nail care, oral hygiene including denture care, and menstrual care. This does not include aesthetics such as styling hair, skin care, and applying cosmetics.

“Rolling and sitting” means an applicant’s or member’s ability to roll and sit independently or with the physical support of another person or with a device such as a pillow or specially-designed chair.

“Running or wandering away” means an applicant or member leaving a physical environment without notifying or receiving permission from the appropriate individuals.

“Self-injurious behavior” means an applicant’s or member’s repeated behavior that causes injury to the applicant or member.

“Verbal or physical threatening” means any behavior in which an applicant or member uses words, sounds, or action to threaten harm to self, others, or an object.

“Wheelchair mobility” means an applicant’s or member’s mobility using a wheelchair and does not include the ability to transfer to the wheelchair.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (C) effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed by emergency action, new Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed in the Secretary of State’s Office June 30, 1995 (Supp. 95-2). Section repealed by emergency action, new Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired June 1, 1996. Section in effect before emergency action restored. Section repealed; new

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Section adopted effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-302. General Provisions**

To qualify for services described in A.R.S. § 36-2939:

1. An applicant shall meet the financial criteria described in Article 4, and
2. AHCCCS shall determine that the applicant is at immediate risk of institutionalization under the PAS assessment as specified in this Article.

**Historical Note**

New Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed in the Office of the Secretary of State June 30, 1995 (Supp. 95-2). New Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026 (Supp. 96-1). Emergency expired June 1, 1996. New Section adopted effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4).

**R9-28-303. Preadmission Screening (PAS) Process**

- A. The assessor shall use the PAS instrument to determine whether the following applicants or members are at immediate risk of institutionalization:
  1. The assessor shall use the PAS instrument prescribed in R9-28-304 to assess an applicant or member who is EPD except as specified in subsection (A)(2) for an applicant or member who is physically disabled and who is less than 6 years old. After assessing a child who is physically disabled and age 6 years to less than 12 years, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  2. The assessor shall use the age-specific PAS instrument prescribed in R9-28-305 to assess an applicant or member who is physically disabled and less than 6 years old. After assessing the child, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  3. The assessor shall use the PAS instrument prescribed in R9-28-305 to assess an applicant or member who is DD, except as specified in subsection (A)(4) for an applicant or member who is DD and residing in a NF. After assessing a child who is DD and less than 6 months of age, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  4. The assessor shall use the PAS instrument prescribed in R9-28-304 for an applicant or a member who is DD and residing in a NF.
  5. The assessor shall use the PAS instrument prescribed in R9-28-304 or R9-28-305, whichever is applicable, to assess an applicant or member who is classified as ventilator-dependent, under Section 1902(e)(9) of the Social Security Act.
- B. For an initial assessment of an applicant who is in a hospital or other acute care setting:
  1. A registered nurse assessor shall complete the PAS assessment; or
  2. In the event that a registered nurse assessor is not available, a social worker assessor shall complete the PAS assessment; and

3. The assessor shall conduct the PAS assessment and determine medical eligibility when discharge is scheduled within seven days.
- C. An assessor shall conduct a face-to-face PAS assessment with an applicant or member, except as provided in subsection (F). The assessor shall make reasonable efforts to obtain the applicant's or member's available medical records. The assessor may also obtain information for the PAS assessment from face-to-face interviews with the:
  1. Applicant or member,
  2. Parent,
  3. Guardian,
  4. Caregiver, or
  5. Any person familiar with the applicant's or member's functional or medical condition.
- D. Using the information described in subsection (C), an assessor shall complete the PAS assessment based on the assessor's education, experience, professional judgment, and training.
- E. After the assessor completes the PAS assessment, the assessor shall calculate a PAS score. The assessor shall compare the PAS score to an established threshold score. The scoring methodology and threshold scores are specified in R9-28-304 and R9-28-305. Except as determined by physician consultant review as provided in subsections (G) through (J), the threshold score is the point at which an applicant or member is determined to be at immediate risk of institutionalization.
- F. Upon request from a person acting on behalf of the applicant, the Administration shall conduct a PAS assessment to determine whether a deceased applicant who was residing in a NF or who received services in an ICF-MR any time during the time period covered by the application would have been eligible to receive ALTCS benefits for those months.
- G. In the following circumstances, the Administration shall request that a physician consultant review the PAS assessment, the available medical records, and use professional judgment to make the determination that an applicant or member has a developmental disability or has a nonpsychiatric medical condition that, by itself or in combination with other medical conditions, places an applicant or member at immediate risk of institutionalization:
  1. The PAS score of an applicant or member who is EPD is less than the threshold specified in R9-28-304, but is at least 56;
  2. The PAS score of an applicant or member who is DD is less than the threshold specified in R9-28-305, but is at least 38;
  3. An applicant or member scores below the threshold specified in R9-28-304, but the Administration has reasonable cause to believe that the applicant's or member's unique functional abilities or medical condition may place the applicant or member at immediate risk of institutionalization;
  4. An applicant or member scores below the threshold specified in R9-28-304 and has a documented diagnosis of autism, autistic-like behavior, or pervasive developmental disorder;
  5. An applicant or member who is seriously mentally ill as defined in A.R.S. § 36-550 who scores at or above the threshold specified in R9-28-304, but may not meet the requirements of A.R.S. § 36-2936. When an applicant or member who is seriously mentally ill scores at or above the threshold, the physician consultant shall exercise professional judgment to determine whether the applicant or member meets the requirements of A.R.S. § 36-2936.
  6. An applicant is an AHCCCS acute care member and scores at or above the threshold specified in R9-28-304

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but the Administration has reasonable cause to believe that the applicant's condition is convalescent and requires less than 90 days of institutional care;

7. An applicant or member is a child who is physically disabled and is at least 6 but less than 12 years of age;
  8. An applicant or member is a child who is physically disabled and is under 6 years of age; and
  9. An applicant is under 6 months of age.
- H.** The physician consultant shall consider the following:
1. Activities of daily living dependence;
  2. Delay in development;
  3. Continence;
  4. Orientation;
  5. Behavior;
  6. Any medical condition, including stability and prognosis of the condition;
  7. Any medical nursing treatment provided to the applicant or member including skilled monitoring, medication, and therapeutic regimens;
  8. The degree to which the applicant or member must be supervised;
  9. The skill and training required of the applicant or member's caregiver; and
  10. Any other factor of significance to the individual case.
- I.** If the physician consultant is unable to make the determination from the PAS assessment and the available medical records, the physician consultant may conduct a face-to-face review with the applicant or member or contact others familiar with the applicant's or member's needs, including a primary care physician or other caregiver, to make the determination.
- J.** The physician consultant shall state the reasons for the determination in the physician review comment section of the PAS instrument.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective July 13, 1992 (Supp. 92-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed by emergency action, new Section adopted by emergency action effective June 30, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Section repealed by emergency action, new Section adopted again by emergency action effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired June 1, 1996. Section in effect before emergency action restored. Section repealed; new Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-303 renumbered to R9-28-304; new Section R9-28-303 made by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-304. Preadmission Screening Criteria for an Applicant or Member who is Elderly and Physically Disabled (EPD)**

- A.** The PAS instrument for an applicant or member who is EPD includes the following categories:
1. Intake information category. The assessor solicits intake information category information on an applicant's or member's demographic background. The components of the intake information category are not included in the calculated PAS score.

2. Functional assessment category. The assessor solicits functional assessment category information on an applicant's or member's:
    - a. Need for assistance with activities of daily living, including:
      - i. Bathing,
      - ii. Dressing,
      - iii. Grooming,
      - iv. Eating,
      - v. Mobility,
      - vi. Transferring, and
      - vii. Toileting in the residential environment or other routine setting;
    - b. Communication and sensory skills, including hearing, expressive communication, and vision; and
    - c. Continence, including bowel and bladder functioning.
  3. Emotional and cognitive functioning category. The assessor solicits emotional and cognitive functioning category information on an applicant's or member's:
    - a. Orientation to person, place, and time. In soliciting this information, the assessor shall also take into account the caregiver's judgment; and
    - b. Behavior, including:
      - i. Wandering,
      - ii. Self-injurious behavior,
      - iii. Aggression,
      - iv. Resistiveness, and
      - v. Disruptive behavior.
  4. Medical assessment category. The assessor solicits medical assessment category information on an applicant's or member's:
    - a. Medical conditions that have an impact on the applicant's or member's functional ability in relation to activities of daily living, continence, and vision;
    - b. Medical condition that requires medical or nursing service and treatment;
    - c. Medication, treatment, and allergies;
    - d. Specific services and treatments that the applicant or member is currently receiving; and
    - e. Physical measurements, hospitalization history, and ventilator dependency.
- B.** The assessor shall use the PAS instrument to assess an applicant or member who is EPD as specified in this Section. A copy of the PAS instrument is available from the Administration. The Administration uses the assessor's PAS assessment to calculate three scores: a functional score, a medical score, and a total score.
1. Functional score.
    - a. The Administration calculates the functional score from responses to scored items in the functional assessment and emotional and cognitive functioning categories. For each response to a scored item, a number of points is assigned, which is multiplied by a weighted numerical value. The result is a weighted score for each response.
    - b. In the functional assessment matrix, all items in the following categories are scored according to subsection (C):
      - i. Activities of daily living,
      - ii. Continence,
      - iii. Sensory,
      - iv. Orientation, and
      - v. Behavior.
    - c. The sum of the weighted scores equals the functional score. The weighted score per item can range

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- from 0 to 15. The maximum functional score attainable by an applicant or member is 166.
2. Medical score.
    - a. In the medical assessment matrix, all items in the following categories are scored according to:
      - i. Medical conditions as specified in subsection (C), and
      - ii. Medical or nursing services and treatments in subsection (C).
    - b. The Administration calculates the medical score based on the applicant's or member's:
      - i. Diagnosis of Alzheimer's, dementia, or organic brain syndrome (OBS);
      - ii. Diagnosis of paralysis; and
      - iii. Current use of oxygen.
    - c. The maximum medical score attainable by an applicant or member is 31.5.
  3. Total score.
    - a. The sum of an applicant's or member's functional and medical scores equals the total score.
- b. The total score is compared to the established threshold score as calculated under this Section. The threshold score is 60.
  - c. As defined in R9-28-303, an applicant or member is determined at immediate risk of institutionalization if the total score is equal to or greater than 60.
- C. The following matrices represent the number of points available and the respective weight for each scored item.
1. Functional assessment points. The lowest value in the range of points available per item in the functional assessment category, zero, indicates minimal to no impairment. Conversely, the highest value indicates severe impairment.
  2. Medical assessment points. The lowest value in the range of points available per item in the medical assessment category, zero, indicates that the applicant or member:
    - a. Does not have the scored medical condition,
    - b. Does not need the scored medical or nursing services, or
    - c. Does not receive the scored medical or nursing services.

FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score per Item (P)x(W)
<b>Activities of Daily Living Section</b>			
Mobility	0-3	5	0-15
Transfer	0-3	5	0-15
Bathing	0-3	5	0-15
Dressing	0-3	5	0-15
Grooming	0-3	5	0-15
Eating	0-3	5	0-15
Toileting	0-3	5	0-15
<b>Continence Section</b>			
Bowel	0-3	1	0-3
Bladder	0-3	1	0-3
<b>Sensory Section</b>			
Vision	0-3	2	0-6
<b>Orientation Section</b>			
Place	0-4	.5	0-2
Time	0-4	.5	0-2
<b>Emotional or Cognitive Behavior Section</b>			
Aggression-Frequency	0-3	1.5	0-4.5
Aggression-Intervention	0-3	1.5	0-4.5
Self-injurious-Frequency	0-3	1.5	0-4.5
Self-injurious-Intervention	0-3	1.5	0-4.5
Wandering-Frequency	0-3	1.5	0-4.5
Wandering-Intervention	0-3	1.5	0-4.5
Resistiveness-Frequency	0-3	1.5	0-4.5
Resistiveness-Intervention	0-3	1.5	0-4.5
Disruptive-Frequency	0-3	1.5	0-4.5
Disruptive-Intervention	0-3	1.5	0-4.5

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MEDICAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P)x(W)
Medical Conditions Section			
Paralysis	0-1	6.5	0 or 6.5
Alzheimer's, or OBS, or Dementia	0-1	20	0 or 20
Services and Treatments Section			
Oxygen	0-1	5	0 or 5

**Historical Note**

New Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed as an emergency rule with the Secretary of State's Office June 30, 1995 (Supp. 95-2). New Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired. New Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-304 renumbered to R9-28-305; new Section R9-28-304 renumbered from R9-28-303 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4).

**R9-28-305. Preadmission Screening Criteria for an Applicant or Member who is Developmentally Disabled (DD)**

- A.** The Administration shall conduct a PAS assessment of an applicant or member who is DD using one of three PAS instruments specifically designed to assess an applicant or member in the following age groups:
- Twelve years of age and older,
  - Six through 11 years of age, and
  - Birth through 5 years of age.
- B.** The PAS instruments for an applicant or member who is DD include three major categories:
- Intake information category. The assessor solicits intake information category information on an applicant's or member's demographic background. The components of this category are not included in the calculated PAS score.
  - Functional assessment category. The functional assessment category differs by age group as indicated in subsections (B)(2)(a) through (e):
    - For an applicant or member 12 years of age and older, the assessor solicits the functional assessment category information on an applicant's or member's:
      - Need for assistance with independent living skills, including hand use, ambulation, wheelchair mobility, transfer, eating or drinking, dressing, personal hygiene, bathing or showering, food preparation, community mobility, and toileting;
      - Communication skills and cognitive abilities, including expressive verbal communication, clarity of communication, associating time with an event and action, and remembering an instruction and a demonstration; and
      - Behavior, including aggression, verbal or physical threatening, self-injurious behavior, and resistive or rebellious behavior.
    - For an applicant or member 6 through 11 years of age, the assessor solicits the functional assessment category information on an applicant's or member's:
      - Need for assistance with independent living skills, including rolling and sitting, crawling and standing, ambulation, climbing stairs or ramps, wheelchair mobility, dressing, personal hygiene, bathing or showering, toileting, level
  - Medical assessment category. The assessor solicits medical assessment category information on an applicant's or member's:
    - Medical condition;
    - Specific services and treatments the applicant or member receives or needs and the frequency of those services and treatments;
    - Current medication;
    - Medical stability;
    - Sensory functioning;
    - Physical measurements; and
    - Current living arrangement, ventilator dependency and eligibility for DES Division of Developmental Disabilities program services.
- C.** The assessor shall use the PAS instrument to assess an applicant or member who is DD. A copy of the PAS instrument is available from the Administration. The Administration uses the assessor's PAS instrument responses to calculate three scores: a functional score, a medical score, and a total score.
- Functional score.
    - The Administration calculates the functional score from responses to scored items in the functional assessment category. Each response is assigned a number of points which is multiplied by a weighted

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numerical value, resulting in a weighted score for each response.

- b. The following items are scored as indicated in subsection (D), under the Functional Assessment matrix:
  - i. For an applicant or member 12 years of age and older, all items in the behavior section are scored. Designated items in the independent living skills, communication skills, and cognitive abilities sections are also scored;
  - ii. For an applicant or member 6 through 11 years of age, all items in the communication section are scored. Designated items in the independent living skills and behavior sections are scored;
  - iii. For an applicant or member 6 months of age through 5 years of age, items in the developmental milestones section are scored based on the age of the applicant.
- c. The sum of the weighted scores equals the functional score. The range of weighted score per item and maximum functional score for each age group is presented below:

AGE GROUP	RANGE FOR WEIGHTED SCORE PER ITEM	MAXIMUM FUNCTIONAL SCORE ATTAINABLE
12+	0 - 11.2	124.1
6-11	0 - 24	112.5
0-5	0 - 5.0	106.02

- d. No minimum functional score is required.

## 2. Medical score.

- a. Subsections (C)(2)(a)(i) through (iii) are scored as indicated in subsection (D), under the Medical Assessment matrix:
  - i. The assessor shall score designated items in the medical conditions for an applicant or member 12 years of age and older and 6 years of age through 11 years of age.
  - ii. The assessor shall score designated items in the medical conditions and medical stability sections for an applicant or member 6 months of age through 5 years of age.
  - iii. The assessor shall complete only the medical assessment section of the PAS for an applicant or member less than 6 months of age. There is no weighted or calculated score assigned. The assessor shall refer the applicant or member for physician consultant review.

- iv. The assessor shall complete only the medical assessment section of the PAS for an applicant or member less than 6 months of age. There is no weighted or calculated score assigned. The assessor shall refer the applicant or member for physician consultant review.

- b. The Administration calculates the medical score from information obtained in the medical assessment category. Each response to a scored item is assigned a number of points. The sum of the points equals the medical score. The range of points per item and the maximum medical score attainable by an applicant or member is presented below:

AGE GROUP	RANGE OF POINTS PER ITEM	MAXIMUM MEDICAL SCORE ATTAINABLE
12+	0 - 20.6	21.4
6-11	0 - 2.5	5
0-5	0 - 10	60

- c. No minimum medical score is required.

## 3. Total score.

- a. The sum of an applicant's or member's functional and medical scores equals the total score.
- b. The total score is compared to an established threshold score in R9-28-304. For an applicant or member who is DD, the threshold score is 40. Based upon the PAS instrument an applicant or member with a total score equal to or greater than 40 is at immediate risk of institutionalization.

## D. The following matrices represent the number of points available and the weight for each scored item.

1. Functional assessment points. An applicant or member age group 0 to 5: The value is received for each negative response. An applicant or member age groups 6 to 11 and 12+: the lowest value in the range of points available per item in the functional assessment category indicates minimal to no impairment. Conversely, the highest value indicates severe impairment.
2. Medical assessment points. The lowest value in the range of points available per item in the medical assessment category, zero, indicates that the applicant or member:
  - a. Does not have a medical condition specified in the following matrices,
  - b. Does not need medical or nursing service as specified in the following matrices, or
  - c. Does not receive any medical or nursing service as specified in the following matrices.

AGE GROUP 12 AND OLDER FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Independent Living Skills Section			
Hand Use, Food Preparation	0-3	3.5	0-10.5
Ambulation, Toileting, Eating, Dressing, Personal Hygiene	0-4	2.8	0-11.2
Communicative Skills and Cognitive Abilities Section			
Associating Time, Remembering Instructions	0-3	0.5	0 - 1.5
Behavior Section			
Aggression, Threatening, Self Injurious	0-4	2.8	0-11.2
Resistive	0-3	3.5	0-10.5

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AGE GROUP 12 AND OLDER MEDICAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Medical Conditions Section			
Cerebral Palsy, Epilepsy	0-1	0.4	0-.4
Moderate, Severe, Profound Mental Retardation	0-1	20.6	0-20.6

AGE GROUP 6-11 FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Independent Living Skills Section			
Climbing Stairs, Wheelchair Mobility, Bladder Control	0-3	1.875	0-5.625
Ambulation, Dressing, Bathing, Toileting	0-4	1.5	0-6
Crawling or Standing	0-5	1.25	0-6.25
Rolling or Sitting	0-8	0.833	0-6.66
Communication Section			
Clarity	0-4	1.5	0-6
Expressive Communication	0-5	1.25	0-6.25
Behavior Section			
Wandering	0-4	6	0-24
Disruptive	0-3	7.5	0-22.5

AGE GROUP 6 - 11 MEDICAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Medical Conditions Section			
Cerebral Palsy, Epilepsy	0-1	2.50	0-2.5

AGE GROUP 0 – 5 FUNCTIONAL ASSESSMENT	Weight
6 -9 Months	5.0
9-11 Months	4.1
12-17 Months	2.9
18-23 Months	2.125
24-29 Months	1.75
30-35 Months	1.55
36-47 Months	1.34
48-59 Months	1.14
60 Months+	1.03

AGE GROUP 0 - 5 MEDICAL ASSESSMENT	Weight
Cerebral Palsy	5.0
Epilepsy	5.0
Moderate, Severe, or Profound Mental Retardation (36 Months and older only)	15.0
Autism + M-CHAT (18 Months and older only) Fails at least six M-CHAT based questions	7.0
Autism + Behaviors (30-35 Months only) Exhibits at least 3 of 4 specific behaviors	5.0
Autism + Behaviors (36 Months and older only) Exhibits at least 6 of 8 specific behaviors	10.0
Drug Regulation + Administration (6 Months to 35 Months)	1.0
Drug Regulation + Administration (36 Months and older)	1.5
Non-Bowel/Bladder Ostomy Care (6 Months to 35 Months)	7.0
Non-Bowel/Bladder Ostomy Care (36 Months and older)	5.0
Tube Feeding (6 Months to 35 Months)	7.0
Tube Feeding (36 Months and older)	5.0
Physical Therapy or Occupational Therapy (6 Months to 35 Months)	1.0

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Physical Therapy or Occupational Therapy (36 Months and older)	1.5
Acute Hospital Admission (One)	1.0
Acute Hospital Admissions (Two or more)	2.0
Direct Care Staff Trained (6 Months to 11 Months)	0.5
Direct Care Staff Trained (12 Months and older)	1.0
Special Diet	2.0

**Historical Note**

Section adopted by emergency action effective June 30, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Section adopted again by emergency action effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired. New Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-305 renumbered to R9-28-306; new Section R9-28-305 renumbered from R9-28-304 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-306. Reassessments**

- A. An assessor shall reassess an ALTCS member to determine continued eligibility:
  1. In connection with a routine audit of the PAS assessment by AHCCCS;
  2. In connection with a request by a provider, program contractor, case manager, or other party, if AHCCCS determines that continued eligibility is uncertain due to substantial evidence of a change in the member's circumstances or error in the PAS assessment; or
  3. Annually when part of a population group identified by the Director in a written report as having an increased likelihood of becoming ineligible.
- B. An assessor shall determine continued eligibility for ALTCS using the same criteria used for the initial PAS assessment as prescribed in R9-28-303.
- C. An assessor shall refer the reassessment to physician consultant review if the member is:
  1. Determined ineligible,
  2. In the ALTCS Transitional Program under R9-28-307 and resides in a NF or ICF-MR, or
  3. Seriously mentally ill and no longer has a non-psychiatric medical condition that impacts the member's ability to function.

**Historical Note**

Adopted effective September 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 29, 1995 (Supp. 95-3). Former Section R9-28-306 renumbered to R9-28-307; new Section R9-28-306 renumbered from R9-28-305 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

**R9-28-307. The ALTCS Transitional Program for a Member who is Elderly and Physically Disabled (EPD) or Developmentally Disabled (DD)**

- A. The ALTCS transitional program serves members enrolled in the ALTCS program who, at the time of reassessment as described in R9-28-306, no longer meet the threshold specified in R9-28-304 for EPD or in R9-28-305 for DD but do meet all other ALTCS eligibility criteria. The Administration shall compare the member's PAS assessment to a scoring methodology for eligibility in the ALTCS transitional program as defined in subsections (B) and (C).
- B. The Administration shall transfer a member who is DD from the ALTCS program to the ALTCS transitional program if, at the time of a reassessment, the total PAS score is less than the threshold described in R9-28-305 but is at least 30, or the

member is diagnosed with moderate, severe, or profound mental retardation.

- C. The Administration shall transfer a member who is EPD from the ALTCS program to the ALTCS transitional program if, at the time of a reassessment, the PAS score is less than the threshold described in R9-28-304 but is at least 40.
- D. For a member residing in a NF or ICF-MR, the program contractor or the Administration shall ensure that the member is moved to an approved home- and community-based setting within 90 continuous days from the enrollment date of the member's eligibility for the ALTCS transitional program.
- E. A member in the ALTCS transitional program shall continue to receive all medically necessary covered services as specified in Article 2.
- F. A member in the ALTCS transitional program is eligible to receive up to 90 continuous days per NF or ICF-MR admission when the member's condition worsens to the extent that an admission is medically necessary.
- G. For a member requiring medically necessary NF or ICF-MR services for longer than 90 days, the program contractor shall request the Administration to conduct a reassessment under R9-28-306.

**Historical Note**

New Section renumbered from R9-28-306 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4).

**ARTICLE 4. ELIGIBILITY AND ENROLLMENT****R9-28-401. Eligibility and Enrollment-Related Definitions**

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

"ALTCS acute care services" means services under 9 A.A.C. 22, Articles 2 and 12, that are provided to a person who meets ALTCS eligibility requirements in 9 A.A.C. 28, Article 4 and who:

- Lives in an acute care living arrangement described in R9-28-406; or
- Is not eligible for long-term care benefits, described in R9-28-409, due to a transfer under R9-28-409 without receiving fair consideration, or
- Has refused institutionalized or HCBS services.

"Community spouse" means the husband or wife of an institutionalized person who has entered into a contract of marriage, recognized as valid by the state of Arizona, and who does not live in a medical institution.



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“CSRD” means Community Spouse Resource Deduction, the amount of a married couple's resources that is excluded in the eligibility determination to prevent impoverishment of the community spouse as determined under R9-28-410.

“Fair consideration” means income, real or personal property, services, or support and maintenance equal to or exceeding the fair market value of the income or resources that were transferred.

“First continuous period of institutionalization” means the first period beginning on or after September 30, 1989 that the applicant was institutionalized for 30 consecutive days or more. To be considered institutionalized, the applicant must:

- Have resided in a medical institution;
- Have received paid formal Home and Community Based Services (HCBS);
- Have received a combination of medical institutionalization and HCBS, or
- Intend to receive HCBS and either:

- Requests a Resource Assessment and is determined in need if institutional services by a Resource Assessment Medical Evaluation; or
- Applies for ALTCS and is determined medically eligible by the Pre-Admission Screening (PAS).

“Institutionalized” means residing in a medical institution or receiving or expecting to receive HCBS that prevent the person from being placed in a medical institution as determined by the PAS.

“Medically eligible” means meeting the ALTCS medical eligibility criteria under Article 3 of this Chapter.

“MMMNA” means Minimum Monthly Maintenance Needs Allowance.

“Redetermination” means a periodic review of all eligibility factors for a recipient.

“Representative” means a person other than a spouse or a parent of a dependent child, who applies for ALTCS on behalf of another person.

“Share of costs” means the amount an ALTCS recipient is required to pay toward the cost of long term care services.

“Spouse” means a person legally married under Arizona law, a person eligible for Social Security benefits as the spouse of another person, or a person living with another person of the opposite sex and the couple represents themselves in the community as husband and wife.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-401.01. General

##### A. Application for ALTCS coverage.

1. The Administration shall provide a person the opportunity to apply for ALTCS as described under Chapter 22, Article 3, unless specified otherwise in this Section.

2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.
    - a. The application shall contain the applicant's name and address.
    - b. Before the application is approved, a person listed in A.A.C. R9-22-302(2) shall sign the application.
    - c. A witness shall also sign the application if an applicant signs the application with a mark.
    - d. The date of application is the date the application is received by the Administration or its designee as described in R9-22-302.
  3. Except as provided in R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
  4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. The Administration shall provide the applicant with a denial notice under subsection (E).
  5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
  6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.
- B.** Conditions of ALTCS eligibility. Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility are met. The conditions of eligibility are:
1. Citizenship and alien status under Chapter 22, Article 3;
  2. SSN under Chapter 22, Article 3;
  3. Living arrangements under R9-28-406;
  4. Resources under R9-28-407;
  5. Income under R9-28-408;
  6. Transfers under R9-28-409;
  7. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311;
  8. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled;
  9. State residency under R9-22-305;
  10. Medical eligibility as specified in Chapter 28, Article 3; and
  11. Providing information and verification as specified under Chapter 22, Article 3.
- C.** Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01.
- D.** Eligibility effective date.
1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
  2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
  3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.
- E.** Notice. The Administration shall send a person a notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights as specified in 9 A.A.C. 34 and:

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1. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
    - a. The name of each approved applicant,
    - b. The effective date of eligibility for each approved applicant,
    - c. The amount of share of cost, and
    - d. The applicant's right to appeal the decision.
  2. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
    - a. The name of each ineligible applicant,
    - b. The specific reason why the applicant is ineligible,
    - c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
    - d. The legal citations supporting the reason for the ineligibility,
    - e. The location where the applicant can review the legal citations, and
    - f. The applicant's right to appeal the decision and request a hearing.
- F. Confidentiality. The Administration shall maintain the confidentiality of a person's record under A.A.C. R9-22-512.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 19 A.A.R. 3320, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-402. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective November 4, 1998 (Supp. 98-4). New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-403. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp. 92-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-404. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp.

92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-405. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-406. ALTCS Living Arrangements**

- A. Long-term care living arrangements. A person may be eligible for ALTCS services, under Article 2, while living in one of the following settings:
1. Institutional settings:
    - a. A Nursing Facility (NF) defined in 42 U.S.C. 1396r(a),
    - b. An Institution for Mental Diseases (IMD) for a person who is either under age 21 or age 65 or older,
    - c. An Intermediate Care Facility for the Mentally Retarded (ICF-MR) for a person with developmental disabilities,
    - d. A hospice (free-standing, hospital, or nursing facility subcontracted beds) defined in A.R.S. § 36-401; or
  2. Home and community-based services (HCBS) settings:
    - a. A person's home defined in R9-28-101(B), or
    - b. Alternative HCBS settings defined in R9-28-101(B).
- B. ALTCS acute care living arrangements.
1. A person applying for and otherwise entitled to receive ALTCS coverage shall receive only ALTCS acute care coverage if residing in one of the following living arrangements, settings, or locations:
    - a. A noncertified medical facility, or
    - b. A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or
    - c. At home or in an alternative HCBS setting when the person refuses HCBS services, or
    - d. A licensed or certified HCBS facility that is not registered with AHCCCS.
  2. Eligibility income limits.
    - a. For a person residing in a setting described in subsection (1)(a) or (1)(b), the gross income limit is 300 percent of the Federal Benefit Rate (FBR).
    - b. For a person residing in a setting described in subsection (1)(c) or (1)(d), the net income limit is 100 percent of the FBR.
- C. Inmate of a public institution. An inmate of a public institution is not eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-407. Resource Criteria for Eligibility**

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- A. The following Medicaid-eligible persons shall be deemed to meet the resource requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
  2. A person receiving Title IV-E Foster Care Maintenance payment; or
  3. A person receiving a Title IV-E Adoption Assistance.
- B. Except as provided in subsection (C), if a person's ALTCS eligibility is most closely related to SSI and is not included in subsection (A), the Administration shall determine eligibility using resource criteria in 42 U.S.C. 1382(a)(1)(B), 42 U.S.C. 1382b, and 20 CFR 416 Subpart L. The resource limit for an individual is \$2,000 or \$3,000 for a couple under 20 CFR 416.1205.
- C. The Administration permits the following exceptions to the resource criteria for a person identified in subsection (B):
1. Resources of the spouse or parent of a minor child are disregarded beginning the first day in the month the person is institutionalized.
  2. The value of household goods and personal effects is excluded.
  3. The value of oil, timber, and mineral rights is excluded.
  4. The value of all of the following shall be disregarded:
    - a. Term insurance;
    - b. Burial insurance;
    - c. Assets that a person has irrevocably assigned to fund the expense of a burial;
    - d. The cash value of all life insurance if the face value does not exceed \$1,500 total per insured person and the policy has not been assigned to fund a pre-need burial plan or has a legally binding designation as a burial fund;
    - e. The value of any burial space held for the purpose of providing a place for the burial of the person, a spouse, or any other member of the immediate family;
    - f. \$1,500 of the equity value of an asset that has a legally binding designation as a burial fund or a revocable burial arrangement if there is no irrevocable burial arrangement;
    - g. During the time a person remains continuously eligible, all appreciation in the value of the assets in subsection (C)(4)(f) will be disregarded; and
    - h. The amount of a payment refunded by a nursing facility after ALTCS approval is only excluded for six months beginning with the month the refund was received. The Administration shall evaluate the refund in accordance with R9-28-409 if transferred without receiving something of equal value.
- D. For an institutionalized spouse, a resource disregard is allowed under 42 U.S.C. 1396r-5(c).
- E. Trusts are evaluated in accordance with federal and state laws to determine eligibility.
- F. A person shall provide information and verification necessary to determine the countable value of resources.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final

rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-408. Income Criteria for Eligibility**

- A. The following Medicaid-eligible persons shall be deemed to meet the income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
  2. A person receiving Title IV-E Foster Care Maintenance Payments; or
  3. A person receiving Title IV-E Adoption Assistance.
- B. If the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;
  2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;
  3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
  4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
  5. Income described in subsection (C) is excluded.
- C. The following are income exceptions:
1. Disbursements from a trust are considered in accordance with federal and state law; and
  2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).
- D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.
- E. The Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The Administration shall consider the following in determining the share-of-cost:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
  2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
  3. The share-of-cost of a person with a spouse is calculated as follows:
    - a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
    - b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.
  4. Income assigned to a trust is considered in accordance with federal and state law.
  5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
    - a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month. A personal-needs allowance equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who

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resides in a medical institution for less than the full calendar month;

- b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
  - c. A household allowance equal to the standard specified in Section 2 of the Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of household members minus the income of the household members if a spouse and children remain at home;
  - d. Expenses for the medical and remedial care services listed in subsection (6) if the expenses have not been paid or are not subject to payment by a third-party, the person still has the obligation to pay the expense, and one of the following conditions is met:
    - i. The expense represents a payment made and reported to the Administration during the application period or a payment reported to the Administration no later than the end of the month following the month in which the payment occurred and the expense has not previously been allowed a share-of-cost deduction; or
    - ii. The expense represents the unpaid balance of an allowed, noncovered medical or remedial expense, and the expense has not been previously a share-of-cost deduction;
  - e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or
  - f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and
6. The deductible expense under subsection (5)(b) shall not include any amount for a service covered under the Title XIX State Plan. The deductible expense may include the TPL deductible, co-insurance, and co-payment charges for the following medically necessary services:
- a. Nonemergency dental services for a person who is age 21 or older;
  - b. Hearing aids and hearing aid batteries for a person who is age 21 or older;
  - c. Nonemergency eye care and prescriptive lenses for a person who is age 21 or older;
  - d. Chiropractic services, including treatment for subluxation of the spine, demonstrated by x-ray;
  - e. Orthognathic surgery for a person who is age 21 or older; or
  - f. Co-payments for Medicare Part D prescriptions, if not paid by the State.
  - g. On a case-by-case basis, other noncovered medically necessary services that a person petitions the Administration for and the Director approves.
- F. A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-409. Transfer of Assets**

- A. The provisions in this Section apply to an institutionalized person who has, or whose spouse has, transferred assets and received less than the fair market value (uncompensated value) as specified in A.R.S. § 36-2934(B) and 42 U.S.C. 1396p(c)(1)(A), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B. A person shall report transfer of assets. The Administration shall evaluate all transfers made during or after the look-back period under 42 U.S.C. 1396p(c)(1)(B), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. The person shall provide verification of any transfer.
- C. Certain transfers are permitted under 42 U.S.C. 1396p(c)(2), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- D. If the Administration determines a disqualification period applies due to a transfer, and the person is otherwise eligible, the person may remain eligible for ALTCS acute care services but shall be disqualified for receiving ALTCS coverage under 42 U.S.C. 1396p(c)(1)(E), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- E. Period of disqualification for transfers.
  - 1. Calculating a period of disqualification at application. The uncompensated value of all transfers shall be divided by the monthly private pay rate. The result of this calculation equals the number of months of ineligibility.
  - 2. Calculating a period of disqualification after approval:
    - a. For one or more transfers occurring in one calendar month or in consecutive months, the period of disqualification is determined under subsection (E)(1). The period of disqualification begins with the month that the first transfer was made.
    - b. For transfers occurring in nonconsecutive calendar months, the period of disqualification for each transfer of assets shall be determined separately under subsection (E)(1) to determine if the periods of disqualification overlap.
      - i. Periods of disqualification that overlap shall be added together and shall run consecutively, beginning with the month the first transfer was made.
      - ii. Periods of disqualification that do not overlap are each applied separately beginning the month that the transfer was made.
- F. Transfers of assets for less than fair market value are presumed to have been made to establish eligibility for ALTCS services.
- G. Rebuttal of disqualification.
  - 1. A person found ineligible for ALTCS services by reason of a transfer of assets for uncompensated value shall have the right to rebut the disqualification for reasons stated

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under 42 U.S.C. 1396p(c)(2)(C), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

2. The person shall have the burden of rebutting the presumption.
  3. If a person rebuts a transfer on the basis of debt repayment, the Administration shall determine the validity of the debt and payment amount under A.R.S. § 44-101.
- H. Undue hardship.** The transfer penalty period may be waived if denial of eligibility for long term care services creates an undue hardship.
1. The Administration shall consider whether the transfer penalty period can be waived when:
    - a. The individual is otherwise eligible for ALTCS benefits and application of the transfer of assets provision would deprive the individual of medical care such that the individual's life or health would be endangered, or
    - b. The individual is otherwise eligible for ALTCS benefits and is deprived of food, clothing, shelter or other necessities of life as evidenced by the fact that the individual's income is less than or equal to the Federal Poverty Level (FPL);
  2. The transfer penalty period shall be waived when:
    - a. The individual is incapacitated as established by the Court or by a physician; and
    - b. The individual who had the legal authority to handle the applicant's finances has violated the terms of that legal authority; and
    - c. An individual acting on the applicant's behalf has exhausted all legal remedies to regain the asset, such as but not limited to, filing a police report and seeking recovery through civil court.
  3. The transfer penalty period shall not be waived when:
    - a. The applicant was mentally competent and would have been aware of the consequences of the transfers at the time the transfers occurred; or
    - b. The applicant gave another person specific legal authority to make the transfers, such as a conservator, or a person granted the applicant's financial power of attorney when the applicant was competent to do so, and the person did not violate the limits of that authority in making the transfers.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-410. Community Spouse**

- A.** The methodology in this Section applies to an institutionalized person who has a community spouse.
- B.** If the institutionalized person's most current period of continuous institutionalization began on or after September 30, 1989, the Administration shall use the methodology for the treatment of resources under 42 U.S.C. 1396r-5(c).
1. The following resource criteria shall be used in addition to the criteria specified in R9-28-407 to be eligible:
    - a. Resources owned by a couple at the beginning of the first continuous period of institutionalization from and after September 30, 1989, shall be computed from the first day of institutionalization. The total value of resources owned by the institutionalized

spouse and the community spouse, and a spousal share equal to one-half of the total value, are computed under 42 U.S.C. 1396r-5(c)(1).

- b. The Community Spouse Resource Deduction (CSRD) is calculated under 42 U.S.C. 1396r-5(f)(2).
  - c. The CSRD is subtracted from the total resources of the couple to determine the amount of the couple's resources considered available to the institutionalized spouse at the time of application under 42 U.S.C. 1396r-5(c)(2).
    - i. Resources in excess of the CSRD must be equal to or less than the standard for a person specified in R9-28-407.
    - ii. The CSRD is allowed as a deduction for 12 consecutive months beginning with the first month in which the institutionalized spouse is eligible for ALTCS benefits. Beginning with the 13th month, the separate property of the institutionalized spouse must be within the resource standard for a person specified in R9-28-407.
    - iii. If a person who was previously eligible for ALTCS as an institutionalized person with a community spouse reapplies for ALTCS after a break in institutionalization of more than 30 days, the CSRD will be allowed as a deduction from resources for a 12-month period in addition to the period in subsection (c)(ii).
  2. Resources are excluded as specified in R9-28-407, except that one vehicle is totally excluded regardless of its value, and any additional vehicles are included using equity value.
  3. The Director may grant eligibility if the Administration determines that a denial of eligibility would create an undue hardship for the institutionalized spouse.
- C.** This Section applies to the income eligibility and post-eligibility treatment of income beginning September 30, 1989, regardless of when the first period of institutionalization began.
1. Income payments are attributed to the institutionalized person and the community spouse under 42 U.S.C. 1396r-5(b)(2).
  2. Income is excluded as specified in R9-28-408.
  3. The institutionalized spouse's income eligibility is determined by combining the income of the institutionalized person and the community spouse and dividing by two. If the institutionalized person is not eligible using this method, the income eligibility shall be based on the income received in the person's name.
  4. The following allowances described in 42 U.S.C. 1396r-5(d)(1) and (2) are allowed as deductions from the institutionalized spouse's income in determining share-of-cost:
    - a. A personal-needs allowance specified in R9-28-408(E)(5);
    - b. A community spouse monthly income allowance, but only to the extent that the institutionalized spouse's income is made available to or for the benefit of the community spouse;
    - c. A family allowance for each family member equal to one-third of the amount remaining after deducting the countable income of the household member from a Minimum Monthly Maintenance Needs Allowance (MMMNA);
    - d. An amount for medical or remedial services as specified in R9-28-408; and

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- e. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement.
  - D. Transfers.**
    - 1. The institutionalized spouse may transfer to any of the following an amount of resources equal to the CSRD without affecting eligibility under 42 U.S.C. 1396r-5(f). The institutionalized spouse may transfer resources to:
      - a. The community spouse; or
      - b. Someone other than the community spouse if the resources are for the sole benefit of the community spouse.
    - 2. The institutionalized spouse is allowed a period of 12 consecutive months, beginning with the first month of eligibility, to transfer resources in excess of the resource standard in R9-28-407 to the persons listed in subsection (D)(1).
    - 3. All other transfers by the institutionalized person or transfers by the community spouse are treated under the provisions in R9-28-409.
  - E. Specific hearing rights as described under 9 A.A.C. 34 apply to a person whose eligibility is determined under this Section.**
    - 1. The institutionalized spouse or the community spouse is entitled to a fair hearing if dissatisfied with the determination of any of the following:
      - a. The community spouse monthly income allowance,
      - b. The amount of monthly income allocated to the community spouse,
      - c. The computation of the spousal share of resources,
      - d. The attribution of resources, or
      - e. The CSRD.
    - 2. The hearing officer may increase the amount of the MMMNA if either the community spouse or institutionalized spouse establishes that the community spouse needs income above the established MMMNA due to exceptional circumstances.
    - 3. The hearing officer may increase the amount of the CSRD to allow the community spouse to retain enough resources to generate income to meet the MMMNA. The hearing officer may allow the community spouse to retain an amount of resources necessary to purchase a single premium life annuity that would furnish monthly income sufficient to bring the community spouse's total monthly income up to the MMMNA.
- Historical Note**
- New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).
- R9-28-411. Changes, Redeterminations, and Notices**
- A. Reporting and verifying changes.**
    - 1. A person shall report to the ALTCS eligibility office the following changes for a person, a person's spouse, or a person's dependent children under 42 CFR 435.916:
      - a. A change of address;
      - b. An admission to or discharge from a medical facility, public institution, or private institution;
      - c. A change in the household's composition;
      - d. A change in income;
      - e. A change in resources;
      - f. A determination of eligibility for other benefits;
      - g. A death;
      - h. A change in marital status;
      - i. An improvement in the person's medical condition;
      - j. A change in school attendance;
      - k. A change in Arizona state residency;
      - l. A change in citizenship or alien status;
      - m. Receipt of an SSN under R9-22-305;
      - n. A transfer of assets under R9-28-409;
      - o. A change in trust income and disbursements in accordance with state and federal law;
      - p. A change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs;
      - q. A change in first-party medical insurance premiums;
      - r. A change in the household expenses used to calculate the community spouse monthly income allowance described in R9-28-410;
      - s. A change in the amount of the community spouse monthly income allowance that is provided to the community spouse by the institutionalized spouse under R9-28-410; and
      - t. Any other change that may affect the person's eligibility or share-of-cost.
    - 2. A change shall be reported either orally or in writing as described under R9-22-306.
  - B. Processing of changes and redeterminations.** A person's eligibility shall be redetermined at least one time every 12 months and when changes occur, under 42 CFR 435.916. A person's share-of-cost, specified in R9-28-408, shall be redetermined whenever a change occurs that may affect the post-eligibility computation of income.
  - C. Actions that may result from a redetermination or change.** Processing a redetermination or change shall result in one of the following findings:
    - 1. No change in eligibility or the post-eligibility computation of income;
    - 2. Discontinuance of eligibility if a condition of eligibility is no longer met;
    - 3. Suspension of eligibility if a condition of eligibility is temporarily not met;
    - 4. A change in the post-eligibility computation of income and the person's share-of-cost; or
    - 5. A change in service from ALTCS to ALTCS acute care services, or from ALTCS acute care services to ALTCS, caused by changes in a person's living arrangement, specified in R9-28-406, or a transfer of assets specified in R9-28-409.
  - D. Notices.**
    - 1. Contents of notice. The Administration shall issue a notice when an action is taken regarding a person's eligibility or computation of share-of-cost. The notice shall contain the following information:
      - a. A statement of the action being taken;
      - b. The effective date of the action;
      - c. The specific reason for the intended action;
      - d. The actual figures used in the eligibility determination and specify the amount by which the person exceeds income standards if eligibility is being discontinued because either a person's resources exceed the resource limit, or a person's income exceeds the income limit;
      - e. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
      - f. An explanation of a person's right to request an evidentiary hearing as described under 9 A.A.C. 34; and

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- g. An explanation of the date by which a request for hearing must be received so that eligibility or the current share-of-cost may be continued.
- 2. Advance notice of changes in eligibility or share-of-cost. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of change. Except as specified in subsection (D)(3), advance notice shall be issued whenever the following adverse action is taken:
  - a. To discontinue or suspend eligibility if an eligible person no longer meets a condition of eligibility, either ongoing or temporarily;
  - b. To affect post-eligibility computation of income and increase a person's share-of-cost; or
  - c. To reduce benefits from ALTCS to ALTCS acute care services due to a change from a long-term care living arrangement to an acute care living arrangement, specified in R9-28-406(B), or due to a transfer with uncompensated value, specified in R9-28-409.
- 3. Adverse actions. An applicant or member may appeal, as described under 9 A.A.C. 34, by requesting a hearing from the Administration or its designee concerning any of the adverse actions if:
  - a. A person provides a clear, written statement, signed by the person, that a person no longer desires services;
  - b. A person provides information that requires termination of eligibility or an increase in the share-of-cost and the person signs a clear written statement waiving advance notice;
  - c. A person cannot be located and mail sent to that person has been returned as undeliverable;
  - d. A person has been admitted to a public institution where the person is ineligible for ALTCS under R9-28-406; or
  - e. A person has been approved for Medicaid in another state;
  - f. The Administration has information that confirms the death of the person;
  - g. The person's primary care provider has prescribed a change in the level of medical care; or
  - h. The notice involves an adverse determination regarding the PAS, specified in A.R.S. § 36-2936.
- E. Transitional. HCBS services may be provided to a person who is no longer at risk of institutionalization but who continues to require significant long-term care services under A.R.S. § 36-2936(D).
- C. Annual enrollment. If an ALTCS member is elderly or physically disabled and lives in a GSA served by more than one program contractor, a member may change to an available program contractor during the annual enrollment choice period.
- D. A program contractor is responsible for the enrolled ALTCS member as described in R9-28-712, County-of-Fiscal Responsibility.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

**R9-28-413. Enrollment with an Elderly and Physically Disabled (EPD) Program Contractor**

- A. A member's enrollment with an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with an EPD program contractor assigned to that GSA.
- B. New member makes a choice of an EPD program contractor. The Administration shall provide a new member an opportunity to choose an EPD program contractor, if an ALTCS member is elderly or physically disabled, and lives in a GSA served by more than one EPD program contractor.
- C. New member who makes no choice of an EPD program contractor. The Administration shall enroll an elderly or physically disabled new member that lives in a GSA with more than one EPD program contractor and who makes no choice of an EPD program contractor under the following:
  - 1. Criteria. The Administration will prioritize enrollment based on continuity of care and enroll a member with an EPD program contractor chosen under the following criteria, including but not limited to:
    - a. A member's living arrangement, and
    - b. A member's primary care practitioner.
  - 2. Algorithm. The Administration shall enroll a member through an algorithm as specified in contract, when a member has a choice of more than one EPD program contractor and the criteria in subsection (C)(1) does not apply.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-414. Enrollment with the DD Program Contractor**

A member's DD program contractor. The Administration shall enroll a member including an American Indian with the DES Division of Developmental Disabilities as specified in A.R.S. § 36-2940, if the ALTCS member is eligible for services for the developmentally disabled.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-415. Enrollment with a Tribal Program Contractor**

- A. On-reservation. Notwithstanding R9-28-412, the Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with the ALTCS tribal program contractor as specified in A.R.S. § 36-2932 if the person:

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-412. General Enrollment**

- A. Program contractors. The Administration shall enroll each ALTCS member with:
  - 1. An elderly and physically disabled (EPD) program contractor,
  - 2. The developmentally disabled (DD) program contractor,
  - 3. A tribal program contractor, or
  - 4. The AHCCCS fee-for-service program.
- B. Enrollment choice. An ALTCS member may choose a program contractor:
  - 1. At the time of application, or
  - 2. If the ALTCS member establishes a home outside of the GSA.

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1. Lives on-reservation of a tribe participating as an ALTCS tribal program contractor, or
  2. Lived on-reservation of a tribe participating as an ALTCS tribal program contractor immediately prior to placement in an off-reservation NF or alternative HCBS setting.
- B.** Off-reservation. The Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with an EPD program contractor under R9-28-413, if the member lives off-reservation, and does not have on-reservation status as specified in subsection (A)(2).

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-416. Enrollment with the Fee-for-Service (FFS) Program**

- A.** No tribal or EPD program contractor in GSA. The Administration shall enroll an ALTCS elderly or physically disabled member who resides in an area with no ALTCS tribal program contractor or EPD program contractor in the AHCCCS FFS program under A.R.S. § 36-2945.
- B.** Prior period coverage. The Administration shall enroll a member in AHCCCS fee-for-service program if a member is eligible for ALTCS services only during prior period coverage.
- C.** The Administration shall enroll a member in the AHCCCS fee-for-service program if the member is eligible for ALTCS services during the prior quarter period.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-417. Notification Requirements**

- A.** Administration responsibilities. The Administration shall notify a member's program contractor when a member is enrolled or disenrolled from the ALTCS program. The Administration shall include the following in the notification:
1. The member's name,
  2. The member's identification number,
  3. The member's effective date of enrollment or disenrollment, and
  4. The member's share-of-cost on a monthly enrollment roster.
- B.** Program contractor's responsibilities. The program contractor shall notify the Administration if an ALTCS member has any change that may affect eligibility including but not limited to:
1. A change in residential address,
  2. A change in medical or functional condition,
  3. A change in living arrangement including:
    - a. Alternative HCBS setting,
    - b. Home,
    - c. Nursing facility, or
    - d. Other living arrangement not specified in this subsection,
  4. Change in resource or income, or
  5. Death.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**R9-28 418. Disenrollment**

The Administration shall disenroll an ALTCS member on the last day of the month following receipt of appropriate notification under R9-28-411 except:

1. The Administration shall disenroll an ALTCS member who dies. A member's last day of enrollment shall be the date of death.
2. The Administration shall disenroll a member immediately when the member voluntarily withdraws from the ALTCS program.
3. If ALTCS benefits have been continued pending an eligibility appeal decision and the discontinuance is upheld as specified in 9 A.A.C. 34, the Administration shall disenroll a member effective on the date of the hearing decision.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS****R9-28-501. Program Contractor and Provider Standards – Related Definitions**

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

“Certification” means a voluntary process by which a federal or state regulatory entity grants recognition to a person, facility, or organization that has met certain qualifications specified by the regulatory entity, allowing the person, facility, or organization to use the word “certified” in a title or designation.

“Therapeutic leave” means that a member leaves an institutional facility for a period that does not exceed nine days per contract year.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

New Section made by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

**R9-28-501.01. Pre-Existing Conditions**

A program contractor shall comply with the pre-existing condition requirements in A.A.C. R9-22-502.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

**R9-28-502. Long-term Care Provider Requirements**

- A.** A provider shall obtain any necessary authorization from the program contractor or the Administration for services provided to a member.
- B.** A provider shall maintain and make available to a program contractor and to the Administration, financial, and medical records for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. The provider



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shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (E) effective June 6, 1989 (Supp. 89-2). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities**

- A. A nursing facility shall not provide services to a member unless the facility is licensed by Arizona Department of Health Services, Medicare- and Medicaid-certified, and meets the requirements in 42 CFR 442, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- B. An ICF-MR shall not provide services to a member unless the ICF-MR is Medicaid-certified and meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C. A nursing facility or ICF-MR that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of subsection (A) or (B).

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

**R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers**

- A. A noninstitutional long-term care provider shall not register with the Administration unless the provider meets the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.
- B. Additional qualifications to provide services to a member:
  1. A community residential setting and a group home for a person with developmental disabilities shall be licensed by the appropriate regulatory agency of the state as described in A.A.C. R9-33-107 and A.A.C. R6-6-714;
  2. An adult foster care home shall be certified or licensed under 9 A.A.C. 10;
  3. A home health agency shall be Medicare-certified and licensed under 9 A.A.C. 10;
  4. A person providing a homemaker service shall meet the requirements specified in the contract between the person and the Administration;
  5. A person providing a personal care service shall meet the requirements specified in the contract between the person and the Administration;

6. An adult day health care provider shall be licensed under 9 A.A.C. 10;
7. A therapy provider shall meet the following requirements:
  - a. A physical therapy provider shall meet the requirements in 4 A.A.C. 24;
  - b. A speech therapist provider shall meet the applicable requirements under 9 A.A.C. 16, Article 2.
  - c. An occupational therapy provider shall meet the requirements in 4 A.A.C. 43; and
  - d. A respiratory therapy provider shall meet the requirements in 4 A.A.C. 45;
8. A respite provider shall meet the requirements specified in contract;
9. A hospice provider shall be Medicare-certified and licensed under 9 A.A.C. 10;
10. A provider of home-delivered meal service shall comply with the requirements in 9 A.A.C. 8;
11. A provider of non-emergency transportation shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division;
12. A provider of emergency transportation shall meet the licensure requirements in 9 A.A.C. 13;
13. A day care provider for the developmentally disabled under A.R.S. § 36-2939 shall meet the licensure requirements in 6 A.A.C. 6;
14. A habilitation provider shall meet the requirements in A.A.C. R6-6-1523 or the therapy requirements in this Section;
15. A service provider, other than a provider specified in subsections (B)(1) through (B)(14), approved by the Director shall meet the requirements specified in a program contractor's contract with the Administration;
16. A behavioral health provider shall have all applicable state licenses or certifications and meet the service specifications in A.A.C. R9-22-1205; and
17. An assisted living home or a residential unit shall meet the requirements as defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services**

A provider shall not provide hospital services to a member unless the hospital is licensed by the Arizona Department of Health Services, and meets the requirements in 42 CFR 441 and 482, as of October 1, 2004, and 42 CFR 456, Subpart C, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997

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(Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).  
Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

**R9-28-506. Requirements for Spouse as Paid Caregiver**

- A.** For purposes of this Section, the following definitions apply:
1. "Extraordinary care" means care that exceeds the range of activities that a spouse would ordinarily perform in the household on behalf of the ALTCS member if the member did not have a disability or chronic illness, and that is necessary to ensure the health and welfare of the member and avoid institutionalization.
  2. "Personal care or similar services" means assistance provided to an ALTCS member with a disability or chronic illness to enable the member to perform Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) that the member would normally perform for himself or herself if the member did not have a disability or chronic illness. Assistance may involve performing a personal care task for the member or cuing the member so that the member performs the task for himself or herself.
- B.** As authorized by the Section 1115 Waiver, a member may choose to have personal care or similar services provided by the member's spouse as a paid caregiver if the following conditions and limitations are met:
1. The member resides in his or her own home;
  2. The Administration or a Program Contractor offers the member the choice of a provider of personal care or similar services other than the member's spouse;
  3. The personal care or similar services is described in the member's plan of care prepared by the member's case manager;
  4. The case manager records at least annually in the member's plan of care the member's choice to have personal care or similar services provided by the member's spouse as a paid caregiver;
  5. The personal care or similar services provided by the spouse are extraordinary care;
  6. The spouse is one of the following:
    - a. Employed by a provider that subcontracts with the member's Program Contractor;
    - b. If the member is developmentally disabled, the spouse is either employed by a provider that subcontracts with the member's Program Contractor, or registered with AHCCCS as an independent provider; or
    - c. If the member is a Native American enrolled in FFS, the spouse is either employed by an AHCCCS registered provider or registered with AHCCCS as an independent provider;
  7. The spouse meets the training and other qualifications that apply to other providers of personal care or similar services registered with AHCCCS;
  8. The Program Contractor does not pay a spouse providing personal care or similar services at a rate that exceeds the rate that would be paid to a provider of personal care or similar services who is not a spouse and the Administration does not pay a spouse providing personal care or similar services at a rate that exceeds the capped fee-for-service payment for personal care or similar services; and
  9. A spouse providing personal care or similar services as a paid caregiver is not paid for more than 40 hours of services in a seven-day period.
- C.** For a member who elects to have the member's spouse provide personal care or similar services as a paid caregiver, personal

care or similar services in excess of 40 hours in a seven-day period are not covered. If a spouse elects to provide less than the hours authorized by the Administration or Program Contractor, the remaining hours of medically necessary personal care or similar services may be provided by another personal caregiver, but the total hours of care provided by the spouse and any other personal caregiver shall not exceed 40 hours in a seven-day period.

- D.** By electing to have the member's spouse provide personal care and similar services as a paid caregiver, the member is not precluded from receiving medically necessary, cost effective home and community based services other than personal care or similar services.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3587, effective October 2, 2007 (Supp. 07-4).

**R9-28-507. Program Contractor General Requirements**

- A.** To participate in the ALTCS program, through a program contractor or directly through the Administration, a provider of ALTCS-covered services shall be registered with the Administration.
- B.** An ALTCS program contractor shall ensure that providers of service meet the requirements of this Article.
- C.** Each ALTCS program contractor shall maintain member service records for five years, that include, at a minimum, a case management plan, medical records, encounter data, grievances, complaints, and service information for each ALTCS member.
- D.** An ALTCS program contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled ALTCS member or designated representative within 12 business days after the program contractor receives notification of enrollment from the Administration. The program contractor shall ensure that the informational materials include:
1. A description of all covered services as specified in contract;
  2. An explanation of service limitations and exclusions;
  3. An explanation of the procedure for obtaining services, including a notice stating that the program contractor is liable only for those services authorized by an ALTCS member's case manager;
  4. An explanation of the procedure for obtaining emergency services;
  5. An explanation of the procedure for filing a grievance and appeal; and
  6. An explanation of when plan changes may occur as specified in contract.
- E.** A subcontractor shall collect the member's share of cost and report to the program contractor the amount collected as specified in the subcontractor contract. The program contractor shall report the share of cost collected to the Administration.
- F.** An ALTCS program contractor shall monitor a trust fund account for an institutionalized ALTCS member to verify that expenditures from the member's trust fund account are in compliance with federal regulations 42 U.S.C. 1396p(d)(4) and A.R.S. § 36-2934.01.
- G.** A program contractor shall ensure that an institutionalized ALTCS member transferred to an acute care facility to receive services is, whenever possible, returned to the original institution upon completion of acute care.
- H.** A program contractor shall ensure that an institutionalized ALTCS member granted therapeutic leave is, whenever medically appropriate, returned to the same bed in the original institution upon completion of the therapeutic leave.

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- I. A program contractor shall ensure that services are paid under A.A.C. R9-22-705.
- J. A program contractor shall comply with the marketing provisions in A.A.C. R9-22-504.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-508. Self-directed Attendant Care (SDAC)**

- A. For purposes of this Article the following terms are defined:
  - “Competent member” means a person who is oriented, exhibits evidence of logical thought, and can provide directions.
  - “Fiscal and Employer Agent” or “FEA” is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.
  - “Medically stable” means the member’s skilled-care medical needs are routine and not subject to frequent change because of health issues.
  - “Personal care” means activities of daily life such as dressing, bathing, eating and mobility.
- B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member’s legal guardian may choose to employ through the FEA a person to provide Self-directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.
- C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, hands-on training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy of health information or training of similar efficacy as approved by the Administration.
- D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member’s home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.
- E. A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.
- F. A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker and general supervision services.
- G. A competent member, who is medically stable, or the member’s legal guardian may employ an attendant care worker to also provide the following skilled services:
  1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;
  2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;
  3. Wound care (non-sterile);
  4. Glucose monitoring;
  5. Glucagon as directed by the health care provider;

6. Insulin by subcutaneous injection only if the member is not able to self-inject;
7. Permanent gastrostomy tube feeding; and
8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.

- H. The Administration or program contractor shall not cover services under subsection (G) unless:

1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and
2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). New Section made by final rulemaking at 16 A.A.R. 2386, effective January 16, 2011 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 2344, effective November 11, 2012 (Supp. 12-3).

**R9-28-509. Agency with Choice**

- A. Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings specific to this Section:
  - “Agency” means a provider of home and community based services, other than an individual, that has a co-employment relationship with one or more members for purposes of this Section.
  - “Co-employment relationship” means a situation where the Agency serves as the legal employer of record and the ALTCS member or authorized representative assumes certain responsibilities related to directing and or managing care.
  - “Individual’s representative” means a parent, family member, guardian, advocate, or other person authorized by the member to serve as a representative in connection with the provision of services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual’s free choice. An individual’s representative may not also be a paid caregiver of an individual receiving services and supports.
  - “Standardized training” means minimum training standards required of all paid caregivers by the Administration as specified in contract.
- B. Purpose. The Agency with Choice program is an ALTCS member directed service model for the provision of home and community based services. Under this model, the ALTCS member or individual’s representative and the agency enter into a co-employment relationship.
- C. In lieu of receiving HCBS services under a traditional service model, a member or the member’s individual’s representative

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may choose to participate in the Agency with Choice service model. Under the Agency with Choice service model, the agency shall maintain the authority to hire and fire paid caregivers and provide standardized training to the caregiver, and the member or individual representative may elect to recruit, select, dismiss, determine duties, schedule, specify training to meet the unique needs of the member, and supervise the paid caregivers on a day-to-day basis.

- D. Setting. This program is applicable to ALTCS members who reside in their own home.
- E. A member who chooses to receive services under the Agency with Choice service model is not precluded from receiving medically necessary, cost-effective services and supports from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the contractor.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

**R9-28-510. Case Management**

- A. A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.
- B. A case manager shall:
  - 1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
  - 2. Develop a service plan by:
    - a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
    - b. Ensuring that a member participates in the preparation of the member's case management plan;
    - c. Specifying the paid and natural support services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
    - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
  - 3. Submit a written justification to the case manager's supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
  - 4. Manage a case management plan by:
    - a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
    - b. Monitoring receipt of services by a member;
  - 5. Assist the member to maintain or progress toward the highest level of functioning;
  - 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
  - 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
  - 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets

the definition of a behavioral health professional under A.A.C. R9-20-101.

- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

**R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements**

A program contractor shall:

- 1. Comply with all requirements specified in A.A.C. R9-22-522; and
- 2. Submit a quarterly utilization control report within time lines specified in contract, and meet the requirements in 42 CFR 456 Subparts C, D, and F, October 1, 2004, incorporated by reference in R9-28-505.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-512. Expired****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

**R9-28-513. Program Compliance Audits**

The Administration shall meet the requirements specified under A.A.C. R9-22-521 for a program contractor.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-514. Release of Safeguarded Information by the Administration and Contractors**

The Administration, program contractors, providers, and noncontracting providers shall meet the requirements specified under A.A.C. R9-22-512 for an ALTCS applicant, or member.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-515. Repealed**

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**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**ARTICLE 6. RFP AND CONTRACT PROCESS**

*Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).*

**R9-28-601. General Provisions**

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contract under A.R.S. § 36-2944.
- B. The Administration shall follow the provisions under 9 A.A.C. 22, Article 6 for members, subject to limitations and exclusions under that Article, unless otherwise specified in this Chapter.
- C. The Administration shall award contracts under A.R.S. § 36-2932 to provide services under A.R.S. § 36-2939.
- D. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- E. The Administration and contractors shall retain all records relating to contract compliance for five years under A.R.S. § 36-2932 and dispose of the records under A.R.S. § 41-2550.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-602. RFP**

The ALTCS RFP for a program contractor serving members who are EPD shall meet the requirements of A.R.S. §§ 36-2944, A.R.S. § 36-2939, A.A.C. R9-22-602, and Articles 2 and 11 of this Chapter.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-603. Contract Award**

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-604. Contract or Proposal Protests; Appeals**

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

**R9-28-605. Waiver of Contractor's Subcontract with Hospitals**

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-606. Contract Compliance Sanction**

- A. The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

**R9-28-607. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-608. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-609. Repealed**

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**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**R9-28-610. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**ARTICLE 7. STANDARDS FOR PAYMENTS****R9-28-701. Standards for Payment Related Definitions**

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

**R9-28-701.10. General Requirements**

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term “program contractor” shall be substituted for “contractor.”

1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01 (10) and Article 2;
7. Payments by the Administration for Hospital Services Provided to an Eligible Person, R9-22-712; R9-22-712.01 and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and
11. Reinsurance, R9-22-720.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-702. Nursing Facility Assessment**

A. For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year.

“Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

“Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R9-11-204.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
  1. A continuing care retirement community,
  2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
  3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
  4. A tribally owned or operated facility located on a reservation, or
  5. Arizona Veteran’s Homes.
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
  1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
  2. The Administration shall use the information obtained under subsection (D)(1) to determine:
    - a. Each nursing facility’s total annual Medicaid patient days,
    - b. Each nursing facility’s total annual Medicare patient days,
    - c. Each nursing facility’s total annual patient days,
    - d. The aggregate net patient service revenue of all assessed providers, and
    - e. The slope described under 42 CFR 433.68(e)(2).
  3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility’s total annual patient days, other than Medicare patient days, by \$15.63.
  4. For a nursing facility, other than a nursing facility exempted in subsection (C), with a number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by

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- multiplying the nursing facility's total annual patient days, other than Medicare patient days, by \$1.80.
5. For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.
  6. The total annual assessment calculated under subsections (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1).
  7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1 of the assessment year.
  8. The Administration shall forward the provider assessments for all assessed facilities to the Arizona Department of Revenue on or before December 1 of the assessment year.
  9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
  10. In the event a nursing facility begins operation during the assessment year, that facility will have no responsibility for the assessment until such time as the facility has submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.
  11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3244, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1989, effective September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 3332, effective January 3, 2017 (Supp. 16-4).

**R9-28-703. Nursing Facility Supplemental Payments****A. Nursing Facility Supplemental Payments**

1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.
3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820

transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(1) applicable to the contractor and to each facility.

4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.
  5. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.
  6. Contractors shall not be required to make quarterly payments to a facility otherwise required by subsection (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.
- B.** Each contractor must pay each facility the amount computed within 20 calendar days of receiving the Nursing Facility Enhanced Payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C.** After each assessment year, the Administration shall reconcile the payments made by contractors under subsections (A)(3) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(1) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).
- D.** General requirements for all payments.
1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
  2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
  3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
  4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.
- E.** The Arizona Veterans' Homes are not eligible for supplemental payments.

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**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1989, effective September 6, 2014 (Supp. 14-3).

**R9-28-704. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-705. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-706. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (B) effective June 6, 1989 (Supp. 89-2). Amended effective April 25, 1990 (Supp. 90-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 4658, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-707. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**Editor's Note:** *The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that the amendment was not reviewed by the Governor's Regulatory Review Council; the agency did not sub-*

*mit a notice of proposed rulemaking for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rulemaking; and the Attorney General has not certified the rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-28-708. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 26, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-709. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (B) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-710. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-711. Repealed****Historical Note**

Adopted effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-712. County of Fiscal Responsibility****A. General requirements.**

1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

**B. Criteria for determining county of fiscal responsibility for an applicant.**

1. If the applicant resides in the applicant's own home, the county of fiscal responsibility is the county where the applicant currently resides.
2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant's own home.



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3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.
  4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant's own home prior to admission to ASH or the public institution.
- C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.
1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
    - a. The member moves from a NF to another NF in a different county,
    - b. The member moves from a NF to an alternative HCBS setting in a different county,
    - c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
    - d. The member moves from an alternative HCBS setting to a NF in a different county,
    - e. The member moves from the member's own home to an alternative HCBS setting in a different county,
    - f. The member moves from the member's own home to a NF in a different county,
    - g. The member moves from a NF or alternative HCBS setting into ASH, or
    - h. The member moves from ASH to a NF or alternative HCBS setting.
  2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal responsibility changes to the new county if the member moves from:
    - a. An alternative HCBS setting to the member's own home in a different county,
    - b. A NF to the member's own home in a different county,
    - c. The member's own home to the member's own home in a different county, or
    - d. ASH to the member's own home.
  3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
    - a. Both program contractors agree, or
    - b. The Administration determines that it is in the best interest of the member.

**Historical Note**

Adopted effective November 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 8 A.A.R. 3340, effective  
July 15, 2002 (Supp. 02-3).

**R9-28-713. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemak-

ing at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-714. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-715. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**ARTICLE 8. TEFRA LIENS AND RECOVERIES****R9-28-801. Definitions Related to TEFRA Liens**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Consecutive days" means days following one after the other without an interruption resulting from a discharge.

"File" means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

"Home" means property in which a member has an ownership interest and that serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

"Recover" means that AHCCCS takes action to collect from a claim.

"TEFRA lien" means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-801.01. TEFRA Liens – General**

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member's interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-802. TEFRA Liens – Affected Members**

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services,
  2. 55 years of age or older, and
  3. Permanently institutionalized.

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- B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-803. TEFRA Liens – Prohibitions**

AHCCCS shall not file a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:

1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-804. TEFRA Liens – AHCCCS Notice of Intent**

- A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.
- B. Content of the Notice of Intent. The Notice of Intent shall include the following information:
1. A description of a TEFRA lien and the action that AHCCCS intends to take,
  2. How a TEFRA lien affects a member's property,
  3. The legal authority for filing a TEFRA lien,
  4. The time-frames and procedures involved in filing a TEFRA lien, and
  5. The member's right to request an exemption.
- C. Request for exemption. A member or a member's representative may request an exemption. To request an exemption the member or the member's representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or

from recovery of lien based on R9-28-802, R9-28-803, or R9-28-806. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Section repealed effective August 11, 1997 (Supp. 97-3). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-805. TEFRA Liens and Estate Recovery – Member's Request for a State Fair Hearing**

- A. If the member or member's representative does not request an exemption under R9-28-804(C), the Administration shall send the member or representative a Notice of TEFRA Lien. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Notice of TEFRA Lien.
- B. If the member requests an exemption and the request is denied, the Administration shall send the member or representative a Denial of a Request for Exemption. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Denial of Request for Exemption. After the 30-day time-frame to file a State Fair Hearing, the member or representative is sent a Notice of a TEFRA Lien.
- C. Hearings regarding TEFRA liens shall be conducted under 9 A.A.C. 34.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-806. TEFRA Liens – Recovery**

- A. AHCCCS shall seek to recover a TEFRA lien upon the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:
1. Spouse;
  2. Child under the age of 21; or
  3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.
- B. AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:
1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; or
  2. A child of the member who resides in the deceased member's home and who:
    - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; and
    - b. Provided care to the member that allowed the member to reside at home rather than in an institution.
- C. To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:

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1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;
3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-807. TEFRA Liens – Release**

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien;
2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home; or
3. Notice of the member's death, if a lien has been filed on a life estate.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES****R9-28-901. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Estate" has the meaning in A.R.S. § 14-1201.

"Member" means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.

"Recover" means that AHCCCS takes action to collect from a claim.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-902. General Provisions**

The provisions in A.A.C. R9-22-1002 apply to this Section.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 7, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-903. Cost Avoidance**

The provisions in A.A.C. R9-22-1003 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-904. Member Participation**

The provisions in A.A.C. R9-22-1004 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-905. Collections**

The provisions in A.A.C. R9-22-1005 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-906. AHCCCS Monitoring Responsibilities**

The provisions in A.A.C. R9-22-1006 apply to this Section.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens**

The provisions in A.A.C. R9-22-1007 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-908. Notification Information for Liens**

The provisions in A.A.C. R9-22-1008 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-909. Notification of Health Insurance Information**

The provisions in A.A.C. R9-22-1009 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-910. Recoveries**

AHCCCS shall recover funds paid before or after the death of a member for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance and deductibles paid by AHCCCS, fee-for-service payments, and reinsurance payments from:

1. The estate of a member who was 55 years of age or older when the member received benefits; or
2. The estate or the property of a member under A.R.S. §§ 36-2935, 36-2956, and 42 U.S.C. 1396p.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-911. Estate Recovery and Undue Hardship**

- A. Any recovery of a claim by AHCCCS against a member's estate shall be made only after the death of the member's surviving spouse and only at a time:

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1. When there exists no surviving minor child under age 21; and
  2. When there exists no surviving child who receives benefits under either Title II or Title XVI of the Social Security Act because the child is blind or disabled as defined in 42 U.S.C. 1382c.
- B.** Undue hardship exemption request. A member's representative may request an undue hardship exemption. If the member's representative wishes to request an undue hardship exemption, the member's representative shall submit the request within 30 days from the receipt of the notification of the AHCCCS claim against the estate. The member's representative shall submit a written statement to AHCCCS describing the factual basis for a claim that the property should be exempt from estate recovery as provided under this Section. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving an undue hardship exemption request, unless the parties mutually agree to a longer period of time.
- C.** AHCCCS shall waive a claim against a member's estate because of undue hardship if any of the following situations exist:
1. The estate consists only of real property that is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:
    - a. Owns a business that is located at the residential property and:
      - i. The business was in operation at the residential property for at least 12 months preceding the death of the member,
      - ii. The business provides more than 50 percent of the heir's or devisee's livelihood, and
      - iii. The recovery of the property would result in the heir or devisee losing the heir's or devisee's means of livelihood; or
    - b. Currently resides in the residence and:
      - i. Resided there at the time of the member's death,
      - ii. Made the residence his or her primary residence for the 12 months immediately before the death of the member, and
      - iii. Owns no other residence; or
  2. The estate consists only of personal property and:
    - a. The heir's or devisee's gross annual income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received are included in determining the household's annual gross income; and
    - b. The heir or devisee does not own a home, land, or other real property.
- D.** When the estate consists of both personal property and real property that qualify for the undue hardship exemption criteria under subsections (B) and (C), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.
- E.** AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:
1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
  2. Ownership interest in trust or non-trust property;
  3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
  4. Any other ownership interests or rights in a property that has unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
  5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1) through (4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-912. Partial Recovery**

AHCCCS shall use the following factors in determining whether to seek a partial recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-913. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-914. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-915. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-916. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-917. Repealed**

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**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-918. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-919. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS****R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalties and assessments.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective June 9, 1998 (Supp. 98-2).  
Amended by final rulemaking at 10 A.A.R. 3065, effective September 11, 2004 (Supp. 04-3).

**R9-28-1002. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

**R9-28-1003. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

**R9-28-1004. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Repealed effective June 9, 1998 (Supp. 98-2).

**ARTICLE 11. BEHAVIORAL HEALTH SERVICES****R9-28-1101. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, and Chapter 22 subject to all exclusions and limitations.

1. Definitions. The definitions in A.A.C. R9-22-1201 and R9-22-101 apply to this Article, in addition to the following definitions:  
“Case manager” means an individual responsible for coordinating the physical health services or behavioral health services provided to a patient at the health care institution.

“Contractor” means an ALTCS contractor or as previously known as program contractor.

“Cost avoid” means the same as in A.A.C. R9-22-1201.

“Intergovernmental agreement” or “IGA” means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

“Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-28-1106.

“Tribal contractor” means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

2. Case management. A tribal contractor shall provide case management services to FFS American Indian members living on or off-reservation as delineated in the IGA.
3. Reimbursement. For FFS American Indians, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a contractor as specified in this Article.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1102. ALTCS Contractor or Tribal Contractor Responsibilities**

- A. ALTCS contractor. A contractor shall arrange for behavioral health services to all enrolled members, including American Indian members who are not enrolled with a tribal contractor.
- B. Tribal contractor. A tribal contractor shall provide behavioral health services to an American Indian member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD American Indian member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.
- C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:
  1. A behavioral health provider to another behavioral health provider,
  2. A RBHA or TRBHA to a contractor,
  3. A contractor or tribal contractor to a RBHA or TRBHA, or

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4. A contractor to a tribal contractor or vice versa.
- D. The Administration, a tribal contractor, or a contractor, as appropriate, shall authorize medical necessary behavioral health services for American Indian members.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1103. Eligibility for Covered Services**

- A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified under Chapter 22, Article 2 and 12.
- B. Behavioral health services are covered as specified in Chapter 22, Article 2 and 12.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1104. General Service Requirements**

- A. Services. Behavioral health services include both mental health and substance abuse services and are subject to the provisions under Chapter 22, Article 2 and 12.
- B. Enrollment of American Indian member. The Administration shall enroll an EPD American Indian member with a tribal contractor on a FFS basis if:
1. The member lives on-reservation of an American Indian tribal organization that is an ALTCS tribal contractor, or
  2. The member lived on-reservation of an American Indian tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.
- C. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS American Indian members enrolled with a tribal contractor as delineated in the intergovernmental agreement.
- D. Enrollment of American Indian members off-reservation. Except as provided in R9-28-1104(B)(2), an EPD American

Indian who resides off-reservation shall be enrolled with an ALTCS contractor to receive behavioral health services, including case management, under R9-28-415.

- E. Enrollment of developmentally disabled American Indian member. A developmentally disabled American Indian member who resides on or off-reservation shall be enrolled with the Department of Economic Security's Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security's Division of Developmental Disabilities.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993; amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1105. Scope of Behavioral Health Services**

Scope of Services. The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 8 A.A.R. 933, effective February 12, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1106. Standards for Service Providers**

- A. Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a contractor.
- B. The Administration or a contractor shall cost avoid any behavioral health service claims if the Administration or the contrac-

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tor establishes the probable existence of first-party liability or third-party liability.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1107. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

**R9-28-1108. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

**ARTICLE 12. REPEALED**

*Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-28-1201. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 13. FREEDOM TO WORK**

*Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).*

**R9-28-1301. General Freedom to Work Requirements**

The Administration shall determine eligibility for AHCCCS medical services under Article 2 of this Chapter and A.A.C. R9-22-1901.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1302. General Administration Requirements**

The Administration shall comply with the confidentiality rule under A.A.C. R9-22-512(C).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1303. Application for Coverage**

- A. A person may apply by submitting an application to an Administration office.
- B. The application date is the date the application is received at an Administration office.
- C. The provisions of A.A.C. R9-22-1406(B) and (D) apply to this Section.
- D. An applicant or representative who files an application may withdraw the application either orally or in writing. The Administration shall send an applicant withdrawing an application a denial notice under R9-28-1304.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1304. Notice of Approval or Denial**

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action and:

1. If approved:
  - a. The effective date of eligibility,
  - b. The amount the person shall pay, and
  - c. An explanation of the person's hearing rights specified in 9 A.A.C. 34; or
2. If denied, the information required by R9-28-401.01(G)(2).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1305. Reporting and Verifying Changes**

An applicant or member shall report and verify changes as described under R9-28-411(A), to the Administration, including any changes in the spouse's income that may affect the share of cost.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1306. Actions that Result from a Redetermination or Change**

The processing of a redetermination or change shall result in one of the following actions:

1. No change in eligibility, share-of-cost, or premium,
2. Discontinuance of eligibility if a condition of eligibility is no longer met,
3. A change in the person's share-of-cost,
4. A change in premium amount, or
5. A change in the coverage group under which a person receives AHCCCS medical coverage.

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

**R9-28-1307. Notice of Adverse Action**

- A. The requirements under R9-28-411(D)(1) apply.
- B. Advance notice of a change in eligibility, share of cost, or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to:
  - 1. Discontinue eligibility,
  - 2. Increase a person's share-of-cost,
  - 3. Increase the premium amount, or
  - 4. Reduce benefits from ALTCS to acute care services.
- C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
  - 1. A member provides a clearly written statement, signed by that member, that services are no longer wanted;
  - 2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that termination of eligibility or reduction of services will be the result of supplying the information and signs a written statement waiving advance notice;
  - 3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable. A member whose eligibility is discontinued under this subsection is subject to reinstatement of discontinued services under 42 CFR 431.231(d);
  - 4. A member has been admitted to a public institution where a person is ineligible for coverage;
  - 5. A member has been approved for Medicaid in another state; or
  - 6. The Administration receives information confirming the death of a member.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1308. Request for Hearing**

An applicant or member may request a hearing under 9 A.A.C. 34.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1309. Conditions of Eligibility**

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

- 1. Furnish a valid Social Security Number (SSN);
- 2. Be a resident of Arizona;
- 3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
- 4. Be at least 16 years of age, but less than 65 years of age;
- 5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
  - a. The unearned income of the applicant or member shall be disregarded,

- b. The income of a spouse or other family members shall be disregarded, and
  - c. The deduction for a minor child shall not apply;
- 6. Reside in a living arrangement specified under R9-28-406(A);
  - 7. Be determined as physically disabled by meeting the medical criteria under Article 3 of this Chapter; and
  - 8. Comply with the member responsibility provisions under A.A.C. R9-22-1502(D) and (F).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1310. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1311. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1312. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1313. Premium Requirements**

- A. As a condition of eligibility, an applicant or member shall:
  - 1. Pay the premium required under subsection (B).
  - 2. Not have any unpaid premiums that exceed the premium amount for one month.
- B. The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
  - 1. A member who has countable income:
    - a. Under \$500, the monthly premium payment shall be \$0.
    - b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
  - 2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1314. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1315. Repealed**



## Arizona Health Care Cost Containment System – Arizona Long-term Care System

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1316. Institutionalized Person**

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution and federal financial participation (FFP) is not available, or
2. Older than age 20 but younger than age 65 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1317. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1318. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1319. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1320. Additional Eligibility Criteria for the Basic Coverage Group**

As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant's or member's income.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1321. Share of Cost**

The Director shall determine the amount a person shall pay for the cost of ALTCS services (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. Share of cost shall be calculated for people who reside in a medical institution for an entire calendar month under R9-28-408(G) and R9-28-410(C) except that the personal-needs allowance shall be increased by 50 percent of the member's earned income.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

**R9-28-1322. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1323. Enrollment**

The Administration shall enroll members under R9-28-412 through R9-28-418.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

**R9-28-1324. Redetermination of Eligibility**

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under Article 3 of this Chapter, the Administration shall determine if the member is eligible under other coverage groups.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 12. Natural Resources**

### **Chapter 4. Game and Fish Commission**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

**R12-4-701 through R12-4-708, R12-4-802 and R12-4-803**

REMOVE Supp. 16-2  
Pages: 1 - 136

REPLACE with Supp. 16-4  
Pages: 1 - 136

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

## TITLE 12. NATURAL RESOURCES

## CHAPTER 4. GAME AND FISH COMMISSION

Authority: A.R.S. § 17-201 et seq.

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).*

*Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 41-1005(A)(1). Exemption from A.R.S. Title 41, Chapter 6 means that the Game and Fish Commission did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; the Commission was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

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**ARTICLE 4. LIVE WILDLIFE**

*New Article 4, consisting of Sections R12-4-401 through R12-4-420, R12-4-422, and R12-4-424 through R12-4-428 adopted effective April 28, 1989.*

*Former Article 4, Commission Orders, consisting of Sections*

## Game and Fish Commission

*R12-4-401 through R12-4-424, R12-4-429 through R12-4-431, R12-4-440 through R12-4-443 expired. See R12-4-118.*

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*Article 5 Article heading amended effective November 7, 1996 (Supp. 96-4).*

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*Article 9, consisting of Sections R12-4-901 through R12-4-*

*906, made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1).*

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*Article 11, consisting of Sections R12-4-1103 and R12-4-1104, made by emergency rulemaking at 17 A.A.R. 1218, effective June 2, 2011 for 180 days (Supp. 11-2). Article 11 renewed by emergency rulemaking at 17 A.A.R. 2376 for 180 days, effective November 3, 2012 (Supp. 11-4).*

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**ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS****R12-4-101. Definitions**

- A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-301, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless otherwise specified:

“Bobcat seal” means the tag a person is required to attach to the raw pelt or unskinned carcass of any bobcat taken by trapping in Arizona or exported out of Arizona regardless of the method of take.

“Bonus point” means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.

“Certificate of insurance” means an official document issued by the sponsor's and sponsor's vendors or subcontractors insurance carrier providing insurance against claims for injury to persons or damage to property which may arise from or in connection with the solicitation or event as determined by the Department.

“Commission Order” means a document adopted by the Commission that does one or more of the following:

- Open, close, or alter seasons,
- Open areas for taking wildlife,
- Set bag or possession limits for wildlife,
- Set the number of permits available for limited hunts, or
- Specify wildlife that may or may not be taken.

“Day-long” means the 24-hour period from one midnight to the following midnight.

“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.

“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.

“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.

“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.

“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.

“Identification number” means the number assigned to each applicant or license holder by the Department, as established under R12-4-111.

“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.

“Management unit” means an area established by the Commission for management purposes.

“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.

“Person” has the meaning as provided under A.R.S. § 1-215.

“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.

“Restricted nonpermit-tag” means a tag issued for a supplemental hunt as established under R12-4-115.

“Solicitation” means any activity that may be considered or interpreted as promoting, selling, or transferring products, services, memberships, or causes, or participation in an event or activity of any kind, including organizational, educational, public affairs, or protest activities, including the distribution or posting of advertising, handbills, leaflets, circulars, posters, or other printed materials for these purposes.

“Solicitation material” means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.

“Sponsor” means the person or persons conducting a solicitation or event.

“Stamp” means a form of authorization in addition to a license that authorizes the license holder to take wildlife specified by the stamp.

“Tag” means the Department authorization a person is required to obtain before taking certain wildlife as established under A.R.S. Title 17 and 12 A.A.C. 4.

“Waterdog” means the larval or metamorphosing stage of a salamander.

“Wildlife area” means an area established under 12 A.A.C. 4, Article 8.

- B. If the following terms are used in a Commission Order, the following definitions apply:

“Antlered” means having an antler fully erupted through the skin and capable of being shed.

“Antlerless” means not having an antler, antlers, or any part of an antler erupted through the skin.

“Bearded turkey” means a turkey with a beard that extends beyond the contour feathers of the breast.

“Buck antelope” means a male pronghorn antelope.

“Adult bull buffalo” means a male buffalo any age or any buffalo designated by a Department employee during an adult bull buffalo hunt.

“Adult cow buffalo” means a female buffalo any age or any buffalo designated by a Department employee during an adult cow buffalo hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of an animal or the specifically identified animal the Department authorizes to be taken and possessed with a valid tag.

“Ram” means any male bighorn sheep.



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“Rooster” means a male pheasant.

“Yearling buffalo” means any buffalo less than three years of age or any buffalo designated by a Department employee during a yearling buffalo hunt.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 22, 1976 (Supp. 76-5). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-01 renumbered as Section R12-4-101 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 22, 1982 (Supp. 82-2). Amended subsection (A), paragraph (10) effective April 7, 1983 (Supp. 83-2). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended subsection (A) effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-102. License, Permit, Stamp, and Tag Fees**

- A. A person who purchases a license, tag, stamp, or permit listed in this Section shall pay at the time of purchase all applicable fees prescribed under this Section or the fees the Director authorizes under R12-4-115.
- B. A person who applies to purchase a hunt permit-tag shall submit with the application all applicable fees using acceptable forms of payment as required under R12-4-104(F) and (G).
- C. As authorized under A.R.S. § 17-345, the license fees in this section include a \$3 surcharge, except Youth and High Achievement Scout licenses.

Hunting and Fishing License Fees	Resident	Nonresident
General Fishing License	\$37	\$55
Community Fishing License	\$24	\$24
General Hunting License	\$37	Not available
Combination Hunting and Fishing License	\$57	\$160
Youth Combination Hunting and Fishing License, fee applies until the applicant's 18th birthday.	\$5	\$5
High Achievement Scout License, as authorized under A.R.S. § 17-336(B). Fee applies until the applicant's 21st birthday.	\$5	Not available
Short-term Combination Hunting and Fishing License	\$15	\$20

Youth Group Two-day Fishing License	\$25	Not available
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Hunt Permit-tag Fees	Resident	Nonresident
Antelope	\$90	\$550
Bear	\$25	\$150
Bighorn Sheep	\$300	\$1,800
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer and Archery Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Pheasant non-archery, non-falconry	Application fee only	Application fee only
Turkey and Archery Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10

Nonpermit-tag and Restricted Non-permit-tag Fees	Resident	Nonresident
Antelope	\$90	\$550
Bear	\$25	\$150
Buffalo		
Adult Bulls or Any Buffalo	\$1,100	\$5,400
Adult Cows	\$650	\$3,250
Yearling	\$350	\$1,750
Cow or Yearling	\$650	\$3,250
Deer	\$45	\$300
Youth	\$25	\$25
Elk	\$135	\$650
Youth	\$50	\$50
Javelina	\$25	\$100
Youth	\$15	\$15
Mountain Lion	\$15	\$75
Turkey	\$25	\$90
Youth	\$10	\$10
Sandhill Crane	\$10	\$10

Stamps and Special Use Fees	Resident	Nonresident
Arizona Colorado River Special Use Permit Stamp. For use by California and Nevada licensees	Not available	\$3
Bobcat Seal	\$3	\$3
State Migratory Bird Stamp	\$5	\$5

Other License Fees	Resident	Nonresident
Fur Dealer's License	\$115	\$115
Guide License	\$300	\$300

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License Dealer's License	\$100	\$100
License Dealer's Outlet License	\$25	\$25
Taxidermist License	\$150	\$150
Trapping License	\$30	\$275
Youth	\$10	\$10
<b>Administrative Fees</b>		
Duplicate License Fee	\$4	\$4
Application Fee	\$13	\$15

- D. A person desiring a replacement of a Migratory Bird or Arizona Colorado River Special Use Permit Stamp shall repurchase the stamp.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 31, 1977 (Supp. 77-2). Amended effective June 28, 1977 (Supp. 77-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 1, 1979 (Supp. 78-6). Amended effective June 4, 1979 (Supp. 79-3). Amended effective January 1, 1980 (Supp. 79-6). Amended paragraphs (1), (7) through (11), (13), (15), (29), (30), and (32) effective January 1, 1981 (Supp. 80-5). Former Section R12-4-30 renumbered as Section R12-4-102 without change effective August 13, 1981. Amended effective August 31, 1981 (Supp. 81-4). Amended effective September 15, 1982 unless otherwise noted in subsection (D) (Supp. 82-5). Amended effective January 1, 1984 (Supp. 83-4). Amended subsections (A) and (C) effective January 1, 1985 (Supp. 84-5). Amended effective January 1, 1986 (Supp. 85-5). Amended subsection (A), paragraphs (1), (2), (8) and (9) effective January 1, 1987. Amended by adding a new subsection (A), paragraph (31) and renumbering accordingly effective July 1, 1987. Both amendments filed November 5, 1986 (Supp. 86-6). Amended subsections (A) and (C) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsections (A) and (C) filed December 30, 1988, effective January 1, 1989"; Amended subsection (C) effective April 28, 1989 (Supp. 89-2). Section R12-4-102 repealed, new Section R12-4-102 filed as adopted November 26, 1990, effective January 1, 1991 (Supp. 90-4). Amended effective September 1, 1992; filed August 7, 1992 (Supp. 92-3). Amended effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective December 16, 1995 (Supp. 94-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State November 14, 1995 (Supp. 95-4). Amended subsection (D), paragraph (4), and subsection (E), paragraph (10), effective October 1, 1996; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended subsection (B), paragraph (6) and subsection (E) paragraph (4), effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 or January 1, 2001, as designated within the text of the Section (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 1157, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2823, effective

August 13, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 12 A.A.R. 1391, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-103. Duplicate Tags and Licenses**

- A. Under A.R.S. § 17-332(C), the Department and its license dealers may issue a duplicate license or tag to an applicant who:
1. Pays the applicable fee prescribed under R12-4-102, and
  2. Signs an affidavit. The affidavit is furnished by the Department and is available at any Department office or license dealer.
- B. The applicant shall provide the following information on the affidavit:
1. The applicant's personal information:
    - a. Name;
    - b. Department identification number, when applicable;
    - c. Residency status and number of years of residency immediately preceding application, when applicable;
  2. The original license or tag information:
    - a. Type of license or tag;
    - b. Place of purchase;
    - c. Purchase date, when available; and
  3. Disposition of the original tag for which a duplicate is being purchased:
    - a. The tag was not used and is lost, destroyed, mutilated, or otherwise unusable; or
    - b. The tag was placed on a harvested animal that was subsequently condemned and the carcass and all parts of the animal were surrendered to a Department employee as required under R12-4-112(B) and (C). An applicant applying for a duplicate tag under this subsection shall also submit the condemned meat duplicate tag authorization form issued by the Department.
- C. In the event the Department is unable to verify the expiration date of the original license, the duplicate license shall expire on December 31 of the current year.

**Historical Note**

Amended effective June 7, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Former Section R12-4-07 renumbered as Section R12-4-103 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Computer Draw and Purchase of Bonus Points**

- A. For the purposes of this Section, "group" means all applicants who placed their names on a single application as part of the same application.
- B. A person is eligible to apply:
1. For a hunt permit-tag if the person:
    - a. Is at least 10 years of age at the start of the hunt for which the person is applying;
    - b. Has successfully completed a Department-sanctioned hunter education course by the start date of

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- the hunt for which the person is applying, when the person is under the age of 14;
- c. Has not reached the bag limit established under subsection (J) for that genus; and
  - d. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
2. For a bonus point if the person:
    - a. Is at least 10 years of age by the application deadline; and
    - b. Is not suspended or revoked in this state as a result of an action under A.R.S. §§ 17-340 or 17-502 at the time the person submits an application.
- C.** An applicant shall apply at the times, locations, and in the manner and method established by the hunt permit-tag application schedule published by the Department and available at any Department office, online at [www.azgfd.gov](http://www.azgfd.gov), or a license dealer.
1. The Commission shall set application deadline dates for hunt permit-tag computer draw applications through the hunt permit-tag application schedule.
  2. The Director has the authority to extend any application deadline date if a problem occurs that prevents the public from submitting a hunt permit-tag application within the deadlines set by the Commission.
  3. The Commission, through the hunt permit-tag application schedule, shall designate the manner and method of submitting an application, which may require an applicant to apply online only. If the Commission requires applicant's to use the online method, the Department shall accept paper applications only in the event of a Department systems failure.
- D.** An applicant for a hunt permit-tag or a bonus point shall complete and submit a Hunt Permit-tag Application. The application form is available from any Department office, a license dealer, or online at [www.azgfd.gov](http://www.azgfd.gov).
- E.** An applicant shall provide the following information on the Hunt Permit-tag Application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Social security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. If the applicant possesses a valid license authorizing the take of wildlife in this state, the number of the applicant's license;
  3. If the applicant does not possess a valid license at the time of the application, the applicant shall purchase a license as established under subsection (L). The applicant shall provide all of the following information on the license application portion of the Hunt Permit-tag Application:
    - a. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - b. Residency status and number of years of residency immediately preceding application, when applicable;
    - c. Type of license for which the person is applying; and
  4. Certify the information provided on the application is true and accurate;
  5. An applicant who is:
    - a. Under the age of 10 and is submitting an application for a hunt other than big game is not required to have a license under this Chapter. The applicant shall indicate "youth" in the space provided for the license number on the Hunt Permit-tag Application.
    - b. Age nine or older and is submitting an application for a big game hunt is required to purchase an appropriate license as required under this Section. The applicant shall either enter the appropriate license number in the space provided for the license number on the Hunt Permit-tag Application or purchase a license at the time of application, as applicable.
- F.** In addition to the information required under subsection (E), an applicant shall also submit all applicable fees established under R12-4-102, as follows:
1. When applying electronically:
    - a. The permit application fee; and
    - b. The license fee, when the applicant does not possess a valid license at the time of application. The applicant shall submit payment in U.S. currency using valid credit or debit card.
    - c. If an applicant is successful in the computer draw, the Department shall charge the hunt permit-tag fee using the credit or debit card furnished by the applicant.
  2. When applying manually:
    - a. The fee for the applicable hunt permit-tag;
    - b. The permit application fee; and
    - c. The license fee if the applicant does not possess a valid license at the time of application. The applicant shall submit payment by certified check, cashier's check, or money order made payable in U.S. currency to the Arizona Game and Fish Department.
- G.** An applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the computer draw, the Department shall deem the application unsuccessful, unless the application is for a bonus point.
1. An applicant shall make all hunt choices for the same genus within one application.
  2. An applicant shall not include applications for different genera of wildlife in the same envelope.
- H.** An applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule.
  2. For genera that have multiple draws within a single calendar year, a person who successfully draws a hunt permit-tag during an earlier season may apply for a later season for the same genus if the person has not taken the bag limit for that genus during a preceding hunt in the same calendar year.
  3. If the bag limit is more than one per calendar year, a person may apply for remaining hunt permit-tags in unfilled hunt areas as specified in the hunt permit-tag application schedule.
- I.** All members of a group shall apply for the same hunt numbers and in the same order of preference.
1. No more than four persons may apply as a group.

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2. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.
- J.** A person shall not apply for a hunt permit-tag for:
  1. Rocky Mountain or desert bighorn sheep if the person has met the lifetime bag limit for that sub-species.
  2. Buffalo if the person has met the lifetime bag limit for that species.
  3. Any species when the person has reached the bag limit for that species during the same calendar year for which the hunt permit-tag applies.
- K.** To participate in:
  1. The computer draw system, an applicant shall possess an appropriate hunting license that shall be valid, either:
    - i. On the last day of the application deadline for that computer draw, as established by the hunt permit-tag application schedule published by the Department, or
    - ii. On the last day of an extended deadline date, as authorized under subsection (C)(2).
    - iii. If an applicant does not possess an appropriate hunting license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application.
  2. The bonus point system, an applicant shall comply with the requirements established under R12-4-107.
- L.** The Department shall reject as invalid a Hunt Permit-Tag Application not prepared or submitted in accordance with this Section or not prepared in a legible manner.
- M.** Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.
- N.** The Department or its authorized agent shall mail hunt permit-tags to successful applicants. The Department shall return application overpayments to the applicant designated "A" on the Hunt Permit-tag Application. The Department shall not refund:
  1. A permit application fee.
  2. A license fee submitted with a valid application for a hunt permit-tag or bonus point.
  3. An overpayment of five dollars or less. The Department shall consider the overpayment to be a donation to the Arizona Game and Fish Fund.
- O.** The Department shall award a bonus point for the appropriate species to an applicant when the payment submitted is less than the required fees, but is sufficient to cover the application fee and, when applicable, license fee.
- P.** When the Department determines a Department error, as defined under subsection (3), caused the rejection or denial of a valid application:
  1. The Director may authorize either:
    - a. The issuance of an additional hunt permit-tag, provided the issuance of an additional hunt permit-tag will have no significant impact on the wildlife population to be hunted and the application for the hunt permit-tag would have otherwise been successful based on its random number, or
    - b. The awarding of a bonus point when a hunt permit-tag is not issued.
  2. A person who is denied a hunt permit-tag or a bonus point under this subsection may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
  3. For the purposes of this subsection, "Department error" means an internal processing error that:
    - a. Prevented a person from lawfully submitting an application for a hunt permit-tag,
    - b. Caused a person to submit an invalid application for a hunt permit-tag,
    - c. Caused the rejection of an application for a hunt permit-tag,
    - d. Failed to apply an applicant's bonus points to a valid application for a hunt permit-tag, or
    - e. Caused the denial of a hunt permit-tag.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 28, 1977 (Supp. 77-3). Amended effective July 24, 1978 (Supp. 78-4). Former Section R12-4-06 renumbered as Section R12-4-104 without change effective August 13, 1981. Amended subsections (N), (O), and (P) effective August 31, 1981 (Supp. 81-4). Former Section R12-4-104 repealed, new Section R12-4-104 adopted effective May 12, 1982 (Supp. 82-3). Amended subsection (D) as an emergency effective December 27, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Emergency expired. Amended effective June 20, 1983 (Supp. 83-3). Amended subsection (F)(3) effective September 12, 1984. Amended subsection (F)(9) and added subsections (F)(10) and (G)(3) effective October 31, 1984 (Supp. 84-5). Amended effective May 5, 1986 (Supp. 86-3). Amended effective June 4, 1987 (Supp. 87-2). Section R12-4-104 repealed, new Section R12-4-104 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-105. License Dealer's License**

- A.** For the purposes of this Section, unless the context otherwise requires:

"Dealer number" means the unique number assigned by the Department to a dealer outlet.

"Dealer outlet" means a specified location authorized to sell licenses under a license dealer's license.

"License" means any hunting or fishing license, permit, stamp, or tag that may be sold by a dealer or dealer outlet under this Section.

"License dealer" means a business licensed by the Department to sell licenses from one or more dealer outlets.

"License Dealer Portal" means the secure website provided by the Department for issuing licenses and permits and accessing a license dealer's account.

- B.** A person is eligible to apply for a license dealer's license, provided all of the following criteria are met:
1. The person's privilege to sell licenses for the Department has not been revoked or canceled under A.R.S. §§ 17-334, 17-338, or 17-339 within the two calendar years immediately preceding the date of application;

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2. The person's credit record or assets assure the Department that the value of the licenses shall be adequately protected;
  3. The person agrees to assume financial responsibility for licenses provided by the Department at the maximum value established under R12-4-102, less the dealer commission prescribed under A.R.S. § 17-338(B).
- C.** A person shall apply for a license dealer's license by submitting an application to any Department office. The application is furnished by the Department and is available at any Department office. A license dealer license applicant shall provide all of the following information on the application:
1. The principal business or corporation information:
    - a. Name,
    - b. Physical address, and
    - c. Telephone number;
    - d. If not a corporation, the applicant shall provide the information required under subsections (a), (b), and (c) for each owner;
  2. The contact information for the person responsible for ensuring compliance with this Section:
    - a. Name,
    - b. Business address, and
    - c. Business telephone number;
  3. Whether the applicant has previously sold licenses under A.R.S. § 17-334;
  4. Whether the applicant is seeking renewal of an existing license dealer's license;
  5. Credit references and a statement of assets and liabilities; and
  6. Dealer outlet information:
    - a. Name,
    - b. Physical address,
    - c. Telephone number, and
    - d. Name of the person responsible for ensuring compliance with this Section at each dealer outlet.
- D.** A license dealer may request to add dealer outlets to the license dealer's license, at any time during the license year, by submitting the application form containing the information required under subsection (C) to the Department.
- E.** An applicant who is denied a license dealer's license under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.
- F.** The Department shall:
1. Provide to the license dealer all licenses that the license dealer will make available to the public for sale,
  2. Authorize the license dealer to use the dealer's own license stock, or
  3. Authorize the license dealer to issue licenses and permits online via the Department's License Dealer Portal.
- G.** Upon receipt of licenses provided by the Department, the license dealer shall verify the licenses received are the licenses identified on the shipment inventory provided by the Department with the shipment.
1. Within five working days from receipt of shipment, the person performing the verification shall:
    - a. Clearly designate any discrepancies on the shipment inventory,
    - b. Sign and date the shipping inventory, and
    - c. Return the signed shipping inventory to the Department.
  2. The Department shall verify any discrepancies identified by the license dealer and credit or debit the license dealer's inventory accordingly.
- H.** A license dealer shall maintain an inventory of licenses for sale to the public at each outlet.
- I.** A license dealer may request additional licenses in writing or verbally.
1. The request shall include:
    - a. The name of the license dealer,
    - b. The assigned dealer number,
    - c. A list of the licenses needed, and
    - d. The name of the person making the request.
  2. Within 10 calendar days from receipt of a request, the Department shall provide the licenses requested, unless:
    - a. The license dealer failed to acknowledge licenses previously provided to the license dealer, as required under subsection (G);
    - b. The license dealer failed to transmit license fees, as required under subsection (J); or
    - c. The license dealer is not in compliance with this Section and all applicable statutes and rules.
- J.** A license dealer shall transmit to the Department all license fees collected by the tenth day of each month, less the dealer commission prescribed under A.R.S. § 17-338(B). Failure to comply with the requirements of this subsection shall result in the cancellation of the license dealer's license, as authorized under A.R.S. § 17-338(A).
- K.** A license dealer shall submit a monthly report to the Department by the tenth day of each month, as prescribed under A.R.S. § 17-339.
1. The monthly report form is furnished by the Department.
  2. A monthly report is required regardless of whether or not activities were performed.
  3. Failure to submit the monthly report in compliance with this subsection shall be cause to cancel the license dealer's license.
  4. The license dealer shall include in the monthly report all of the following information for each outlet:
    - a. Name of the dealer;
    - b. The assigned dealer number;
    - c. Reporting period;
    - d. Number of sales and dollar amount of sales for reporting period, by type of license sold;
    - e. Dollar amount of commission authorized under A.R.S. § 17-338(B);
    - f. Debit and credit adjustments for previous reporting periods, if any;
    - g. Number of affidavits received for which a duplicate license was issued under R12-4-103;
    - h. List of lost or missing licenses; and
    - i. Printed name and signature of the preparer.
  5. In addition to the information required under subsection (K), the license dealer shall also provide the affidavit for each duplicate license issued by the dealer during the reporting period.
    - a. The affidavit is furnished by the Department and is included in the license book.
    - b. A license dealer who fails to submit the affidavit for a duplicate license issued by the license dealer shall remit to the Department the actual cash value of the original license replaced.
- L.** The Department shall provide written notice of suspension and demand the return of all inventory within five calendar days from any license dealer who:
1. Fails to transmit monies due the Department under A.R.S. § 17-338 by the deadline established under subsection (J);
  2. Issues to the Department more than one check with insufficient funds during a calendar year; or
  3. Otherwise fails to comply with this Section and all applicable statutes and rules.

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- M.** As prescribed under A.R.S. § 17-338, the actual cash value of licenses not returned to the Department is due and payable to the Department within 15 working days from the date the Department provides written notice to the license dealer. This includes, but is not limited to:
1. Licenses not returned upon termination of business by a license dealer; or
  2. Licenses reported by a dealer outlet or discovered by the Department to be lost, missing, stolen, or destroyed for any reason.
- N.** In addition to those violations that may result in revocation, suspension, or cancellation of a license dealer's license as prescribed under A.R.S. §§ 17-334, 17-338, and 17-339, the Commission may revoke a license dealer's license if the license dealer or an employee of the license dealer is convicted of counseling, aiding, or attempting to aid any person in obtaining a fraudulent license.
- Historical Note**
- Amended effective June 7, 1976 (Supp. 77-3). Former Section R12-4-08 renumbered as Section R12-4-105 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-105 repealed, new Section R12-4-105 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).
- R12-4-106. Special Licenses Licensing Time-frames**
- A.** For the purposes of this Section, the following definitions apply:
- "Administrative review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(1).
- "License" means any permit or authorization issued by the Department and listed under subsection (H).
- "Overall time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(2).
- "Substantive review time-frame" has the same meaning as prescribed under A.R.S. § 41-1072(3).
- B.** As required under A.R.S. § 41-1072 et seq., within the overall time-frames listed in the table below, the Department shall either:
1. Grant a license to an applicant after determining the applicant meets all of the criteria required by statute and the governing rule; or
  2. Deny a license to an applicant when the Department determines the applicant does not meet all of the criteria required by statute and the governing rule.
    - a. The Department may deny a license at any point during the review process if the information provided by the applicant demonstrates the applicant is not eligible for the license as prescribed under statute or the governing rule.
    - b. The Department shall issue a written denial notice when it is determined that an applicant does not meet all of the criteria for the license.
    - c. The written denial notice shall provide:
      - i. The Department's justification for the denial, and
      - ii. When a hearing or appeal is authorized, an explanation of the applicant's right to a hearing or appeal.
- C.** During the overall time-frame:
1. The applicant and the Department may agree in writing to extend the overall time-frame.
  2. The substantive review time-frame shall not be extended by more than 25% of the overall time-frame.
- D.** An applicant may withdraw an application at any time.
- E.** The administrative review time-frame shall begin upon the Department's receipt of an application.
1. During the administrative review time-frame, the Department may return to the applicant, without denial, an application that is missing any of the information required under R12-4-409 and the rule governing the specific license. The Department shall issue to the applicant a written notice that identifies all missing information and indicates the applicant has 30 days in which to return the missing information.
  2. The administrative review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the notice until the date the Department receives the missing information.
  3. If an applicant fails to respond to a request for missing information within 30 days, the Department shall consider the application withdrawn.
- F.** The substantive review time-frame shall begin when the Department determines an application is complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The written notice shall:
    - a. Identify the additional information, and
    - b. Indicate the applicant has 30 days in which to submit the additional information.
    - c. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information.
    - d. If an applicant fails to respond to a request for additional information within 30 days, the Department shall consider the application withdrawn.
  2. The substantive review time-frame and the overall time-frame listed for the applicable license under this Section are suspended from the date on the request until the date the Department receives the additional information.
- G.** If the last day of the time-frame period falls on a Saturday, Sunday, or an official State holiday, the Department shall consider the next business day the time-frame period's last day. All periods listed are:
1. Calendar days, and
  2. Maximum time periods.
- H.** The Department may grant or deny a license in less time than specified below.

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Table 1. Time-Frames

Name of Special License	Governing Rule	Administrative Review Time-frame	Substantive Review Time-frame	Overall Time-frame
Aquatic Wildlife Stocking Permit	R12-4-410	10 days	170 days	180 days
Authorization for Use of Drugs on Wildlife	R12-4-309	20 days	70 days	90 days
Challenged Hunter Access/Mobility Permit	R12-4-217	1 day	29 days	30 days
Crossbow Permit	R12-4-216	1 day	29 days	30 days
Disabled Veteran's License	R12-4-202	1 day	29 days	30 days
Fishing Permits	R12-4-310	10 days	20 days	30 days
Game Bird License	R12-4-414	10 days	20 days	30 days
Guide License	R12-4-208	10 days	20 days	30 days
License Dealer's License	R12-4-105	10 days	20 days	30 days
Live Bait Dealer's License	R12-4-411	10 days	20 days	30 days
Pioneer License	R12-4-201	1 day	29 days	30 days
Private Game Farm License	R12-4-413	10 days	20 days	30 days
Scientific Collecting Permit	R12-4-418	10 days	20 days	30 days
Small Game Depredation Permit	R12-4-113	10 days	20 days	30 days
Sport Falconry License	R12-4-422	10 days	20 days	30 days
Watercraft Agents	R12-4-509	10 days	20 days	30 days
White Amur Stocking License	R12-4-424	10 days	20 days	30 days
Wildlife Holding License	R12-4-417	10 days	20 days	30 days
Wildlife Rehabilitation License	R12-4-423	10 days	50 days	60 days
Wildlife Service License	R12-4-421	10 days	50 days	60 days
Zoo License	R12-4-420	10 days	20 days	30 days

**Historical Note**

Editorial correction subsections (F) through (G) (Supp. 78-5). Former Section R12-4-09 renumbered as Section R12-4-106 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section adopted June 10, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

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

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

"Bonus point hunt number" means the hunt number assigned in a Commission Order for use by an applicant who is applying for a bonus point only.

"Loyalty bonus point" means a bonus point awarded to a person who has submitted a valid application for a hunt permit-tag or a bonus point for a specific genus identified in subsection (B) at least once annually for a consecutive five-year period.

**B.** The bonus point system grants a person one random number entry in each computer draw for antelope, bear, bighorn sheep, buffalo, deer, elk, javelina, or turkey for each bonus point that person has accumulated under this Section.

- Each bonus point random number entry is in addition to the entry normally granted under R12-4-104.
- When processing a "group" application, as defined under R12-4-104, the Department shall use the average number of bonus points accumulated by all persons in the group, rounded to the nearest whole number. If the average number of bonus points is equal to or greater than .5, the total will be rounded to the next higher number.
- The Department shall credit a bonus point under an applicant's Department identification number for the genus on the application.

4. The Department shall not transfer bonus points between persons or genera.

**C.** The Department shall award one bonus point to an applicant who submits a valid Hunt Permit-tag Application provided the following apply:

- The application is unsuccessful in the computer draw or the application is for a bonus point only;
- The application is not for a hunt permit-tag leftover after the computer draw and available on a first-come, first-served basis as established under R12-4-114; and
- The applicant either provides the appropriate hunting license number on the application or submits an application and fees for the applicable license with the Hunt Permit-tag Application, as applicable.

**D.** An applicant who purchases a bonus point only shall:

- Submit a valid Hunt Permit-tag Application, as prescribed under R12-4-104, with the assigned bonus point hunt number for the particular genus as the first-choice hunt number on the application. The Department shall reject any application that:
  - Indicates the bonus point only hunt number as any choice other than the first-choice, or
  - Includes any other hunt number on the application;
- Include the applicable fees:
  - Application fee, and
  - Applicable license fee, required when the applicant does not possess a valid license at the time of application; and

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3. Submit only one Hunt Permit-tag Application per genus per computer draw.
- E. With the exception of the hunter education bonus point, each accumulated bonus point is valid only for the genus designated on the Hunt Permit-tag Application.
- F. With the exception of a permanent bonus point awarded for hunter education and a loyalty bonus point which is accrued and forfeited as established under subsection (L), a person's accumulated bonus points for a genus are expended if:
  1. The person is issued a hunt permit-tag for that genus in a computer draw;
  2. The person fails to submit a Hunt Permit-tag Application for that genus for five consecutive years; or
  3. The person purchases a surrendered tag as prescribed under R12-4-118(F)(1), (2), or (3).
- G. Notwithstanding subsection (F), the Department shall restore any expended bonus points to a person who surrenders or transfers a tag in compliance with R12-4-118 or R12-4-121.
- H. An applicant issued a first-come, first-served hunt permit-tag under R12-4-114(C)(2)(e) after the computer draw does not expend bonus points for that genus.
- I. An applicant who is unsuccessful for a first-come, first-served hunt permit-tag made available by the Department after the computer draw is not eligible to receive a bonus point.
- J. The Department shall award one permanent bonus point for each genus upon a person's first graduation from a Department-sanctioned Arizona Game and Fish Department Hunter Education Course.
  1. Course participants are required to provide the following information upon registration, the participants:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number;
    - d. E-mail address, when available;
    - e. Date of birth; and
    - f. Department ID number, when applicable.
  2. The Arizona Game and Fish Department-certified Instructor shall submit the course paperwork to the Department within 10 business days of course completion. Course paperwork must be received by the Department no less than 30 days before the computer draw application deadline, as specified in the hunt permit-tag application schedule in order for the Department to assign hunter education bonus points in the next computer draw.
  3. The Department shall not award hunter education bonus points for any of the following specialized hunter education courses:
    - a. Bowhunter Education,
    - b. Trapper Education, or
    - c. Advanced Hunter Education.
- K. The Department provides an applicant's total number of accumulated bonus points on the Department's application web site or IVR telephone system.
  1. If a person believes the total number of accumulated bonus points is incorrect, the person may request proof of compliance with this Section, from the Department, to prove Department error.
  2. In the event of an error, the Department shall correct the person's record.
- L. The following provisions apply to the loyalty bonus point program:
  1. An applicant who submits a valid application at least once a year for a hunt permit-tag or a bonus point for a specific genus consecutively for a five-year period shall accrue a loyalty bonus point for that genus.
  2. Except as established under subsection (N), once a loyalty bonus point is accrued, the applicant shall retain the loyalty bonus point provided the applicant annually submits an application, with funds sufficient to cover all application fees and applicable license fees for each applicant listed on the application, for a hunt permit-tag or a bonus point for the genus for which the loyalty bonus point was accrued.
  3. An applicant who fails to apply in any calendar year for a hunt permit-tag or bonus point for the genus for which the loyalty bonus point was accrued shall forfeit the loyalty bonus point for that genus.
  4. A loyalty bonus point is accrued in addition to all other bonus points.
- M. A military member, military reserve member, member of the National Guard, or emergency response personnel with a public agency may request the reinstatement of any expended bonus points for a successful Hunt Permit-tag Application.
  1. To request reinstatement of expended bonus points under these circumstances, an applicant shall submit all of the following information to the Arizona Game and Fish Department, Draw Section, 5000 W. Carefree Highway, Phoenix, AZ 85086:
    - a. Evidence of mobilization or change in duty status, such as a letter from the public agency or official orders; or
    - b. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable; and
    - c. The valid, unused hunt permit-tag.
  2. The Department shall deny requests post-marked after the beginning date of the hunt for which the hunt permit-tag is valid, unless the person also submits, with the request, evidence of mobilization, activation, or a change in duty status that precluded the applicant from submitting the hunt permit-tag before the beginning date of the hunt.
  3. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this subsection.
  4. Reinstatement of bonus points under this subsection is not subject to the requirements established under R12-4-118.
- N. It is unlawful for a person to purchase a bonus point by fraud or misrepresentation and any bonus point so obtained shall be removed from the person's Department record.

**Historical Note**

Former Section R12-4-03 renumbered as Section R12-4-107 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-107 repealed, new Section R12-4-107 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective July 29, 1992 (Supp. 92-3). Section R12-4-107 repealed, new Section R12-4-107 adopted effective January 1, 1999; filed with the Office of the Secretary of State February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 845, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January



2, 2016 (Supp. 15-4).

#### **R12-4-108. Management Unit Boundaries**

A. For the purpose of this Section, parentheses mean “also known as,” and the following definitions shall apply:

1. “FH” means “forest highway,” a paved road.
2. “FR” means “forest road,” an unpaved road.
3. “Hwy” means “Highway.”
4. “mp” means “milepost.”

B. The state is divided into units for the purpose of managing wildlife. Each unit is identified by a number, or a number and letter. For the purpose of this Section, Indian reservation land contained within any management unit is not under the jurisdiction of the Arizona Game and Fish Commission or the Arizona Game and Fish Department.

C. Management unit descriptions are as follows:

Unit 1 – Beginning at the New Mexico state line and U.S. Hwy 60; west on U.S. Hwy 60 to Vernon Junction; south on the Vernon-McNary road (FR 224) to the White Mountain Apache Indian Reservation boundary; east and south along the reservation boundary to Black River; east and north along Black River to the east fork of Black River; north along the east fork to Three Forks; and continuing north and east on the Three Forks-Williams Valley-Alpine Rd. (FR 249) to U.S. Hwy 180; east on U.S. Hwy 180 to the New Mexico state line; north along the state line to U.S. Hwy 60.

Unit 2A – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); north on U.S. Hwy 191 (AZ Hwy 61) to the Navajo Indian Reservation boundary; westerly along the reservation boundary to AZ Hwy 77; south on AZ Hwy 77 to Exit 292 on I-40; west on the westbound lane of I-40 to Exit 286; south on AZ Hwy 77 to U.S. Hwy 180; southeast on U.S. Hwy 180 to AZ Hwy 180A; south on AZ Hwy 180A to AZ Hwy 61; east on AZ Hwy 61 to U.S. Hwy 180 (AZ Hwy 61); east to U.S. Hwy 191 at St. Johns; except those portions that are sovereign tribal lands of the Zuni Tribe.

Unit 2B – Beginning at Springerville; east on U.S. Hwy 60 to the New Mexico state line; north along the state line to the Navajo Indian Reservation boundary; westerly along the reservation boundary to U.S. Hwy 191 (AZ Hwy 61); south on U.S. Hwy 191 (U.S. Hwy 180) to Springerville.

Unit 2C – Beginning at St. Johns on U.S. Hwy 191 (AZ Hwy 61); west on to AZ Hwy 61 Concho; southwest on AZ Hwy 61 to U.S. Hwy 60; east on U.S. Hwy 60 to U.S. Hwy 191 (U.S. Hwy 180); north on U.S. Hwy 191 (U.S. Hwy 180) to St. Johns.

Unit 3A – Beginning at the junction of U.S. Hwy 180 and AZ Hwy 77; south on AZ Hwy 77 to AZ Hwy 377; southwesterly on AZ Hwy 377 to AZ Hwy 277; easterly on AZ Hwy 277 to Snowflake; easterly on the Snowflake-Concho Rd. to U.S. Hwy 180A; north on U.S. Hwy 180A to U.S. Hwy 180; northwesterly on U.S. Hwy 180 to AZ Hwy 77.

Unit 3B – Beginning at Snowflake; southerly along AZ Hwy 77 to U.S. Hwy 60; southwest along U.S. Hwy 60 to the White Mountain Apache Indian Reservation boundary; easterly along the reservation boundary to the Vernon-McNary Rd. (FR 224); northerly along the Vernon-McNary Rd. to U.S. Hwy 60; west on U.S. Hwy 60 to AZ Hwy 61; northeasterly on AZ Hwy 61 to AZ Hwy 180A; northerly on AZ Hwy 180A to Concho-Snowflake

Rd.; westerly on the Concho-Snowflake Rd. to Snowflake.

Unit 3C – Beginning at Snowflake; westerly on AZ Hwy 277 to AZ Hwy 260; westerly on AZ Hwy 260 to the Sitgreaves National Forest boundary with the Tonto National Forest; easterly along the Apache-Sitgreaves National Forest boundary to U.S. Hwy 60 (AZ Hwy 77); northeasterly on U.S. Hwy 60 (AZ Hwy 77) to Showlow; northerly along AZ Hwy 77 to Snowflake.

Unit 4A – Beginning on the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest at the Mogollon Rim; north along this boundary (Leonard Canyon) to East Clear Creek; northerly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; northerly on Hipkoe Dr. to I-40; west on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; east along the Navajo Indian Reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd.; westerly and southerly along the Woods Canyon Lake Rd. to the Mogollon Rim; westerly along the Mogollon Rim to the boundary of the Apache-Sitgreaves National Forest with the Coconino National Forest.

Unit 4B – Beginning at AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest; northeasterly on AZ Hwy 260 to AZ Hwy 277; northeasterly on AZ Hwy 277 to Hwy 377; northeasterly on AZ Hwy 377 to AZ Hwy 77; northeasterly on AZ Hwy 77 to I-40 Exit 286; northeasterly along the westbound lane of I-40 to Exit 292; north on AZ Hwy 77 to the Navajo Indian Reservation boundary; west along the reservation boundary to the Little Colorado River; southerly along the Little Colorado River to Chevelon Creek; southerly along Chevelon Creek to Woods Canyon; westerly along Woods Canyon to Woods Canyon Lake Rd. (FH 151); westerly and southerly along the Woods Canyon Lake Rd. (FH 151) to the Mogollon Rim; easterly along the Mogollon Rim to the intersection of AZ Hwy 260 and the Sitgreaves National Forest boundary with the Tonto National Forest.

Unit 5A – Beginning at the junction of the Sitgreaves National Forest boundary with the Coconino National Forest boundary at the Mogollon Rim; northerly along this boundary (Leonard Canyon) to East Clear Creek; northeasterly along East Clear Creek to AZ Hwy 99; north on AZ Hwy 99 to AZ Hwy 87; north on AZ Hwy 87 to Business I-40 (3rd St.); west on Business I-40 (3rd St.) to Hipkoe Dr.; north on Hipkoe Dr. to I-40; west on I-40 to the Meteor Crater Rd. (Exit 233); southerly on the Meteor Crater-Chavez Pass-Jack’s Canyon Rd. (FR 69) to AZ Hwy 87; southwest along AZ Hwy 87 to the Coconino-Tonto National Forest boundary; easterly along the Coconino-Tonto National Forest boundary (Mogollon Rim) to the Sitgreaves National Forest boundary with the Coconino National Forest.

Unit 5B – Beginning at Lake Mary-Clint’s Well Rd. (FH3) and Walnut Canyon (mp 337.5 on FH3); southeasterly on FH3 to AZ Hwy 87; northeasterly on AZ Hwy 87 to FR 69; westerly and northerly on FR 69 to I-40 (Exit 233); west on I-40 to Walnut Canyon (mp 210.2); south-

westerly along the bottom of Walnut Canyon to Walnut Canyon National Monument; southwesterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; southwesterly along the bottom of Walnut Canyon to FH3 (mp 337.5).

Unit 6A – Beginning at the junction of U.S. Hwy 89A and FR 237; southwesterly on U.S. Hwy 89A to the Verde River; southeasterly along the Verde River to the confluence with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary; easterly along this boundary to AZ Hwy 87; northeasterly on AZ Hwy 87 to Lake Mary-Clint's Well Rd. (FH3); northwesterly on FH3 to FR 132; southwesterly on FR 132 to FR 296; southwesterly on FR 296 to FR 296A; southwesterly on FR 296A to FR 132; northwesterly on FR 132 to FR 235; westerly on FR 235 to Priest Draw; southwesterly along the bottom of Priest Draw to FR 235; westerly on FR 235 to FR 235A; westerly on FR 235A to FR 235; southerly on FR 235 to FR 235K; northwesterly on FR 235K to FR 700; northerly on FR 700 to Mountaineer Rd.; west on Mountaineer Rd. to FR 237; westerly on FR 237 to U.S. Hwy 89A except those portions that are sovereign tribal lands of the Yavapai-Apache Nation.

Unit 6B – Beginning at mp 188.5 on I-40 at a point just north of the east boundary of Camp Navajo; south along the eastern boundary of Camp Navajo to the southeastern corner of Camp Navajo; southeast approximately 1/3 mile through the forest to the forest road in section 33; southeast on the forest road to FR 231 (Woody Mountain Rd.); easterly on FR 231 to FR 533; southerly on FR 533 to U.S. Hwy 89A; southerly on U.S. Hwy 89A to the Verde River; northerly along the Verde River to Sycamore Creek; northeasterly along Sycamore Creek and Volunteer Canyon to the southwest corner of the Camp Navajo boundary; northerly along the western boundary of Camp Navajo to the northwest corner of Camp Navajo; continuing north to I-40 (mp 180.0); easterly along I-40 to mp 188.5.

Unit 7 – Beginning at the junction of AZ Hwy 64 and I-40 (in Williams); easterly on I-40 to FR 171 (mp 184.4 on I-40); northerly on FR 171 to the Transwestern Gas Pipeline; easterly along the Transwestern Gas Pipeline to FR 420 (Schultz Pass Rd.); northeasterly on FR 420 to U.S. Hwy 89; across U.S. Hwy 89 to FR 545; east on FR 545 to the Sunset Crater National Monument; easterly along the southern boundary of the Sunset Crater National Monument to FR 545; east on FR 545 to the 345 KV transmission lines 1 and 2; southeasterly along the power lines to I-40 (mp 212 on I-40); east on I-40 to mp 221.4; north to the southwest corner of the Navajo Indian Reservation boundary; northerly and westerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; west on U.S. Hwy 180 to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 8 – Beginning at the junction of I-40 and U.S. Hwy 89 (in Ash Fork, Exit 146); south on U.S. Hwy 89 to the Verde River; easterly along the Verde River to Sycamore Creek; northerly along Sycamore Creek to Volunteer Canyon; northeasterly along Volunteer Canyon to the west boundary of Camp Navajo; north along the bound-

ary to a point directly north of I-40; west on I-40 to U.S. Hwy 89.

Unit 9 – Beginning where Cataract Creek enters the Havasupai Reservation; easterly and northerly along the Havasupai Reservation boundary to Grand Canyon National Park; easterly along the Grand Canyon National Park boundary to the Navajo Indian Reservation boundary; southerly along the reservation boundary to the Four Corners Gas Line; southwesterly along the Four Corners Gas Line to U.S. Hwy 180; westerly along U.S. Hwy 180 to AZ Hwy 64; south along AZ Hwy 64 to Airport Rd.; west and north along Airport Rd. to the Valle-Cataract Creek Rd.; westerly along the Valle-Cataract Creek Rd. to Cataract Creek at Island Tank; northwesterly along Cataract Creek to the Havasupai Reservation Boundary.

Unit 10 – Beginning at the junction of AZ Hwy 64 and I-40; westerly on I-40 to Crookton Rd. (AZ Hwy 66, Exit 139); westerly on AZ Hwy 66 to the Hualapai Indian Reservation boundary; northeasterly along the reservation boundary to Grand Canyon National Park; east along the park boundary to the Havasupai Indian Reservation; easterly and southerly along the reservation boundary to where Cataract Creek enters the reservation; southeasterly along Cataract Creek in Cataract Canyon to Island Tank; easterly on the Cataract Creek-Valle Rd. to Airport Rd.; south and east along Airport Rd. to AZ Hwy 64; south on AZ Hwy 64 to I-40.

Unit 11M – Beginning at the junction of Lake Mary-Clint's Well Rd (FH3) and Walnut Canyon (mp 337.5 on FH3); northeasterly along the bottom of Walnut Canyon to the Walnut Canyon National Monument boundary; northeasterly along the northern boundary of the Walnut Canyon National Monument to Walnut Canyon; northeasterly along the bottom of Walnut Canyon to I-40 (mp 210.2); east on I-40 to the 345 KV transmission lines 1&2 (mp 212 on I-40); north and northeasterly along the power line to FR 545 (Sunset Crater Rd); west along FR 545 to the Sunset Crater National Monument boundary; westerly along the southern boundary of the Sunset Crater National monument to FR 545; west on FR 545 to US Hwy 89; across US Hwy 89 to FR 420 (Schultz Pass Rd); southwesterly on FR 420 to the Transwestern Gas Pipeline; westerly along the Transwestern Gas Pipeline to FR 171; south on FR 171 to I-40 (mp 184.4 on I-40); east on I-40 to a point just north of the eastern boundary of the Navajo Army Depot (mp 188.5 on I-40); south along the eastern boundary of the Navajo Army Depot to the southeast corner of the Depot; southeast approximately 1/3 mile to forest road in section 33; southeasterly along that forest road to FR 231 (Woody Mountain Rd); easterly on FR 231 to FR 533; southerly on FR 533 to US Hwy 89A; southerly on US Hwy 89A to FR 237; northeasterly on FR 237 to Mountaineer Rd; easterly on Mountaineer Rd to FR 700; southerly on FR 700 to FR 235K; southeasterly on FR 235K to FR 235; northerly on FR 235 to FR 235A; easterly on FR 235A to FR 235; easterly on FR 235 to Priest Draw; northeasterly along the bottom of Priest Draw to FR 235; easterly on FR 235 to FR 132; southeasterly on FR 132 to FR 296A; northeasterly on FR 296A to FR 296; northeasterly on FR 296 to FR 132; northeasterly on FR 132 to FH 3; southeasterly on FH 3 to the south rim of Walnut Canyon (mp 337.5 on FH3).

Unit 12A – Beginning at the confluence of the Colorado River and South Canyon; southerly and westerly along

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the Colorado River to Kanab Creek; northerly along Kanab Creek to Snake Gulch; northerly, easterly, and southerly around the Kaibab National Forest boundary to South Canyon; northeasterly along South Canyon to the Colorado River.

Unit 12B – Beginning at U.S. Hwy 89A and the Kaibab National Forest boundary near mp 566; southerly and easterly along the forest boundary to Grand Canyon National Park; northeasterly along the park boundary to Glen Canyon National Recreation area; easterly along the recreation area boundary to the Colorado River; north-easterly along the Colorado River to the Arizona-Utah state line; westerly along the state line to Kanab Creek; southerly along Kanab Creek to the Kaibab National Forest boundary; northerly, easterly, and southerly along this boundary to U.S. Hwy 89A near mp 566; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13A – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; easterly along the Colorado River to Kanab Creek; northerly along Kanab Creek to the Utah state line; west along the Utah state line to the western edge of the Hurricane Rim; except those portions that are sovereign tribal lands of the Kaibab Band of Paiute Indians.

Unit 13B – Beginning on the western edge of the Hurricane Rim at the Utah state line; southerly along the western edge of the Hurricane Rim to Mohave County Rd. 5 (the Mt. Trumbull Rd.); west along Mohave County Rd. 5 to the town of Mt. Trumbull (Bundyville); south from the town of Mt. Trumbull (Bundyville) on Mohave County Rd. 257 to BLM Rd. 1045; south on BLM Rd. 1045 to where it crosses Cold Spring Wash near Cold Spring Wash Pond; south along the bottom of Cold Spring Wash to Whitmore Wash; southerly along the bottom of Whitmore Wash to the Colorado River; westerly along the Colorado River to the Nevada state line; north along the Nevada state line to the Utah state line; east along the Utah state line to the western edge of the Hurricane Rim.

Unit 15A – Beginning at Pearce Ferry on the Colorado River; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to the Hualapai Indian Reservation; west and north along the west boundary of the reservation to the Colorado River; westerly along the Colorado River to Pearce Ferry; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 15B – Beginning at Kingman on I-40 (Exit 48); northwesterly on U.S. Hwy 93 to Hoover Dam; north and east along the Colorado River to Pearce Ferry; southerly on the Pearce Ferry Rd. to Antares Rd.; southeasterly on Antares Rd. to AZ Hwy 66; easterly on AZ Hwy 66 to Hackberry Rd.; southerly on the Hackberry Rd. to its junction with U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 15C – Beginning at Hoover Dam; southerly along the Colorado River to AZ Hwy 68 and Davis Dam; easterly on AZ Hwy 68 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to Hoover Dam.

Unit 15D – Beginning at AZ Hwy 68 and Davis Dam; southerly along the Colorado River to I-40; east and north on I-40 to Kingman (Exit 48); northwest on U.S. Hwy 93 to AZ Hwy 68; west on AZ Hwy 68 to Davis Dam; except those portions that are sovereign tribal lands of the Fort Mohave Indian Tribe.

Unit 16A – Beginning at Kingman on I-40 (Exit 48); south and west on I-40 to U.S. Hwy 95 (Exit 9); southerly on U.S. Hwy 95 to the Bill Williams River; easterly along the Bill Williams and Santa Maria rivers to U.S. Hwy 93; north on U.S. Hwy 93 to I-40 (Exit 71); west on I-40 to Kingman (Exit 48).

Unit 16B – Beginning at I-40 on the Colorado River; southerly along the Arizona-California state line to the Bill Williams River; east along the Bill Williams River to U.S. Hwy 95; north on U.S. Hwy 95 to I-40 (Exit 9); west on I-40 to the Colorado River.

Unit 17A – Beginning at the junction of the Williamson Valley Rd. (County Road 5) and the Camp Wood Rd. (FR 21); westerly on the Camp Wood Rd. to the west boundary of the Prescott National Forest; north along the forest boundary to the Baca Grant; east, north and west around the grant to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); southerly on Williamson Valley Rd. (County Rd. 5, FR 6) to the Camp Wood Rd.

Unit 17B – Beginning at the junction of Iron Springs Rd. (County Rd. 10) and Williamson Valley Rd. (County Road 5) in Prescott; westerly on the Prescott-Skull Valley-Hillside-Bagdad Rd. to Bagdad; northeast on the Bagdad-Camp Wood Rd. (FR 21) to the Williamson Valley Rd. (County Rd. 5, FR 6); south on the Williamson Valley Rd. (County Rd. 5, FR 6) to the Iron Springs Rd.

Unit 18A – Beginning at Seligman; westerly on AZ Hwy 66 to the Hualapai Indian Reservation; southwest and west along the reservation boundary to AZ Hwy 66; southwest on AZ Hwy 66 to the Hackberry Rd.; south on the Hackberry Rd. to U.S. Hwy 93; south on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeast along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; north and east along the forest boundary to the Williamson Valley Rd. (County Rd. 5, FR 6); northerly on the Williamson Valley Rd. (County Rd. 5, FR 6) to Seligman and AZ Hwy 66; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 18B – Beginning at Bagdad; southeast on AZ Hwy 96 to the Santa Maria River; southwest along the Santa Maria River to U.S. Hwy 93; northerly on U.S. Hwy 93 to Cane Springs Wash; easterly along Cane Springs Wash to the Big Sandy River; northerly along the Big Sandy River to Trout Creek; northeasterly along Trout Creek to the Davis Dam-Prescott power line; southeasterly along the power line to the west boundary of the Prescott National Forest; south along the forest boundary to the Baca Grant; east, south and west along the forest boundary; south

along the west boundary of the Prescott National Forest; to the Camp Wood-Bagdad Rd.; southwesterly on the Camp Wood-Bagdad Rd. to Bagdad; except those portions that are sovereign tribal lands of the Hualapai Indian Tribe.

Unit 19A – Beginning at AZ Hwy 69 and U.S. Hwy 89 (in Prescott); northerly on U.S. Hwy 89 to the Verde River; easterly along the Verde River to I-17; southwest-erly on the southbound lane of I-17 to AZ Hwy 69; north-westerly on AZ Hwy 69 to U.S. Hwy 89; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe and the Yavapai-Apache Nation.

Unit 19B – Beginning at the intersection of U.S. Hwy 89 and AZ Hwy 69, west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; northwest on the Iron Springs Rd. to the junction of Williamson Valley Rd. and Iron Springs Rd.; northerly on the Williamson Val-ley-Prescott-Seligman Rd. (FR 6, Williamson Valley Rd.) to AZ Hwy 66 at Seligman; east on Crookton Rd. (AZ Hwy 66) to I-40 (Exit 139); east on I-40 to U.S. Hwy 89; south on U.S. Hwy 89 to the junction with AZ Hwy 69; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20A – Beginning at the intersection of U.S. Hwy 89 and AZ Hwy 69; west on Gurley St. to Grove Ave.; north on the Grove Ave. to Miller Valley Rd.; northwest on the Miller Valley Rd. to Iron Springs Rd.; west and south on the Iron Springs-Skull Valley-Kirkland Junction Rd. to U.S. Hwy 89; continue south and easterly on the Kirkland Junction-Wagoner-Crown King-Cordes Rd. to Cordes, from Cordes southeast to I-17 (Exit 259); north on the southbound lane of I-17 to AZ Hwy 69; northwest on AZ Hwy 69 to junction of U.S. Hwy 89 at Prescott; except those portions that are sovereign tribal lands of the Yavapai-Prescott Tribe.

Unit 20B – Beginning at the Hassayampa River and U.S. Hwy 60/93 (in Wickenburg); northeasterly along the Has-sayampa River to the Kirkland Junction-Wagoner- Crown King-Cordes road (at Wagoner); southerly and northeast-erly along the Kirkland Junction-Wagoner-Crown King-Cordes Rd. (at Wagoner) to I-17 (Exit 259); south on the southbound lane of I-17 to the New River Road (Exit 232); west on the New River Road to State Hwy 74; west on AZ Hwy 74 to the junction of AZ Hwy 74 and U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Has-sayampa River.

Unit 20C – Beginning at U.S. Hwy 60/93 and the Santa Maria River; northeasterly along the Santa Maria River to AZ Hwy 96; easterly on AZ Hwy 96 to Kirkland Junc-tion; southeasterly along the Kirkland Junction-Wagoner-Crown King-Cordes road to the Hassayampa River (at Wagoner); southwest-erly along the Hassayampa River to U.S. Hwy 60/93; northwesterly on U.S. Hwy 60/93 to the Santa Maria River.

Unit 21 – Beginning on I-17 at the Verde River; southerly on the southbound lane of I-17 to the New River Road (Exit 232); east on New River Road to Fig Springs Road; northeasterly on Fig Springs Road to the Tonto National Forest boundary; southeasterly along this boundary to the Verde River; north along the Verde River to I-17.

Unit 22 – Beginning at the junction of the Salt and Verde Rivers; north along the Verde River to the confluence

with Fossil Creek; northeasterly along Fossil Creek to Fossil Springs; southeasterly on FS trail 18 (Fossil Spring Trail) to the top of the rim; northeasterly on the rim to Nash Point on the Tonto-Coconino National Forest boundary along the Mogollon Rim; easterly along this boundary to Tonto Creek; southerly along the east fork of Tonto Creek to the spring box, north of the Tonto Creek Hatchery, and continuing southerly along Tonto Creek to the Salt River; westerly along the Salt River to the Verde River; except those portions that are sovereign tribal lands of the Tonto Apache Tribe and the Fort McDowell Yavapai Nation.

Unit 23 – Beginning at the confluence of Tonto Creek and the Salt River; northerly along Tonto Creek to the spring box, north of the Tonto Creek Hatchery, on Tonto Creek; northeasterly along the east fork of Tonto Creek to the Tonto-Sitgreaves National Forest boundary along the Mogollon Rim; east along this boundary to the White Mountain Apache Indian Reservation boundary; south-erly along the reservation boundary to the Salt River; westerly along the Salt River to Tonto Creek.

Unit 24A – Beginning on AZ Hwy 177 in Superior; southeasterly on AZ Hwy 177 to the Gila River; north-easterly along the Gila River to the San Carlos Indian Reservation boundary; easterly, westerly and northerly along the reservation boundary to the Salt River; south-westerly along the Salt River to AZ Hwy 288; southerly on AZ Hwys 288 and 188 to U.S. Hwy 60; southwest-erly on U.S. Hwy 60 to AZ Hwy 177.

Unit 24B – Beginning on U.S. Hwy 60 in Superior; north-easterly on U.S. Hwy 60 to AZ Hwy 188; northerly on AZ Hwys 188 and 288 to the Salt River; westerly along the Salt River to the Tonto National Forest boundary near Granite Reef Dam; southeasterly along Forest boundary to Forest Route 77 (Peralta Rd.); southwest-erly on Forest Route 77 (Peralta Rd.) to U.S. Hwy 60; easterly on U.S. Hwy 60 to Superior.

Unit 25M – Beginning at the junction of 51st Ave. and I-10; west on I-10 to AZ Loop 303, northeasterly on AZ Loop 303 to I-17; north on I-17 to Carefree Hwy; east on Carefree Hwy to Cave Creek Rd.; northeasterly on Cave Creek Rd. to the Tonto National Forest boundary; east-erly and southerly along the Tonto National Forest boundary to Fort McDowell Yavapai Nation boundary; northeasterly along the Fort McDowell Yavapai Nation boundary to the Verde River; southerly along the Verde River to the Salt River; southwest-erly along the Salt River to the Tonto National Forest boundary; southerly along the Tonto National Forest boundary to Bush Hwy/Power Rd.; southerly on Bush Hwy/Power Rd. to AZ Loop 202; easterly, southerly, and westerly on AZ Loop 202 to the intersection of Pecos Rd. at I-10; west on Pecos Rd. to the Gila River Indian Community boundary; northwesterly along the Gila River Indian Community boundary to 51st Ave; northerly on 51st Ave to I-10; except those portions that are sovereign tribal lands.

Unit 26M – Beginning at the junction of I-17 and New River Rd. (Exit 232); southwest-erly on New River Rd. to AZ Hwy 74; westerly on AZ Hwy 74 to U.S. Hwy 93; southeasterly on U.S. Hwy 93 to the Beardsley Canal; southwest-erly on the Beardsley Canal to Indian School Rd.; west on Indian School Rd. to Jackrabbit Trail; south on Jackrabbit Trail to I-10 (Exit 121); west on I-10 to Oglesby Rd. (Exit 112); south on Oglesby Rd. to AZ

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Hwy 85; south on AZ Hwy 85 to the Gila River; north-easterly along the Gila River to the Gila River Indian Community boundary; southeasterly along the Gila River Indian Community boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to the Tohono O'odham Nation boundary; easterly along the Tohono O'odham Nation boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeasterly on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287 north of Coolidge; east on AZ Hwy 287 to AZ Hwy 79; north on AZ Hwy 79 to U.S. Hwy 60; northwesterly on U.S. Highway 60 to Peralta Rd.; northeasterly along Peralta Rd. to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to the Salt River; northeasterly along the Salt River to the Verde River; northerly along the Verde River to the Tonto National Forest boundary; northwesterly along the Tonto National Forest boundary to Fig Springs Rd.; southwesterly on Fig Springs Rd. to New River Rd.; west on New River Rd. to I-17 (Exit 232); except Unit 25M and those portions that are sovereign tribal lands.

Unit 27 – Beginning at the New Mexico state line and AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; north on U.S. Hwy 191 to Lower Eagle Creek Rd. (Pump Station Rd.); west on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; north along Eagle Creek to the San Carlos Apache Indian Reservation boundary; north along the San Carlos Apache Indian Reservation boundary to Black River; northeast along Black River to the East Fork of Black River; northeast along the East Fork of Black River to Three Forks-Williams Valley-Alpine Rd. (FR 249); easterly along Three Forks-Williams Valley-Alpine Rd. to U.S. Hwy 180; southeast on U.S. Hwy 180 to the New Mexico state line; south along the New Mexico state line to AZ Hwy 78.

Unit 28 – Beginning at I-10 and the New Mexico state line; north along the state line to AZ Hwy 78; southwest on AZ Hwy 78 to U.S. Hwy 191; northwest on U.S. Hwy 191 to Clifton; westerly on the Lower Eagle Creek Rd. (Pump Station Rd.) to Eagle Creek; northerly along Eagle Creek to the San Carlos Indian Reservation boundary; southerly and west along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to I-10 Exit 352; easterly on I-10 to the New Mexico state line.

Unit 29 – Beginning on I-10 at the New Mexico state line; westerly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186; southeast on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek-Kuykendall cutoff road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on the Rucker Canyon Rd. to Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line; north along the state line to I-10.

Unit 30A – Beginning at the junction of the New Mexico state line and U.S. Hwy 80; south along the state line to the U.S.-Mexico border; west along the border to U.S. Hwy 191; northerly on U.S. Hwy 191 to I-10 Exit 331; northeasterly on I-10 to the Bowie-Apache Pass Rd.; southerly on the Bowie-Apache Pass Rd. to AZ Hwy 186;

southeasterly on AZ Hwy 186 to AZ Hwy 181; south on AZ Hwy 181 to the West Turkey Creek - Kuykendall cut-off road; southerly on the Kuykendall cutoff road to Rucker Canyon Rd.; easterly on Rucker Canyon Rd. to the Tex Canyon Rd.; southerly on Tex Canyon Rd. to U.S. Hwy 80; northeast on U.S. Hwy 80 to the New Mexico state line.

Unit 30B – Beginning at U.S. Hwy 191 and the U.S.-Mexico border; west along the border to the San Pedro River; north along the San Pedro River to I-10; northeasterly on I-10 to U.S. Hwy 191; southerly on U.S. Hwy 191 to the U.S.-Mexico border.

Unit 31 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; northerly along AZ Hwy 77 to the Gila River; northeast along the Gila River to the San Carlos Indian Reservation boundary; south then east and north along the reservation boundary to U.S. Hwy 70; southeast on U.S. Hwy 70 to U.S. Hwy 191; south on U.S. Hwy 191 to the 352 exit on I-10; southwest on I-10 to Exit 340.

Unit 32 – Beginning at Willcox Exit 340 on I-10; north on Fort Grant Rd. to Brookerson Rd.; north on Brookerson Rd. to Ash Creek Rd.; west on Ash Creek Rd. to Fort Grant Rd.; north on Fort Grant Rd. to Bonita; northerly on the Bonita-Klondyke Rd. to the junction with Aravaipa Creek; west along Aravaipa Creek to AZ Hwy 77; southerly along AZ Hwy 77 to the San Pedro River; southerly along the San Pedro River to I-10; northeast on I-10 to Willcox Exit 340.

Unit 33 – Beginning at Tangerine Rd. and AZ Hwy 77; north and northeast on AZ Hwy 77 to the San Pedro River; southeast along the San Pedro River to I-10 at Benson; west on I-10 to Marsh Station Rd. (Exit 289); northwest on the Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary; then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.

Unit 34A – Beginning in Nogales at I-19 and Grand Avenue (U.S. Highway 89); northeast on Grand Avenue (U.S. Hwy. 89) to AZ Hwy 82; northeast on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to the Sahuarita road alignment; west along the Sahuarita road alignment to I-19 Exit 75; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 34B – Beginning at AZ Hwy 83 and I-10 Exit 281; easterly on I-10 to the San Pedro River; south along the San Pedro River to AZ Hwy 82; westerly on AZ Hwy 82 to AZ Hwy 83; northerly on AZ Hwy 83 to I-10 Exit 281.

Unit 35A – Beginning on the U.S.-Mexico border at the San Pedro River; west along the border to Lochiel Rd.; north on Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to

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Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on the FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; northeasterly on the Elgin-Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; easterly on AZ Hwy 82 to the San Pedro River; south along the San Pedro River to the U.S.-Mexico border.

Unit 35B – Beginning at Grand Avenue (U.S. Hwy 89) at the U.S.-Mexico border in Nogales; east along the U.S.-Mexico border to Lochiel Rd.; north on the Lochiel Rd. to Patagonia San Rafael Rd.; north on the Patagonia San Rafael Rd. to San Rafael Valley-FS 58 Rd.; north on the San Rafael Valley-FS 58 Rd. to Christian Ln.; north on the Christian Ln. to Ranch Rd.; east and north on the Ranch Rd. to FR 799-Canelo Pass Rd.; northeasterly on FR 799-Canelo Pass Rd. to AZ Hwy 83; northwesterly on the AZ Hwy 83 to Elgin Canelo Rd.; north on the Elgin Canelo Rd. to Upper Elgin Rd.; north on the Upper Elgin Rd. to AZ Hwy 82; southwest on AZ Hwy 82 to Grand Avenue; southwest on Grand Avenue to the U.S.-Mexico border.

Unit 36A – Beginning at the junction of Sandario Rd. and AZ Hwy 86; southwesterly on AZ Hwy 86 to AZ Hwy 286; southerly on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; north on I-19 to the southern boundary of the San Xavier Indian Reservation boundary; westerly and northerly along the reservation boundary to the Sandario road alignment; north on Sandario Rd. to AZ Hwy 86.

Unit 36B – Beginning at I-19 and Grand Avenue (U.S. Hwy 89) in Nogales; southwest on Grand Avenue to the U.S.-Mexico border; west along the U.S.-Mexico border to AZ Hwy 286; north on AZ Hwy 286 to the Arivaca-Sasabe Rd.; southeasterly on the Arivaca-Sasabe Rd. to the town of Arivaca; from the town of Arivaca northeasterly on the Arivaca Rd. to I-19; south on I-19 to Grand Avenue (U.S. Hwy 89).

Unit 36C – Beginning at the junction of AZ Hwy 86 and AZ Hwy 286; southerly on AZ Hwy 286 to the U.S.-Mexico border; westerly along the border to the east boundary of the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; easterly on AZ Hwy 86 to AZ Hwy 286.

Unit 37A – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to AZ Hwy 86; southwest on AZ Hwy 86 to the Tohono O'odham Nation boundary; north, east, and west along this boundary to Battaglia Rd.; east on Battaglia Rd. to Toltec Rd.; north on Toltec Rd. to I-10 (Exit 203); southeast on I-10 to AZ Hwy 87 (Exit 211); north on AZ Hwy 87 to AZ Hwy 287; east on AZ Hwy 287 to AZ Hwy 79 at Florence; southeast on AZ Hwy 79 to its junction with AZ Hwy 77; south on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 37B – Beginning at the junction of AZ Hwy 79 and AZ Hwy 77; northwest on AZ Hwy 79 to U.S. Hwy 60; east on U.S. Hwy 60 to AZ Hwy 177; southeast on AZ

Hwy 177 to AZ Hwy 77; southeast and southwest on AZ Hwy 77 to AZ Hwy 79.

Unit 38M – Beginning at the junction of I-10 and Tangerine Rd. (Exit 240); southeast on I-10 to Avra Valley Rd. (Exit 242); west on Avra Valley Rd. to Sandario Rd.; south on Sandario Rd. to the San Xavier Indian Reservation boundary; south and east along the reservation boundary to I-19; south on I-19 to Sahuarita Rd. (Exit 75); east on Sahuarita Rd. to AZ Hwy 83; north on AZ Hwy 83 to I-10 (Exit 281); east on I-10 to Marsh Station Rd. (Exit 289); northwest on Marsh Station Rd. to the Agua Verde Rd.; north on the Agua Verde Rd. to its terminus, then north 1/2 mile to the Coronado National Forest boundary; north and west along the National Forest boundary, then west, north, and east along the Saguaro National Park boundary; continuing north and west along the Coronado National Forest boundary to the southern boundary of Catalina State Park; west along the southern boundary of Catalina State Park to AZ Hwy 77; north on AZ Hwy 77 to Tangerine Rd.; west on Tangerine Rd. to I-10.

Unit 39 – Beginning at AZ Hwy 85 and the Gila River; east along the Gila River to the western boundary of the Gila River Indian Community; southeasterly along this boundary to AZ Hwy 347 (John Wayne Parkway); south on AZ Hwy 347 (John Wayne Parkway) to AZ Hwy 84; east on AZ Hwy 84 to Stanfield; south on the Stanfield-Cocklebur Rd. to I-8; westerly on I-8 to Exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; southerly on AZ Hwy 85 to the Gila River; except those portions that are sovereign tribal lands of the Tohono O'odham Nation and the Ak-Chin Indian Community.

Unit 40A – Beginning at Ajo; southeasterly on AZ Hwy 85 to Why; southeasterly on AZ Hwy 86 to the Tohono O'odham (Papago) Indian Reservation; northerly and easterly along the reservation boundary to the Cocklebur-Stanfield Rd.; north on the Cocklebur-Stanfield Rd. to I-8; westerly on I-8 to AZ Hwy 85; southerly on AZ Hwy 85 to Ajo.

Unit 40B – Beginning at Gila Bend; westerly on I-8 to the Colorado River; southerly along the Colorado River to the Mexican border at San Luis; southeasterly along the border to the Cabeza Prieta National Wildlife Refuge; northerly, easterly and southerly around the refuge boundary to the Mexican border; southeast along the border to the Tohono O'odham (Papago) Indian Reservation; northerly along the reservation boundary to AZ Hwy 86; northwesterly on AZ Hwy 86 to AZ Hwy 85; north on AZ Hwy 85 to Gila Bend; except those portions that are sovereign tribal lands of the Cocopah Tribe.

Unit 41 – Beginning at I-8 and U.S. Hwy 95 (in Yuma); easterly on I-8 to exit 87; northerly on the Agua Caliente Rd. to the Hyder Rd.; northeasterly on Hyder Rd. to 555th Ave.; north on 555th Ave. to Lahman Rd.; east on Lahman Rd., which becomes Agua Caliente Rd.; northeasterly on Agua Caliente Rd. to Old Hwy 80; northeasterly on Old Hwy 80 to Arizona Hwy 85; northerly on AZ Hwy 85 to Oglesby Rd.; north on Oglesby Rd. to I-10; westerly on I-10 to Exit 45; southerly on Vicksburg-Kofa

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National Wildlife Refuge Rd. to the Refuge boundary; easterly, southerly, westerly, and northerly along the boundary to the Castle Dome Rd.; southwesterly on the Castle Dome Rd. to U.S. Hwy 95; southerly on U.S. Hwy 95 to I-8.

Unit 42 – Beginning at the junction of the Beardsley Canal and U.S. Hwy 93 (U.S. 89, U.S. 60); northwesterly on U.S. Hwy 93 to AZ Hwy 71; southwesterly on AZ Hwy 71 to U.S. Hwy 60; westerly on U.S. Hwy 60 to Aguila; south on the Eagle Eye Rd. to the Salome-Hassayampa Rd.; southeasterly on the Salome-Hassayampa Rd. to I-10 (Exit 81); easterly on I-10 to Jackrabbit Trail (Exit 121); north along Jackrabbit Trail to the Indian School road; east along Indian School Rd. to the Beardsley Canal; northeasterly along the Beardsley Canal to U.S. Hwy 93.

Unit 43A – Beginning at U.S. Hwy 95 and the Bill Williams River; west along the Bill Williams River to the Arizona-California state line; southerly to the south end of Cibola Lake; northerly and easterly on the Cibola Lake Rd. to U.S. Hwy 95; south on U.S. Hwy 95 to the Stone Cabin-King Valley Rd. (King Rd.); east along the Stone Cabin-King Valley Rd. (King Rd.) to the west boundary of the Kofa National Wildlife Refuge; northerly along the refuge boundary to the Crystal Hill Rd. (Blevens Rd.); northwesterly on the Crystal Hill Rd. (Blevens Rd.) to U.S. Hwy 95; northerly on U.S. Hwy 95 to the Bill Williams River; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 43B – Beginning at the south end of Cibola Lake; southerly along the Arizona-California state line to I-8; southeasterly on I-8 to U.S. Hwy 95; easterly and northerly on U.S. Hwy 95 to the Castle Dome road; northeast on the Castle Dome Rd. to the Kofa National Wildlife Refuge boundary; north along the refuge boundary to the Stone Cabin-King Valley Rd. (King Rd.); west along the Stone Cabin-King Valley Rd. (King Rd.) to U.S. Hwy 95; north on U.S. Hwy 95 to the Cibola Lake Rd.; west and south on the Cibola Lake Rd. to the south end of Cibola Lake; except those portions that are sovereign tribal lands of the Quechan Tribe.

Unit 44A – Beginning at U.S. Hwy 95 and the Bill Williams River; south along U.S. Hwy 95 to AZ Hwy 72; southeasterly on AZ Hwy 72 to Vicksburg; south on the Vicksburg-Kofa National Wildlife Refuge Rd. to I-10; easterly on I-10 to the Salome-Hassayampa Rd. (Exit 81); northwesterly on the Salome-Hassayampa Rd. to Eagle Eye Rd.; northeasterly on Eagle Eye Rd. to Aguila; east on U.S. Hwy 60 to AZ Hwy 71; northeasterly on AZ Hwy 71 to U.S. Hwy 93; northwesterly on U.S. Hwy 93 to the Santa Maria River; westerly along the Santa Maria and Bill Williams rivers to U.S. Hwy 95; except those portions that are sovereign tribal lands of the Colorado River Indian Tribes.

Unit 44B – Beginning at Quartzsite; south on U.S. Hwy 95 to the Crystal Hill Rd. (Blevens Rd.); east on the Crystal Hill Rd. (Blevens Rd.) to the Kofa National Wildlife Refuge; north and east along the refuge boundary to the Vicksburg-Kofa National Wildlife Refuge Rd.; north on the Vicksburg-Kofa National Wildlife Refuge Rd. to AZ Hwy 72; northwest on AZ Hwy 72 to U.S. Hwy 95; south on U.S. Hwy 95 to Quartzsite.

Unit 45A – Beginning at the junction of the Stone Cabin-King Valley Rd. (King Rd.) and Kofa National Wildlife Refuge boundary; east on the Stone Cabin-King Valley Rd. (King Rd.) to O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north boundary of the Kofa National Wildlife Refuge; west and south on the boundary line to Stone Cabin-King Valley Rd. (King Rd.).

Unit 45B – Beginning at O-O Junction; north from O-O Junction on the Kofa Mine Rd. to the Evening Star Mine; north on a line over Polaris Mountain to Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.); north on the Midwell-Alamo Spring-Kofa Cabin Rd. (Wilbanks Rd.) to the El Paso Natural Gas Pipeline Rd.; north on a line from the junction to the north Kofa National Wildlife Refuge boundary; east to the east refuge boundary; south and west along the Kofa National Wildlife Refuge boundary to the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E); north and west on the Stone Cabin-King Valley Rd. (Wellton-Kofa Rd./Ave 40E) to O-O Junction.

Unit 46A – That portion of the Cabeza Prieta National Wildlife Refuge east of the Yuma-Pima County line.

Unit 46B – That portion of the Cabeza Prieta National Wildlife Refuge west of the Yuma-Pima County line.

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective March 5, 1976 (Supp. 76-2). Amended effective May 17, 1977 (Supp. 77-3). Amended effective September 7, 1978 (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-10 renumbered as Section R12-4-108 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective February 4, 1993 (Supp. 93-1). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 865, effective July 1, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-109. Approved Trapping Education Course Fee**

Under A.R.S. § 17-333.02(A), the provider of an approved educational course of instruction in responsible trapping and environmental ethics may collect a fee from each participant that:

1. Is reasonable and commensurate for the course, and
2. Does not exceed \$25.

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Editorial correction paragraph (14) (Supp. 78-5). Former Section R12-4-11 renumbered as Section R12-4-109 without change effective August 13, 1981 (Supp. 81-4). Amended by adding paragraphs (2) and (3) and renumbering former paragraphs (2) through (17) as paragraphs (4) through (19) effective May 12, 1982 (Supp. 82-3). Amended effective March 1, 1991; filed February 28,

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1991 (Supp. 91-1). Section repealed by final rulemaking at 6 A.A.R. 211, effective May 1, 2000 (Supp. 99-4).  
New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-110. Posting and Access to State Land****A.** For the purpose of this Section:

1. "Corrals," "feed lots," or "holding pens" mean completely fenced areas used to contain livestock for purposes other than grazing.
2. "Existing road" means any maintained or unmaintained road, way, highway, trail, or path that has been used for motorized vehicular travel, and clearly shows or has a history of established vehicle use, and is not currently closed by the Commission.
3. "State lands" means all land owned or held in trust by the state that is managed by the State Land Department and lands that are owned or managed by the Game and Fish Commission.

**B.** In addition to the prohibition against posting prescribed under A.R.S. § 17-304, a person shall not lock a gate, construct a fence, place an obstacle, or otherwise commit an act that denies legally available access to or use of any existing road upon state lands by persons lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.

1. A person in violation of this Section shall take immediate corrective action to remove any lock, fence, or other obstacle unlawfully preventing access to state lands.
2. If immediate corrective action is not taken, a representative of the Department may remove any unlawful posting and remove any lock, fence, or other obstacle that unlawfully prevents access to state lands.
3. In addition, the Department may take appropriate legal action to recover expenses incurred in the removal of any unlawful posting or obstacle that prevented access to state land.

**C.** The provisions of this Section do not allow any person to trespass upon private land to gain access to any state land.**D.** A person may post state lands as closed to hunting, fishing, or trapping without further action by the Commission when the state land is within one-quarter mile of any:

1. Occupied residence, cabin, lodge, or other building; or
2. Corrals, feed lots, or holding pens containing concentrations of livestock other than for grazing purposes.

**E.** The Commission may grant permission to lock, tear down, or remove a gate or close a road or trail that provides legally available access to state lands for persons lawfully taking wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing if access to such lands is provided by a reasonable alternate route.

1. Under R12-4-610, the Director may grant a permit to a state land lessee to temporarily lock a gate or close an existing road that provides access to state lands if the taking of wildlife will cause unreasonable interference during a critical livestock or commercial operation. This permit shall not exceed 30 days.
2. Applications for permits for more than 30 days shall be submitted to the Commission for approval.
3. If a permit is issued to temporarily close a road or gate, a copy of the permit shall be posted at the point of the closure during the period of the closure.

**F.** A person may post state lands other than those referenced under subsection (D) as closed to hunting, fishing, or trapping, provided the person has obtained a permit from the Commission authorizing the closure. A person possessing a permit authorizing the closure of state lands shall post signs in compliance with A.R.S. 17-304(C). The Commission may permit the closure of state land when it is necessary:

1. Because the taking of wildlife constitutes an unusual hazard to permitted users;
2. To prevent unreasonable destruction of plant life or habitat; or
3. For proper resource conservation, use, or protection, including but not limited to high fire danger, excessive interference with mineral development, developed agricultural land, or timber or livestock operations.

**G.** A person shall submit an application for posting state land to prohibit hunting, fishing, or trapping under subsection (F), or to close an existing road under subsection (E), as required under R12-4-610. If an application to close state land to hunting, fishing, or trapping is made by a person other than the state land lessee, the Department shall provide notice to the lessee and the State Land Commissioner before the Commission considers the application. The state land lessee or the State Land Commissioner shall file any objections with the Department, in writing, within 30 days after receipt of notice, after which the matter shall be submitted to the Commission for determination.**H.** A person may use a vehicle on or off a road to pick up lawfully taken big game animals.**I.** The closing of state land to hunting, fishing, or trapping shall not restrict any other permitted use of the land.**J.** State trust land may be posted with signs that read "State Land No Trespassing," but such posting shall not prohibit access to such land by any person lawfully taking or retrieving wildlife or conducting any activities that are within the scope of and take place while lawfully hunting or fishing.**K.** When hunting, fishing, or trapping on state land, a license holder shall not:

1. Break or remove any lock or cut any fence to gain access to state land;
2. Open and not immediately close a gate;
3. Intentionally or wantonly destroy, deface, injure, remove, or disturb any building, sign, equipment, marker, or other property;
4. Harvest or remove any vegetative or mineral resources or object of archaeological, historic, or scientific interest;
5. Appropriately mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;
6. Dig, remove, or destroy any tree or shrub;
7. Gather or collect renewable or non-renewable resources for the purpose of sale or barter unless specifically permitted or authorized by law;
8. Frighten or chase domestic livestock or wildlife, or endanger the lives or safety of others when using a motorized vehicle or other means; or
9. Operate a motor vehicle off road or on any road closed to the public by the Commission or landowner, except to retrieve a lawfully taken big game animal.

**Historical Note**

Adopted effective June 1, 1977 (Supp. 77-3). Editorial correction subsection (F) (Supp. 78-5). Former Section R12-4-13 renumbered as Section R12-4-110 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-111. Identification Number**



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A person applying for a Department identification number, as defined under R12-4-101, shall provide the person's:

1. Full name,
2. Any additional names the person has lawfully used in the past or is known by,
3. Date of birth, and
4. Mailing address.

**Historical Note**

Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-05 renumbered as Section R12-4-111 without change effective August 13, 1981 (Supp. 81-4). Section R12-4-111 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-112. Diseased, Injured, or Chemically-immobilized Wildlife**

- A.** A person who lawfully takes and possesses wildlife believed to be diseased, injured, or chemically-immobilized may request an inspection of the wildlife carcass provided:
1. The wildlife was lawfully taken and possessed under a valid hunt permit- or nonpermit-tag, and
  2. The person who took the wildlife did not create the condition.
- B.** The Department, after inspection, may condemn the carcass if it is determined the wildlife is unfit for human consumption. The Department shall condemn chemically-immobilized wildlife only when the wildlife was taken during the immobilizing drug's established withdrawal period.
- C.** The person shall surrender the entire condemned wildlife carcass and any parts thereof to the Department.
1. Upon surrender of the condemned wildlife, the Department shall provide to the person written authorization allowing the person to purchase a duplicate hunt permit- or nonpermit-tag.
  2. The person may purchase a duplicate tag from any Department office or license dealer where the permit-tag is available.
- D.** If the duplicate tag is issued by a license dealer, the license dealer shall forward the written authorization to the Department with the report required under R12-4-105(K).

**Historical Note**

Former Section R12-4-04 renumbered as Section R12-4-112 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-113. Small Game Depredation Permit**

- A.** The Department shall issue a small game depredation permit authorizing the take of small game and the allowable methods of take only after the Department has determined all other remedies prescribed under A.R.S. § 17-239(A), (B), and (C) have been exhausted and the take of the small game is necessary to alleviate the property damage. A small game depredation permit is:
1. A complimentary permit.
  2. Not valid for the take of migratory birds unless the permit holder:

- a. Obtains and possesses a federal special purpose permit under 50 C.F.R. 21.41, revised October 1, 2014, which is incorporated by reference; or
- b. Is exempt from permitting requirements under 50 C.F.R. 21.43, revised October 1, 2014, which is incorporated by reference;
- c. For subsections (A)(2)(a) and (b), the incorporated material is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or it may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

- B.** A person desiring a small game depredation permit shall submit to the Department an application requesting the permit. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The person shall provide all of the following information on the form:

1. Full name or, when submitted by a municipality, the name of the agency and agency contact;
2. Mailing address;
3. Telephone number or, when submitted by a municipality, agency contact number;
4. E-mail address, when available, or, when submitted by a municipality, agency contact e-mail address;
5. Description of property damage suffered;
6. Species of animal causing the property damage; and
7. Area the permit would be valid for.

**Historical Note**

Adopted effective August 5, 1976 (Supp. 76-4). Former Section R12-4-12 renumbered as Section R12-4-113 without change effective August 13, 1981 (Supp. 81-4). Amended as an emergency effective September 20, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Amended effective May 5, 1986 (Supp. 86-3). Section R12-4-113 repealed, new Section R12-4-113 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags**

- A.** The Department provides numbered tags for sale to the public. The Department shall ensure each tag:
1. Includes a transportation and shipping permit as prescribed under A.R.S. §§ 17-332 and 17-371, and
  2. Clearly identifies the animal for which the tag is valid.
- B.** If the Commission establishes a big game season for which a hunt number is not assigned, the Department or its authorized agent, or both, shall sell nonpermit-tags.
1. A person purchasing a nonpermit-tag shall provide all of the following information to a Department office or license dealer at the time of purchase; the applicant's:
    - a. Name,
    - b. Mailing address, and
    - c. Department identification number.
  2. An applicant shall not obtain nonpermit-tags in excess of the bag limit established by Commission Order when it established the season for which the nonpermit-tags are valid.
- C.** If the number of hunt permits for a species in a particular hunt area must be limited, a Commission Order establishes a hunt

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number for that hunt area and a hunt permit-tag is required to take the species in that hunt area.

1. A person applying for a hunt permit-tag shall submit an application as described under R12-4-104.
2. The Department shall determine whether a hunt permit-tag will be issued to an applicant as follows:
  - a. The Department shall reserve a maximum of 20% of the hunt permit-tags for each hunt number, except as established under subsection (C)(2)(b), for antelope, bear, deer, elk, javelina, and turkey and reserve a maximum of 20% of the hunt permit-tags for all hunt numbers combined statewide for bighorn sheep and buffalo to issue to persons who have bonus points and shall issue the hunt permit-tags as established under subsection (C)(2)(c).
  - b. For antelope, bear, deer, elk, javelina, and turkey, the Department shall reserve one hunt permit-tag for any hunt number with fewer than five, but more than one, hunt permit-tags and shall issue the tag as established under subsection (C)(2)(c). When this occurs, the Department shall adjust the number of available hunt permit-tags in order to ensure the total number of hunt permit-tags available does not exceed the 20% maximum specified in subsection (C)(2)(a).
  - c. The Department shall issue the reserved hunt permit-tags for hunt numbers that eligible applicants designate as their first or second choices. The Department shall issue the reserved hunt permit-tags by random selection:
    - i. First, to eligible applicants with the highest number of bonus points for that genus;
    - ii. Next, if there are reserved hunt permit-tags remaining, to eligible applicants with the next highest number of bonus points for that genus; and
    - iii. If there are still tags remaining, to the next eligible applicants with the next highest number of bonus points; continuing in the same manner until all of the reserved tags have been issued or until there are no more applicants for that hunt number who have bonus points.
  - d. The Department shall ensure that all unreserved hunt permit-tags are issued by random selection:
    - i. First, to hunt numbers designated by eligible applicants as their first or second choices; and
    - ii. Next, to hunt numbers designated by eligible applicants as their third, fourth, or fifth choices.
  - e. Before each of the three passes listed under (C)(2)(c)(i),(ii), and (iii), each application is processed through the Department's random number generator program. A random number is assigned to each application; an additional random number is assigned to each application for each group bonus point, including the Hunter Education and Loyalty bonus points. Only the lowest random number generated for an application is used in the computer draw process. A new random number is generated for each application for each pass of the computer draw.
  - f. If the bag limit is more than one per calendar year, or if there are unissued hunt permit-tags remaining after the random computer draw, the Department shall ensure these hunt permit-tags are available on a first-come, first-served basis as specified in the annual hunt permit-tag application schedule.

- D. A person may purchase hunt permit-tags equal to the bag limit for a genus.
  1. A person shall not exceed the established bag limit for that genus.
  2. A person shall not apply for any additional hunt-permit-tags if the person has reached the bag limit for that genus during the same calendar year.
  3. A person who surrenders a tag in compliance with R12-4-118 is eligible to apply for another hunt permit-tag for the same genus during the same calendar year, provided the person has not reached the bag limit for that genus.
- E. The Department shall make available to nonresidents:
  1. For bighorn sheep and buffalo, no more than one hunt permit-tag or 10% of the total hunt permit-tags, whichever is greater, for bighorn sheep or buffalo in any computer draw. The Department shall not make available more than 50% nor more than two bighorn sheep or buffalo hunt permit-tags of the total in any hunt number.
  2. For antelope, antlered deer, bull elk, or turkey, no more than 10%, rounded down to the next lowest number, of the total hunt permit-tags in any hunt number. If a hunt number for antelope, antlered deer, bull elk, or turkey has 10 or fewer hunt permit-tags, no more than one hunt permit-tag will be made available unless the hunt number has only one hunt permit-tag, then that tag shall only be available to a resident.
- F. The Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives.
- G. The Department shall not issue under subsection (C)(2)(c), more than half of the hunt permit-tags made available to nonresidents under subsection (E).
- H. A nonresident cap established under this Section applies only to hunt permit-tags issued by computer draw under subsections (C)(2)(c) and (d).

**Historical Note**

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 1183, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-115. Restricted Nonpermit-Tags; Supplemental Hunts and Hunter Pool**

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

"Companion tag" means a restricted nonpermit-tag valid for a supplemental hunt prescribed by Commission Order that exactly matches the season dates and open areas of another big game hunt, for which a hunt number is assigned and hunt permit-tags are issued through the computer draw.

"Emergency season" means a season established for reasons constituting an immediate threat to the health, safety or management of wildlife or its habitat, or public health or safety.

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“Management objectives” means goals, recommendations, or guidelines contained in Department or Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations;

“Hunter pool” means all persons who have submitted an application for a supplemental hunt.

“Restricted nonpermit-tag” means a permit limited to a season for a supplemental hunt established by the Commission for the following purposes:

Take of depredating wildlife as authorized under A.R.S. § 17-239;

Take of wildlife under an Emergency Season; or

Take of wildlife under a population management hunt if the Commission has prescribed nonpermit-tags by Commission Order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

- B.** The Commission shall, by Commission Order, open a season or seasons and prescribe a maximum number of restricted nonpermit-tags to be made available under this Section.
- C.** The Department shall implement a population management hunt under the open season or seasons established under subsection (B) if the Department determines the:
  - 1. Regular seasons have not met or will not meet management objectives;
  - 2. Take of wildlife is necessary to meet management objectives; and
  - 3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.
- D.** To implement a population management hunt established by Commission Order, the Department shall:
  - 1. Select season dates, within the range of dates listed in the Commission Order;
  - 2. Select specific hunt areas, within the range of hunt areas listed in the Commission Order;
  - 3. Select the legal animal that may be taken from the list of legal animals identified in the Commission Order;
  - 4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags authorized in the Commission Order.
    - a. The Department shall not issue more restricted nonpermit-tags than the maximum number prescribed by Commission Order.
    - b. A restricted nonpermit-tag is valid only for the supplemental hunt for which it is issued.
- E.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to a supplemental hunt.
- F.** If the Department anticipates the normal fee structure will not generate adequate participation, then the Department may reduce restricted nonpermit-tag fees up to 75%, as authorized under A.R.S. § 17-239(D).
- G.** A supplemental hunt application submitted in accordance with this Section does not invalidate any other application submitted by the person for a hunt permit-tag.
  - 1. The Department shall not accept a group application, as defined under R12-4-104, for a restricted nonpermit-tag.
  - 2. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit established by Commission Order.
  - 3. The issuance of a restricted nonpermit-tag does not authorize a person to exceed the bag limit established by Commission Order.
- H.** To participate in a supplemental hunt, a person shall:
  - 1. Obtain a restricted nonpermit-tag as prescribed under this Section, and
  - 2. Possess a valid hunting license. If the applicant does not possess a valid license or the license will expire before the supplemental hunt, the applicant shall purchase an appropriate license.
- I.** The Department or its authorized agent shall maintain a hunter pool for supplemental hunts other than companion tag hunts.
  - 1. The Department shall purge and renew the hunter pool on an annual basis.
  - 2. An applicant for a restricted nonpermit-tag under this subsection shall submit a hunt permit-tag application to the Department. The application is available at any Department office, an authorized agent, or online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
    - a. The applicant's:
      - i. Name,
      - ii. Mailing address,
      - iii. Number of years of residency immediately preceding application,
      - iv. Date of birth, and
      - v. Daytime and evening telephone numbers,
    - b. The species that the applicant would like to hunt, if selected,
    - c. The applicant's hunting license number.
  - 3. In addition to the requirements established under subsection (I)(2), at the time of application the applicant shall submit the application fee required under R12-4-102.
  - 4. When issuing a restricted nonpermit-tag, the Department or its authorized agent shall randomly select applicants from the hunter pool.
    - a. The Department or its authorized agent shall attempt to contact each randomly-selected applicant by telephone at least three times within a 24-hour period.
    - b. If an applicant cannot be contacted or is unable to participate in the supplemental hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application.
    - c. In compliance with subsection (D)(4), the Department or its authorized agent shall select no more applications after the number of restricted nonpermit-tags established by Commission Order are issued.
  - 5. The Department shall reserve a restricted nonpermit-tag for an applicant only for the period specified by the Department when contact is made with the applicant. If an applicant fails to purchase the nonpermit-tag within the specified period, the Department or its authorized agent shall:
    - a. Remove the person's application from the hunter pool, and
    - b. Offer that restricted nonpermit-tag to another person whose application is drawn from the hunter pool as established under this Section.
  - 6. A person who participates in a supplemental hunt through the hunter pool shall be removed from the supplemental hunter pool for the genus for which the person participated. A hunter pool applicant who is selected and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:
    - a. The fee for the tag as established under R12-4-102 or subsection (F) if the fee has been reduced, and
    - b. The applicant's hunting license number. The applicant shall possess an appropriate license that is valid

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at the time of the supplemental hunt. The applicant shall purchase a license at the time of application when:

- i. The applicant does not possess a valid license, or
- ii. The applicant's license will expire before the supplemental hunt.

7. A person who participates in a supplemental hunt shall not reapply for the hunter pool for that genus until the hunter pool is renewed.

**J.** The Department shall only make a companion tag available to a person who possesses a matching hunt permit-tag and not a person from the hunter pool. Authorization to issue a companion tag occurs when the Commission establishes a hunt in Commission Order under subsection (B).

1. The requirements of subsection (D) are not applicable to a companion tag issued under this subsection.
2. To obtain a companion tag under this subsection, an applicant shall submit a hunt permit-tag application to the Department. The application is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application, the applicant's:
  - a. Name,
  - b. Mailing address,
  - c. Department identification number, and
  - d. Hunt permit-tag number, to include the hunt number and permit number, corresponding with the season dates and open areas of the supplemental hunt.
3. In addition to the requirements established under subsection (J)(2), at the time of application the applicant shall:
  - a. Provide verification that the applicant lawfully obtained the hunt permit-tag for the hunt described under this subsection by presenting the hunt permit-tag to a Department office for verification, and
  - b. Submit all applicable fees required under R12-4-102.

#### Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered as Section R12-4-607 without change effective December 22, 1987 (Supp. 87-4). New Section R12-4-115 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 991, effective April 2, 2005; amended by final rulemaking at 11 A.A.R. 1177, effective May 2, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

#### R12-4-116. Reward Payments

**A.** Subject to the restrictions prescribed under A.R.S. § 17-315, a person may claim a reward from the Department when the person provides information that leads to an arrest through the Operation Game Thief Program. The person who reports the unlawful activity will then become eligible to receive a reward as established under subsections (C) and (D), provided funds are available in the Wildlife Theft Prevention Fund and:

1. The person who reported the violation provides the Operation Game Thief control number issued by Department law enforcement personnel, as established under subsection (B);
  2. The information provided relates to a violation of any provisions of A.R.S. Title 17, A.A.C. Title 12, Chapter 4, or federal wildlife laws enforced by and under the jurisdiction of the Department, but not on Indian Reservations;
  3. The person did not first provide information during a criminal investigation or judicial proceeding; and
  4. The person who reports the violation is not:
    - a. The person who committed the violation,
    - b. A peace officer,
    - c. A Department employee, or
    - d. An immediate family member of a Department employee.
- B.** The Department shall inform the person providing information regarding a wildlife violation of the procedure for claiming a reward if the information results in an arrest. The Department shall also provide the person with the control number assigned to the reported violation.
- C.** Reward payments for information that results in an arrest for the reported violation are as follows:
1. For cases that involve antelope, eagles, bear, bighorn sheep, buffalo, deer, elk, javelina, mountain lion, turkey, or endangered or threatened wildlife as defined under R12-4-401, \$500;
  2. For cases that involve wildlife that are not listed under subsection (C)(1), a minimum of \$50, not to exceed \$150, except for additional amounts authorized under subsection (C)(3); and
  3. For cases that involve any wildlife, an additional \$1,000 may be made available based on:
    - a. The value of the information;
    - b. The unusual value of the wildlife;
    - c. The number of individual animals taken;
    - d. Whether or not the person who committed the unlawful act was arrested for commercialization of wildlife; and
    - e. Whether or not the person who committed the unlawful act is a repeat offender.
- D.** If more than one person independently provides information or evidence that leads to an arrest for a violation, the Department may divide the reward payment among the persons who provided the information if the total amount of the reward payment does not exceed the maximum amount of a monetary reward established under subsections (C) or (E);
- E.** Notwithstanding subsection (C), the Department may offer and pay a reward up to the minimum civil damage value of the wildlife unlawfully taken, wounded or killed, or unlawfully possessed as prescribed under A.R.S. § 17-314, if the Department believes that an enhanced reward offer is merited due to the specific circumstances of the case.

#### Historical Note

Adopted effective January 10, 1979 (Supp. 79-1). Former Section R12-4-15 renumbered as Section R12-4-116 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 18, 1985 (Supp. 85-6). Section R12-4-116 repealed, new Section R12-4-116 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final rulemaking at 21

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A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-117. Indian Reservations**

A state license, permit, or tag is not required to hunt or fish on any Indian reservation in this State. Wildlife lawfully taken on an Indian reservation may be transported or processed anywhere in the State if it can be identified as to species and legality as provided in A.R.S. § 17-309(A)(19). All wildlife transported anywhere in this State is subject to inspection under the provisions of A.R.S. § 17-211(E)(4).

**Historical Note**

Former Section R12-4-02 renumbered as Section R12-4-117 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-117 repealed, new Section R12-4-117 adopted effective April 10, 1984 (Supp. 84-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-118. Hunt Permit-tag Surrender**

**A.** The Commission authorizes the Department to implement a tag surrender program if the Director finds:

1. The Department has the administrative capacity to implement the program;
2. There is public interest in such a program; or
3. The tag surrender program is likely to meet the Department's revenue objectives.

**B.** The tag surrender program is limited to a person who has a valid and active membership in a Department membership program.

1. The Department may establish a membership program that offers a person various products and services.
2. The Department may establish different membership levels based on the type of products and services offered and set prices for each level.
  - a. The lowest membership level may include the option to surrender one hunt permit-tag during the membership period.
  - b. A higher membership level may include the option to surrender more than one hunt permit-tag during the membership period.
3. The Department may establish terms and conditions for the membership program in addition to the following:
  - a. Products and services to be included with each membership level.
  - b. Membership enrollment is available online only and requires a person to create a portal account.
  - c. Membership is not transferable.
  - d. No refund shall be made for the purchase of a membership, unless an internal processing error resulted in the collection of erroneous fees.

**C.** The tag surrender program is restricted to the surrender of an original, unused hunt permit-tag obtained through a computer draw.

1. A person must have a valid and active membership in the Department's membership program with at least one unredeemed tag surrender that was valid:
  - a. On the application deadline date for the computer draw in which the hunt permit-tag being surrendered was drawn, and
  - b. At the time of tag surrender.
2. A person who chooses to surrender an original, unused hunt permit-tag shall do so prior to the close of business the day before the hunt begins for which the tag is valid.

3. A person may surrender an unused hunt permit-tag for a specific species only once before any bonus points accrued for that species must be expended.

**D.** To surrender an original, unused hunt permit-tag, a person shall comply with all of the following conditions:

1. A person shall submit a completed application form to any Department office. The application form is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application form:
  - a. The applicant's:
    - i. Name,
    - ii. Mailing address,
    - iii. Department identification number,
    - iv. Membership number,
  - b. Applicable hunt number,
  - c. Applicable hunt permit-tag number, and
  - d. Any other information required by the Department.
2. A person shall surrender the original, unused hunt permit-tag as required under subsection (C) in the manner described by the Department as indicated on the application form.

**E.** Upon receipt of an original, unused hunt permit-tag surrendered in compliance with this Section, the Department shall:

1. Restore the person's bonus points that were expended for the surrendered tag, and
2. Award the bonus point the person would have accrued had the person been unsuccessful in the computer draw for the surrendered tag.
3. Not refund any fees the person paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E).

**F.** The Department may, at its sole discretion, re-issue or destroy the surrendered original, unused hunt permit-tag. When re-issuing a tag, the Department may use any of the following methods in no order of preference:

1. Re-issuing the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who has a valid and active membership in that membership level and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
2. Re-issuing the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program with a tag surrender option and who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process;
3. Re-issuing the surrendered tag to an eligible person who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process; or
4. Offering the surrendered tag through the first-come, first-served process.

**G.** For subsections (F)(1), (2), and (3); if the Department cannot contact a person qualified to receive a tag or the person declines to purchase the surrendered tag, the Department shall make a reasonable attempt to contact and offer the surrendered tag to the next person qualified to receive a tag for that hunt number based on the assigned random number during the Department's computer draw process. This process will continue until the surrendered tag is either purchased or the number of persons qualified is exhausted. For purposes of subsections (G) and (H), the term "qualified" means a person who satisfies the conditions for re-issuing a surrendered tag as provided under the selected re-issuing method.

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- H. When the re-issuance of a surrendered tag involves a group application and one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Department shall offer the surrendered tag first to the applicant designated "A" if qualified to receive a surrendered tag.
1. If applicant "A" chooses not to purchase the surrendered tag or is not qualified, the Department shall offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag.
  2. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag.
- I. A person who receives a surrendered tag shall submit the applicable tag fee as established under R12-4-102 and provide their valid hunting license number.
1. A person receiving the surrendered tag as established under subsections (F)(1), (2), and (3) shall expend all bonus points accrued for that genus, except any accrued Hunter Education and loyalty bonus points.
  2. The applicant shall possess a valid hunting license at the time of purchasing the surrendered tag and at the time of the hunt for which the surrendered tag is valid. If the person does not possess a valid license at the time the surrendered tag is offered, the applicant shall purchase a license in compliance with R12-4-104.
  3. The issuance of a surrendered tag does not authorize a person to exceed the bag limit established by Commission Order.
  4. It is unlawful for a person to purchase a surrendered tag when the person has reached the bag limit for that genus during the same calendar year.
- J. A person is not eligible to petition the Commission under R12-4-611 for reinstatement of any expended bonus points, except as authorized under R12-4-107(M).
- K. For the purposes of this Section and R12-4-121, "valid and active membership" means a paid and unexpired membership in any level of the Department's membership program.

**Historical Note**

Adopted effective April 8, 1983 (Supp. 83-2). Section R12-4-118 repealed effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-119. Arizona Game and Fish Department Reserve**

- A. The Commission shall establish an Arizona Game and Fish Department Reserve under A.R.S. § 17-214, consisting of commissioned reserve officers and noncommissioned reserve volunteers.
- B. Commissioned reserve officers shall:
1. Meet and maintain the minimum qualifications and training requirements necessary for peace officer certification by the Arizona Peace Officer Standards and Training Board as prescribed under 13 A.A.C. 4, and
  2. Assist with wildlife enforcement patrols, boating enforcement patrols, off-highway vehicle enforcement patrols, special investigations, and other enforcement and related non-enforcement duties as the Director designates.
- C. Noncommissioned reserve volunteers shall:
1. Meet qualifications that the Director determines are related to the services to be performed by the volunteer and the success or safety of the program mission, and

2. Perform any non-enforcement duties designated by the Director for the purposes of conservation and education to maximize paid staff time.

**Historical Note**

Adopted effective September 29, 1983 (Supp. 83-5). Section R12-4-119 repealed, new Section R12-4-119 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-120. Issuance, Sale, and Transfer of Special Big Game License-tags**

- A. An incorporated nonprofit organization that is tax exempt under section 501(c) seeking special big game license-tags as authorized under A.R.S. § 17-346 shall submit a proposal to the Director of the Arizona Game and Fish Department from March 1 through May 31 preceding the year when the tags may be legally used. The proposal shall include all of the following information for each member of the organization coordinating the proposal:
1. The name of the organization making the proposal and the:
    - a. Name;
    - b. Mailing address;
    - c. E-mail address, when available; and
    - d. Telephone number;
  2. Organization's previous involvement with wildlife management;
  3. Organization's conservation objectives;
  4. Number of special big game license-tags and the species requested;
  5. Purpose to be served by the issuance of these tags;
  6. Method or methods by which the tags will be marketed and sold;
  7. Proposed fund raising plan;
  8. Estimated amount of money to be raised and the rationale for that estimate;
  9. Any special needs or particulars relevant to the marketing of the tags;
  10. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c) of the Internal Revenue Code, unless a current and correct copy is already on file with the Department;
  11. Statement that the person or organization submitting the proposal agrees to the conditions established under A.R.S. § 17-346 and this Section;
  12. Printed name and signature of the president and secretary-treasurer of the organization or their equivalent; and
  13. Date of signing.
- B. The Director shall return to the organization any proposal that does not comply with the requirements established under A.R.S. § 17-346 and this Section. Because proposals are reviewed for compliance after the May 31 deadline, an organization that receives a returned proposal cannot resubmit a corrected proposal, but may submit a proposal that complies with the requirements established under A.R.S. § 17-346 and this Section the following year.
- C. The Director shall submit all timely and valid proposals to the Commission for consideration.
1. In selecting an organization, the Commission shall consider the:
    - a. Written proposal;

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- b. Proposed uses for tag proceeds;
    - c. Qualifications of the organization as a fund raiser;
    - d. Proposed fund raising plan;
    - e. Organization's previous involvement with wildlife management; and
    - f. Organization's conservation objectives.
  - 2. The Commission may accept any proposal in whole or in part and may reject any proposal if it is in the best interest of wildlife to do so.
  - 3. Commission approval and issuance of any special big game license-tag is contingent upon compliance with this Section.
  - D.** A successful organization shall agree in writing to all of the following:
    - 1. To underwrite all promotional and administrative costs to sell and transfer each special big game license-tag;
    - 2. To transfer all proceeds to the Department within 90 days of the date that the organization sells or awards the tag;
    - 3. To sell and transfer each special big game license-tag as described in the proposal; and
    - 4. To provide the Department with the name, address, and physical description of each person to whom a special big game license-tag is transferred.
  - E.** The Department and the successful organization shall coordinate on:
    - 1. The specific projects or purposes identified in the proposal;
    - 2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and
    - 3. The dates when the wildlife project or purpose will be accomplished.
  - F.** The Department shall dedicate all proceeds generated by the sale or transfer of a special big game license-tag to the management of the species for which the tag was issued.
    - a. A special license-tag shall not be issued until the Department receives all proceeds from the sale of license-tags.
    - b. The Department shall not refund proceeds.
  - G.** A special big game license-tag is valid only for the person named on the tag, for the season dates on the tag, and for the species for which the tag was issued.
    - 1. A hunting license is not required for the tag to be valid.
    - 2. Possession of a special big game license-tag shall not invalidate any other big game tag or application for any other big game tag.
    - 3. Wildlife taken under the authority of a special big game license-tag shall not count towards the established bag limit for that species.
- Historical Note**
- Adopted effective September 22, 1983 (Supp. 83-5). Amended effective April 7, 1987 (Supp. 87-2). Correction, balance of language in subsection (I) is deleted as certified effective April 7, 1987 (Supp. 87-4). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).
- R12-4-121. Big Game Tag Transfer**
- A.** For the purposes of this Section:
- “Authorized nonprofit organization” means a nonprofit organization approved by the Department to receive donated unused tags.
- “Unused tag” means a big game hunt permit-tag, nonpermit-tag, or special license tag that has not been attached to any animal.
- B.** A parent, grandparent, or guardian issued a big game hunt permit-tag, nonpermit-tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.
1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
  2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
    - a. Proof of ownership of the unused tag to be transferred,
    - b. The unused tag, and
    - c. The minor's valid hunting license.
  3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the person's estate may transfer an unused tag to an eligible minor. The person acting as the personal representative shall present:
    - a. The deceased person's death certificate, and
    - b. Proof of the person's authority to act as the personal representative of the deceased person's estate.
  4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
  5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.
- C.** A person issued a tag or the person's legal representative may donate the unused tag to an authorized nonprofit organization for use by a minor child with a life threatening medical condition or permanent physical disability or a veteran of the Armed Forces of the United States with a service-connected disability.
1. The person or legal representative who donates the unused tag shall provide the authorized nonprofit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
  2. An authorized nonprofit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child or veteran by contacting any Department office.
    - a. To obtain a transfer, the nonprofit organization shall:
      - i. Provide proof of donation of the unused tag to be transferred;
      - ii. Provide the unused tag;
      - iii. Provide proof of the minor child's or veteran's valid hunting license.
    - b. To be eligible to receive a donated unused tag from an authorized nonprofit organization, a minor child shall meet the criteria established under subsection (D).
  3. A person who donates an original, unused hunt permit-tag issued in a computer drawing to an authorized nonprofit organization may submit a request to the Department for the reinstatement of the bonus points expended for that unused tag, provided all of the following conditions are met:
    - a. The person has a valid and active membership in the Department's membership program with at least one unredeemed tag surrender on the application deadline date, for the computer draw in which the hunt

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- permit-tag being surrendered was drawn, and at the time of tag surrender.
- b. The person submits a completed application form as described under R12-4-118;
  - c. The person provides acceptable proof to the Department that the tag was transferred to an authorized nonprofit organization; and
  - d. The person submits the request to the Department:
    - i. No later than 60 days after the date on which the tag was donated to an authorized nonprofit organization; and
    - ii. No less than 30 days prior to the computer draw application deadline for that genus, as specified in the hunt permit-tag application schedule.
- D.** To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:
1. Possess a valid hunting license,
  2. Has not reached the applicable annual or lifetime bag limit for that genus, and
  3. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-sanctioned hunter education course before the beginning date of the hunt.
- E.** To receive an unused tag authorized under subsection (C), an eligible veteran of the Armed Forces of the United States with a service-connected disability shall meet the following criteria:
1. Possess a valid hunting license, and
  2. Has not reached the applicable annual or lifetime bag limit for that genus.
- F.** A nonprofit organization is eligible to apply for authorization to receive a donated unused tag, provided the nonprofit organization:
1. Is qualified under section 501(c)(3) of the United States Internal Revenue Code, and
  2. Affords opportunities and experiences to:
    - a. Children with life-threatening medical conditions or physical disabilities, or
    - b. Veterans with service-connected disabilities.
  3. This authorization is valid for a period of one-year, unless revoked by the Department for noncompliance with the requirements established under A.R.S. § 17-332 or this Section.
  4. A nonprofit organization shall apply for authorization by submitting an application to any Department office. The application form is furnished by the Department and is available at any Department office. A nonprofit organization shall provide all of the following information on the application:
    - a. Nonprofit organization's information:
      - i. Name,
      - ii. Physical address,
      - iii. Telephone number;
    - b. Contact information for the person responsible for ensuring compliance with this Section:
      - i. Name,
      - ii. Address,
      - iii. Telephone number;
    - c. Signature of the president and secretary-treasurer of the organization or their equivalents; and
    - d. Date of signing.
  5. In addition to the application, a nonprofit organization shall provide all of the following:
    - a. A copy of the organization's articles of incorporation and evidence that the organization has tax-exempt status under Section 501(c)(3) of the Internal Revenue

- Code, unless a current and correct copy is already on file with the Department;
- b. Document identifying the organization's mission;
  - c. A letter stating how the organization will participate in the Big Game Tag Transfer program; and
  - d. A statement that the person or organization submitting the application agrees to the conditions established under A.R.S. § 17-332 and this Section.
6. An applicant who is denied authorization to receive donated tags under this Section may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective October 10, 1986, filed September 25, 1986 (Supp. 86-5). Rule expired one year from effective date of October 10, 1986. Rule readopted without change for one year effective January 22, 1988, filed January 7, 1988 (Supp. 88-1). Rule expired effective January 22, 1989 (Supp. 89-1). New Section R12-4-121 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Repealed effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1195, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-122. Handling, Transporting, Processing, and Storing of Game Meat Given to Public Institutions and Charitable Organizations**

- A.** Under A.R.S. § 17-240 and this Section, the Department may donate the following wildlife, except that the Department shall not donate any portion of an animal killed in a collision with a motor vehicle or an animal that died subsequent to immobilization by any chemical agent:
1. Big game, except bear or mountain lion;
  2. Upland game birds;
  3. Migratory game birds;
  4. Game fish.
- B.** The Director shall not authorize an employee to handle game meat for the purpose of this Section until the employee has satisfactorily completed a course designed to give the employee the expertise necessary to protect game meat recipients from diseased or unwholesome meat products. A Department employee shall complete a course that is either conducted or approved by the State Veterinarian. The employee shall provide a copy of a certificate that demonstrates satisfactory completion of the course to the Director.
- C.** Only an employee authorized by the Director shall determine if game meat is safe and appropriate for donation. An authorized Department employee shall inspect and field dress each donated carcass before transporting it. The Department shall not retain the game meat in storage for more than 48 continuous hours before transporting it, and shall reinspect the game meat for wholesomeness before final delivery to the recipient.
- D.** Final processing and storage is the responsibility of the recipient.

**Historical Note**

Adopted effective August 6, 1991 (Supp. 91-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1).

**R12-4-123. Expenditure of Funds**



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- A. The Director may expend funds available through appropriations, licenses, gifts, or other sources, in compliance with applicable laws and rules, and:
  - 1. For purposes designated by lawful Commission agreements and Department guidelines;
  - 2. In agreement with budgets approved by the Commission;
  - 3. In agreement with budgets appropriated by the legislature;
  - 4. With regard to a gift, for purposes designated by the donor, the Director shall expend undesignated donations for a public purpose in furtherance of the Department's responsibilities and duties.
- B. The Director shall ensure that the Department implements internal management controls to comply with subsection (A) and to deter unlawful use or expenditure of funds.

**Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 12 A.A.R. 291, effective March 11, 2006 (Supp. 06-1).

**R12-4-124. Proof of Domicile**

- A. An applicant may be required to present acceptable proof of domicile in Arizona to the Department upon request.
- B. Acceptable proof of domicile in Arizona may include, but is not limited to, one or more of the following lawfully obtained documents:
  - 1. Arizona Driver's License;
  - 2. Arizona Resident State Income Tax Return filing;
  - 3. Arizona school records containing satisfactory proof of identity and relationship of the parent or guardian to the minor child, when applicable;
  - 4. Arizona Voter Registration Card;
  - 5. Certified copy of an Arizona court order such as an order of probation, parole, or mandatory release;
  - 6. Selective Service Registration Acknowledgement Card indicating an address in Arizona;
  - 7. Social Security Administration document indicating an address in Arizona; or
  - 8. Current documents issued by the U.S. military indicating Arizona as state of residence or an address in Arizona.

**Historical Note**

New Section made by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**R12-4-125. Public Solicitation or Event on Department Property**

- A. All Department buildings, properties, and wildlife areas are designated non-public forums and are closed to all solicitations and events unless permitted by the Department.
- B. A solicitation or event on Department property shall not:
  - 1. Conflict with the Department's mission; or
  - 2. Constitute partisan political activity, the activity of a political campaign, or influence in any way an election or the results thereof.
- C. A request for permission to conduct a solicitation or event on Department property shall be directed to the responsible Regional Supervisor or Branch Chief who shall initially determine whether an application is required for the solicitation or event.
- D. If it is determined that an application is required, the person may apply for a solicitation or event permit by submitting a completed solicitation or event application to any Department office or Department Headquarters, Director's Office, at 5000 W. Carefree Hwy, Phoenix, AZ 85086. The application form is furnished by the Department and available at all Department offices.
  - 1. An applicant shall submit an application:
    - a. Not more than six months prior to the solicitation or event; and
    - b. Not less than 14 days prior to the desired date of the solicitation or event for solicitations other than the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials; or
    - c. Not less than 10 days prior to the desired date of the solicitation or event for solicitations involving only the posting of advertising, handbills, leaflets, circulars, posters, or other printed materials.
  - 2. An applicant shall provide all of the following information on the application:
    - a. Sponsor's name, address, and telephone number;
    - b. Sponsor's e-mail address, when available;
    - c. Contact person's name and telephone number, when the sponsor is an organization;
    - d. Proposed date of the solicitation or event;
    - e. Specific, proposed location for the solicitation or event;
    - f. Starting and approximate concluding times;
    - g. General description of the solicitation or event's purpose;
    - h. Anticipated number of attendees, when applicable;
    - i. Amount of fees to be charged to attendees, when applicable;
    - j. Detailed description of any activity that will occur at the solicitation or event, including a detailed map of the solicitation or event and any equipment that will be used, e.g., tents, tables, etc.;
    - k. Copies of any solicitation materials to be distributed to the public or to be posted on Department property;
    - l. Copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control, required when the applicant intends to sell alcohol at the solicitation or event; and
    - m. The contact person's signature and date. The person's signature on the application certifies that the sponsor:
      - i. Assumes risk of injury to persons or property;
      - ii. Agrees to hold harmless the state of Arizona, its officials, Departments, employees, and agents against all claims arising from the use of Department facilities;
      - iii. Assumes responsibility for any damages or clean-up costs due to the solicitation or event, solicitation or event cleanup, or solicitation or event damage repair; and
      - iv. Agrees to surrender the premises in a clean and orderly condition.
- E. The Department may take any of the following actions to the extent necessary and in the best interest of the State:
  - 1. Require the sponsor to furnish all necessary labor, material, and equipment for the solicitation or event;
  - 2. Require the sponsor to post a deposit against damage and cleanup expense;
  - 3. Require indemnification of the state of Arizona, its Departments, agencies, officers, and employees;
  - 4. Require the sponsor to carry adequate insurance and provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;

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5. Require the sponsor to enter into written agreements with any vendors and subcontractors and require vendors and subcontractors to provide certificates of insurance to the Department not less than ten business days before the solicitation or event. A certificate of insurance for a solicitation or event shall name the state of Arizona, its Departments, agencies, boards, commissions, officers, agents, and employees as additional insureds;
  6. Require the sponsor to provide medical support, security, and sanitary services, including public restrooms; and
  7. Impose additional conditions not otherwise specified under this Section on the conduct of the solicitation or event.
- F.** The Department may consider the following criteria when determining whether any of the actions in subsection (E) are necessary and in the best interest of the state:
1. Previous experience with similar solicitations or events;
  2. Deposits required for similar solicitations or events in Arizona;
  3. Risk data; and
  4. Medical, sanitary, and security services required for similar solicitations or events in Arizona and the cost of those services.
- G.** The Department shall designate the hours of use for Department property.
- H.** The Department shall inspect the solicitation or event site at the conclusion of activities and document any damage or cleanup costs incurred because of the solicitation or event. The sponsor shall be responsible for any cleanup or damage costs associated with the solicitation or event.
- I.** The sponsor shall not allow, without the express written permission of the Department, the possession, use, or consumption of alcoholic beverages at the solicitation or event site. When the Department provides written permission for the possession, use, or consumption of alcoholic beverages at the solicitation or event site, the sponsor shall provide to the Department:
1. A copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, required when the applicant intends to sell alcohol at the solicitation or event; and
  2. A liquor liability rider, included with the insurance certificate required under subsection (E)(4).
- J.** The sponsor shall not allow unlawful possession or use of drugs at the solicitation or event site.
- K.** The Department shall deny an application for any of the following reasons:
1. The solicitation or event interferes with the work of an employee or the daily business of the Department;
  2. The solicitation or event conflicts with the time, place, manner, or duration of other approved or pending solicitations or events;
  3. The content of the solicitation or event conflicts with or is unrelated to the Department's activities or its mission;
  4. The solicitation or event presents a risk of injury or illness to persons or risk of damage to property;
  5. The sponsor cannot demonstrate adequate compliance with applicable local, state, or federal laws, ordinances, codes, or regulations, or
  6. The sponsor has not complied with the requirements of the application process or this Section.
- L.** At all times, the Department reserves the right to immediately remove or cause to be removed all obstructions or other hazards of the solicitation or event that could damage state property, inhibit egress, or poses a safety risk. The Department also reserves the right to immediately remove or cause to be removed any person damaging state property, inhibiting egress, or posing a threat to public health and safety.
- M.** The Department may revoke approval of a solicitation or event due to emergency circumstances or for failure to comply with this Section.
- N.** The Department shall send written notice of the denial or revocation of an approved permit. The notice shall contain the reason for the denial or revocation.
- O.** A sponsor:
1. Is liable to the Department for damage to Department property and any expense arising out of the sponsor's use of Department property.
  2. Shall post solicitation material only in designated posting areas.
  3. Shall ensure that a solicitation or event on Department property causes the minimum infringement of use to the public and government operation.
  4. Shall modify or terminate a solicitation or event, upon request by the Department, if the Department determines that the solicitation or event unacceptably infringes on the Department's operations or causes an unacceptable risk of liability exposure to the State.
- P.** When conducting an event on Department property, a sponsor shall:
1. Park or direct vehicles in designated parking areas.
  2. Obey all posted requirements and restrictions.
  3. Designate one person to act as a monitor for every 50 persons anticipated to attend the solicitation or event. The monitor shall act as a contact person for the Department for the purposes of the solicitation or event.
  4. Ensure that all safety standards, guidelines, and requirements are followed.
  5. Implement additional safety requirements upon request by the Department.
  6. Ensure all obstructions and hazards are eliminated.
  7. Ensure trash and waste is properly disposed of throughout the solicitation or event.
- Q.** The Department shall revoke or terminate the solicitation or event if a sponsor fails to comply with a Department request or any one of the following minimum safety requirements:
1. All solicitation or event activities shall comply with all applicable federal, state, and local laws, ordinances, codes, statutes, rules, and regulations.
  2. The layout of the solicitation or event shall ensure that emergency vehicles will have access at all times.
  3. The Department may conduct periodic safety checks throughout the solicitation or event.
- R.** This Section does not apply to government agencies.

**Historical Note**

New Section made by emergency rulemaking at 10 A.A.R. 4777, effective November 4, 2004 for 180 days (Supp. 04-4). Emergency expired (Supp. 05-2). New Section renumbered from R12-4-804 and amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 2. LICENSES; PERMITS; STAMPS; TAGS****R12-4-201. Pioneer License**

- A.** A pioneer license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The pioneer license is only available at a Department office.
- B.** The pioneer license is a complimentary license and is valid for the license holder's lifetime.
- C.** A person who is age 70 or older and has been a resident of Arizona for at least 25 consecutive years immediately preceding application may apply for a pioneer license by submitting an

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application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A pioneer license applicant shall provide all of the following information on the application:

1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant is 70 years of age or older and has been a resident of this state for 25 or more consecutive years immediately preceding application for the license; and
    - b. The information provided on the application is true and accurate.
  3. Applicant's signature and date. The applicant's signature shall be either notarized or witnessed by a Department employee.
- D.** In addition to the requirements listed under subsection (C), an applicant for a pioneer license shall also submit any one of the following documents at the time of application:
1. Valid U.S. passport;
  2. Original or certified copy of the applicant's birth certificate;
  3. Original or copy of a valid government-issued driver's license; or
  4. Original or copy of a valid government-issued identification card.
- E.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- F.** The Department shall deny a pioneer license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(1),
  2. Fails to comply with this Section, or
  3. Provides false information on the application.
- G.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Ch 6, Article 10.
- H.** A pioneer license holder may request a no-fee duplicate of the paper license provided:
1. The license was lost or destroyed;
  2. The license holder submits a written request to the Department for a no-fee duplicate paper license; and
  3. The Department's records indicate a pioneer license was previously issued to that person.
- I.** A person issued a pioneer license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).

#### Historical Note

Former Section R12-4-31 renumbered as Section R12-4-201 without change effective August 13, 1981. New Section R12-4-201 amended effective August 31, 1981

(Supp. 81-4). Amended subsection (B) effective December 9, 1985 (Supp. 85-6). Amended subsections (D) and (E), and changed application for a Pioneer License effective September 24, 1986 (Supp. 86-5). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

#### R12-4-202. Disabled Veteran's License

- A.** A disabled veteran's license grants all of the hunting and fishing privileges of a combination hunting and fishing license. The disabled veteran's license is only available at a Department office.
- B.** The disabled veteran's license is a complimentary license and is valid for a three-year period from the issue date or the license holder's lifetime, as established under subsection (F).
- C.** An eligible applicant is a disabled veteran who:
1. Has been a resident of Arizona for at least one year immediately preceding application, and
  2. Is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling. Eligibility for the disabled veteran's license is based on the disability rating, not on the compensation received by the veteran.
- D.** A person applying for a disabled veteran's license shall submit an application to the Department. The application form is furnished by the Department and available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
1. The applicant's personal information:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that:
    - a. The applicant meets the eligibility requirements prescribed under A.R.S. § 17-336(A)(2),
    - b. The applicant has been a resident of this state for at least one year immediately preceding application for the license, and
    - c. The information provided on the application is true and accurate.
  3. Applicant's signature and date.
- E.** In addition to the requirements established under subsection (D), an applicant for a disabled veteran's license shall, at the time of application, also submit an original certification or a benefits letter issued by the United States Department of Veteran's Affairs (DVA) or obtained from the DVA website that meets the requirements specified in subsections (D)(1), (2), and (3). The certification form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The certification shall be completed by an

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agent of the United States Department of Veteran's Affairs. The certification shall include all of the following information:

1. The applicant's full name,
  2. Certification that the applicant is receiving compensation from the United States government for permanent service-connected disabilities rated as 100% disabling,
  3. Certification that the 100% rating is permanent, and:
    - a. Will not require reevaluation or
    - b. Will be reevaluated in three years, and
  4. The signature and title of the Department of Veterans' Affairs agent who issued or approved the certification.
- F.** If the certification or benefits letter required under subsection (E) indicate the applicant's disability rating of 100% is permanent and:
1. Will not be reevaluated, the disabled veteran's license will not expire.
  2. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.
- G.** All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- H.** The Department shall deny a disabled veteran's license when the applicant:
1. Fails to meet the criteria prescribed under A.R.S. § 17-336(A)(2),
  2. Fails to comply with the requirements of this Section, or
  3. Provides false information during the application process.
- I.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- J.** A disabled veteran's license holder may request a no-fee duplicate paper license provided:
1. The license was lost or destroyed,
  2. The license holder submits a written request to the Department for a duplicate license, and
  3. The Department's records indicate a disabled veteran's license was previously issued to that person.
- K.** A person issued a disabled veteran's license prior to January 1, 2014 shall be entitled to the privileges established under subsection (A).
- L.** For the purposes of this Section, "disabled veteran" means a veteran of the armed forces of the United States with a service connected disability.

**Historical Note**

Former Section R12-4-66 renumbered, then repealed and readopted as Section R12-4-43 effective February 20, 1981 (Supp. 81-1). Former Section R12-4-43 renumbered as Section R12-4-202 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 31, 1984 (Supp. 84-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section R12-4-202 adopted effective December 22, 1989 (Supp. 89-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 1199, effective June 30, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2550, effective January 5, 2015 (Supp. 15-2).

**R12-4-203. National Harvest Information Program (HIP);****State Waterfowl and Migratory Bird Stamp**

- A.** All state fish and wildlife agencies are required to obtain data to assess the harvest of migratory game birds in compliance with the federally mandated National Harvest Information Program administered by the United States Fish and Wildlife Service in accordance with 50 C.F.R. Part 20.
- B.** In compliance with the National Harvest Information Program, the Department requires a person to possess a migratory bird stamp or authorization number, which may be affixed to or written on the appropriate license, and a current, valid federal waterfowl stamp. The migratory bird stamp and authorization number are required to take band-tailed pigeons, moorhen, coots, doves, ducks, geese, snipe, or swans.
1. The state migratory bird stamp expires on June 30 of each year. To obtain a state migratory bird stamp, a person shall submit:
    - a. The fee required under R12-4-102, and
    - b. A completed state migratory bird registration form to a license dealer or a Department office.
  2. The person shall provide on the state migratory bird registration form the person's:
    - a. Name,
    - b. Mailing address,
    - c. Date of birth, and
    - d. Information on past and anticipated hunting activity.
  3. The youth combination hunting and fishing license includes the state migratory bird stamp privileges. A youth hunter who possesses a valid combination hunting and fishing license shall obtain:
    - a. A Federal waterfowl stamp when the youth hunter is 16 years of age or older and is taking ducks, geese, swans, coots, gallinules; or
    - b. A permit-tag when the youth hunter is taking sandhill crane.
- C.** A license dealer shall submit state migratory bird registration forms for all state migratory bird stamps sold with the monthly report required under A.R.S. § 17-338.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).  
 Amended effective April 22, 1980 (Supp. 80-2).  
 Amended subsections (A), (C), (D), and (G) effective December 29, 1980 (Supp. 80-6). Former Section R12-4-41 renumbered as Section R12-4-203 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (C), (E), (G) and added Form 7016 (Supp. 81-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section adopted effective July 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 1146, effective July 1, 2000 (Supp. 00-1). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 13 A.A.R. 462, effective February 6, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**Editor's Note**

For similar subject matter, see Section R12-4-411.  
 This editor's note does not apply to the new Section adopted effective July 1, 1997 (Supp. 96-4).

**R12-4-204. Repealed****Historical Note**

Amended effective May 31, 1976 (Supp. 76-3). Correc-

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tion, Historical Note Supp. 76-3 should read "Amended effective May 3, 1976" (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective March 20, 1981 (Supp. 81-2). Former Section R12-4-32 renumbered as Section R12-4-204 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Repealed by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-205. High Achievement Scout License**

- A.** A high achievement scout license is offered to a resident who is:
1. Eligible for a combination hunting and fishing license,
  2. Under 21 years of age, and
  3. A member of the Boy Scouts of the United States of America and has attained the rank of Eagle Scout, or
  4. A member of the Girl Scouts of the United States of America and has attained the Gold Award.
- B.** The high achievement scout license grants all of the hunting and fishing privileges of the youth combination hunting and fishing license and is only available at Department offices.
1. The license is valid for one year from the date of purchase or selected start date provided the date selected is no more than 60 calendar days from and after the date of purchase.
  2. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the high achievement scout license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- C.** An applicant for a high achievement scout license shall apply on an application form available from any Department office and on the Department's web site at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide all of the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** In addition to the application, an eligible applicant shall present with the application:
1. For an applicant who is a member of the Boy Scouts of the United States of America, any one of the following original documents:
    - a. A certification letter from the Boy Scouts of the United States of America stating that the applicant has attained the rank of Eagle Scout,
    - b. A Boy Scouts of the United States of America Eagle Scout Award Certificate, or
    - c. A Boy Scouts of the United States of America Eagle Scout wallet card.
  2. For an applicant who is a member of the Girl Scouts of the United States of America, any one of the following original documents:

- a. A certification letter from the Girl Scouts of the United States of America stating that the applicant has completed the award,
- b. A Girl Scouts of the United States of America Gold Award Certificate, or
- c. A Girl Scouts Gold Award Certificate from the local council.

- E.** The Department shall deny a high achievement scout license to an applicant who:
1. Is not eligible for the license;
  2. Fails to comply with the requirements of this Section; or
  3. Provides false information during the application process.
- F.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Editorial correction subsection (A) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective September 23, 1980 (Supp. 80-5). Former Section R12-4-33 renumbered as Section R12-4-205 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 17 A.A.R. 1472, effective July 12, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-206. General Hunting License; Exemption**

- A.** A general hunting license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the general hunting license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** The general hunting license is valid for one-year from:
1. The date of purchase when a person purchases the hunting license from a license dealer, as defined under R12-4-101;
  2. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
  3. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
  4. The selected start date when a person purchases the hunting license from a Department office or online. A person may select the start date for the hunting license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C.** A resident may apply for a general hunting license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A general hunting license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;

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- d. Department identification number, when applicable;
  - e. Residency status and number of years of residency immediately preceding application, when applicable;
  - f. Mailing address, when applicable;
  - g. Physical address;
  - h. Telephone number, when available; and
  - i. E-mail address, when available; and
  - 2. Affirmation that the information provided on the application is true and accurate; and
  - 3. Applicant's signature and date.
- D.** In addition to the requirements listed under subsection (C), at the time of application an applicant who is applying for a general hunting license:
- 1. In person shall pay the applicable fee required under R12-4-102.
  - 2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E.** A person who is under 10 years of age may hunt wildlife other than big game without a hunting license when accompanied by a properly licensed person who is 18 years of age or older.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).  
 Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-34 renumbered as Section R12-4-206 without change effective August 13, 1981 (Supp. 81-4).  
 Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-207. General Fishing License; Exemption**

- A.** A general fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The general fishing license is valid:
- 1. State-wide including Mittry Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission designated community waters. The list of Commission designated community waters is available at any license dealer, Department office, and online at [www.azgfd.gov](http://www.azgfd.gov).
  - 2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a general fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- B.** The general fishing license is valid for one-year from:
- 1. The date of purchase when a person purchases the fishing license from a license dealer, as defined under R12-4-101; or
  - 2. The selected start date when a person purchases the fishing license from a Department office or online. A person may select the start date for the fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C.** A resident or nonresident may apply for a general fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department

and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A general fishing license applicant shall provide the following information on the application:

- 1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  - 2. Affirmation that the information provided on the application is true and accurate; and
  - 3. Applicant's signature and date.
- D.** In addition to the requirements listed under subsection (C), an applicant who is applying for a general fishing license:
- 1. In person shall pay the applicable fee required under R12-4-102.
  - 2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
- E.** In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish without a fishing license.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2).  
 Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-35 renumbered as Section R12-4-207 without change effective August 13, 1981 (Supp. 81-4).  
 Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-208. Guide License**

- A.** A guide, as defined under A.R.S. § 17-101, is a person who does any one of the following:
- 1. Advertises for guiding services.
  - 2. Is presented to the public for hire as a guide.
  - 3. Is employed by a commercial enterprise as a guide.
  - 4. Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading, or instructing a person in the field to locate and take wildlife.
  - 5. Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
- B.** A person shall not act as a guide unless the person holds one of the following guide licenses:
- 1. A hunting guide license, which authorizes the license holder to act as a guide for the taking of lawful wildlife other than aquatic wildlife as defined under A.R.S. § 17-101.
  - 2. A fishing guide license, which authorizes the license holder to act as a guide for the taking of lawful aquatic wildlife.

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3. A hunting and fishing guide license, which authorizes the license holder to act as a guide for the taking of lawful wildlife.
- C. A guide license shall expire on December 31 of each year.
- D. A person is not eligible to apply for an original or renewal guide license when any one of the following conditions apply:
  1. The applicant was convicted of a felony violation of any federal wildlife law, within five years immediately preceding the date of application;
  2. The applicant was convicted of a violation listed under A.R.S. § 17-309(D), within five years immediately preceding the date of application;
  3. The applicant was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended within five years immediately preceding the date of application; or
  4. The applicant's privilege to take or possess wildlife or to guide or act as a guide is currently suspended or revoked anywhere in the United States for violation of a federal or state wildlife law.
- E. Notwithstanding subsection (D), a person who was convicted of a misdemeanor violation of any wildlife law within one year preceding the date of application may apply for a guide license provided the person immediately and voluntarily reported the violation to the Department after committing the violation.
- F. An applicant for a guide license shall:
  1. Be 18 years of age or older, and
  2. Possess the required Department-issued license, as applicable:
    - a. A current Arizona hunting license when applying for a hunting guide license;
    - b. A current Arizona fishing license when applying for a fishing guide license;
    - c. A current Arizona combination hunting and fishing license when applying for a hunting and fishing guide license;
- G. The guide license does not exempt the license holder from any applicable method of take or licensing requirement. The guide license holder shall comply with all applicable Commission rules, including, but not limited to, rules governing:
  1. Lawful methods of take,
  2. Lawful devices, and
  3. License requirements.
- H. Unless otherwise provided under this Section, a person shall successfully complete the Department administered examination, and answer at least 80% of the questions correctly, prior to applying for a guide license. Guide examinations are:
  1. Provided at a Department office.
  2. Valid for a period up to twelve months prior to the date on which the applicant submits an application to the Department.
  3. Conducted during normal business hours.
  4. Conducted on the first Monday of the month or by special appointment. A person interested in taking the guide examination shall contact a Department office to obtain scheduling information.
- I. The examination is based on the type of guide license the person is seeking.
  1. A person shall provide acceptable proof of identity, as listed under subsection (L)(2), prior to taking the examination.
  2. The examination may include questions regarding any of the following topics:
    - a. A.R.S. Title 17 Game and Fish statutes and Commission rules regarding the taking and handling of terrestrial and aquatic wildlife;
    - b. A.R.S. Title 28, Ch 3, Article 20 Off-highway Vehicles statutes and rule regarding the use of off-highway vehicles;
    - c. A.R.S. Title 5, Ch 3, Boating and Water Sports statutes and Commission rules on boating;
    - d. Requirements for guiding on federal lands;
    - e. Identification of aquatic wildlife species;
    - f. Identification of wildlife;
    - g. Special state and federal laws regarding certain species;
    - h. General knowledge of species habitat and wildlife that may occur in the same habitat;
    - i. General knowledge of the types of habitat within the State; and
    - j. General knowledge of special or concurrent jurisdictions within the State.
3. An applicant who fails an examination may retake the examination on the same day or as otherwise agreed upon by the applicant and the examination administrator. An applicant who fails an examination twice on the same day shall wait at least seven calendar days, from the examination date, before retaking the examination.
- J. In addition to the guide examination requirement under subsection (H), a guide license holder shall take the Department administered examination when:
  1. The applicant is applying to add a new guiding authority to a current guide license;
  2. The applicant for a hunting guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of terrestrial wildlife within one year preceding the date of application;
  3. The applicant for a fishing guide license was convicted of a violation of A.R.S. Title 17 or Game and Fish Commission rule governing the taking and handling of aquatic wildlife within one year preceding the date of application;
  4. The applicant failed to submit a renewal application postmarked before the expiration date of the guide license; or
  5. The applicant failed to submit the annual report for the preceding license year by January 10 of the following license year.
- K. A person may apply for a guide license by submitting an application to the Department. The application form is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A guide license applicant shall provide all of the following information on the application:
  1. The applicant's personal information:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number or Department identification number;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available;
    - i. E-mail address, when available;
    - j. Type of guide license sought; and
    - k. Calendar year for which the application is made;
  2. The outfitting or guide:
    - a. Business name; and
    - b. Business address, as applicable;
  3. Responses to questions relating to criminal violations;
  4. Affirmation that:

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- a. The applicant meets the eligibility requirements prescribed under this Section; and
  - b. The information provided on the application is true and accurate;
- 5. Applicant's signature and date.
- L.** In addition to the requirements listed under subsection (K), an applicant for a guide license shall also submit the following documents at the time of application for an original or renewal of a guide license:
  - 1. Proof of the successful completion of the guide examination required under subsection (H). The applicant must successfully complete the examination within the twelve months immediately preceding the date of application.
  - 2. One of the following as proof of the applicant's identity:
    - a. Valid U.S. passport;
    - b. Original or certified copy of the applicant's birth certificate;
    - c. Original or copy of a valid government-issued driver's license; or
    - d. Original or copy of a valid government-issued identification card.
- M.** All information and documentation provided by the guide license applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- N.** An applicant for a guide license shall pay all applicable fees required under R12-4-102 upon approval of an initial or renewal application for a guide license.
- O.** The Department shall deny a guide license when the applicant:
  - 1. Fails to meet the criteria prescribed under A.R.S. § 17-362,
  - 2. Fails to comply with the requirements of this Section,
  - 3. Provides false information during the application process,
  - 4. Fails to provide the annual report required under subsection (R) by January 10, or
  - 5. Provides false information in the annual report required under subsection (R) within three years immediately preceding the date of application.
- P.** The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- Q.** A guide license holder may submit an application for renewal of a guide license after December 1 of the year it was issued. The Department shall not start the substantive review, as defined under A.R.S. § 41-1072, before January 10 of the following license year, unless the Department receives the annual report prior to the date established under subsection (R). The current guide license shall remain valid pending a Department decision on the application for renewal, provided:
  - 1. The application for renewal is submitted to the Department by December 31, and
  - 2. The Department receives the annual report submitted in compliance with subsection (R).
- R.** A guide license holder shall submit to the Department the annual report required under A.R.S. § 17-362(C) for the previous calendar year before January 10 of the following license year. The report form is furnished by the Department and is available at any Department office or online at [www.azgfd.gov](http://www.azgfd.gov).
  - 1. A report is required whether or not the license holder performed any guiding activities.
  - 2. The annual report shall include all of the following information, as applicable:
    - a. License holder's personal information:
      - i. Name;
      - ii. Guide license number; and
      - iii. E-mail address, when available; and
    - b. Client's personal information:
      - i. Name;
      - ii. Mailing address; and
      - iii. Arizona license, tag and permit numbers, and
    - c. Dates guiding activities were conducted;
    - d. Number and species of wildlife taken by the clients;
    - e. Game management unit or body of water where guiding activities took place;
    - f. Affirmation that the information provided in the annual report is true and accurate; and
    - g. License holder's signature and date.
- 3. The Department shall not renew a guide license if the annual report is not submitted to the Department by January 10 of the following license year.
- S.** The date of receipt for the items required under subsections (K), (L), (Q), and (R) shall be as follows:
  - 1. The date a person presents the items to a Department office;
  - 2. The date a private express mail carrier receives the package containing the items as indicated on the shipping package; or
  - 3. The date of the United States Postal Service postmark stamped on the envelope containing the items.
- T.** While performing guide activities or providing guide services, a guide license holder shall:
  - 1. Possess a valid guide license.
  - 2. Possess a valid Arizona hunting, fishing, or combination hunting and fishing license, as applicable under subsection (F)(2).
  - 3. Present the license for inspection upon the request of any peace officer, wildlife manager, or game ranger.
  - 4. Report any violation of a federal or state wildlife regulation, law, or rule personally witnessed by the guide license holder.
- U.** A guide license holder shall not:
  - 1. Use, or allow another person to use, any method or device prohibited under any federal or state wildlife regulation, law, or rule while taking wildlife.
  - 2. Aid, counsel, agree to aid, or attempt to aid another person in planning or engaging in conduct that results in a violation of any federal or state wildlife regulation, law, or rule while taking wildlife.
  - 3. Pursue any wildlife or hold at bay any wildlife for a person unless that person is present during the pursuit to take the wildlife.
    - a. The person shall be continuously present during the entire pursuit of that specific target animal.
    - b. If dogs are used, the person shall be present when the dogs are released on a specific target animal and shall be continuously present for the remainder of the pursuit.
  - 4. Hold wildlife at bay other than during daylight hours, unless a Commission Order authorizes the take of the species at night.
- V.** As authorized under A.R.S. § 17-362(A), the Commission may revoke or suspend a guide license when any one or more of the following actions occur:
  - 1. The guide license holder failed to comply with the requirements of A.R.S. Title 17 or was convicted of violating any provision of A.R.S. Title 17;
  - 2. The guide license holder was convicted of a felony violation of any federal wildlife law;
  - 3. The guide license holder was convicted of a violation listed under A.R.S. § 17-309(D);



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4. The guide license holder was convicted of a violation of a federal or state wildlife law for which a license to take wildlife may be revoked or suspended; or
5. The guide license holder's privilege to take or possess wildlife is suspended or revoked by any jurisdiction for violation of a federal or state wildlife law.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2). Former Section R12-4-40 renumbered as Section R12-4-208 without change effective August 13, 1981 (Supp. 81-4). Former rule repealed, new Section R12-4-208 adopted effective December 22, 1989 (Supp. 89-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-209. Community Fishing License; Exemption**

- A. A community fishing license is valid for taking all aquatic wildlife from Commission designated community waters, only, and allows the license holder to engage in simultaneous fishing as defined under R12-4-301. The list of Commission designated community waters is available at any license dealer, Department office, and online at [www.azgfd.gov](http://www.azgfd.gov).
- B. The community fishing license is valid for one-year from:
  1. The date of purchase when a person purchases the community fishing license from a license dealer, as defined under R12-4-101; or
  2. The selected start date when a person purchases the community fishing license from a Department office or online. A person may select the start date for the community fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- C. A resident or nonresident may apply for a community fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A community fishing license applicant shall provide the following information on the application:
  1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status and number of years of residency immediately preceding application, when applicable;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D. In addition to the requirements listed under subsection (C), an applicant who is applying for a community fishing license:
  1. In person shall pay the applicable fee required under R12-4-102.

2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.

- E. In addition to the exemption prescribed under A.R.S. § 17-335, a person who is under 10 years of age may fish in Commission designated community waters without a fishing license.

**Historical Note**

Adopted effective March 20, 1981 (Supp. 81-2). Former Section R12-4-42 renumbered as Section R12-4-209 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-210. Combination Hunting and Fishing License; Exemption**

- A. A combination hunting and fishing license is valid for the taking of small game, fur-bearing animals, predatory animals, nongame animals, and upland game birds.
- B. A combination hunting and fishing license is valid for the taking of all aquatic wildlife and allows the license holder to engage in simultaneous fishing as defined under R12-4-101. The combination hunting and fishing license is valid:
  1. State-wide including Mitty Lake and Topock Marsh and the Arizona shoreline of Lake Mead, Lake Mohave and Lake Havasu, and Commission designated community waters. The list of Commission designated community waters is available at any license dealer, Department office, and online at [www.azgfd.gov](http://www.azgfd.gov).
  2. On that portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California and connected adjacent water, provided Arizona has an agreement with California and Nevada that recognizes a combination hunting and fishing license as valid for taking aquatic wildlife on any portion of the Colorado River that forms the common boundary between Arizona and Nevada and Arizona and California.
- C. The Department offers three combination hunting and fishing licenses:
  1. A short-term combination hunting and fishing license, valid for one 24-hour period from midnight to midnight.
    - a. The short-term combination hunting and fishing license is not valid for the take of big game animals.
    - b. The short-term combination hunting and fishing license is valid for the take of migratory game birds and waterfowl, provided the person possesses the applicable State Migratory Bird stamp and Federal Waterfowl stamp.
    - c. The Department does not limit the number of short-term combination hunting and fishing licenses a resident or nonresident may purchase.
  2. A combination hunting and fishing license for a person age 18 and over.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a license dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag

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- application schedule published by the Department;
- iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
  - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
- b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
3. A youth combination hunting and fishing license for a person through age 17.
    - a. The combination hunting and fishing license is valid for one-year from:
      - i. The date of purchase when a person purchases the combination hunting and fishing license from a license dealer, as defined under R12-4-101;
      - ii. On the last day of the application deadline for that draw, as established by the hunt permit-tag application schedule published by the Department;
      - iii. On the last day of an extended deadline date, as authorized under subsection R12-4-104(C). If an applicant does not possess an appropriate license that meets the requirements of this subsection, the applicant shall purchase the license at the time of application; or
      - iv. The selected start date when a person purchases the combination hunting and fishing license from a Department office or online. A person may select the start date for the combination hunting and fishing license provided the date selected is no more than 60 calendar days from and after the date of purchase.
    - b. A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the combination hunting and fishing license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- D. A resident or nonresident may apply for a combination hunting and fishing license by submitting an application to the Department, a License Dealer as defined under R12-4-101, or online at [www.azgfd.gov](http://www.azgfd.gov). The application is furnished by the Department and is available at any Department office, license dealer, and online at [www.azgfd.gov](http://www.azgfd.gov). A combination hunting and fishing license applicant shall provide the following information on the application:
    1. The applicant's:
      - a. Name;
      - b. Date of birth,
      - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
      - d. Department identification number, when applicable;
      - e. Residency status and number of years of residency immediately preceding application, when applicable;
      - f. Mailing address, when applicable;
      - g. Physical address;
      - h. Telephone number, when available; and
      - i. E-mail address, when available; and
    2. Affirmation that the information provided on the application is true and accurate; and
    3. Applicant's signature and date.
- E. In addition to the requirements listed under subsection (C), an applicant who is applying for a combination hunting and fishing license:
    1. In person shall pay the applicable fee required under R12-4-102.
    2. Online shall electronically pay the fee required under R12-4-102 and print the new license. A person applying online shall affirm, or provide permission for another person to affirm, the information electronically provided is true and accurate.
  - F. Exemptions authorized under R12-4-206(E), R12-4-207(E), and R12-4-209(E) also apply to this Section, as applicable.

**Historical Note**

Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective January 20, 1977 (Supp. 77-1). Editorial correction subsection (A), paragraph (2) (Supp. 78-5). Amended effective March 7, 1979 (Supp. 79-2). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-39 repealed, new Section R12-4-39 adopted effective March 17, 1981 (Supp. 81-2). Former Section R12-4-39 renumbered as Section R12-4-210 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 16, 1982 (Supp. 82-6). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-211. Lifetime License**

- A. The Department offers the following lifetime licenses:
  1. A lifetime hunting license includes the privileges established under R12-4-206(A).
  2. A lifetime fishing license includes the privileges established under R12-4-207(A).
  3. A lifetime combination hunting and fishing license includes the privileges established under R12-4-210(A) and (B).
- B. A lifetime license does not expire and remains valid if the licensee subsequently resides outside of this state.
  1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
  2. Limits established under R12-4-114 for nonresident permit-tags do not apply to a lifetime license holder.
- C. A resident may apply for a lifetime license by submitting an application to the Department and paying the applicable fee required under subsection (D). The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A lifetime license applicant shall provide the following information on the application:
  1. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);

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- e. Department identification number, when applicable;
  - f. Residency status and number of years of residency immediately preceding application, when applicable;
  - g. Mailing address, when applicable;
  - h. Physical address;
  - i. Telephone number, when available; and
  - j. E-mail address, when available; and
2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- D.** The fees for resident lifetime licenses are determined by the age of the applicant as follows:
1. Age 0 through 13 years is 17 times the fee established under R12-4-102 for the equivalent one-year license.
  2. Age 14 through 29 years is 18 times the fee established under R12-4-102 for the equivalent one-year license.
  3. Age 30 through 44 years is 16 times the fee established under R12-4-102 for the equivalent one-year license.
  4. Age 45 through 61 years is 15 times the fee established under R12-4-102 for the equivalent one-year license.
  5. Age 62 and older is 8 times the fee established under R12-4-102 for the equivalent one-year license.
  6. For the purposes of this subsection, when the applicant is under the age of 18, the fee for the lifetime license is based on the full priced license fee, not the youth license fee.
- E.** A lifetime license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- F.** A person issued a lifetime license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A)(1), (A)(2), or (A)(3), as applicable, for the equivalent lifetime license.
- D.** A resident may apply for a benefactor license by submitting an application to the Department. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A benefactor license applicant shall provide the following information on the application:
1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Social Security Number, when required under A.R.S. §§ 25-320(P) and 25-502(K);
    - e. Department identification number, when applicable;
    - f. Residency status and number of years of residency immediately preceding application, when applicable;
    - g. Mailing address, when applicable;
    - h. Physical address;
    - i. Telephone number, when available; and
    - j. E-mail address, when available; and
  2. Affirmation that the information provided on the application is true and accurate; and
  3. Applicant's signature and date.
- E.** A benefactor license may be denied or suspended pursuant to, and for the offenses described under, A.R.S. § 17-340.
- F.** A person issued a benefactor license prior to the effective date of this Section shall be entitled to the privileges established under subsection (A).

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective January 1, 1977 (Supp. 76-5). Former Section R12-4-37 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-213. Hunt Permit-tags and Nonpermit-tags**

- A.** A valid hunt permit-tag or nonpermit-tag is required to validate a license to take a big game animal or other wildlife requiring a valid tag. Before a person may take a big game animal or other wildlife requiring a tag, the person shall apply for and obtain the appropriate tag required for the take of that big game animal or other wildlife.
- B.** A person may apply for a hunt permit-tag in accordance with R12-4-104 and at the times, locations, and in the manner established by the hunt permit-tag application schedule that the Department publishes and is available at any Department office, online at [www.azgfd.gov](http://www.azgfd.gov), or a license dealer as defined under R12-4-101.
- C.** A person applying for a nonpermit-tag shall apply in accordance with R12-4-114 and pay the required fee established under R12-4-102.

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2). Amended effective December 4, 1980 (Supp. 80-6). Former Section R12-4-38 renumbered as Section R12-4-213 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-214. Apprentice License**

- A.** An apprentice license authorizes the taking of small game, furbearing animals, predatory animals, nongame animals, and

**Historical Note**

Amended effective March 7, 1979 (Supp. 79-2). Amended effective October 9, 1980 (Supp. 80-5). Former Section R12-4-36 renumbered as Section R12-4-211 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-212. Benefactor License**

- A.** A benefactor license includes the privileges established under R12-4-210(A) and (B). A valid hunt permit-tag, nonpermit-tag, or stamp is required to validate the benefactor license for the take of big game animals, migratory game birds, or other wildlife authorized by an applicable tag or stamp.
- B.** A benefactor license does not expire and remains valid if the licensee subsequently resides outside of this state.
1. A licensee who resides outside of Arizona shall submit the nonresident fee to purchase any required permit-tag, nonpermit-tag, or stamp to hunt and fish in this state.
  2. Limits established under R12-4-114 for nonresident permit-tags do not apply to a benefactor license holder.
- C.** The benefactor license fee is \$1,500. The difference between \$1,500 and the license fee for a resident lifetime combination hunting and fishing license established under R12-4-211(D):
1. Is a donation to the State for continued management, protection, and conservation of the State's wildlife.
  2. Shall be credited to the wildlife endowment fund established under A.R.S. § 17-271.
  3. May be tax deductible to the extent allowed by federal and state income tax statutes for contributions to qualifying tax-exempt organizations.

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upland game birds. The apprentice license is only available from a Department office.

- B.** An apprentice license is:
  - 1. A complimentary license,
  - 2. Valid for any two consecutive days; and
  - 3. Issued to a person only once per calendar year.
- C.** The apprentice license is not valid for the take of big game animals.
- D.** The apprentice license is valid for the take of migratory game birds and waterfowl when the apprentice also possesses the applicable Migratory Bird stamp and federal waterfowl stamp.
- E.** An apprentice license holder shall be accompanied by a mentor at all times while in the field. A mentor is eligible to apply for no more than two apprentice hunting licenses in any calendar year. A mentor shall:
  - 1. Be a resident of Arizona,
  - 2. Be 18 years of age or older,
  - 3. Possess an appropriate and valid Arizona hunting license, and
  - 4. Provide the apprentice with instruction and supervision on safe and ethical hunting practices.
  - 5. A short-term license does not meet the license requirement of this subsection.
- F.** A mentor may apply for an apprentice license at any Department office. An applicant for an apprentice license shall provide the following information at the time of application:
  - 1. The mentor's:
    - a. Name;
    - b. Arizona hunting license number and effective date of the license; and
  - 2. The applicant's:
    - a. Name;
    - b. Age;
    - c. Date of birth;
    - d. Telephone number, when available;
    - e. Department identification number, when applicable;
    - f. E-mail address, when available;
    - g. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - f. Mailing address, when applicable;
    - g. Physical address; and
    - h. Residency status.

**Historical Note**

Former Section R12-4-67 renumbered as Section R12-4-214 without change effective August 13, 1981 (Supp. 81-4). Repealed effective December 22, 1989 (Supp. 89-4).

New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-215. Youth Group Two-day Fishing License**

- A.** A youth group two-day fishing license authorizes a nonprofit organization or governmental entity as defined under subsection (C) that sponsors adult supervised activities for youth to take up to 25 youths fishing. The youth group two-day fishing license is only available from a Department office. The youth group two-day fishing license is valid for:
  - 1. Two consecutive days,
  - 2. The take of all aquatic wildlife, and
  - 3. All privileges established under R12-4-207(A).
- B.** A nonprofit organization or governmental entity may apply for a youth group two-day fishing license at any Department office. An applicant for a youth group two-day fishing license shall be a resident. The applicant shall pay the fee required under R12-4-102 and provide the following information at the time of application:
  - 1. The nonprofit organization's or governmental entity's:
    - a. Name;
    - b. Mailing address; and
    - c. Telephone number, when available;
  - 2. The applicant's:
    - a. Name;
    - b. Date of birth,
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Mailing address, when applicable;
    - f. Physical address;
    - g. Telephone number, when available; and
    - h. E-mail address, when available;
  - 3. The dates on which the nonprofit organization intends to conduct the youth group fishing activity.
  - 4. The approximate number of youth participating in the group fishing activity.

- C.** For the purpose of this Section, "governmental entity" means any town, city, county, municipality, or other political subdivision of this state or any department, agency, board, commission, authority, division, office, public school, public charter school, public corporation, or other public entity of this state or any department agency bureau, or office of the federal government that is physically located within this state.

**Historical Note**

Adopted effective December 9, 1982 (Supp. 82-6). Section repealed, new Section adopted effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective December 31, 2003 (Supp. 05-4). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-216. Crossbow Permit**

- A.** For the purposes of this Section, "healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
  - Medical Doctor,
  - Doctor of Osteopathy,
  - Doctor of Chiropractic,
  - Nurse Practitioner, or
  - Physician Assistant.
- B.** A crossbow permit allows a person to use a crossbow, or any bow to be drawn and held with an assisting device, during an archery-only season, as prescribed under R12-4-318, when authorized under R12-4-304 as lawful for the species hunted.
- C.** The crossbow permit does not exempt the permit holder from any other applicable method of take or licensing requirement. The permit holder shall be responsible for compliance with all applicable regulatory requirements.
- D.** The crossbow permit does not expire, unless:
  - 1. The medical certification portion of the application indicates the person has a temporary physical disability; then the crossbow permit shall be valid only for the period of time indicated on the crossbow permit as specified by the healthcare provider,
  - 2. The permit holder no longer meets the criteria for obtaining the crossbow permit, or
  - 3. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose crossbow permit is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E.** An applicant for a crossbow permit shall apply by submitting an application to the Department. The application form is fur-

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nished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). A crossbow permit applicant shall provide all of the following information on the application:

1. The applicant's:
  - a. Name;
  - b. Date of birth;
  - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
  - d. Department identification number, when applicable;
  - e. Residency status;
  - f. Mailing address, when applicable;
  - g. Physical address;
  - h. Telephone number, when available; and
  - i. E-mail address, when available;
2. Affirmation that:
  - a. The applicant meets the requirements of this Section, and
  - b. The information provided on the application is true and accurate, and
3. Applicant's signature and date.
4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
  - a. Certify the applicant has one or more of the following physical limitations:
    - i. An amputation involving body extremities required for stable function to use conventional archery equipment;
    - ii. A spinal cord injury resulting in a disability to the lower extremities, leaving the applicant nonambulatory;
    - iii. A wheelchair restriction;
    - iv. A neuromuscular condition that prevents the applicant from drawing and holding a bow;
    - v. A failed functional draw test that equals 30 pounds of resistance and involves holding it for four seconds;
    - vi. A failed manual muscle test involving the grading of shoulder and elbow flexion and extension or an impaired range-of-motion test involving the shoulder or elbow; or
    - vii. A combination of comparable physical disabilities resulting in the applicant's inability to draw and hold a bow.
  - b. Indicate whether the disability is temporary or permanent and, when temporary, specify the expected duration of the physical limitation; and
  - c. Provide the healthcare provider's:
    - i. Typed or printed name,
    - ii. License number,
    - iii. Business address,
    - iv. Telephone number, and
    - v. Signature and date;
5. A person who holds a valid Challenged Hunter Access/Mobility Permit (CHAMP) and who is applying for a crossbow permit is exempt from the requirements of subsection (E)(4) and shall indicate "CHAMP" in the space provided for the medical certification on the crossbow permit application
- F. All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- G. The Department shall deny a crossbow permit when the applicant:

1. Fails to meet the criteria prescribed under this Section,
2. Fails to comply with the requirements of this Section, or
3. Provides false information during the application process.
- H. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I. The applicant claiming a temporary or permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- J. When acting under the authority of a crossbow permit, the crossbow permit holder shall possess the permit, and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
- K. A crossbow permit holder shall not:
  1. Transfer the permit to another person, or
  2. Allow another person to use or possess the permit.

**Historical Note**

Adopted effective April 7, 1983 (Supp. 83-2). Repealed effective January 1, 1993; filed December 18, 1993 (Supp. 92-4). New Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP)**

- A. For the purposes of this Section, the following definitions apply:  
 "Healthcare provider" means a person who is licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:

Medical Doctor,  
 Doctor of Osteopathy,  
 Doctor of Chiropractic,  
 Nurse Practitioner, or  
 Physician Assistant.

"Severe permanent disability" means one or more permanent physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, intellectual disability, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, pulmonary disorders, quadriplegia and other spinal cord conditions, sickle cell anemia, and end stage renal disease or a combination of permanent disabilities resulting in comparable substantial functional limitations.

- B. The Challenged Hunter Access/Mobility Permit (CHAMP) allows a person with a severe permanent disability to perform one or more of the following activities:
1. Discharge a firearm or other legal hunting device from a motor vehicle if, under existing conditions:
    - a. The discharge is otherwise lawful;
    - b. The motor vehicle is not in motion;
    - c. The motor vehicle is not on any road, as defined under A.R.S. § 17-101; and
    - d. The motor vehicle's engine is turned off.
  2. Discharge a firearm or other legal hunting device from a watercraft, as defined under R12-4-501; provided the motor is turned off, the sail furled, or both; and progress has ceased.

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- a. The watercraft may be drifting as a result of current or wind, beached, moored, resting at anchor, or propelled by paddle, oars, or pole.
  - b. A person may use a watercraft under power to retrieve dead or wounded wildlife.
  - c. For the purposes of this subsection, "watercraft" does not include a sinkbox.
- 3. Use off-road locations in a motor vehicle if use is not in conflict with federal or state statutes or regulations or local ordinances or regulations and the motor vehicle is used as a place to wait for game. A person shall not use a motor vehicle to chase or pursue game.
- 4. Designate an assistant to track and dispatch a wounded animal, and to retrieve the animal, in accordance with the requirements of this Section.
- C. The CHAMP holder shall comply with all applicable regulatory requirements. A CHAMP does not exempt the permit holder from any other applicable method of take or licensing requirement.
- D. The CHAMP does not expire, unless:
  - 1. The permit holder no longer meets the criteria for obtaining the CHAMP, or
  - 2. The Commission revokes the person's hunting privileges under A.R.S. § 17-340. A person whose CHAMP is revoked by the Commission may petition the Commission for a rehearing as established under R12-4-607.
- E. An applicant for a CHAMP shall apply by submitting an application to the Department. The application form is furnished by the Department and is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The CHAMP applicant shall provide all of the following information on the application:
  - 1. The applicant's:
    - a. Name;
    - b. Date of birth;
    - c. Physical description, to include the applicant's eye color, hair color, height, and weight;
    - d. Department identification number, when applicable;
    - e. Residency status;
    - f. Mailing address, when applicable;
    - g. Physical address;
    - h. Telephone number, when available; and
    - i. E-mail address, when available;
  - 2. Affirmation that:
    - a. The applicant meets the requirements of this Section, and
    - b. The information provided on the application is true and accurate, and
  - 3. Applicant's signature and date.
  - 4. The certification portion of the application shall be completed by a healthcare provider. The healthcare provider shall:
    - a. Certify the applicant is a person with a severe permanent disability as defined under subsection (A), and
    - b. Provide the healthcare provider's:
      - i. Typed or printed name,
      - ii. Business address,
      - iii. Telephone number, and
      - iv. Signature and date;
- F. All information and documentation provided by the applicant is subject to Department verification. The Department shall return the original or certified copy of a document to the applicant after verification.
- G. The applicant claiming a severe permanent disability is responsible for all costs associated with obtaining the medical documentation, re-evaluation of the information, or a second medical opinion.
- H. The Department shall deny a CHAMP when the applicant:
  - 1. Fails to meet the criteria prescribed under this Section,
  - 2. Fails to comply with the requirements of this Section, or
  - 3. Provides false information during the application process.
- I. The Department shall provide written notice to the applicant stating the reason for the denial. The applicant may appeal the denial to the Commission as prescribed in A.R.S. Title 41, Chapter 6, Article 10.
- J. When acting under the authority of the CHAMP, the permit holder shall possess and exhibit the permit upon request to any peace officer, wildlife manager, or game ranger.
- K. The CHAMP holder shall ensure the CHAMP vehicle placard, issued with the CHAMP, is visibly displayed on the motor vehicle or watercraft when in use.
- L. The Department shall provide a CHAMP holder with a dispatch permit that allows the CHAMP holder to designate a licensed hunter as an assistant to:
  - 1. Dispatch and retrieve an animal wounded by the CHAMP holder, or
  - 2. Retrieve wildlife killed by the CHAMP holder.
- M. The CHAMP holder shall:
  - 1. Designate an assistant only after the animal is wounded or killed.
  - 2. Ensure the designation on the dispatch permit is in ink and includes:
    - a. A description of the animal,
    - b. The assistant's name and valid Arizona hunting license number,
    - c. The date and time the animal was wounded or killed, and
  - 3. Ensure compliance with all of the following requirements:
    - a. The site where the animal is wounded and the location from which tracking begins are marked so they can be identified later.
    - b. The assistant possesses the dispatch permit and a valid hunting license while tracking and dispatching the wounded animal. When acting under the authority of the dispatch permit, the assistant shall possess and exhibit the dispatch permit and hunting license upon request to any peace officer, wildlife manager, or game ranger.
    - c. The CHAMP holder is in the field while the assistant is tracking and dispatching the wounded animal.
    - d. The assistant does not transfer the dispatch permit to anyone except that the dispatch permit may be transferred back to the CHAMP holder.
    - e. Dispatch is made by a method that is lawful for the take of the particular animal in the particular season in accordance with requirements established under R12-4-304 and R12-4-318.
    - f. The assistant attaches the dispatch permit to the carcass of the animal and returns the carcass to the CHAMP holder, and the tag of the CHAMP holder is affixed to the carcass.
    - g. If the assistant is unsuccessful in locating and dispatching the wounded animal, the assistant returns the dispatch permit to the CHAMP holder. The CHAMP holder shall strike the name and authorization of the assistant from the dispatch permit.
- N. A dispatch permit may not be reused when all spaces for designation of an assistant are filled or the dispatch permit is attached to a carcass. The CHAMP holder may request another dispatch permit from the Department if:

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1. All spaces for assistants are filled,
2. The dispatch permit is lost, or
3. When the CHAMP holder needs another dispatch permit for another big game hunt.

**O. A CHAMP holder shall not:**

1. Transfer the permit to another person, or
2. Allow another person to use or possess the permit.

**Historical Note**

Adopted effective October 9, 1980 (Supp. 80-5). Former Section R12-4-59 renumbered as Section R12-4-310 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-310 renumbered as R12-4-217 and amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-310 renumbered as R12-4-217 and amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Section repealed, new Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 212, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3045, effective January 3, 2015 (Supp. 14-4).

**R12-4-218. Repealed****Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective November 7, 1996 (Supp. 96-4).

**R12-4-219. Renumbered****Historical Note**

Adopted as an emergency effective July 5, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 24, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2).

**R12-4-220. Repealed****Historical Note**

Adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4).

**ARTICLE 3. TAKING AND HANDLING OF WILDLIFE****R12-4-301. Definitions**

In addition to the definitions provided under A.R.S. § 17-101, the following definitions apply to this Article unless otherwise specified:

"Administer" means to pursue, capture, or otherwise restrain wildlife in order to directly apply a drug to wildlife by injection, inhalation, ingestion or any other means.

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

"Artificial lures and flies" means man-made devices intended as visual attractants for fish and does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, artificial salmon eggs, artificial corn, or artificial marshmallows.

"Barbless hook" means any fishhook manufactured without barbs or on which the barbs have been completely closed or removed.

"Body-gripping trap" means a device designed to capture an animal by gripping the animal's body.

"Cervid" means any member of the deer family (Cervidae); which includes caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer.

"Confinement trap" means a device designed to capture wildlife alive and hold it without harm.

"Crayfish net" means a net that does not exceed 36 inches on a side or in diameter and is retrieved by means of a hand-held line.

"Dip net" means any net, excluding the handle, that is no greater than 3 feet in the greatest dimension, that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the individual.

"Drug" means any chemical substance, other than food or mineral supplements, which affects the structure or biological function of wildlife.

"Evidence of legality" means the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law and is identifiable as the "legal wildlife" prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity and size.

"Foothold trap" means a device designed to capture an animal by the leg or foot.

"Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

"Land set" means any trap used on land rather than in water.

"Minnow trap" means a trap with dimensions that do not exceed 12 inches in depth, 12 inches in width and 24 inches in length.

"Muzzleloading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, having a single barrel, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Muzzleloading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.

"Nonprofit organization" means an organization that is recognized as nonprofit under Section 501(c) of the U.S. Internal Revenue Code.

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“Paste-type bait” means a partially liquefied substance used as a lure for animals.

“Person” means any individual, corporation, partnership, limited liability company, non-governmental organization or club, licensed animal shelter, government entity other than the Department, and any officer, employee, volunteer, member or agent of a person.

“Pre-charged pneumatic weapon” means an air gun or pneumatic weapon that is charged from an external high compression source such as an air compressor, air tank, or external hand pump.

“Sight-exposed bait” means a carcass or parts of a carcass lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include a trap flag, dried or bleached bone with no attached tissue, or less than two ounces of paste-type bait.

“Simultaneous fishing” means taking fish by using two lines and not more than two hooks or two artificial lures or flies per line.

“Sinkbox” means a low floating device with a depression that affords a hunter a means of concealment beneath the surface of the water.

“Trap flag” means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

“Water set” means any trap used and anchored in water rather than on land.

#### Historical Note

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976, Amended effective June 7, 1976 (Supp. 76-3). Amended effective May 26, 1978 (Supp. 78-3). Editorial correction subsection (D) (Supp. 78-5). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-50 renumbered as Section R12-4-301 without change effective August 13, 1981 (Supp. 81-4). Amended subsection (A) effective May 12, 1982 (Supp. 82-3). Amended effective July 3, 1984 (Supp. 84-4). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Amended effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Former R12-4-301 renumbered to R12-4-321; new Section made by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. In addition to meeting requirements prescribed under A.R.S. § 17-331, an individual who takes wildlife shall have in possession any tag required for the particular season or hunt area.
- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. An individual who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established by Commission Order for that genus or species.
- D. An individual shall:
  1. Take and tag only the wildlife identified on the tag; and
  2. Use a tag only in the season and hunt for which the tag is valid, as specified by Commission Order.

- E. Except as permitted under R12-4-217, an individual shall not:
  1. Allow their tag to be attached to wildlife killed by another individual,
  2. Allow their tag to be possessed by another individual who is in a hunt area,
  3. Attach their tag to wildlife killed by another individual,
  4. Attach a tag issued to another individual to wildlife, or
  5. Possess a tag issued to another individual while in a hunt area.
- F. Except as permitted under R12-4-217, immediately after an individual kills wildlife, the individual shall attach the tag to the wildlife carcass in the manner indicated on the tag.
- G. An individual who lawfully takes wildlife with a valid tag and authorizes another individual to possess, transport, or ship the tagged portion of the carcass shall complete the Transportation and Shipping Permit portion of the original tag authorizing the take of that animal.
- H. If a tag is cut, notched, mutilated, or the Transportation and Shipping Permit portion of the tag is signed or filled out, the tag is no longer valid for the take of wildlife.

#### Historical Note

Former Section R12-4-51 renumbered as Section R12-4-302 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (D), (E), and repealed subsection (G) effective May 12, 1982 (Supp. 82-3). Amended effective March 23, 1983 (Supp. 83-2). Amended subsection (F) effective October 31, 1984 (Supp. 84-5). Amended subsections (A), (D), (F) and (G) and added a new Section (H) effective June 4, 1987 (Supp. 87-2). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Amended effective January 1, 1989, filed December 30, 1988” (Supp. 89-2). Section R12-4-302 repealed, new Section R12-4-302 adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Section repealed, new Section adopted effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 683, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

#### R12-4-303. Unlawful Devices, Methods, and Ammunition

- A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking any wildlife in this state:
  1. An individual shall not use any of the following to take wildlife:
    - a. Fully automatic firearms, including firearms capable of selective automatic fire; or
    - b. Tracer, armor-piercing, or full-jacketed ammunition designed for military use.
  2. An individual shall not use or possess any of the following while taking wildlife:
    - a. Poisoned projectiles or projectiles that contain explosives;
    - b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238;
    - c. Any lure, attractant, or cover scent containing any cervid urine; or



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- d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights; except for devices such as laser range finders, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.
- 3. An individual shall not:
  - a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
  - b. Injure, confine, or place a tracking device in or on wildlife for the purpose of aiding another individual to take wildlife.
  - c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
  - d. Place any substance in a manner intended to attract bears.
  - e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
  - f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter unless that hunter is present for the entire hunt.
  - g. Take migratory game birds, except Eurasian Collared-doves, using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells, electronically amplified bird calls, or baits, as prohibited under 50 CFR 20.21, revised October 1, 2009. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office web site [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the Superintendent of Documents, U.S. Government Printing Office, 732 N. Capitol St. N.W., Stop IDCC, Washington, D.C. 20401.
  - h. Discharge a pneumatic weapon .30 caliber or larger while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.
- 4. An individual shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
  - a. An individual places edible or ingestible substances for the purpose of attracting or taking big game, or
  - b. An individual knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
- 5. Subsection (A)(4) does not limit Department employees or Department agents in the performance of their official duties.
- 6. For the purposes of subsection (A)(4), edible or ingestible substances do not include any of the following:
  - a. Water.
  - b. Salt.
  - c. Salt-based materials produced and manufactured for the livestock industry.
  - d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

**B.** Wildlife taken in violation of this Section is unlawfully taken.

- C. This Section does not apply to any activity allowed under A.R.S. § 17-302, to an individual acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

#### Historical Note

Amended effective May 3, 1976 (Supp. 76-3). Amended effective April 29, 1977 (Supp. 77-2). Amended effective September 7, 1978 (Supp. 78-5). Former Section R12-4-52 renumbered as Section R12-4-303 without change effective August 13, 1981 (Supp. 81-4). Amended effective March 28, 1983 (Supp. 83-2). Amended subsections (A) and (C) effective October 31, 1984 (Supp. 84-5). Amended effective June 4, 1987 (Supp. 87-2). Former Section R12-4-303 repealed, new Section R12-4-303 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-303 repealed, new Section R12-4-303 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. An individual may only use the following methods to take big game when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318.
  - 1. To take antelope:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs, only;
    - g. Pre-charged pneumatic weapons .35 caliber or larger;
    - h. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
    - i. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(1)(h) to be drawn and held with an assisting device.
  - 2. To take bear:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs, only;
    - g. Pre-charged pneumatic weapons .35 caliber or larger;
    - h. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
    - i. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal

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- cutting edges or bows as described in subsection (A)(2)(h) to be drawn and held with an assisting device; and
- j. Pursuit with dogs only between August 1 and December 31, provided the individual shall immediately kill or release the bear after it is treed, cornered, or held at bay. For the purpose of this subsection, "release" means the individual removes the dogs from the area so the bear can escape on its own after it is treed, cornered, or held at bay.
3. To take bighorn sheep:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs, only;
    - g. Pre-charged pneumatic weapons .35 caliber or larger;
    - h. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
    - i. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(3)(h) to be drawn and held with an assisting device.
  4. To take buffalo:
    - a. State-wide, except for the game management units identified under subsection (A)(4)(b):
      - i. Centerfire rifles;
      - ii. Muzzleloading rifles;
      - iii. All other rifles using black powder or synthetic black powder;
      - iv. Centerfire handguns no less than .41 Magnum or centerfire handguns with an overall cartridge length of no less than two inches;
      - v. Bows with a standard pull of 40 or more lbs, using arrows with broadheads of no less than 7/8 inch in width with metal cutting edges; and
      - vi. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(4)(a)(v) to be drawn and held with an assisting device.
    - b. In game management units 5A and 5B:
      - i. Centerfire rifles,
      - ii. Muzzleloading rifles, and
      - iii. All other rifles using black powder or synthetic black powder.
  5. To take deer:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs, only;
    - g. Pre-charged pneumatic weapons .35 caliber or larger;
  - h. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - i. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(5)(h) to be drawn and held with an assisting device.
6. To take elk:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs, only;
    - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
    - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(6)(g) to be drawn and held with an assisting device.
  7. To take javelina:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs, only;
    - g. Pre-charged pneumatic weapons .35 caliber or larger;
    - h. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
    - i. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(7)(h) to be drawn and held with an assisting device;
    - j. .22 rimfire magnum rifles; and
    - k. 5 mm rimfire magnum rifles.
  8. To take mountain lion:
    - a. Centerfire rifles;
    - b. Muzzleloading rifles;
    - c. All other rifles using black powder or synthetic black powder;
    - d. Centerfire handguns;
    - e. Handguns using black powder or synthetic black powder;
    - f. Shotguns shooting slugs or shot;
    - g. Pre-charged pneumatic weapons .35 caliber or larger;
    - h. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
    - i. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal

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- cutting edges or bows as described in subsection (A)(8)(h) to be drawn and held with an assisting device;
- j. Artificial light, during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
  - k. Pursuit with dogs, provided the individual shall immediately kill or release the mountain lion after it is treed, cornered, or held at bay. For the purpose of this subsection, "release" means the individual removes the dogs from the area so the mountain lion can escape on its own after it is treed, cornered, or held at bay.
9. To take turkey:
    - a. Shotguns shooting shot;
    - b. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
    - c. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(9)(b) to be drawn and held with an assisting device.
- B.** An individual may only use the following methods to take small game, when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318.
1. To take cottontail rabbits and tree squirrels:
    - a. Firearms,
    - b. Bow and arrow,
    - c. Crossbow,
    - d. Pneumatic weapons,
    - e. Slingshots,
    - f. Hand-held projectiles,
    - g. Falconry, and
    - h. Dogs.
  2. To take all upland game birds and Eurasian Collared-doves:
    - a. Bow and arrow;
    - b. Falconry;
    - c. Pneumatic weapons;
    - d. Shotguns shooting shot, only;
    - e. Handguns shooting shot, only;
    - f. Crossbow;
    - g. Slingshot;
    - h. Hand-held projectiles; and
    - i. Dogs.
  3. To take migratory game birds, except Eurasian Collared-doves:
    - a. Bow and arrow;
    - b. Crossbow;
    - c. Falconry;
    - d. Dogs;
    - e. Shotguns shooting shot:
      - i. Ten gauge or smaller, except that lead shot shall not be used or possessed while taking ducks, geese, swans, mergansers, common moorhens, or coots; and
      - ii. Incapable of holding more than a total of three shells, as prescribed under 50 CFR 20.21, published October 1, 2009. The material incorporated by reference in this subsection does not include any later amendments or editions. The material is available at any Department office, online from the Government Printing Office web site [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the Superintendent of Documents, U.S. Government Printing Office, 732 N. Capitol St. N.W., Stop: IDCC, Washington, D.C. 20401.
- C.** An individual may take waterfowl from any watercraft, except a sinkbox, subject to the following conditions:
1. The motor is shut off, the sail is furled, as applicable, and any progress from a motor or sail has ceased;
  2. The watercraft may be:
    - a. Adrift as a result of current or wind action;
    - b. Beached;
    - c. Moored;
    - d. Resting at anchor; or
    - e. Propelled by paddle, oars, or pole; and
  3. The individual may only use the watercraft under power to retrieve dead or crippled waterfowl; shooting is prohibited while the watercraft is underway.
- D.** An individual may take predatory and furbearing animals by using the following methods, when authorized by Commission Order and subject to the restrictions under R12-4-303 and R12-4-318:
1. Firearms;
  2. Pre-charged pneumatic weapons .22 caliber or larger;
  3. Bow and arrow;
  4. Crossbow;
  5. Traps not prohibited under R12-4-307;
  6. Artificial light while taking raccoon provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail;
  7. Artificial light while taking coyote during seasons with day-long hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
  8. Dogs.
- E.** An individual may take nongame mammals and birds by any method authorized by Commission Order and not prohibited under R12-4-303 or R12-4-318, subject to the following restrictions. An individual:
1. Shall not take nongame mammals and birds using foot-hold traps;
  2. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
  3. Shall not use firearms at night; and
  4. May use artificial light while taking nongame mammals and birds, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.
- F.** An individual may take reptiles by any method not prohibited under R12-4-303 or R12-4-318 subject to the following restrictions. An individual:
1. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
  2. Shall not use firearms at night; and
  3. May use artificial light while taking reptiles provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

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**Historical Note**

Amended effective May 21, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective October 20, 1977 (Supp. 77-5). Amended effective January 11, 1978 (Supp. 78-1). Amended effective September 7, 1978 (Supp. 78-5). Amended effective November 14, 1979 (Supp. 79-6). Amended effective July 22, 1980 (Supp. 80-4). Former Section R12-4-53 renumbered as Section R12-4-304 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 12, 1982 (Supp. 82-3). Amended effective April 7, 1983 (Supp. 83-2). Amended subsection (I) effective June 7, 1984 (Supp. 84-3). Amended effective February 28, 1985 (Supp. 85-1). Amended effective September 16, 1985 (Supp. 85-5). Amended effective June 4, 1987 (Supp. 87-2). Former Section R12-4-304 repealed, new Section R12-4-304 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-304 repealed, new Section R12-4-304 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Former Section R12-4-304 repealed, new Section R12-4-304 adopted effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 2629, effective December 9, 2011 (Supp. 11-4). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

**R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife**

- A.** An individual shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wild mammal, bird, or reptile that the individual possesses, transports, or imports until arrival at the individual's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.
- B.** In addition to the requirement in subsection (A), an individual possessing or transporting the following wildlife shall ensure each:
  1. Big game animal, sandhill crane, and pheasant has the required valid tag attached as prescribed under R12-4-302;
  2. Migratory game bird, except sandhill cranes, has one fully feathered wing attached;
  3. Sandhill crane has either the fully feathered head or one fully feathered wing attached; and
  4. Quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, when the current Commission Order has established separate bag or possession limits for any species of quail.
- C.** An individual who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission may authorize its transportation or shipment by completing and signing the Transportation and Shipping Permit portion of the valid tag for that animal. A separate Transportation and Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372(B), an individual may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation and Shipping Permit issued by the Department. The individual shall provide the following information on the permit form:
  1. Number and description of the wildlife to be transported or shipped;
  2. Name, address, license number, and license class of the individual who took the wildlife;
  3. Tag number;
  4. Name and address of the individual receiving a portion of the carcass of the wildlife as authorized under subsection (D), if applicable;
  5. Address of destination where the wildlife is to be transported or shipped; and
  6. Name and address of transporter or shipper.
- D.** An individual who lawfully takes wildlife under a tag may authorize another individual to possess the head or carcass of the wildlife by separating and attaching the tag as prescribed under R12-4-302.
- E.** An individual who receives a portion of the wildlife shall provide the identity of the individual who took and gave the portion of the wildlife.
- F.** An individual shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed as prescribed under R12-4-308.
- G.** Except as provided under R12-4-307, before an individual may sell, offer for sale, or export the raw pelt or unskinned carcass of a bobcat taken in this state the individual shall:
  1. Present the bobcat for inspection at any Department office, and
  2. Purchase a bobcat seal by paying the fee established under R12-4-102 at any Department office or other location as determined and published by the Department. Department personnel or an authorized agent shall attach and lock the bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag.
- H.** An individual who takes bear or mountain lion under A.R.S. § 17-302 during a closed season may retain the carcass of the wildlife if the individual has a valid hunting license and the carcass is immediately tagged with a nonpermit-tag as required under R12-4-114 and R12-4-302, unless the individual has already taken the applicable bag limit for that big game animal. An animal retained under this subsection shall count towards the applicable bag limit for bear or mountain lion as authorized by Commission Order. The individual shall comply with inspection and reporting requirements established under R12-4-308.
- I.** An individual may possess, transport, or import only the following portions of a cervid lawfully taken in another state or country:
  1. Boneless portions of meat, or meat that has been cut and packaged;
  2. Clean hides and capes with no skull or soft tissue attached, except as required for proof of legality;
  3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached;
  4. Finished taxidermy mounts or products; and
  5. Upper canine teeth with no meat or tissue attached.
- J.** A private game farm license holder may transport a cervid lawfully killed or slaughtered at the license holder's game farm to a licensed meat processor.
- K.** An individual may possess or transport only the following portions of a cervid lawfully killed or slaughtered at a private game farm authorized under R12-4-413:
  1. Boneless portions of meat, or meat that has been cut and packaged;
  2. Clean hides and capes with no skull or soft tissue attached;
  3. Clean skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached;

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- 4. Finished taxidermy mounts or products; and
- 5. Upper canine teeth with no meat or tissue attached.
- L. An individual who obtains buffalo meat as authorized under R12-4-306 may sell the meat.
- M. Except for cervids, which are subject to requirements established under subsections (I), (J), and (K), an individual may import into this state the carcasses or parts of wildlife, including aquatic wildlife, lawfully taken in another state or country if transported and exported in accordance with the laws of the state or country of origin.
- N. An individual in possession of or transporting the carcass of any freshwater fish taken within this state shall ensure that the head, tail, or skin is attached so that the species can be identified, numbers counted, and any required length determined.
- O. An individual shall not transport live crayfish from the site where taken, except as permitted under R12-4-316.
- P. An individual in possession of a carp (*Cyprinus carpio*), buffalofish (*Ictiobus* spp.), or crayfish (families *Astacidae*, *Cambaridae*, and *Parastacidae*) carcass taken under Commission Order may sell the carcass.
- 2. When required by the Department, a hunter with a non-permit-tag shall:
  - a. Hunt in the order scheduled,
  - b. Be accompanied by a Department employee who:
    - i. Shall designate the buffalo to be harvested.
    - ii. May assist in taking the buffalo if the hunter fails to dispatch a wounded buffalo within a reasonable period.
- E. A hunter issued a buffalo permit-tag or non-permit tag shall check out no more than three days after the end of the hunt, regardless of whether the hunter was successful, unsuccessful, or did not participate in a buffalo hunt.
  - 1. House Rock Herd (Units 12A, 12B, and 13A): a hunter may check out either in person or by telephone at the House Rock Wildlife Area headquarters, the Jacob Lake Check station when open during deer season, or the Department's Flagstaff regional office.
  - 2. Raymond Herd (Units 5A and 5B):
    - a. A successful hunter shall check out in person at the Raymond Wildlife Area headquarters or the Department's Flagstaff regional office. The hunter shall present the buffalo to the Department for the purpose of gathering biological data.
    - b. An unsuccessful hunter shall check out by telephone at the Raymond Wildlife Area headquarters or the Department's Flagstaff regional office.
  - 3. At the time of check-out, the hunter shall provide all of the following information:
    - a. Hunter's name,
    - b. Hunter's contact number,
    - c. Tag number,
    - d. Sex of buffalo taken,
    - e. Age of the buffalo taken: adult or yearling,
    - f. Number of days hunted, and
    - g. Number of buffalo seen while hunting.
  - 4. When accompanied by an authorized Department employee, the employee shall conduct the check-out at the end of the hunt.
- F. Failure to comply with the requirements of this Section shall result in the invalidation of the hunter's permit-tag or nonpermit-tag, consistent with the written acknowledgment signed and agreed to by the hunter.

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Former Section R12-4-54 renumbered as Section R12-4-305 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 12, 1982 (Supp. 82-3). Amended effective June 14, 1983 (Supp. 83-3). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Section repealed, new Section adopted effective April 1, 1997; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 683, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. When authorized by Commission Order, the Department shall conduct a hunt to harvest buffalo from the state's buffalo herds.
- B. A hunter with a buffalo permit-tag or nonpermit-tag shall:
  - 1. Provide a signed written acknowledgment that the hunter received, read, understands, and agrees to comply with the requirements of this Section.
  - 2. Be accompanied by an authorized Department employee, when required, and
  - 3. Take only the buffalo designated by the Department employee, when required.
- C. For the House Rock Herd (Units 12A, 12B, and 13A): when required by the Department, a hunter with a nonpermit-tag shall:
  - 1. Hunt in the order scheduled.
  - 2. Be accompanied by a Department employee who:
    - a. Shall designate the buffalo to be harvested, and
    - b. May assist in taking the buffalo if the hunter fails to dispatch a wounded buffalo within a reasonable period.
- D. For the Raymond Herd (Units 5A and 5B):
  - 1. A hunter with a permit-tag shall:
    - a. Hunt in the order scheduled, and
    - b. Be accompanied by an authorized Department employee who:
      - i. Shall designate the buffalo to be harvested, and
      - ii. May assist in taking the buffalo if the hunter fails to dispatch a wounded buffalo within a reasonable period.

**Historical Note**

Former Section R12-4-55 renumbered as Section R12-4-306 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (B), and (D) effective May 12, 1982 (Supp. 82-3). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. An Arizona trapping license permits an individual to trap predatory and fur-bearing animals. The Department shall issue a registration number to a trapper and enter the number on the trapping license at the time the trapper purchases the license. The trapper registration number is not transferable.
- B. A trapping license is required for any individual 14 years of age and older. An individual under the age of 14 is not required to purchase a trapping license, but shall apply for and obtain a registration number.

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- C. An individual born on or after January 1, 1967 shall successfully complete a Department-approved trapping education course before applying for a trapping license.
- D. An individual applying for a trapping registration number or trapping license shall pay the applicable fees established under R12-4-102.
- E. An individual applying for a trapping registration number or trapping license shall apply using a form furnished by the Department. The form is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The individual shall provide all of the following information on the form:
1. Applicant's:
    - a. Full name, address, and telephone number;
    - b. Date of birth and physical description;
  2. Identification number assigned by the Department;
  3. Category of license:
    - a. Resident,
    - b. Nonresident, or
    - c. Juvenile, and
  4. The applicant's signature.
- F. A trapper may only trap predatory and fur-bearing animals during trapping seasons established by Commission Order.
- G. A trapper shall:
1. Inspect traps daily;
  2. Kill or release all predatory and fur-bearing animals;
  3. Possess a choke restraint device that enables the trapper to release a javelina from a trap when trapping in a javelina hunt unit, as designated by Commission Order;
  4. Possess a device that is designed or manufactured to restrain a trapped animal while it is being removed from a trap when its release is required by this Section; and
  5. Release, without additional injury, all animals that cannot lawfully be taken by trap.
  6. Subsections (G)(3) and (G)(4) do not apply when the trapper is using a confinement trap.
- H. A trapper shall not:
1. Bait a confinement trap with:
    - a. A live animal;
    - b. Any edible parts of small game, big game, or game fish; or
    - c. Any part of any game bird or nongame bird.
  2. Set any trap within:
    - a. One-half mile of any of the following areas developed for public use:
      - i. Boat launching area,
      - ii. Camping area,
      - iii. Picnic area, or
      - iv. Roadside rest area.
    - b. One-half mile of any occupied residence or building without permission of the owner or resident.
    - c. One-hundred yards of an interstate highway or any other highway maintained by the Arizona Department of Transportation.
    - d. Fifty feet of any trail maintained for public use by a government agency.
    - e. Seventy-five feet of any other road as defined under A.R.S. § 17-101.
    - f. Subsections (H)(2)(b), (H)(2)(c), (H)(2)(d), and (H)(2)(e) do not apply when the trapper is using a confinement trap.
  3. Set a foothold trap within 30 feet of sight-exposed bait.
  4. Use any:
    - a. Body-gripping or other instant kill trap with an open jaw spread that exceeds 5 inches for any land set or 10 inches for any water set;
    - b. Foothold trap with an open jaw spread that exceeds 7 1/2 inches for any water set;
    - c. Snare, unless authorized under subsection (I);
    - d. Trap with an open jaw spread that exceeds 6 1/2 inches for any land set; or
    - e. Trap with teeth.
- I. A trapper who uses a foothold trap to take wildlife with a land set shall use commercially manufactured traps that meet the following specifications:
1. A padded or rubber-jawed trap or an unpadded trap with jaws permanently offset to a minimum of 3/16 inch and a device that allows for pan tension adjustment;
  2. A foothold trap that captures wildlife by means of an enclosed bar or spring designed to prevent the capture of non-targeted wildlife or domestic animals; or
  3. A powered cable device with an inside frame hinge width no wider than 6 inches, a cable loop stop size of at least 2 inches in diameter to prevent capture of small non-target species, and a device that allows for a pan tension adjustment.
- J. A trapper who uses a foothold trap to take wildlife with a land set shall ensure that the trap has an anchor chain equipped with at least two swivels as follows:
1. An anchor chain 12 inches or less in length shall have a swivel attached at each end.
  2. An anchor chain greater than 12 inches in length shall have one swivel attached at the trap and one swivel attached within 12 inches of the trap. The anchor chain shall be equipped with a shock-absorbing spring that requires less than 40 pounds of force to extend or open the spring.
- K. A trapper shall ensure that each trap has either the name and address or the registration number of the trapper marked on a metal tag attached to the trap. The number assigned by the Department is the only acceptable registration number.
- L. A trapper shall immediately attach a valid bobcat transportation tag to the pelt or unskinned carcass of a bobcat taken in this state. The trapper shall validate the transportation tag by providing all of the following information on the bobcat transportation tag:
1. Current trapping license number,
  2. Game management unit where the bobcat was taken,
  3. Sex of the bobcat, and
  4. Method by which the bobcat was taken.
- M. The Department shall provide transportation tags with each trapping license. Additional transportation tags are available at any Department office at no charge.
- N. A trapper shall ensure that all bobcats taken in this state have a bobcat seal attached and locked either through the mouth and an eye opening or through both eye openings no later than 10 days after the close of trapping season.
1. When available, bobcat seals are issued on a first-come, first-served basis at Department offices and other locations at those times and places as determined and published by the Department.
  2. The trapper shall pay the bobcat seal fee established under R12-4-102.
  3. Department personnel or an authorized agent shall attach and lock a bobcat seal only to a pelt or unskinned carcass presented with a validated transportation tag and a complete lower jaw identified with labels provided with the transportation tag. Department personnel or authorized agents shall collect the transportation tags and jaws before attaching the bobcat seal.

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- O. Department personnel shall attach a bobcat seal to a bobcat pelt seized under A.R.S. § 17-211(E)(4) before disposal by the Department to the public.
- P. A licensed trapper shall file the annual report prescribed under A.R.S. § 17-361(D).
  - 1. The trapper shall submit the report to Arizona Game and Fish Department, Game Branch, 5000 W. Carefree Highway, Phoenix, AZ 85086 by April 1 of each year.
  - 2. A report is required even when trapping activities were not conducted. The report form is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).
  - 3. The Department shall deny a trapping license to any trapper who fails to submit an annual report until the trapper complies with reporting requirements.
- Q. Persons suffering property loss or damage due to wildlife and who take responsive measures as permitted under A.R.S. §§ 17-239 and 17-302 are exempt from this Section. This exemption does not authorize any form of trapping prohibited under A.R.S. § 17-301.
  - ii. 8:00 a.m. to 8:00 p.m. during each day of the season.
  - b. Check-out requirement is open:
    - i. 8:00 a.m. to 8:00 p.m. during each day of the season, and
    - ii. Until 12:00 noon on the day after the close of the season.
  - 3. A hunter shall:
    - a. Check in at a wildlife check station in person before hunting when the Department includes a check in requirement in the Commission Order for that season;
    - b. Check out at a wildlife check station in person after hunting when the Department includes a check-out requirement in the Commission Order for that season and shall:
      - i. Present for inspection any wildlife taken; and
      - ii. Display any license, tag, or permit required for taking or transporting wildlife.

**Historical Note**

Repealed effective May 3, 1976 (Supp. 76-3). New Section R12-4-56 adopted effective September 2, 1977 (Supp. 77-5). Amended effective December 27, 1979 (Supp. 79-6). Former Section R12-4-56 renumbered as Section R12-4-307 without change effective August 13, 1981. New Section R12-4-307 amended effective August 31, 1981 (Supp. 81-4). Amended effective August 4, 1982 (Supp. 82-4). Correction, Former Section R12-4-56 renumbered as Section R12-4-307 without change effective August 13, 1981 should read "effective August 31, 1981." Amended as an emergency effective March 29, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-2). Amended subsections (B), (C)(6), (7), and (8) and added subsection (I)(5) as a permanent rule effective August 27, 1984 (Supp. 84-4). Amended subsection (C), paragraph (4), subsection (D), subsection (H), paragraph (1), subsection (I), paragraphs (3), (4) and (5) effective September 12, 1986 (Supp. 86-5). Amended effective March 1, 1994; filed in the Office of the Secretary of State November 23, 1993; Exhibit A - "Trapping Report" Form 2050, repealed from Section R12-4-307 (Supp. 93-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Corrected mislabeled subsection "C" to subsection "D" as per the Commission's request July 22, 1997 (Supp. 97-2). Amended effective February 9, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. The Department has the authority to establish mandatory wildlife check stations.
  - 1. The Department shall publish in the Commission Order establishing the season the:
    - a. Location,
    - b. Check in requirements, and
    - c. Check-out requirements for that specific season.
  - 2. The Department shall ensure a wildlife check station with a published:
    - a. Check in requirement is open:
      - i. 8:00 a.m. the day before the season until 8:00 p.m. the first day of the season, and
- B. The Department may conduct inspections of lawfully taken wildlife at the Department's Phoenix and regional offices or designated locations during the posted business hours.
  - 1. A bighorn sheep hunter shall check out either in person or by designee within three days after the close of the season. The hunter or designee shall submit the intact horns and skull for inspection and photographing. A Department representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken under Commission Order. It is unlawful for any person to remove, alter, or obliterate the mark or seal.
  - 2. A successful bear or mountain lion hunter shall:
    - a. Report information about the kill to the Department either in person or by telephone within 48 hours of taking the wildlife. The report shall include the:
      - i. Name of the hunter,
      - ii. Hunter's hunting license number,
      - iii. Sex of the wildlife taken,
      - iv. Management unit where the wildlife was taken,
      - v. Telephone number where the hunter can be reached for additional information, and
      - vi. Any additional information required by the Department.
    - b. Present either in person or by designee the skull, hide, and attached proof of sex for inspection within 10 days of taking the wildlife. If a hunter freezes the skull or hide before presenting it for inspection, the hunter shall prop the jaw open to allow access to the teeth and ensure that the attached proof of sex is identifiable and accessible.
  - 3. For seasons other than bear, bighorn sheep, or mountain lion, where a harvest objective is established, a successful hunter shall report information about the kill either in person or by telephone within 48 hours of taking the wildlife. The report shall include the information required under subsection (B)(2)(a).
- C. The Director may establish vehicle roadblocks at specific locations when necessary to ensure compliance with applicable wildlife laws. Any occupant of a vehicle at a roadblock shall, upon request, present for inspection all wildlife in possession, and produce and display any license, tag, stamp, or permit required for taking or transporting wildlife.
- D. This Section does not limit the game ranger or wildlife manager's authority to conduct stops, searches, and inspections authorized under A.R.S. §§ 17-211(E), 17-250(A)(4), and 17-331, or to establish voluntary wildlife survey stations to gather biological information.

**Historical Note**

Amended effective June 29, 1978 (Supp. 78-3). Former Section R12-4-57 renumbered as Section R12-4-308 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-308 repealed, new Section R12-4-308 adopted effective May 12, 1982 (Supp. 82-3). Amended subsections (B), (D), and (F), and added subsection (G) effective July 3, 1984 (Supp. 84-4). Former Section R12-4-308 repealed, new Section R12-4-308 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-308 repealed, new Section R12-4-308 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective July 12, 1996 (Supp. 96-3). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 683, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

**R12-4-309. Authorization for Use of Drugs on Wildlife**

- A. A person shall not administer any drug to any wildlife under the jurisdiction of the state, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation without written authorization from the Department or as otherwise provided under subsection (E).
- B. A person requesting written authorization for the use of drugs on wildlife shall submit the request in writing to the Department at 5000 W. Carefree Hwy, Phoenix, AZ 85086 and at least 120 days before the anticipated start date of the activity and provide all of the following:
  1. A plan that includes:
    - a. The purpose and need for the proposed activity;
    - b. A clear statement of the objectives; for fertility control the statement shall include the target wildlife population goals or densities and the anticipated time-frame for meeting these objectives;
    - c. A description of the agent, drug, or method including federal approvals or permits obtained, as applicable, and any mandated labeling restrictions or limitations designed to reduce or minimize detrimental effects to wildlife and humans;
    - d. Required approvals, including, but not limited to, any federal or state agency approvals for specific use;
    - e. Citations of published scientific literature documenting field studies on the efficacy and safety for both target and non-target species, including predators, scavengers, and humans;
    - f. A description of the activity area;
    - g. A description of the target species population and current status;
    - h. A description of the field methodology for delivery that includes the following, as applicable:
      - i. Timing,
      - ii. Sex and number of animals to be treated,
      - iii. Percentage of the population to be treated,
      - iv. Calculated population effect, and
      - v. Short and long term monitoring and evaluation procedures.
  2. Documentation regarding the experience and credentials of the applicant or the applicant's agents as it applies to the requested activity;

3. Written endorsement from the agency or institution; required when the applicant is a government agency, university, or other institution; and
  4. Written permission from landowners or lessees in all locations where the drug will be administered.
- C. The Department shall notify the applicant of the Department's decision to grant or deny the request within 90 days. The Department has the authority to place conditions on the written authorization regarding:
    1. Locations and time-frames,
    2. Drugs and methodology,
    3. Limitations,
    4. Reporting requirements, and
    5. Any other conditions deemed necessary by the Department.
  - D. A person with authorization shall:
    1. Carry written authorization while engaged in the activity and exhibit it upon request to any peace officer;
    2. Allow Department personnel to be present to monitor activities for compliance, public safety, and proper treatment of animals;
    3. Adhere to all drug label restrictions and precautions;
    4. Provide an annual and final report:
      - a. The annual report must include the number of animals treated, the level of treatment effect obtained to date, and any problems including mortalities or morbidities of target animals.
      - b. The final report must include the end results, including the number of wildlife treated and treatment effects on target and non-target wildlife, including mortalities, morbidities, and reproductive rate changes.
    5. Comply with all conditions and requirements set forth in the written authorization.
  - E. This Section does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license in accordance with R12-4-407(A)(2) and (8), R12-4-428(B)(13), activities as authorized under R12-4-418, R12-4-420, R12-4-421, and R12-4-423, an individual exempt from special licensing under R12-4-407(A)(4) and (5), or reasonable lethal removal activities for wildlife control as authorized under A.R.S. § 17-239(A).
  - F. This Section does not limit:
    1. Department employees or Department agents in the performance of their official duties related to wildlife management,
    2. The practices of aquaculture facilities administered by the US Fish and Wildlife Service, and commercial aquaculture facilities operating under a valid license from the Arizona Department of Agriculture, or
    3. The use of supplements or drugs as a part of conventional livestock operations where those supplements may incidentally be consumed by wildlife.
  - G. The Department shall take possession of and dispose of any remaining wildlife drugs administered in violation of this Section and any devices and paraphernalia used to administer those drugs, as authorized under A.R.S. §§ 17-211(E), 17-231(A), and 17-240(B).

**Historical Note**

Amended effective May 21, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective March 7, 1979 (Supp. 79-2). Former Section R12-4-58 renumbered as Section R12-4-309 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-309 repealed, new Section R12-4-309 adopted effective May 12, 1982 (Supp. 82-3). Amended subsection (A)



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effective July 3, 1984 (Supp. 84-4). Former Section R12-4-309 repealed, new Section R12-4-309 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-309 repealed, new Section R12-4-309 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1997; filed with the Office of the Secretary of State November 7, 1996 (Supp. 96-4). Amended effective January 1, 1999; filed with the Office of the Secretary of State December 4, 1998 (Supp. 98-4). Section repealed by final rulemaking at 8 A.A.R. 1702, effective March 11, 2002 (Supp. 02-1). New Section made by final rulemaking at 16 A.A.R. 1460, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. The Department may issue a fishing permit to state, county, or municipal agencies or departments and to nonprofit organizations licensed by or contracted with the Department of Economic Security or Department of Health Services, whose primary purpose is to provide physical or mental rehabilitation or training for individuals with physical, developmental, or mental disabilities.
- B. The permit:
  - 1. Is valid for the two days specified on the permit;
  - 2. Authorizes up to 20 individuals with physical, developmental, or mental disabilities to fish without a fishing license upon any public waters except that fishing in the waters of the Colorado River is restricted to fishing from the Arizona shoreline only, unless the persons fishing under the authority of the permit also possess a valid Colorado River stamp from the adjacent state; and
  - 3. Does not exempt individuals fishing under the authority of the permit from compliance with other statutes, Commission Orders, and rules not contained in this Section.
- C. An applicant for a fishing permit shall submit a properly completed application to the Department. The application is furnished by the Department and is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).
  - 1. The applicant shall provide all of the following information:
    - a. The name, address, and telephone number of the agency, department, or nonprofit organization requesting the permit;
    - b. The name, position title, and telephone number of the individual responsible for supervising the individuals fishing under the authority of the permit;
    - c. The total number of individuals who will be fishing under the authority of the permit;
    - d. The dates of the two days for which the permit will be valid; and
    - e. The location for which the permit will be valid.
  - 2. In addition to the information required under subsection (C)(1), nonprofit organizations shall also submit documentation that they are licensed by or have a contract with the Department of Economic Security or the Department of Health Services for the purpose of providing rehabilitation or treatment services to individuals or groups with physical, developmental, or mental disabilities.
- D. The Department shall issue or deny the fishing permit to an applicant within 30 calendar days of receiving an application.

- E. The fishing permit holder shall provide instruction on fish identification, fishing ethics, safety, and techniques to the individuals who will be fishing under authority of the permit. The Department shall provide the lesson plan for this instruction to the permit holder.
- F. Each individual fishing without a license under the authority of the fishing permit may take only one-half the regular bag limit established by Commission Order for any species, unless the regular bag limit is one, in which case the permit authorizes the regular limit.
- G. The permit holder shall submit a report to the Department not later than 30 days after the end of the authorized fishing dates. The report form is furnished by the Department and is available at any Department office. The permit holder shall report all of the following information on the form:
  - 1. The fishing permit number and the information contained in the permit;
  - 2. The total number of individuals who fished and total hours fished;
  - 3. The total number of fish caught, kept, and released, by species.
- H. The Department may deny future fishing permits to a permit holder who failed to submit the report until the permit holder complies with reporting requirements.

**Historical Note**

Adopted effective October 9, 1980 (Supp. 80-5). Former Section R12-4-59 renumbered as Section R12-4-310 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-310 renumbered as R12-4-217 and amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-310 renumbered as R12-4-217 and amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). New Section adopted November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

**R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License or Hunting License While Taking Wildlife**

In addition to the exemptions prescribed under A.R.S. § 17-335, R12-4-206(E), R12-4-207(E), and R12-4-209(E) and provided the person's fishing and hunting license privileges are not currently revoked by the Commission:

- 1. A fishing license is not required when a person is:
  - a. Fishing from artificial ponds, tanks, and lakes contained entirely on private lands that are not:
    - i. Open to the public, and
    - ii. Managed by the Department.
  - b. Taking terrestrial mollusks or crustaceans from private property.
  - c. Fishing in Arizona on any designated Saturday occurring during National Fishing and Boating Week, except in waters of the Colorado River forming the common boundaries between Arizona and California, Nevada, or Utah where fishing without a license is limited to the shoreline, unless the state with concurrent jurisdiction removes licensing requirements on the same day.
  - d. Participating in an introductory fishing education program sanctioned by the Department, during scheduled program hours, only. A sanctioned program shall have a Department employee, sport fishing contractor, or authorized volunteer instructor present during scheduled program hours. For the

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purposes of this subsection, “authorized volunteer instructor” means a person who has successfully passed the Department’s required background check and sport fishing education workshop.

2. A hunting license is not required when a person is participating in an introductory hunting event organized, sanctioned, or sponsored by the Department. The person may hunt small game, furbearing, predator, and designated mammals during scheduled event hours, only. To hunt migratory game birds, the individual shall have any stamps required by federal regulation. The introductory hunting event shall have a Department employee, certified hunter education instructor, or authorized volunteer present during scheduled hunting hours. For the purposes of this subsection, “authorized volunteer” means a person who has successfully passed the Department’s required background check and Department event best practices training. This subsection does not apply to any event that requires participants to obtain a permit-tag or nonpermit-tag.

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective May 26, 1978 (Supp. 78-3). Amended effective May 31, 1979. Amended effective June 4, 1979 (Supp. 79-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-60 renumbered as Section R12-4-311 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A), (B), and (D) and added subsections (F) and (G) effective December 17, 1981 (Supp. 81-6). Amended as an emergency effective May 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-3). Emergency certification expired. Amended subsections (A) through (E) effective December 7, 1982 (Supp. 82-6). Amended subsections (C) and (D) effective February 9, 1984 (Supp. 84-1). Amended effective December 13, 1985 (Supp. 85-6). Amended subsections (A) and (D) effective December 16, 1986 (Supp. 86-6). Former Section R12-4-311 repealed, new Section R12-4-311 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Former Section R12-4-322 repealed, new Section R12-4-311 adopted effective January 1, 1989, filed effective December 30, 1988” (Supp. 89-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-312. Repealed****Historical Note**

Amended effective June 4, 1979 (Supp. 79-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-61 renumbered as Section R12-4-312 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (B), (E) and (F) effective December 17, 1981 (Supp. 81-6). Amended subsections (A), (C), (D), (E), and added subsection (G) effective December 9, 1982 (Supp. 82-6). Amended subsection (A), paragraph (1) effective November 27, 1984 (Supp. 84-6). Amended effective December 13, 1985 (Supp. 85-6). Former Section R12-4-312 repealed, new Section R12-4-312 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read “Former Section R12-4-312 repealed, new Section R12-4-312

adopted effective January 1, 1989, filed December 30, 1988 (Supp. 89-2). Amended by final rulemaking at 10

A.A.R. 850, effective April 3, 2004 (Supp. 04-1).

Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

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

- A. An individual may take aquatic wildlife as defined under A.R.S. § 17-101, subject to the restrictions prescribed under R12-4-303, R12-4-317, and this Section. Aquatic wildlife may be taken during the day or night and may be taken using artificial light as prescribed under A.R.S. § 17-301.
- B. The Commission may, through Commission Order, prescribe legal sizes for possession of aquatic wildlife.
- C. An individual may take aquatic wildlife by angling or simultaneous fishing as defined under R12-4-301 with any bait, artificial lure, or fly subject to the following restrictions, an individual:
  1. Shall not possess aquatic wildlife other than aquatic wildlife prescribed by Commission Order;
  2. Shall not use the flesh of game fish as bait, except sunfish of the genus *Lepomis*;
  3. May use live baitfish, as defined under R12-4-101, only in areas designated by Commission Order; and
  4. Shall not use waterdogs as live bait in that portion of Santa Cruz County lying east and south of State Highway 82 or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- D. In addition to angling, an individual may also take the following aquatic wildlife using the following methods, subject to the restrictions established under R12-4-303, R12-4-317, and this Section:
  1. Carp (*Cyprinus carpio*), buffalofish, mullet, tilapia, goldfish, and shad may be taken by:
    - a. Bow and arrow,
    - b. Crossbow,
    - c. Snare,
    - d. Gig,
    - e. Spear or spear gun, or
    - f. Snagging,
  2. Except for snagging, an individual shall not use any of the methods of take listed under subsection (D)(1) within 200 yards of any boat dock or designated swimming area.
  3. Striped bass may be taken by spear or spear gun in waters designated by Commission Order.
  4. Live baitfish may be taken for personal use as bait by:
    - a. A cast net not to exceed a radius of 4 feet measured from the horn to the headline;
    - b. A minnow trap, as defined under R12-4-301;
    - c. A seine net not to exceed 10 feet in length and 4 feet in width; or
    - d. A dip net.
  5. Catfish may be taken by bow and arrow or crossbow in waters designated by Commission Order.
  6. Amphibians, soft-shelled turtles, mollusks, and crustaceans may be taken by minnow trap, crayfish net, hand, or with any hand-held, non-motorized implement that does not discharge a projectile, unless otherwise permitted under this Section.
  7. In addition to the methods described under subsection (D)(6), bullfrogs may be taken by:
    - a. Bow and arrow,
    - b. Crossbow,
    - c. Pneumatic weapon, or
    - d. Slingshot.

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8. In addition to the methods described under subsection (D)(6), crayfish may be taken with the following devices:
  - a. A trap not more than 3 feet in the greatest dimension,
  - b. A dip net as defined under R12-4-301, or
  - c. A seine net not larger than 10 feet in length and 4 feet in width.
- E. An individual who uses a crayfish net and minnow trap shall:
  1. Attach a water-resistant identification tag to the trap when it is unattended. The tag shall include the individual's:
    - a. Name,
    - b. Address, and
    - c. Fishing license number.
  2. Raise and empty the trap daily.

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 17, 1977 (Supp. 77-3). Amended effective June 29, 1978 (Supp. 78-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-62 renumbered as Section R12-4-313 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 7, 1982 (Supp. 82-6). Amended subsection (A)(7) and added subsection (E)(3) effective November 27, 1984 (Supp. 84-6). Amended subsections (A) and (E) effective December 9, 1985 (Supp. 85-6). Amended subsections (A) and (E) effective December 16, 1986 (Supp. 86-6). Former Section R12-4-313 repealed, new Section R12-4-313 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-313 repealed, new Section R12-4-313 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective October 14, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

**R12-4-314. Repealed****Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-63 renumbered as Section R12-4-314 without change effective August 13, 1981 (Supp. 81-4). Amended subsection (B) effective December 31, 1984 (Supp. 84-6). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Section repealed by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1).

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

- A. An individual may possess fish taken alive as provided under R12-4-313 on the waters where taken, except when the take or possession is expressly prohibited under R12-4-313 or R12-4-317, but the individual shall not transport the fish alive from the waters where taken except as authorized under R12-4-316.
- B. An individual shall attach water resistant identification to any unattended live boxes or stringers holding fish and ensure the identification bears the individual's:

1. Name,
2. Address, and
3. Fishing license number.

**Historical Note**

Former Section R12-4-64 renumbered as Section R12-4-315 without change effective August 13, 1981 (Supp. 81-4). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

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

**Historical Note**

Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 4, 1979 (Supp. 79-3). Amended subsections (A), (B), (C), and (D) effective December 29, 1980 (Supp. 80-6). Former Section R12-4-65 renumbered as Section R12-4-316 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (B), (C) and (F) effective February 9, 1984 (Supp. 84-1). Amended effective December 31, 1984 (Supp. 84-6). Former Section R12-4-316 repealed, new Section R12-4-316 adopted effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Former Section R12-4-316 repealed, new Section R12-4-316 adopted effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2147, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. Methods of lawfully taking aquatic wildlife during seasons designated by Commission Order as "general" seasons are designated under R12-4-313.
- B. Other seasons designated by Commission Order have specific requirements and lawful methods of take more restrictive than those for general seasons, as prescribed under this Section. While taking aquatic wildlife under R12-4-313 an individual participating in:
  1. An "artificial lures and flies only" season shall use only artificial lures and flies as defined under R12-4-301. The Commission may further restrict "artificial lures and flies only" season to the use of barbless or single barbless hooks as defined under R12-4-301.
  2. A "live baitfish" season shall not possess or use any species of fish as live bait at, in, or upon any waters unless that species is specified as a live baitfish for those waters by Commission Order. Live baitfish shall not be transported from the waters where taken except as authorized under R12-4-316.
  3. An "immediate kill or release" season shall kill and retain the designated species as part of the bag limit or immediately release the wildlife. Further fishing is prohibited after the legal bag limit is killed.
  4. A "catch and immediate release" season shall immediately release the designated species.
  5. An "immediate kill" season shall immediately kill and retain the designated species as part of the bag limit.
  6. A "snagging" season shall use this method only at times and locations designated by Commission Order.
  7. A "spear or spear gun" season shall use this method only at times and locations designated by Commission Order.
- C. A "special" season may be designated by Commission Order to allow fish to be taken by hand or by any hand-held, non-motorized implement that does not discharge a projectile. The "special" season may apply to any waters where a fish die-off is imminent due either to poor or low water conditions, Department fish renovation activities, or as designated by Commission Order.

**Historical Note**

Renumbered, then repealed and readopted as Section R12-4-43 effective February 20, 1981 (Supp. 81-1). Former Section R12-4-66 renumbered as Section R12-4-317 without change effective August 13, 1981 (Supp. 81-4). Correction, Section R12-4-317 formerly shown as

repealed should have read reserved. Former Historical Note erroneous, see R12-4-202. Section R12-4-317 adopted effective June 20, 1984 (Supp. 84-3). Repealed effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Repealed effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). New Section made by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. Methods of lawfully taking wild mammals, birds, and reptiles during seasons designated by Commission Order as "general" seasons are designated under R12-4-304.
- B. Methods of lawfully taking big game during seasons designated by Commission Order as "special" are designated under R12-4-304. "Special" seasons are open only to a person who possesses a special big game license tag authorized under A.R.S. § 17-346 and R12-4-120.
- C. When designated by Commission Order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as prescribed under this Section. While taking the species authorized by the season, a person participating in:
  1. A "CHAMP" season shall be a challenged hunter access/mobility permit holder as established under R12-4-217.
  2. A "youth-only hunt" shall be under the age of 18. A youth hunter whose 18th birthday occurs during a "youth-only hunt" for which the youth hunter has a valid permit or tag may continue to participate for the duration of that "youth-only hunt."
  3. A "pursuit-only" season may use dogs to pursue bears, mountain lions, or raccoons as designated by Commission Order, but shall not kill or capture the quarry. A person participating in a "pursuit-only" season shall possess and, at the request of Department personnel, produce an appropriate and valid hunting license and any required tag for taking the animal pursued, even though there shall be no kill.
  4. A "restricted season" may use any lawful method authorized for a specific species under R12-4-304, except dogs may not be used to pursue the wildlife for which the season was established.
  5. An "archery-only" season shall not use any other weapons, including crossbows or bows with a device that holds the bow in a drawn position except as authorized under R12-4-216. A person participating in an "archery-only" season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
    - a. Bows and arrows, and
    - b. Falconry.
  6. A "handgun, archery, and muzzleloader (HAM)" season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
    - a. Bows and arrows,
    - b. Crossbows or bows to be drawn and held with an assisting device,
    - c. Handguns, and
    - d. Muzzle-loading rifles as defined under R12-4-301.
  7. A "muzzleloader" season may use one or more of the following methods or devices if authorized under R12-4-304 as lawful for the species hunted:
    - a. Bows and arrows;

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- b. Crossbows or bows to be drawn and held with an assisting device; and
  - c. Muzzleloading rifles or handguns, as defined under R12-4-301.
8. A "limited weapon" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Any trap except foothold traps,
  - b. Bows and arrows,
  - c. Capture by hand,
  - d. Crossbows or bows to be drawn and held with an assisting device,
  - e. Dogs,
  - f. Falconry,
  - g. Hand-propelled projectiles,
  - h. Nets,
  - i. Pneumatic weapons discharging a single projectile .25 caliber or smaller, or
  - j. Slingshots.
9. A "limited weapon hand or hand-held implement" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Catch-pole,
  - b. Hand,
  - c. Snake hook, or
  - d. Snake tongs.
10. A "limited weapon-pneumatic" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Capture by hand,
  - b. Dogs,
  - c. Falconry,
  - d. Hand-propelled projectiles,
  - e. Nets,
  - f. Pneumatic weapons discharging a single projectile .25 caliber or smaller, or
  - g. Slingshots.
11. A "limited weapon-rimfire" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Any trap except foothold traps,
  - b. Bows and arrows,
  - c. Capture by hand,
  - d. Crossbows or bows to be drawn and held with an assisting device,
  - e. Dogs,
  - f. Falconry,
  - g. Hand-propelled projectiles,
  - h. Nets,
  - i. Pneumatic weapons,
  - j. Rifled firearms using rimfire cartridges,
  - k. Shotgun shooting shot or slug, or
  - l. Slingshots.
12. A "limited weapon-shotgun" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Any trap except foothold traps,
  - b. Bows and arrows,
  - c. Capture by hand,
  - d. Crossbows or bows to be drawn and held with an assisting device,
  - e. Dogs,
  - f. Falconry,
  - g. Hand-propelled projectiles,
  - h. Nets,
  - i. Pneumatic weapons,
  - j. Shotgun shooting shot or slug, or
  - k. Slingshots.
13. A "limited weapon-shotgun shooting shot" season may use one or more of the following methods or devices for taking wildlife, if authorized under R12-4-304 as lawful for the species hunted:
- a. Any trap except foothold traps,
  - b. Bows and arrows,
  - c. Capture by hand,
  - d. Crossbows or bows to be drawn and held with an assisting device,
  - e. Dogs,
  - f. Falconry,
  - g. Hand-propelled projectiles,
  - h. Nets,
  - i. Pneumatic weapons,
  - j. Shotgun shooting shot, or
  - k. Slingshots.
14. A "falconry-only" season shall be a falconer licensed under R12-4-422 unless exempt under A.R.S. § 17-236(C) or R12-4-407. A falconer participating in a "falconry-only" season shall use no other method of take except falconry.
15. A "raptor capture" season shall be a falconer licensed under R12-4-422 unless exempt under R12-4-407.

**Historical Note**

Adopted effective June 4, 1987 (Supp. 87-2). Amended effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Amended effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended effective January 1, 1997; filed in the Office of the Secretary of State July 12, 1996 (Supp. 96-3). Amended effective January 1, 1998; filed in the Office of the Secretary of State November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 16 A.A.R. 1460, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

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

- A. For the purposes of this Section, "locate" means any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.
- B. An individual shall not take or assist in taking wildlife from or with the aid of aircraft.
- C. Except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, an individual shall not locate or assist in locating wildlife from or with the aid of an aircraft in a hunt unit with an open

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big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.

- D. An individual who possesses a special big game license tag for a special season under R12-4-115 or R12-4-120 or an individual who assists or will assist such a licensee shall not use an aircraft to locate wildlife beginning 48 hours before and during a Commission-ordered special season.
- E. This Section does not apply to any individual acting within the scope of official duties as an employee or authorized agent of the state or the United States to manage or protect or aid in the management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

**Historical Note**

Amended effective May 21, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended effective June 12, 1979 (Supp. 79-3). Amended effective April 22, 1980 (Supp. 80-2). Former Section R12-4-68 renumbered as Section R12-4-319 without change effective August 13, 1981 (Supp. 81-4). Repealed effective April 28, 1989 (Supp. 89-2). New Section R12-4-319 adopted as an emergency effective October 18, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. New Section adopted by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

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

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 850, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

**R12-4-321. Restrictions for Taking Wildlife in City, County, or Town Parks and Preserves**

- A. All city, county, and town parks and preserves are closed to hunting, unless open by Commission Order.
- B. Unless otherwise provided under Commission Order or rule, a city, county, or town may:
  1. Limit or prohibit any individual from hunting or trapping within 1/4 mile of any:
    - a. Developed picnic area,
    - b. Developed campground,
    - c. Boat ramp,
    - d. Shooting range,
    - e. Occupied structure, or
    - f. Golf course.

2. Require an individual entering a city, county, or town park or preserve, for the purpose of hunting, to declare the individual's intent to hunt when entering the park or preserve, if the park or preserve has an entry station in operation.
3. Allow an individual to take wildlife in a city, county, or town park or preserve only during the posted park or preserve hours.

**Historical Note**

New Section R12-4-321 renumbered from R12-4-301 and amended by final rulemaking at 18 A.A.R. 1458, effective January 1, 2013 (Supp. 12-2).

**R12-4-322. Pickup and Possession of Wildlife Carcasses or Parts**

- A. For the purposes of this Section, the following definitions apply:
  1. "Fresh" means the majority of the wildlife carcass or part is not exposed dry bone and is comprised mainly of hair, hide, or flesh.
  2. "Not fresh" means the majority of the wildlife carcass or part is exposed dry bone due to natural processes such as scavenging, decomposition, or weathering.
- B. If not contrary to federal law or regulation, an individual may pick up and possess naturally shed antlers or horns or other wildlife parts that are not fresh without a permit or inspection by a Department officer.
- C. If not contrary to federal law or regulation, an individual may only pick up and possess a fresh wildlife carcass or its parts under this Section if the individual notifies the Department prior to pick up and possession and:
  1. The Department's first report or knowledge of the carcass or its parts is voluntarily provided by the individual wanting to possess the carcass or its parts;
  2. A Department law enforcement officer is able to observe the carcass or its parts at the site where the animal was found in the same condition and location as when the animal was originally found by the individual wanting to possess the carcass or its parts; and
  3. A Department law enforcement officer, using the officer's education, training, and experience, determines the animal died from natural causes. The Department may require the individual to take the officer to the site where the animal carcass or parts were found when an adequate description or location cannot be provided to the officer.
- D. If a Department law enforcement officer determines that the individual wanting to possess the carcass or its parts is authorized to do so under subsection (C), the officer may authorize possession of the carcass or its parts.
- E. Wildlife parts picked up and possessed from areas under control of jurisdictions that prohibit such activity, such as other states, reservations, or national parks, are illegal to possess in this state.
- F. This Section does not authorize the pickup and possession of a threatened or endangered species carcass or its parts.

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 826, effective July 1, 2013 (Supp. 13-2).

**ARTICLE 4. LIVE WILDLIFE****R12-4-401. Live Wildlife Definitions**

In addition to definitions provided under A.R.S. § 17-101, and for the purposes of this Article, the following definitions apply:

"Adoption" means the transfer of custody of live wildlife to a member of the public, initiated by either the Department or its authorized agent, when no special license is required.

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“Agent” means the person identified on a special license and who assists a special license holder in performing activities authorized by the special license to achieve the objectives for which the license was issued. “Agent” has the same meaning as “sublicensee” and “subpermittee” as these terms are used for the purpose of federal permits.

“Aquarium trade” means the commercial industry and its customers who lawfully trade in aquatic live wildlife.

“Aversion training” means behavioral training in which an aversive stimulus is paired with an undesirable behavior in order to reduce or eliminate that behavior.

“Captive live wildlife” means live wildlife held in captivity, physically restrained, confined, impaired, or deterred to prevent it from escaping to the wild or moving freely in the wild.

“Captive-reared” means wildlife born, bred, raised, or held in captivity.

“Cervid” means a mammal classified as a Cervidae or member of the deer family found anywhere in the world, as defined in the taxonomic classification from the Integrated Taxonomic Information System, available online at [www.itis.gov](http://www.itis.gov).

“Circus” means a scheduled event where a variety of entertainment is the principal business, primary purpose, and attraction. “Circus” does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.

“Commercial purpose” means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain.

“Domestic” means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans who held them in captivity or individuals or populations that escaped from human captivity.

“Educational display” means a display of captive live wildlife to increase public understanding of wildlife biology, conservation, and management without requiring or soliciting payment from an audience or an event sponsor. For the purposes of this Article, “to display for educational purposes” refers to display as part of an educational display.

“Educational institution” means any entity that provides instructional services or education-related services to persons.

“Endangered or threatened wildlife” means wildlife listed under 50 C.F.R. 17.11, revised October 1, 2013, which is incorporated by reference. A copy of the list is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

“Evidence of lawful possession” means any license or permit authorizing possession of a specific live wildlife species or individual, or other documentation establishing lawful possession. Other forms of documentation may include, but are not limited to, a statement issued by the country or state of origin verifying a license or permit for that specific live wildlife species or individual is not required.

“Exhibit” means to display captive live wildlife in public or to allow photography of captive live wildlife for any commercial purpose.

“Exotic” means wildlife or offspring of wildlife not native to North America.

“Fish farm” means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose.

“Game farm” means a commercial operation designed and operated for the purpose of propagating, rearing, or selling terrestrial wildlife or the parts of terrestrial wildlife for any purpose stated under R12-4-413.

“Health certificate” means a certificate of an inspection completed by a licensed veterinarian verifying the animal examined appears to be healthy and free of infectious, contagious, and communicable diseases.

“Hybrid wildlife” means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered wildlife.

“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-317.

“Live bait” means aquatic live wildlife used or intended for use in taking aquatic wildlife.

“Migratory birds” mean all species listed under 50 C.F.R. 10.13 revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

“Noncommercial purpose” means the use of products or services developed using wildlife for which no compensation or monetary value is received.

“Nonhuman primate” means any nonhuman member of the order Primate of mammals including prosimians, monkeys, and apes.

“Nonnative” means wildlife or its offspring that did not occur naturally within the present boundaries of Arizona before European settlement.

“Person” has the same meaning as defined under A.R.S. § 1-215.

“Photography” means any process that creates durable images of wildlife or parts of wildlife by recording light or other electromagnetic radiation, either chemically by means of a light-sensitive material or electronically by means of an image sensor.

“Rehabilitated wildlife” means live wildlife that is injured, orphaned, sick, or otherwise debilitated and is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.

“Research facility” means any association, institution, organization, school, except an elementary or secondary school, or society that uses or intends to use live animals in research.

“Restricted live wildlife” means wildlife that cannot be imported, exported, or possessed without a special license or lawful exemption. “Shooting preserve” means any operation where live wildlife is released for the purpose of hunting.

“Special license” means any license issued under this Article, including any additional stipulations placed on the license authorizing specific activities normally prohibited under A.R.S. § 17-306 and R12-4-402.

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“Species of greatest conservation need” means any species listed in the Department’s Arizona’s State Wildlife Action Plan list Tier 1a and 1b published by the Arizona Game and Fish Department. The material is available for inspection at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).

“Stock” and “stocking” means to release live aquatic wildlife into public or private waters other than the waters where taken.

“Taxa” means groups of animals within specific classes of wildlife occurring in the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological, genetic, or behavioral factors.

“Unique identifier” means a permanent marking made of alphanumeric characters that identifies an individual animal, which may include, but is not limited to, a tattoo or microchip.

“USFWS” means the United States Fish and Wildlife Service.

“Volunteer” means a person who:

Assists a special license holder in conducting activities authorized under the special license,

Is under the direct supervision of the license holder at the premises described on the license,

Is not designated as an agent, and

Receives no compensation.

“Wildlife disease” means any disease that poses a health risk to wildlife in Arizona.

“Zoo” means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency.

“Zoonotic” means a disease that can be transmitted from animals to humans or, more specifically, a disease that normally exists in animals but that can infect humans.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-402. Live Wildlife: Unlawful Acts**

- A. A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
  2. Export any live wildlife from the state;
  3. Conduct any of the following activities with live wildlife within the state:
    - a. Display,
    - b. Exhibit,
    - c. Give away,
    - d. Lease,
    - e. Offer for sale,
    - f. Possess,
    - g. Propagate,
    - h. Purchase,
    - i. Release,
    - j. Rent,
    - k. Sell,
    - l. Sell as live bait,

- m. Stock,
- n. Trade,
- o. Transport; or

4. Kill any captive live wildlife.

- B. The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C. A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-403. Escaped or Released Live Wildlife**

- A. The Department may seize, quarantine, or euthanize any live wildlife that has been released, has escaped, or is likely to escape if the wildlife poses an actual or potential threat to:
1. Native wildlife;
  2. Wildlife habitat; or
  3. Public health, safety, or welfare; or
  4. Property.
- B. A person shall not release live wildlife, unless specifically directed to do so by the Department or authorized under this Article.
- C. The person possessing the wildlife shall be responsible for all costs incurred by the Department associated with seizing or quarantining the wildlife.
- D. All special license holders shall be subject to the requirements of this Section.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License**

- A. A person may take live wildlife from the wild under a valid Arizona hunting or fishing license provided the current Commission Order authorizes a live bag and possession limit for that wildlife and the individual possesses the appropriate hunting or fishing license and special license, when applicable.
- B. Except for live baitfish which may only be possessed and transported as established under R12-4-316, a person may conduct any of the following activities with wildlife taken under an Arizona hunting or fishing license provided the activity is for a noncommercial purpose:
1. Export,
  2. Kill,
  3. Place on educational display,
  4. Possess,
  5. Propagate, and
  6. Transport.
- C. A person possessing wildlife or offspring of wildlife taken under this Section shall dispose of the wildlife or offspring of wildlife using any one or more of the following methods:
1. Giving the wildlife as a gift,
  2. Exporting the wildlife to another state or jurisdiction, or



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3. Disposing of the wildlife as directed by the Department.
- D. A person shall not use wildlife or offspring of wildlife taken under this Section for commercial purposes.
- E. A person exporting live wildlife for a noncommercial purpose shall verify exported live wildlife and offspring of wildlife shall not be:
  1. Bartered,
  2. Leased,
  3. Offered for sale,
  4. Purchased,
  5. Rented,
  6. Sold, or
  7. Used for any commercial purpose.
- F. A person may temporarily hold and release live wildlife possessed under this Section into the wild, provided the person did not remove the wildlife from the immediate area where it was taken.
- G. A person shall not exceed the possession limit of live wildlife established by Commission Order for that species.
  1. Offspring of wildlife possessed under this Section shall count towards the established possession limit.
  2. A person may possess offspring of amphibians or reptiles in excess of the possession limit for no more than 12 months from the date of birth or hatching.
  3. On or before the day the offspring reach 12 months of age, the person possessing them shall dispose of them as prescribed under subsection (C).
  4. A person is prohibited from releasing offspring of propagated wildlife into the wild.
- H. A person may use reptiles and amphibians taken under a valid Arizona hunting license for the purpose of providing aversion or avoidance training when the current Commission Order authorizes a live bag and possession limit for that reptile or amphibian.
- I. A person may sell photographs of wildlife taken under a valid hunting or fishing license.
- J. A person who possesses live wildlife or offspring of wildlife taken under this Section shall comply with the requirements prescribed under R12-4-425 if the wildlife becomes listed as restricted wildlife under R12-4-406.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit**

- A. A person may import mammals, birds, amphibians, and reptiles not listed as restricted wildlife under R12-4-406 without a special license required under this Article, provided the animals are:
  1. Lawfully possessed under a:
    - a. Lawful exemption; or
    - b. Valid license, permit, or other form of authorization from another state, the United States, or another country; and
  2. Accompanied by the health certificate required under 3 A.A.C. 2, Article 6, and this Article, when applicable.
- B. A person may import live aquatic wildlife not listed as restricted wildlife under R12-4-406 without a special license under the following conditions:
  1. The aquatic wildlife is lawfully possessed under a lawful exemption, valid license, permit, or other form of authori-

zation from another state, the United States, or another country; and

2. The aquatic wildlife is used only for restaurants or markets that are licensed to sell food to the public and the wildlife is killed before it is transported from the restaurant or market, or, if transported alive from the market, is conveyed directly to its final destination for preparation as food; or
3. The aquatic wildlife is used only for the aquarium trade or a fish farm and is accompanied by a valid license or permit issued by another state or the United States that allows the wildlife to be transported into this state.
  - a. A person in the aquarium trade shall:
    - i. Only use aquatic wildlife used in the aquarium trade as a pet or in an educational display, and
    - ii. Keep aquatic wildlife used in the aquarium trade in an aquarium or enclosed pond that does not allow the wildlife to leave the aquarium or pond and does not allow other live aquatic wildlife to enter the aquarium or pond.
  - b. A person in the aquarium trade shall not use or possess aquatic wildlife listed as restricted live wildlife under R12-4-406.
- C. A person shall obtain the appropriate special license listed under R12-4-409(A) before importing aquatic live wildlife for any purpose not stated under subsection (B), unless exempt under this Chapter.
- D. A person may purchase, possess, exhibit, transport, propagate, trade, rent, lease, give away, sell, offer for sale, export, or kill wildlife or aquatic wildlife or its offspring without an Arizona license or permit if the wildlife is lawfully imported and possessed as prescribed under subsections (A) or (B).
- E. An individual shall use and dispose of wildlife that is taken under an Arizona hunting or fishing license as prescribed by R12-4-404, or R12-4-417 and this Article, as applicable.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-406. Restricted Live Wildlife**

- A. In order to lawfully possess wildlife listed as restricted under this Section, for any activity prohibited under A.R.S. §§ 17-255.02, 17-306, R12-4-1102, or this Article, a person shall possess:
  1. All applicable federal licenses and permits; and
  2. The appropriate special license listed under R12-4-409(A); or
  3. Act under a lawful exemption authorized under A.R.S. § 17-255.04, R12-4-316, R12-4-404, R12-4-405, R12-4-407, R12-4-425, R12-4-427, and R12-4-430.
- B. The Commission recognizes the online taxonomic classification from the Integrated Taxonomic Information System as the authority in determining the designations of restricted live mammals, birds, reptiles, amphibians, fish, crustaceans, and mollusks referenced under this Article. The Integrated Taxonomic Information System is available at any Department office and at [www.itis.gov](http://www.itis.gov).
- C. All of the following are considered restricted live wildlife and are subject to the requirements of this Article, unless otherwise specified:

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1. Hybrid wildlife, as defined under R12-4-401, resulting from the interbreeding of at least one parent species of wildlife that is listed as restricted under this Section; and
  2. Transgenic species, unless otherwise specified under this Article. For the purposes of this Section, "transgenic species" means any organism that has had genes from another organism put into its genome through direct human manipulation of that genome. Transgenic species do not include natural hybrids or individuals that have had their chromosome number altered to induce sterility. A transgenic animal is considered wildlife if the animal is the offspring of at least one wildlife species.
- D.** Domestic animals, as defined under R12-4-401, are not subject to restrictions under A.R.S. Title 17, 12 A.A.C. 4, or Commission Orders.
- E.** Unless otherwise specified, all mammals listed below are considered restricted live wildlife:
1. All species of the order *Afrosoricida*. Common names include: tenrecs and golden moles.
  2. All species of the following families of the order *Artiodactyla*. Common name: even-toed ungulates:
    - a. The family *Antilocapridae*. Common name: pronghorns.
    - b. The family *Bovidae*. Common names include: cattle, buffalo, bison, oxen, duikers, antelopes, gazelles, goats, and sheep. Except the following genera which are not restricted:
      - i. The genus *Bubalus*. Common name: water buffalo.
      - ii. The genus *Bison*. Common name: bison, American bison or buffalo.
    - c. The family *Cervidae*. Common names include: cervid, deer, elk, moose, wapiti, and red deer.
    - d. The family *Tayassuidae*. Common name: peccaries.
  3. All species of the order *Carnivora*. Common names include: carnivores, skunks, raccoons, bears, foxes, and weasels.
  4. All species of the order *Chiroptera*. Common name: bats.
  5. All species of the genus *Didelphis*. Common name: American opossums.
  6. All species of the order *Erinaceomorpha*. Common names include: gymnures and moonrats. Except members of the family *Erinaceidae*, which are not restricted. Common name: hedgehogs.
  7. All species of the order *Lagomorpha*. Common names include: pikas, rabbits, and hares. Except for members of the genus *Oryctolagus* containing domestic rabbits, which are not wildlife and are not restricted.
  8. All nonhuman primates. Common names include: orangutans, chimpanzees, gorillas, macaques, and spider monkeys.
  9. All species of the following families of the order *Rodentia*. Common name: rodents:
    - a. The family *Capromyidae*. Common name: hutias.
    - b. The family *Castoridae*. Common name: beavers.
    - c. The family *Echimyidae*. Common names include: coypus and nutrias.
    - d. The family *Erethizontidae*. Common name: new world porcupines.
    - e. The family *Geomyidae*. Common name: pocket gophers.
    - f. The family *Sciuridae*. Common names include: squirrels, chipmunks, marmots, woodchucks, and prairie dogs.
  10. All species of the order *Soricomorpha*. Common names include: shrews, desmans, moles, and shrew-moles.
  11. All species of the order *Xenarthra*. Common names include: edentates; or sloths, anteaters, and armadillos.
- F.** Birds listed below are considered restricted live wildlife:
1. The following species within the family *Phasianidae*. Common names: partridges, grouse, turkeys, quail, and pheasants:
    - a. *Callipepla gambelii*. Common name: Gambel's quail.
    - b. *Callipepla squamata*. Common name: scaled quail.
    - c. *Colinus virginianus*. Common name: northern bobwhite. Restricted only in game management units 34A, 36A, 36B, and 36C as prescribed under R12-4-108.
    - d. *Cyrtonyx montezumae*. Common name: Montezuma, harlequin, or Mearn's quail.
    - e. *Dendragapus obscurus*. Common name: dusky grouse.
  2. All species listed under the Migratory Bird Treaty Act listed under 50 C.F.R. 10.13 revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.
- G.** Reptiles listed below are considered restricted live wildlife:
1. All species of the order *Crocodylia*. Common names include: gavials, caimans, crocodiles, and alligators.
  2. All species of the following families or genera of the order *Squamata*:
    - a. The family *Atractaspididae*. Common name: burrowing asps.
    - b. The following species and genera of the family *Colubridae*:
      - i. *Boiga irregularis*. Common name: brown tree snake.
      - ii. *Dispholidus typus*. Common name: boomslang.
      - iii. *Rhabdophis*. Common name: keelback.
      - iv. *Thelotornis kirtlandii*. Common names include: bird snake or twig snake.
    - c. The family *Elapidae*. Common names include: cobras, mambas, coral snakes, kraits, Australian elapids, and sea snakes.
    - d. The family *Helodermatidae*. Common names include: Gila monster and Mexican beaded lizard.
    - e. The family *Viperidae*. Common names include: true vipers and pit vipers, including rattlesnakes.
  3. The following species of the order *Testudines*:
    - a. All species of the family *Chelydridae*. Common name: snapping turtles.
    - b. All species of the genus *Gopherus*. Common names include: gopher tortoises, including the desert tortoise.
- H.** Amphibians listed below are considered restricted live wildlife. The following species within the order *Anura*, common names frogs and toads:
1. The species *Bufo horribilis*, *Bufo marinus*, *Bufo schneideri*. Common names include: giant or marine toads.
  2. All species of the genus *Rana*. Common names include: leopard frogs and bullfrogs. Except bullfrogs possessed under A.R.S. § 17-102.
  3. All species of the genus *Xenopus*. Common name: clawed frogs.
- I.** Fish listed below are considered restricted live wildlife:
1. All species of the family *Acipenseridae*. Common name: sturgeon.
  2. The species *Amia calva*. Common name: bowfin.

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3. The species *Aplodinotus grunniens*. Common name: freshwater drum.
  4. The species *Arapaima gigas*. Common name: bony tongue.
  5. All species of the genus *Astyanax*. Common name: tetra.
  6. The species *Belonesox belizanus*. Common name: pike topminnow.
  7. All species, both marine and freshwater, of the orders *Carcharhiniformes*, *Heterodontiformes*, *Hexanchiformes*, *Lamniformes*, *Orectolobiformes*, *Pristiophoriformes*, *Squaliformes*, *Squatiniiformes*, and except for all species of the families *Brachaeluridae*, *Hemiscylliidae*, *Orectolobidae*, and *Triakidae*; genera of the family *Scyliorhinidae*, including *Aulohalaelurus*, *Halaehurus*, *Haploblepharus*, *Poroderma*, and *Scyliorhinus*; and genera of the family *Parascylliidae*, including *Cirrhoscyllium* and *Parascyllium*. Common name: sharks.
  8. All species of the family *Centrarchidae*. Common name: sunfish.
  9. All species of the family *Cetopsidae* and *Trichomycteridae*. Common name: South American catfish.
  10. All species of the family *Channidae*. Common name: snakehead.
  11. All of the species *Cirrhinus mrigala*, *Gibelion catla*, and *Labeo rohita*. Common name: Indian carp.
  12. All species of the family *Clariidae*. Common names include: labyrinth or airbreathing catfish.
  13. All species of the family *Clupeidae* except threadfin shad, species *Dorosoma petenense*. Common names include: herring and shad.
  14. The species *Ctenopharyngodon idella*. Common names include: white amur or grass carp.
  15. The species *Cyprinella lutrensis*. Common name: red shiner.
  16. The species *Electrophorus electricus*. Common name: electric eel.
  17. All species of the family *Esocidae*. Common names include: pike and pickerels.
  18. All species of the family *Hiodontidae*. Common names include: goldeye and mooneye.
  19. The species *Hoplias malabaricus*. Common name: tiger fish.
  20. The species *Hypophthalmichthys molitrix*. Common name: silver carp.
  21. The species *Hypophthalmichthys nobilis*. Common name: bighead carp.
  22. All species of the family *Ictaluridae*. Common name: catfish.
  23. All species of the genus *Lates* and *Luciolates*. Common name: Nile perch.
  24. All species of the family *Lepisosteidae*. Common name: gar.
  25. The species *Leuciscus idus*. Common names include: whitefish and ide.
  26. The species *Malapterurus electricus*. Common name: electric catfish.
  27. All species of the family *Moronidae*. Common name: temperate bass.
  28. The species *Mylopharyngodon piceus*. Common name: black carp.
  29. All species of the family *Percidae*. Common names include: walleye and pike perches.
  30. All species of the family *Petromyzontidae*. Common name: lamprey.
  31. The species *Polyodon spathula*. Common name: American Paddlefish.
  32. All species of the family *Potamotrygonidae*. Common name: stingray.
  33. All species of the genera *Pygocentrus*, *Pygopristis*, and *Serrasalmus*. Common name: piranha.
  34. All species of the family *Salmonidae*. Common names include: trout and salmon.
  35. The species *Scardinius erythrophthalmus*. Common name: rudd.
  36. All species of the family *Serranidae*. Common name: bass.
  37. The following species, and hybrid forms, of the Genus *Tilapia*: *O. aureus*, *O. mossambica*; *O. niloticus*, *O. urolepis hornorum* and *T. zilli*. Common name: tilapia.
  38. The species *Thymallus arcticus*. Common name: Arctic grayling.
- J.** Crustaceans listed below are considered restricted live wildlife:
1. All freshwater species within the families *Astacidae*, *Cambaridae*, and *Parastacidae*. Common name: crayfish.
  2. The species *Eriocheir sinensis*. Common name: Chinese mitten crab.
- K.** Mollusks listed below are considered restricted live wildlife:
1. The species *Corbicula fluminea*. Common name: Asian clam.
  2. All species of the family *Dreissenidae*. Common names include: zebra and quagga mussel.
  3. The species *Euglandina rosea*. Common name: rosy wolfsnail.
  4. The species *Mytilopsis leucophaea*. Common names include: Conrad's false mussel or false dark mussel.
  5. All species of the genus *Pomacea*. Common names include: Chinese mystery snail or apple snail.
  6. The species *Potamopyrgus antipodarum*. Common name: New Zealand mud snail.
- L.** All wildlife listed within Aquatic Invasive Species Director's Order #1.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife**

- A.** All live cervids may only be imported, possessed, or transported as authorized under R12-4-430.
- B.** A person is not required to possess a special license to lawfully possess restricted live wildlife under the following circumstances:
1. A person may possess, transport, or give away a desert tortoise (*Gopherus morafkai*) or the progeny of a desert tortoise provided the person possessed the tortoise prior to April 28, 1989 or obtained the tortoise through a Department authorized adoption program. A person who receives a desert tortoise that is given away under this Section is also exempt from special license requirements. A person shall not:

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- a. Propagate lawfully possessed desert tortoises or their progeny unless authorized in writing by the Department's special license administrator.
  - b. Export a live desert tortoise from this state unless authorized in writing by the Department.
2. A licensed veterinarian may possess restricted wildlife while providing medical care to the wildlife and may release rehabilitated wildlife as directed in writing by the Department, provided:
  - a. The veterinarian keeps records of restricted live wildlife as required by the Veterinary Medical Examining Board, and makes the records available for inspection by the Department.
  - b. The Department assumes no financial responsibility for any care the veterinarian provides, except care that is specifically authorized by the Department.
3. A person may transport restricted live wildlife through this state provided the person:
  - a. Transports the wildlife through the state within 72 continuous and consecutive hours;
  - b. Ensures at least one person is continually present with, and accountable for, the wildlife while in this state;
  - c. Ensures the wildlife is neither transferred nor sold to another person;
  - d. Ensures the wildlife is accompanied by evidence of lawful possession, as defined under R12-4-401;
  - e. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable; and
  - f. Ensures the carcasses of any wildlife that die while in transport through this state are disposed of only as directed by the Department.
4. A person may exhibit, export, import, possess, and transport restricted live wildlife for a circus, temporary animal exhibit, or government-authorized state or county fair, provided the person:
  - a. Possesses evidence of lawful possession as defined under R12-4-401, for the wildlife;
  - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
  - c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
  - d. Ensures the wildlife does not come into physical contact with the public;
  - e. Keeps the wildlife under complete control by safe and humane means; and
  - f. Ensures the wildlife is not in this state for more than 60 consecutive days.
5. A person may export, import, possess, and transport restricted live wildlife for the purpose of commercial photography, provided the person:
  - a. Possesses evidence of lawful possession as defined under R12-4-401 for the wildlife;
  - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
  - c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
  - d. Ensures the wildlife does not come into physical contact with the public;
  - e. Keeps the wildlife under complete control by safe and humane means; and
  - f. Ensures the wildlife is not in this state for more than 60 consecutive days.
6. A person may exhibit, import, possess, and transport restricted live wildlife for advertising purposes other than photography, provided the person:
  - a. Ensures the wildlife is accompanied by evidence of lawful possession as defined under R12-4-401;
  - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
  - c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
  - d. Maintains the wildlife under complete control by safe and humane means;
  - e. Prevents the wildlife from coming into contact with the public or being photographed with the public;
  - f. Does not charge the public a fee to view the wildlife; and
  - g. Exports the wildlife from the state within 10 days of importation.
7. A person may export restricted live wildlife, provided the person:
  - a. Ensures the wildlife is accompanied by evidence of lawful possession as defined under R12-4-401;
  - b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
  - c. Maintains the wildlife under complete control by safe and humane means;
  - d. Prevents the wildlife from coming into contact with the public or being photographed with the public;
  - e. Does not charge the public a fee to view the wildlife; and
  - f. Exports the wildlife from the state within 10 days of importation.
8. A person may possess restricted live wildlife taken alive under R12-4-404, R12-4-405, and R12-4-427, provided the person possesses the wildlife in compliance with those Sections.
9. A person who holds a falconry license issued by another state or country is exempt from obtaining an Arizona Sport Falconry License under R12-4-422, unless remaining in this State for more than 180 consecutive days.
  - a. The falconer licensed in another state or country shall present a copy of the out-of-state or out-of-country falconry license, or its equivalent, to the Department upon request.
  - b. A falconer licensed in another state or country and who remains in this State for more than the 180-day period shall apply for an Arizona Sport Falconry License in order to continue practicing sport falconry in this state.
10. A person may export, give away, import, kill, possess, propagate, purchase, trade, and transport restricted live wildlife provided the person is doing so for a medical or scientific research facility registered with the United States Department of Agriculture under 9 C.F.R. 2.30 revised January 1, 2012, which is incorporated by reference in this Section. The incorporated material is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference contains no future editions or amendments.
11. A person may import and transport restricted live game fish and crayfish directly to restaurants or markets that are licensed to sell food to the public.

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12. A person operating a restaurant or market licensed to sell food to the public may exhibit, offer for sale, possess, and sell restricted live game fish or crayfish, provided the live game fish and crayfish are killed before being transported from the restaurant or market.
  13. A person may export, giveaway, import, kill, possess, propagate, purchase, and trade transgenic animals provided the person is doing so for a medical or scientific research facility.
- C. An exemption granted under this Section is not valid for any wildlife protected by federal statute or regulation.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-408. Holding Wildlife for the Department**

- A. A game ranger may authorize a person to possess or transport live wildlife on behalf of the Department if the wildlife is needed as evidence in a pending civil or criminal proceeding.
- B. With the exception of live cervids, the Department has the authority to allow a person to possess and transport captive live wildlife for up to 72 hours or as otherwise directed by the Department.
- C. The Director has the authority to allow a person to hold a live cervid on behalf of the Department.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-409. General Provisions and Penalties for Special Licenses**

- A. A special license is required when a person intends to conduct any activity using restricted live wildlife. Special licenses are listed as follows:
  1. Aquatic wildlife stocking license, established under R12-4-410;
  2. Game bird license, established under R12-4-414;
  3. Live bait dealer's license, established under R12-4-411;
  4. Private game farm license, established under R12-4-413;
  5. Scientific collecting license, established under R12-4-418;
  6. Sport falconry license, established under R12-4-422;
  7. White amur stocking and holding license, established under R12-4-424;
  8. Wildlife holding license, established under R12-4-417;
  9. Wildlife rehabilitation license, established under R12-4-423;
  10. Wildlife service license, established under R12-4-421; and
  11. Zoo license, established under R12-4-420.
- B. A person applying for a special license listed under subsection (A) shall:
  - a. Submit an application to the Department meeting the specific application requirements established under the applicable governing Section.
    - i. Applications for special licenses are furnished by the Department and are available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).
    - ii. An application is required upon initial application for a special license and when renewing a special license.
  - b. Pay all applicable fees required under R12-4-412.

- C. At the time of application, the person shall certify:
  1. The information provided on the application is true and correct to the applicant's knowledge;
  2. The applicant shall comply with any municipal, county, state or federal code, ordinance, statute, regulation, or rule applicable to the license held; and
  3. The applicant's live wildlife privileges are not currently suspended or revoked in this state, any other state or territory, or by the United States.
- D. A special license obtained by fraud or misrepresentation is invalid from the date of issuance.
- E. The Department shall either grant or deny a special license within the applicable overall time-frame established for that special license under R12-4-106Ch.
- F. In addition to the criteria prescribed under the applicable governing Section, the Department shall deny a special license when:
  1. The applicant's live wildlife privileges are revoked or suspended in this state, any other state, or by the United States;
  2. The applicant was convicted of illegally holding or possessing live wildlife within five years preceding the date of application for the special license; or
  3. The applicant knowingly provides false information on an application.
  4. The Department shall deny a license to a person who fails to meet the requirements established under the applicable governing Section or this Section. The Department shall provide a written notice to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- G. A special license holder may only engage in activities using federally-protected wildlife when the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license. A special license issued by the Department does not:
  1. Exempt the license holder from any municipal, county, state or federal code, ordinance, statute, regulation, or rule; or
  2. Authorize the license holder to engage in any activity using wildlife that is protected by federal regulation.
- H. The Department may place additional stipulations on a special license at the time of initial application or renewal when necessary to:
  1. Conserve wildlife populations,
  2. Prevent the introduction and proliferation of wildlife diseases,
  3. Prevent wildlife from escaping, or
  4. Protect public health or safety.
- I. A special license holder shall keep live wildlife in a facility according to the captivity standards prescribed under R12-4-428 or as otherwise required under this Article.

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- J. The Department may inspect a facility to verify compliance with all applicable requirements established under this Article.
- K. A special license holder shall keep records in compliance with the requirements established under the governing Section and shall make the records available for inspection to the Department upon request.
- L. The Department may conduct an inspection of an applicant's or license holder's facility at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
- M. Upon determining a disease or other emergency condition exists that poses an immediate threat to the public or the welfare of any wildlife, the Department may immediately order a cessation of operations under the special license and, if necessary, order the humane disposition or quarantine of any contaminated or affected wildlife.
  - 1. When directed by the Department, a special license holder shall:
    - a. Perform disease testing,
    - b. Submit biological samples to the Department or its designee,
    - c. Surrender the wildlife to the Department;
    - d. Quarantine the wildlife, or
    - e. Humanely euthanize the wildlife.
  - 2. The license holder shall:
    - a. Ensure any disease or other emergency condition under this subsection is diagnosed by a person professionally certified to make the diagnosis.
    - b. Be responsible for all costs associated with the testing and treatment of the contaminated and affected wildlife.
- N. If a condition exists, including disease or any violation of this Article, that poses a threat to the public or the welfare of any wildlife, but the threat does not constitute an emergency, the Department may issue a written notice of the condition to the special license holder specifying a reasonable period of time for the license holder to remedy the noticed condition. The notice of condition shall be delivered to the special license holder by certified mail or personal service.
  - 1. Failure of the license holder to remedy the noticed condition within the time specified by the Department is a violation under subsection (O).
  - 2. If a licensee receives three notices under this subsection for the same condition within a two-year period, the Department shall treat the third notice as a failure to remedy.
- O. A special license holder shall not:
  - 1. Violate any provision of the governing Section or this Section;
  - 2. Violate any provision of the special license that the person possesses, including any stipulations specified on the special license;
  - 3. Violate A.R.S. § 13-2908, relating to criminal nuisance;
  - 4. Violate A.R.S. § 13-2910, relating to cruelty to animals; or
  - 5. Refuse to allow the inspection of facilities, wildlife, or required records.
- P. The Department may take one or more of the following actions when a special license holder is convicted of a criminal offense involving cruelty to animals, violates subsection (N), or fails to comply with any requirement established under the governing Section or this Section:
  - 1. File criminal charges,
  - 2. Suspend or revoke a special license,
  - 3. Humanely dispose of the wildlife,
  - 4. Seize or seize in place any wildlife held under a special license.
- 5. A person may appeal to the Commission any Department action listed under this subsection as prescribed under A.R.S. Title 41, Chapter 6, Article 10, except the filing of criminal charges.
- Q. A special license holder who wishes to continue conducting activities authorized under the special license shall submit a renewal application to the Department on or before the special license expiration date.
  - 1. The current license will remain valid until the Department grants or denies the new special license.
  - 2. If the Department denies the renewal application and the license holder appeals the denial to the Commission as prescribed under subsection (F)(4), the license holder may continue to hold the wildlife until:
    - a. The date on which the Commission makes its final decision on the appeal, or
    - b. The final date on which a person may request judicial review of the decision.
  - 3. A special license holder who fails to submit a renewal application to the Department before the date the license expires, cannot lawfully possess any live wildlife currently possessed under the license.
- R. If required by the governing Section, a special license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
  - 1. A report is required regardless of whether or not activities were performed during the previous year.
  - 2. The special license becomes invalid if the special license holder fails to submit the annual report by January 31 of each year.
  - 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
  - 4. When the license holder is acting as a representative of an institution, organization, or agency for the purposes of the special license, the license holder shall submit the report required under subsection this Section:
    - a. By January 31 of each year the license holder is affiliated with the institution, organization, or agency; or
    - b. Within 30 days of the date of termination of the license holder's affiliation with the institution, organization, or agency.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-410. Aquatic Wildlife Stocking License**

- A. An aquatic wildlife stocking license allows a person to import, possess, purchase, stock, and transport any restricted species designated on the license at the location specified on the license.
- B. The aquatic wildlife stocking license is valid for no more than 20 consecutive days.

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- C. In addition to the requirements established under this Section, an aquatic wildlife stocking license holder shall comply with the special license requirements established under R12-4-409.
- D. The license holder shall be responsible for compliance with all applicable regulatory requirements. The aquatic wildlife stocking license does not:
  - 1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  - 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- E. The Department shall deny an aquatic wildlife stocking license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny an aquatic wildlife stocking license when:
  - 1. The Department determines that issuance of the license will result in a negative impact to native wildlife; or
  - 2. The applicant proposes to use aquatic wildlife that is not compatible with, or poses a threat to, any wildlife within the river drainage or the area where the stocking is to occur.
- F. A person applying for an aquatic wildlife stocking license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). An applicant shall provide the following on the application:
  - 1. The applicant's information:
    - a. Name;
    - b. Mailing address; and
    - c. Department ID number, when applicable;
  - 2. When the applicant proposes to use the aquatic wildlife for a commercial purpose the applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number;
  - 3. Aquatic wildlife species information:
    - a. Common name of the aquatic wildlife species;
    - b. Number of animals for each species; and
    - c. Approximate size of the aquatic wildlife that will be used under the license;
  - 4. The purpose for introducing the aquatic wildlife species;
  - 5. For each location where the aquatic wildlife will be stocked, the owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location of the stocking site, to include river drainage and the Global Positioning System location or Universal Transverse Mercator coordinates;
  - 6. A detailed description or diagram of the facilities where the applicant will stock the aquatic wildlife, which includes:
    - a. Size of waterbody proposed for stocking aquatic wildlife;
    - b. Nearest river, stream, or other freshwater system;
    - c. Points where water enters each waterbody, when applicable;
    - d. Points where water leaves each waterbody, when applicable; and
    - e. Location of fish containment barriers;
- G. In addition to the requirements listed under subsection (F), when an applicant wishes to stock an aquatic species in an area where that species has not yet been introduced, is not currently established, or there is potential for conflict with Department efforts to conserve wildlife, the applicant shall also submit a written proposal to the Department at the time of application. The written proposal shall contain all of the following information:
  - 1. Anticipated benefits resulting from the introduction of the aquatic live wildlife species;
  - 2. Potential adverse economic impacts;
  - 3. Potential dangers the introduced aquatic species may possibly create for native aquatic species and game fish, to include all of the following:
    - a. Determination of whether or not the introduced aquatic species is compatible with native aquatic species or game fish;
    - b. Potential ecological problems created by the introduced aquatic species;
    - c. Anticipated hybridization concerns with introducing the aquatic species; and,
    - d. Future plans designed to evaluate the status and impact of the species after it is introduced.
  - 4. Assessment of probable impacts to sensitive species in the area using the list generated by the Department's On-Line Environmental Review Tool, which is available at [www.azgfd.gov](http://www.azgfd.gov). The proposal must address each species listed.
- H. An applicant for an aquatic wildlife stocking license shall pay all applicable fees established under R12-4-412.
- I. An aquatic wildlife stocking license holder shall:
  - 1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  - 2. Obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private non-commercial fish pond certified to be free of diseases and causative agents through the following actions:
    - a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the fish farm or pond where the aquatic wildlife or biological material is held before it is shipped to the license holder.
    - b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to stocking.

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- c. The applicant shall submit a copy of the certification to the Department prior to conducting any stocking activities.
- 3. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
- 4. Possess the license or legible copy of the license while conducting any activities authorized under the aquatic stocking license and presents it for inspection upon the request of any Department employee or agent.
- 5. Dispose of wildlife only as authorized under this Section or as directed in writing by the Department.
- J. An aquatic wildlife stocking license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-411. Live Bait Dealer's License**

- A. A live bait dealer's license allows a person to perform any of the following activities using the aquatic live wildlife listed under subsection (B): exhibit for sale, export, import, kill, offer for sale, possess, purchase, sell, trade, or transport.
- B. A live bait dealer's license allows a person to perform any of the activities listed under subsection (A) with any or all of the following aquatic live wildlife:
  - 1. Fathead minnow, *Pimephales promelas*;
  - 2. Golden shiner, *Notemigonus crysoleucas*;
  - 3. Goldfish, *Carassius auratus*;
  - 4. Mosquito fish, *Gambusia affinis*;
  - 5. Threadfin shad, *Dorosoma petenense*; and
  - 6. Waterdogs, *Ambystoma tigrinum*, except in that portion of Santa Cruz County lying east and south of State Highway 82, or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- C. A live bait dealer's license expires on December 31 of each year.
- D. In addition to the requirements established under this Section, a live bait dealer license holder shall comply with the special license requirements established under R12-4-409.
- E. The license holder shall be responsible for compliance with all applicable regulatory requirements. The live bait dealer's license does not:
  - 1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  - 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- F. The Department shall deny a live bait dealer's license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- G. A person applying for a live bait dealer's license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). An applicant shall provide the following information on the application:
  - 1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Department ID number, when applicable;
  - 2. The applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number of the applicant's business;
  - 3. Wildlife species information:
    - a. Common name of all wildlife species; and
    - b. The number of animals for each species that will be sold under the license.
  - 4. For each location where the wildlife will be used, the owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
  - 5. A detailed description or diagram of the facilities where the applicant will hold the wildlife;
  - 6. For each supplier from whom the applicant will obtain wildlife, the supplier's:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address;
    - d. Telephone number;
  - 7. Any other information required by the Department; and
  - 8. The certification required under R12-4-409(C).
- H. An applicant for a live bait dealer's license shall pay all applicable fees established under R12-4-412.
- I. A live bait dealer's license holder shall:
  - 1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  - 2. Obtain live baitfish from a facility certified free of the diseases and causative agents through the following actions:
    - a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the facility where the wildlife is held before it is shipped to the license holder.
    - b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to shipping.
    - c. The applicant shall submit a copy of the certification to the Department prior to conducting any activities authorized under the license.
    - d. The live bait dealer's license holder shall include a copy of the certification in each shipment.
  - 3. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
  - 4. Possess the license or legible copy of the license while conducting activities authorized under the live bait dealers license and presents it for inspection upon the request of any Department employee or agent.
  - 5. Dispose of aquatic wildlife only as authorized under this Section or as directed by the Department.



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- J. A live bait dealer's license holder shall comply with the requirements established under R12-4-428.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-412. Special License Fees**

- A. A person who applies for a special license authorized under this Article shall pay all applicable fees at the time of application.
- B. A new application fee is required upon initial application or when an applicant fails to renew a special license before the license expires.
- C. A renewal application fee is required when an applicant submits an application to renew the special license before the license expires.

Special License Fees	New Application	Renewal Application
Aquatic Wildlife Stocking License	no fee	no fee
Game Bird		
Field Trial License	\$6	\$6
Hobby License	\$5	\$5
Shooting Preserve License	\$115	\$115
Live Bait Dealer's License	\$35	\$35
Private Game Farm License	\$57.50	\$57.50
Scientific Collecting License		
Commercial	no fee	no fee
Noncommercial	no fee	no fee
Sport Falconry License, not available to a nonresident under R12-4-422(J).	\$87.50	\$87.50
White Amur Stocking and Holding License		
Commercial	\$250	\$250
Noncommercial	no fee	no fee
Wildlife Holding License	no fee	no fee
Wildlife Rehabilitation License	no fee	no fee
Wildlife Service License	no fee	no fee
Zoo License	\$115	\$115

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). New Section adopted effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section repealed by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-413. Private Game Farm License**

- A. A private game farm license authorizes a person to commercially farm and sell wildlife, as specified on the license at the location designated on the license.

1. A private game farm license allows the license holder to:
    - a. Display for sale, give away, import, offer for sale, possess, purchase, rent or lease, sell, trade, or transport wildlife, wildlife carcasses, or parts of wildlife; and
    - b. Propagate and rear wildlife.
  2. The Private Game Farm License expires on December 31 of each year.
- B. Private game farm wildlife may be killed or slaughtered, but a person shall not kill or allow the wildlife to be killed by hunting or in a manner that could be perceived as hunting or recreational sport harvest.
- C. Private game farm wildlife shall not be killed by a person who pays a fee to the owner of the private game farm for killing the wildlife, nor shall the game farm owner accept a fee for killing the wildlife, except as authorized under R12-4-414.
- D. A private game farm license authorizes the use of only the following species:
1. Captive-reared game birds:
    - a. *Alectoris chukar*, Chukar;
    - b. *Callipepla californica*, California or valley quail;
    - c. *Callipepla gambelii*, Gambel's quail;
    - d. *Callipepla squamata*, Scaled quail;
    - e. *Colinus virginianus*, Northern bobwhite;
    - f. *Cyrtonyx montezumae*, Montezuma or Mearns' quail;
    - g. *Dendragapus obscurus*, Dusky grouse; and
    - h. *Phasianus colchicus*, Ringneck and whitewing pheasant;
  2. Mammals listed as restricted live wildlife under R12-4-406, provided:
    - a. The same species does not exist in the wild in this state;
    - b. The applicant submits proof of a valid license issued by the United States Department of Agriculture under 9 CFR 25.30 at the time of application;
    - c. The applicant submits a written proposal at the time of application, which includes all of the following information:
      - i. Species to be possessed,
      - ii. Purpose of possession,
      - iii. Purpose of propagation, when applicable,
      - iv. Methods designed to prevent wildlife from escaping,
      - v. Methods designed to prevent threat to native wildlife,
      - vi. Methods designed to ensure public safety; and
      - vii. Methods for disposal of the wildlife, which may include export from this state, or transfer to an eligible game farm licensed under this Section, a zoo licensed under R12-4-420, or a medical or scientific research facility exempted under R12-4-407.
- E. The Department shall deny an application for:
1. A new private game farm license for cervids. The Department may accept a renewal application for a private game farm license holder currently permitted to possess cervids, provided the license holder is in compliance with all applicable requirements under R12-4-409, R12-4-430, and this Section.
  2. A private game farm license for Northern bobwhite, *Colinus virginianus*, in game management units 34A, 36A, 36B, and 36C, as prescribed under R12-4-108.
- F. In addition to the requirements established under this Section, a private game farm holder shall comply with the special license requirements established under R12-4-409.

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- G.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The private game farm license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- H.** The Department shall deny a private game farm license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** A person applying for a private game farm license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). An applicant shall provide the following information on the application:
1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Department ID number, when applicable;
  2. The applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number;
  3. For wildlife to be used under the license:
    - a. Common name of the wildlife species;
    - b. Number of animals for each species; and
    - c. When the applicant is renewing the private game farm license, the species and number of animals for each species currently held in captivity under the license;
  4. For each location where the wildlife will be used, the land owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
  5. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with the requirements established under R12-4-428 and any other captivity standards established under this Section;
  6. For each wildlife supplier from whom the special license applicant will obtain wildlife, the supplier's:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address;
    - d. Telephone number;
  7. Any other information required by the Department; and
  8. The certification required under R12-4-409(C).
- J.** An applicant for a private game farm license shall pay all applicable fees established under R12-4-412.
- K.** A private game farm license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  2. Ensure each shipment of live wildlife imported into the state is accompanied by a health certificate.
    - a. The certificate shall be issued no more than 30 days prior to the date on which the wildlife shipped.
    - b. A copy of the certificate shall be submitted to the Department prior to importation.
  3. Ensure the following documentation accompanies each shipment of wildlife made by the game farm:
    - a. Name of the private game farm license holder,
    - b. Private game farm license number,
    - c. Date wildlife was shipped,
    - d. Number of wildlife, by species, included in the shipment,
    - e. Name of the person or common carrier transporting the shipment, and
    - f. Name of the person receiving the shipment.
  4. Provide each person who transports a wildlife carcass from the site of the game farm with a receipt that includes all of the following:
    - a. Date the wildlife was purchased, traded, or given as a gift;
    - b. Name of the game farm; and
    - c. Number of wildlife carcasses, by species, being transported.
  5. Ensure each facility is inspected by the attending veterinarian at least once every year.
  6. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
  7. Maintain records of all wildlife possessed under the license for a period of three years. In addition to the information required under subsections (M)(4)(a) through (M)(4)(e), the records shall also include:
    - a. The private game farm license holder's:
      - i. Name;
      - ii. Mailing address;
      - iii. Telephone number; and
      - iv. Special license number;
    - b. Copies of all federal, state, and local licenses, permits, and authorizations required for the lawful operation of the private game farm;
    - c. Copies of the annual report required under subsection (M);
    - d. Number of all restricted live wildlife, by species and the date it was obtained;
    - e. Source of all restricted live wildlife and the date it was obtained;
    - f. Number of offspring propagated by all restricted live wildlife; and
    - g. For all restricted live wildlife disposed of by the license holder:
      - i. Number, species, and date of disposition; and
      - ii. Manner of disposition to include the names and addresses of persons to whom the wildlife was bartered, given, or sold, when authorized.
- L.** A private game farm license holder shall not:
1. Propagate hybrid wildlife or domestic animals with wildlife; or
  2. Possess domestic species under the special license.
- M.** A private game farm license holder shall submit an annual report to the Department before January 31 of each year for

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activities performed under the license for the previous calendar year. The report form is furnished by the Department.

1. A report is required regardless of whether or not activities were performed during the previous year.
  2. The private game farm license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
  3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
  4. The annual report shall include all of the following information, as applicable:
    - a. Number of wildlife, by species;
    - b. Source of all wildlife that the license holder obtained or propagated;
    - c. Date on which the wildlife was obtained or propagated;
    - d. Date on which the wildlife was disposed of and the manner of disposition; and
    - e. Name of person who received wildlife disposed of by barter, given as a gift, or sale.
- N.** Except for cervids which shall be disposed of only as established under R12-4-430, a private game farm license holder who no longer uses the wildlife for a commercial purpose shall dispose of the wildlife as follows:
1. Export,
  2. Transfer to another private game farm licensed under this Section,
  3. Transfer to a zoo licensed under R12-4-420,
  4. Transfer to a medical or scientific research facility exempt under R12-4-407,
  5. As directed by the Department, or
  6. As otherwise authorized under this Section.
- O.** A private game farm license holder shall comply with the requirements established under R12-4-428 and R12-4-430.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-414. Game Bird License**

- A.** A game bird license authorizes a person to display for sale, export, give as a gift, import, offer for sale, possess, propagate, purchase, sell, trade, and transport only the game birds specified on the license at the location specified on the license. A person who possesses a game bird license may conduct any of the following activities when stipulated on the person's game bird license:
1. Year-round possession of live captive-reared game birds at the site specified on the license, Game Bird Hobby:
    - a. A license holder shall possess no more than 50 game birds at any one time.
    - b. The Game Bird Hobby license expires on December 31 each year.
  2. Take of game birds by a person who may be charged a fee, Game Bird Shooting Preserve:
    - a. A license holder shall restrict the release and take of the live game birds on private lands to an area not more than 1,000 acres.
- b. A person is not required to possess a hunting license when taking a game bird released under a game bird license.
- c. The Game Bird Shooting Preserve license expires on December 31.
3. Conduct a competition to test the performance of hunting dogs for no more than 10 consecutive days, Game Bird Field Trial.
4. Train a dog or raptor to hunt game birds for no more than 10 consecutive days, Game Bird Field Training.
- B.** A game bird license authorizes the use of the following game bird species as specified under the license:
1. Game Bird Hobby:
    - a. *Alectoris chukar*, Chukar;
    - b. *Callipepla californica*, California or valley quail;
    - c. *Callipepla gambelii*, Gambel's quail;
    - d. *Callipepla squamata*, Scaled quail;
    - e. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D);
    - f. *Cyrtonyx montezumae*, Montezuma or Mearns's quail; and
    - g. *Dendragapus obscurus*, Dusky grouse.
  2. Game Bird Shooting Preserve, Game Bird Field Trial, and Game Bird Field Training:
    - a. *Alectoris chukar*, Chukar;
    - b. *Anas platyrhynchos*, Mallard duck;
    - c. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D);
    - d. *Phasianus colchicus*, Ringneck and Whitewing pheasant;
  3. For the game bird species listed below, a game bird license authorizes a person to conduct only the following activities: display, export for noncommercial purposes, give as a gift, import, kill, possess, propagate, purchase, and transport:
    - a. *Callipepla californica*, California or valley quail;
    - b. *Callipepla gambelii*, Gambel's quail;
    - c. *Callipepla squamata*, Scaled quail;
    - d. *Cyrtonyx montezumae*, Montezuma or Mearns's quail; and
    - e. *Dendragapus obscurus*, Dusky grouse.
- C.** In addition to the requirements established under this Section, a game bird license holder shall comply with the special license requirements established under R12-4-409.
- D.** The license holder shall be responsible for compliance with all applicable regulatory requirements. The game bird license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- E.** The Department shall deny a game bird license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department may deny a game bird license when:
1. The applicant proposes to release game birds:

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- a. At a location where an established wild population of the same species exists.
    - b. During nesting periods of upland game birds or waterfowl that nest in the area.
  2. The applicant requests a license:
    - a. For the sole purpose described under subsection (A)(1) and proposes to possess more than 50 game birds at any one time.
    - b. To possess Northern bobwhites, *Colinus virginianus*, in any one of the following game management units, as described under R12-4-108; 34A, 36A, 36B, and 36C.
  3. The Department determines the:
    - a. Authorized activity listed under this Section may pose a threat to native wildlife, wildlife habitat, or public health or safety.
    - b. Escape of any species listed on the application may pose a threat to native wildlife or public health or safety.
    - c. Release of game birds may interfere with a wildlife or habitat restoration program.
- F.** A person applying for a game bird license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). An applicant shall provide the following information on the application:
1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and,
    - d. Department ID number, when applicable;
  2. If the applicant will use the game birds for a commercial purpose, the applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number;
  3. If the applicant will use the game birds for an activity affiliated with a sponsoring organization, the organization's:
    - a. Name;
    - b. Mailing address; and
    - c. Telephone number of the organization chair or local chapter;
  4. For game birds to be used under the license:
    - a. Common name of game bird species;
    - b. Number of animals for each species; and
    - c. When the applicant is renewing the game bird license, the species and number of animals for each species currently held in captivity under the license;
  5. A description of how the applicant intends to use the game birds:
    - a. For personal possession only;
    - b. Charge a person a fee to take game birds;
    - c. Conduct a competition to test the performance of hunting dogs; or
    - d. Train a dog or raptor to hunt;
  6. For each location where game birds will be used, the owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
  7. For each location where game birds will be released, the land owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
  8. A detailed description or diagram of the facilities where the applicant will hold game birds and a description of how the facilities comply with the requirements established under R12-4-428 and any other captivity standards established under this Section;
  9. For each game bird supplier from whom the applicant will obtain game birds, the supplier's:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address;
    - d. Telephone number;
  10. Any other information required by the Department; and
  11. The certification required under R12-4-409(C).
- G.** An applicant for a game bird license shall pay all applicable fees established under R12-4-412.
- H.** A game bird license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
  3. Ensure each facility is inspected by the attending veterinarian at least once every year.
  4. Possess the license or legible copy of the license while conducting any activity authorized under the game bird license and presents it for inspection upon the request of any Department employee or agent.
  5. Ensure each shipment of game birds imported into the state is accompanied by a health certificate.
    - a. The certificate shall be issued no more than 30 days prior to the date on which the game birds are shipped.
    - b. A copy of the certificate shall be submitted to the Department prior to importation.
  6. Provide each person that transports game birds taken under the game bird license with documentation that includes all of the following:
    - a. Name of the game bird license holder;
    - b. Game bird license number;
    - c. Date the game bird was purchased, traded, or given as a gift;
    - d. Number of game birds, by species; and
    - e. When the game birds are being shipped:
      - i. Name of the person or common carrier transporting the shipment, and
      - ii. Name of the person receiving the shipment.
  7. Maintain records of all game birds possessed under the license for a period of three years. In addition to the information required under subsections (H)(5)(a) through (H)(5)(d), the records shall also include:
    - a. The game bird license holder's:
      - i. Name;
      - ii. Mailing address;

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- iii. Telephone number; and
  - iv. Special license number;
- b. Copies of all federal, state, and local licenses, permits, and authorizations required for the lawful operation of the game bird activity;
- c. Copies of the annual report required under subsection (I);
- 8. Dispose of game birds only as authorized under this Section or as directed by the Department.
- I. A game bird license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
  - 1. A report is required regardless of whether or not activities were performed during the previous year.
  - 2. The game bird license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
  - 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
  - 4. The annual report shall include all of the following information, as applicable:
    - a. Number of all game birds, by species and the date it was obtained;
    - b. Source of all game birds and the date the game bird was obtained;
    - c. Number of offspring propagated by all game birds; and
    - d. For all game birds disposed of by the license holder:
      - i. Number, species, and date of disposition; and
      - ii. Manner of disposition to include the names and addresses of persons to whom the wildlife was bartered, given, or sold, when authorized.
- J. A game bird license holder shall comply with the requirements established under R12-4-428.
- K. A game bird released under a game bird license may be taken with any method designated under R12-4-304.
- L. A game bird released under a game bird license and found outside of the location specified on the license shall become property of the State and is subject to the requirements prescribed under A.R.S. Title 17 and 12 A.A.C. 4, Article 3.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-415. Repealed****Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-416. Repealed****Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-417. Wildlife Holding License**

- A. A wildlife holding license authorizes a person to display for educational purposes, euthanize, export, give away, import,

photograph for commercial purposes, possess, propagate, purchase, or transport, restricted and nonrestricted live wildlife lawfully:

- 1. Held under a valid hunting or fishing license for a purpose listed under subsection (C),
- 2. Collected under a valid scientific collecting license issued under R12-4-418,
- 3. Obtained under a valid wildlife rehabilitation license issued under R12-4-423,
- 4. Or as otherwise authorized by the Department.
- B. A wildlife holding license expires on December 31 of the year issued, or, if the license holder is a representative of an institution, organization, or agency described under subsection (C)(4), upon termination of affiliation with that entity, whichever comes first.
- C. A wildlife holding license is valid for the following purposes, only:
  - 1. Advancement of science;
  - 2. Lawfully possess restricted live wildlife when it is:
    - a. Necessary to give humane treatment to restricted live wildlife that has been abandoned or permanently disabled, and is therefore unable to meet its own needs in the wild; or
    - b. Previously possessed under another special license and the primary purpose for that special license no longer exists;
  - 3. Promotion of public health or welfare;
  - 4. Provide education under the following conditions:
    - a. The applicant is an educator affiliated or partnered with an educational organization; and
    - b. The educational organization permits the use of live wildlife.
  - 5. Photograph for a commercial purpose live wildlife provided:
    - a. The wildlife will be photographed without posing a threat to other wildlife or the public, and
    - b. The photography will not adversely impact other affected wildlife in this state, or
  - 6. Wildlife management.
- D. The Department shall deny an application for a wildlife holding license for the possession of cervids.
- E. In addition to the requirements established under this Section, a wildlife holding license holder shall comply with the special license requirements established under R12-4-409.
- F. The license holder shall be responsible for compliance with all applicable regulatory requirements. The wildlife holding license does not:
  - 1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  - 2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- G. The Department shall deny a wildlife holding license to a person who fails to meet the requirements established under R12-4-409 or this Section, or when the person's wildlife holding privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1)

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through (4), the Department shall deny a wildlife holding when:

1. It is in the best interest of the wildlife; or
  2. The issuance of the license will adversely impact other wildlife or their habitat in the state.
- H.** A person applying for a wildlife holding license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide the following information:
1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Department ID number, when applicable;
  2. If the applicant will use the wildlife for a commercial purpose, the applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number;
  3. If the applicant will use wildlife for activities authorized by an educational or scientific institution that employs, contracts, or is similarly affiliated with the applicant, the institution's:
    - a. Name;
    - b. Mailing address; and
    - c. Telephone number;
  4. For wildlife to be used under the license:
    - a. Common name of the wildlife species;
    - b. Number of animals for each species;
    - c. When the application is for the use of multiple species, the applicant shall list each species and the number of animals for each species; and
    - d. When the applicant is renewing the wildlife holding license, the species and number of animals for each species currently held in captivity under the license;
  5. For wildlife to be used for educational purposes:
    - a. The affiliated educational institution's:
      - i. Name;
      - ii. Federal Tax Identification Number;
      - iii. Mailing address; and
      - iv. Telephone number of the educational institution;
    - b. A copy of the established curriculum utilizing sound educational objectives; and
    - c. A plan for how the applicant will address any safety concerns associated with the use of live wildlife in a public setting.
  6. For each location where the applicant proposes to hold the wildlife, the owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
  7. A detailed description and diagram, or photographs, of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428, and any other captivity standards that may be established under this Section;
  8. The dates that the applicant will begin and end holding wildlife;
  9. A clear description of how the applicant intends to dispose of the wildlife once the proposed activity for which the license was issued ends;
  10. Any other information required by the Department; and
  11. The certification required under R12-4-409(C).
  12. For subsection (H)(7), the Department may, at its discretion, accept documented current certification or approval by the applicant's institutional animal care and use committee or similar committee in lieu of the description, diagram, and photographs of the facilities.
- I.** In addition to the requirements listed under subsection (H), at the time of application, an applicant for a wildlife holding license shall also submit:
1. Evidence of lawful possession, as defined under R12-4-401;
  2. A statement of the applicant's experience in handling and providing care for the wildlife to be held or experience relevant to handling or providing care for wildlife;
  3. A written proposal that contains all of the following information:
    - a. A description of the activity the applicant intends to perform under the license;
    - b. Purpose for the proposed activity;
    - c. The contribution the proposed activity will make to one or more of the primary purposes listed under subsection (C).
    - d. For an applicant who wishes to possess restricted live wildlife for the purpose of providing humane treatment, a written explanation stating why the wildlife is unable to meet its own needs in the wild and the following information for the licensed veterinarian who will provide care for the wildlife:
      - i. Name;
      - ii. Mailing address; and
      - iii. Telephone number;
- J.** An applicant for a wildlife holding license shall pay all applicable fees required under R12-4-412.
- K.** A wildlife holding license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
  3. Possess the license or legible copy of the license while conducting any activity authorized under the wildlife holding license and presents it for inspection upon the request of any Department employee or agent.
  4. Permanently mark any restricted live wildlife used for lawful activities under the authority of the license, when required by the Department.
  5. Ensure that a copy of the license accompanies any transportation or shipment of wildlife made under the authority of the license.
  6. Surrender wildlife held under the license to the Department upon request.
- L.** A wildlife holding license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year or as indicated under subsection (O). The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.

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2. The wildlife holding license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall include all of the following information, as applicable:
  - a. A list of animals held during the year, the list shall be by species and include the source and date on which the wildlife was acquired.
  - b. The permanent mark or identifier of the wildlife, such as name, number, or another identifier for each animal held during the year, when required by the Department. This designation or identifier shall be provided with other relevant reported details for the holding or disposition of the individual animal;
  - c. Whether the wildlife is alive or dead.
  - d. The current location of the wildlife.
  - e. A list of all educational displays where the wildlife was utilized to include the date, location, organization or audience, approximate attendance, and wildlife used.
- M. A wildlife holding license holder may authorize an agent to assist the license holder in conducting activities authorized under the wildlife holding license, provided the agent's wildlife privileges are not suspended or revoked in any state.
  1. The license holder shall obtain written authorization from the Department before allowing a person to act as an agent.
  2. The license holder shall notify the Department in writing within 10 calendar days of terminating any agent.
  3. The Department may suspend or revoke the license holder's license if an agent violates any requirement of this Section or Article or any stipulations placed upon the license.
  4. An agent may possess wildlife for the purposes outlined under subsection (C), under the following conditions:
    - a. The agent shall possess evidence of lawful possession, as defined under R12-4-401, for all wildlife possessed by the agent;
    - b. The agent shall return the wildlife to the primary license holder's facility within two days of receiving the wildlife.
- N. A wildlife holding license holder shall not barter, give as a gift, loan for commercial activities, offer for sale, sell, trade, or dispose of any restricted live wildlife, offspring of restricted live wildlife, or their parts except as stipulated on the wildlife holding license or as directed in writing by the Department.
- O. A wildlife holding license is no longer valid once the primary purpose for which the license was issued, as prescribed in subsection (C), no longer exists. When this occurs, the wildlife holding license holder shall immediately submit the annual report required under (L) to the Department.
- P. A wildlife license holder shall comply with the requirements established under R12-4-409, R12-4-428, and R12-4-430.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R.

2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-418. Scientific Collecting License**

- A. A scientific collecting license allows a person to conduct any of the following activities with live wildlife when specified on the license:
  1. Display,
  2. Photograph for noncommercial purposes,
  3. Possess,
  4. Propagate,
  5. Take,
  6. Transport, and
  7. Use for educational purposes.
- B. The Department issues three types of scientific collecting licenses:
  1. Personal,
  2. Consultant, and
  3. Government, which includes educational and research institutions.
- C. A person may apply for a scientific collecting license only when the license is requested for:
  1. The purpose of wildlife management, gathering information valuable to the maintenance of wild populations, education, the advancement of science, or promotion of the public health or welfare;
  2. A purpose that is in the best interest of the wildlife or the species, will not adversely impact other affected wildlife in this state, and may be authorized without posing a threat to wildlife or public safety; and
  3. A purpose that does not unnecessarily duplicate previously documented projects.
- D. A scientific collecting license expires on December 31 each year.
- E. For the protection of wildlife or public safety, the Department has the authority to take any one or more of the following actions:
  1. Rescind or modify any method of take authorized by the license;
  2. Restrict the number of animals for each species or other taxa the license holder may take under the license;
  3. Restrict the age, condition, or location of wildlife the license holder may take under the license; or
  4. Deny or substitute the number of specimens and taxa requested on an application.
- F. The license holder shall be responsible for compliance with all applicable regulatory requirements. The scientific collecting license does not:
  1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- G. The Department may deny a scientific collecting license to a person who fails to meet the requirements established under R12-4-409 or this Section, or when the person's scientific collecting privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a sci-

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entific collecting license when it is in the best interest of the wildlife or public safety.

- H.** A person applying for a scientific collecting license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available from any Department office, and online at [www.azgfd.gov](http://www.azgfd.gov). A person applying for a scientific collecting license shall provide the following information on the application:
1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Department ID number; when applicable;
  2. If the applicant will use wildlife for activities authorized by a scientific, educational, or government institution, organization, or agency that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the institution's:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address;
    - d. Telephone number of the institution; and
    - e. The applicant's title or a description of the nature of affiliation with the institution or organization;
  3. When the applicant is renewing the scientific collecting license, the species and number of animals for each species currently held in captivity;
  4. For each the location where the wildlife will be held, the land owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
  5. A detailed description and diagram, or photographs, of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428, and any other captivity standards that may be established under this Section;
  6. Any other information required by the Department; and
  7. The certification required under R12-4-409(C).
  8. For subsection (H)(5), the Department may, at its discretion, accept documented current certification or approval by the applicant's institutional animal care and use committee or similar committee in lieu of the description, diagram, and photographs of the facilities.
- I.** In addition to the requirements listed under subsection (H), at the time of application, an applicant for a scientific collecting license shall also submit a written proposal. The written proposal shall contain all of the following information:
1. List of activities the applicant intends to perform under the license;
  2. Purpose for the use of wildlife as established under subsection (C);
  3. When the applicant intends to use wildlife for educational purposes, the proposal shall also include the:
    - a. Minimum number of presentations the applicant anticipates to provide under the license
    - b. Name, title, address, and telephone number of persons whom the applicant has contacted to offer educational presentations; and
  - c. Number of specimens the applicant already possesses for any species requested on the application;
  4. Applicant's relevant qualifications and experience in handling and, when applicable, providing care for the wildlife to be held under the license;
  5. Methods of take that the applicant will use, to include:
    - a. Justification for using the method, and
    - b. Proposed method of disposing wildlife taken under the license and any subsequent offspring, when applicable;
  6. Number of animals for each species that will be used under the license;
  7. Locations where collection will take place;
  8. Names and addresses of any agents who will assist the applicant in carrying out the activities described in the proposal.
  9. Project completion date; and
  10. Whether the applicant intends to publish the project or its findings.
- J.** An applicant for a scientific collecting license shall pay all applicable fees required under R12-4-412.
- K.** A scientific collecting license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  2. Possess the license or legible copy of the license while conducting any activity authorized under the scientific collecting license and presents it for inspection upon the request of any Department employee or agent.
  3. Notify the Department in writing within 10 calendar days of terminating any agent.
  4. Use the most humane and practical method possible prescribed under R12-4-304, R12-4-313, or as directed by the Department in writing.
  5. Conduct activities authorized under the scientific collecting license only at the locations and time periods specified on the scientific collecting license.
  6. Dispose of wildlife, wildlife parts, or offspring, only as directed by the Department.
- L.** A scientific collecting license holder shall not exhibit any wildlife held under the license, unless the person also possesses a zoo license authorized under R12-4-420.
- M.** A scientific collecting license holder may request authorization to allow an agent to assist the license holder in carrying out activities authorized under the scientific collecting license by submitting a written request to the Department.
1. An applicant may request the ability to allow a person to act as an agent on the applicant's behalf, provided:
    - a. An employment or supervisory relationship exists between the applicant and the agent, and
    - b. The agent's privilege to take or possess live wildlife is not suspended or revoked in any state.
  2. The license holder shall obtain approval from the Department prior to allowing the agent assist in any activities.
  3. The license holder is liable for all acts the agent performs under the authority of this Section.
  4. The Department, acting on behalf of the Commission, may suspend or revoke a license for violation of this Section by an agent.
  5. The license holder shall ensure the agent possesses a legible copy of the license while conducting any activity authorized under the scientific collecting license and presents it for inspection upon the request of any Department employee or agent.
- N.** A scientific collecting license holder may submit to the Department a written request to amend the license to add or



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delete an agent, location, project, or other component documented on the license at any time during the license period.

- O. A scientific collecting license holder shall submit an annual report to the Department before January 31 of each year. The report form is furnished by the Department.
  - 1. A report is required regardless of whether or not activities were performed during the previous year.
  - 2. The scientific collecting license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
  - 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
  - 4. The Department may stipulate submission of additional interim reports upon license application or renewal.
- P. A scientific collecting license holder who wishes to permanently hold wildlife species collected under the license in Arizona that will no longer be used for activities authorized under the license shall apply for and obtain a wildlife holding license in compliance with R12-4-417 or another appropriate special license.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-419. Repealed****Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-420. Zoo License**

- A. With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, a zoo license allows an individual to perform all of the following: exhibit, display for educational purposes, import, purchase, export, possess, propagate, euthanize, transport, give away, offer for sale, sell, or trade restricted live wildlife and other Arizona wildlife legally possessed, subject to the following restrictions:
  - 1. A zoo license holder shall hold all wildlife possessed in the facilities specified on the license except when the wildlife is transported to or from a temporary exhibit. A temporary exhibit shall not exceed 60 consecutive days at any one location.
  - 2. A zoo license holder shall only dispose of restricted live wildlife in this state by selling, giving, or trading it to another zoo licensed under this Section, to an appropriate special license holder such as a game farm licensed under R12-4-413, to a medical or scientific research facility exempted under R12-4-407, by exporting it to a zoo that is certified by the American Zoo and Aquarium Association, or as directed by the Department.
  - 3. A zoo license holder shall not accept any wildlife that is donated, purchased, or otherwise obtained without accompanying evidence of lawful possession.
  - 4. A zoo license holder shall dispose of all wildlife obtained under a scientific collecting permit or wildlife that has been loaned to the zoo by the Department only as directed in writing by the Department.
- 5. A zoo license holder shall hold wildlife in such a manner as to prevent it from escaping from the facilities specified on the license, and to prevent the entry of unauthorized individuals or other wildlife.
- B. The Department shall issue a zoo license only for the following purposes:
  - 1. The advancement of science, wildlife management, or promotion of public health or welfare;
  - 2. Education; or
  - 3. Conservation, or maintaining a population of wildlife threatened with extinction in the wild.
- C. An applicant for a zoo license shall apply on a form provided by the Department and available from any Department office. The applicant shall provide the following information:
  - 1. Name, address, telephone number, birthdate, physical description, and Department ID number (if applicable) of the applicant;
  - 2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business. If the applicant will use wildlife for activities authorized by an educational or scientific institution that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the name, address, and telephone number of the institution;
  - 3. The wildlife species and the number of animals per species that will be held under the license. The list shall include scientific and common names for all wildlife held;
  - 4. An applicant for a zoo license shall include a typewritten, computer or word processor printed, or legibly handwritten proposal that describes the following:
    - a. How the facility or operation meets the definition of a zoo, as stated in A.R.S. § 17-101; and
    - b. The purpose of the license. Acceptable purposes of a zoo license are listed in subsection (B);
  - 5. If the applicant is renewing the zoo license, the species and number of animals per species that are currently in captivity, and evidence of lawful possession as defined in A.R.S. § 17-101;
  - 6. Proof of current licensing by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare;
  - 7. The name, address, and telephone number of the zoo where the wildlife will be held. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
  - 8. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section. The Department shall not approve a license application until the wildlife holding facility satisfies a Department inspection; and
  - 9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- D. The Department shall issue a zoo license in compliance with R12-4-106. If the Department denies the application for a zoo license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall issue a license for the purposes stated in subsection (B) if:

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1. It is in the best interest of the wildlife, and
  2. Issuance of the license will not adversely impact other wildlife in the state.
- E.** A zoo license holder shall clearly display an entrance sign that states the days of the week and hours when the facility is open for viewing by the general public.
- F.** A zoo license holder shall maintain a record of each animal obtained under subsection (A)(4) for three years following the date of disposition. The record shall include the species, source of the wildlife, date received, any Department approval authorizing acquisition, and the date and method of disposition.
- G.** Before January 31 of each year, a zoo license holder shall file a written report on activities performed under the license for the previous calendar year. A zoo license holder shall submit an annual report to the Department in compliance with R12-4-409(O). The report shall summarize the current species inventory, and acquisition and disposition of all wildlife held under the license.
- H.** A zoo license holder may not add restricted live wildlife as specified in R12-4-406 to the license without making a written request to and receiving approval from the Department.
- I.** A zoo license holder is subject to R12-4-409, R12-4-428, and R12-4-430.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-421. Wildlife Service License**

- A.** A wildlife service license authorizes a person to provide, advertise, or offer assistance in removing the live wildlife listed below to the general public. For the purposes of this Section, the following wildlife, as defined under A.R.S. § 17-101(B), are designated live wildlife:
1. Furbearing animals;
  2. Javelina (*Pecari tajacu*);
  3. Nongame animals;
  4. Predatory animals; and
  5. Small game.
- B.** A wildlife service license is not required when conducting pest control removal services authorized under A.R.S. § Title 32, Chapter 22 for the following wildlife not protected under federal regulation:
1. Rodents, except those in the family Sciuridae;
  2. European starlings;
  3. Peach-faced love birds;
  4. House sparrows;
  5. Eurasian collared-doves; and
  6. Any other non-native wildlife species.
- C.** A wildlife service license allows a person to conduct activities that facilitate the removal and relocation of live wildlife listed under subsection (A) when the wildlife causes a nuisance, property damage, poses a threat to public health or safety, or if the health or well-being of the wildlife is threatened by its immediate environment. Authorized activities include, but are not limited to, capture, removal, transportation, and relocation.
- D.** The wildlife service license expires on December 31 each year.
- E.** An employee of a governmental public safety agency is not required to possess a wildlife service license when the employee is acting within the scope of the employee's official duties.
- F.** In addition to the requirements established under this Section, a wildlife service license holder shall comply with the special license requirements established under R12-4-409.
- G.** The license holder shall be responsible for compliance with all applicable regulatory requirements; the wildlife service license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- H.** The Department shall deny a wildlife service license to a person who fails to meet the requirements established under R12-4-409 or this Section or when the person's wildlife service privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I.** A person applying for a wildlife service license shall submit an application to the Department. The application is furnished by the Department and is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). An applicant shall provide the following information on the application:
1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number;
    - d. Physical description, to include the applicant's eye color, hair color, height, and weight; and;
    - e. Department ID number, when applicable;
  2. If the applicant will perform license activities for a commercial purpose, the applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address;
    - d. Telephone number; and
    - e. Hours and days of the week the applicant will be available for service;
  3. The designated wildlife species or groups of species listed under subsection (A) that will be used under the license;
  4. The methods that the wildlife license holder will use to perform authorized activities;
  5. The general geographic area where services will be performed;
  6. Any other information required by the Department; and
  7. The certification required under R12-4-409(C).
- J.** In addition to the requirements listed under subsection (I), at the time of application, an applicant for a wildlife service license shall also submit:
1. Proof the applicant has a minimum of six months full-time employment or volunteer experience handling wildlife of the species or groups designated on the application; and
  2. A written proposal that contains all of the following information:

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- a. Applicant's experience in the capture, handling, and removal of wildlife;
  - b. Specific species the applicant has experience capturing, handling, or removing;
  - c. General location and dates when the activities were performed;
  - d. Methods used to carry out the activities; and
  - e. The methods used to dispose of the wildlife.
- K.** When renewing a license without change to the species or species groups authorized under the current license, the wildlife service license holder may reference supporting materials previously submitted in compliance with subsection (J).
- L.** An applicant for a wildlife service license shall pay all applicable fees established under R12-4-412.
- M.** A wildlife service license holder shall:
  - 1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  - 2. Facilitate the removal and relocation of designated wildlife in a manner that:
    - a. Is least likely to cause injury to the wildlife; and
    - b. Will prevent the wildlife from coming into contact with the general public.
  - 3. Obtain special authorization from the Department regional office that has jurisdiction over the area where the activities will be conducted when performing any activities involving javelina.
  - 4. Release captured designated wildlife only as follows:
    - a. Without immediate threat to the animal or potentially injurious contact with humans;
    - b. During an ecologically appropriate time of year;
    - c. Into a suitable habitat;
    - d. In the same geographic area as the animal was originally captured, except that birds may be released at any location statewide within the normal range of that species in an ecological suitable habitat; and
    - e. In an area designated by the Department regional office that has jurisdiction over the area where it was captured.
  - 5. Euthanize the wildlife using the safest, quickest, and most humane method available.
  - 6. Dispose of all wildlife that is euthanized or that otherwise dies while possessed under the license by burial or incineration within 30 days of death, unless otherwise directed by the Department.
  - 7. Possess the license or legible copy of the license while conducting any wildlife service activity and presents it for inspection upon the request of any Department employee or agent.
  - 8. Inform the Department in writing within five working days of any change in telephone number, area of service, or business hours or days.
- N.** A wildlife service license holder may submit to the Department a written request to amend the license to add or delete authority to control and release designated species of wildlife, provided the request meets the requirements of this Section.
- O.** A wildlife service license holder shall not:
  - 1. Exhibit wildlife or parts of wildlife possessed under the license.
  - 2. Possess designated wildlife beyond the period necessary to transport and relocate or euthanize the wildlife.
  - 3. Retain any parts of wildlife.
- P.** A wildlife service license holder may:
  - 1. Euthanize designated wildlife only when authorized by the Department.
  - 2. Give injured or orphaned wildlife to a wildlife rehabilitation license holder.
- Q.** A wildlife service license holder shall submit an annual report to the Department before January 31 of each year on activities performed under the license for the previous calendar year. The report form is furnished by the Department.
  - 1. A report is required regardless of whether or not activities were performed during the previous year.
  - 2. The wildlife service license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
  - 3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
  - 4. The annual report shall provide a list of all services performed under the license to include:
    - a. The date and location of service;
    - b. The number and species of wildlife removed, and
    - c. The method of disposition for each animal removed, including the location and date of release.
- R.** A wildlife service license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

**Historical Note**

Adopted effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-422. Sport Falconry License**

- A.** In addition to the definitions provided under A.R.S. § 17-101, R12-4-101, and R12-4-401, and for the purposes of this Section, the following definitions apply:

"Abatement services" means the use of raptors possessed under a falconry permit for the control of nuisance species.

"Captive-bred raptor" means a raptor hatched in captivity.

"Hack" means the temporary release of a raptor into the wild to condition the raptor for use in falconry.

"Hybrid" has the same meaning as prescribed under 50 C.F.R. 21.3, revised October 1, 2013. This incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

"Imping" means using a molted feather to replace or repair a damaged or broken feather.

"Retrices" means a raptor's tail feathers.

"Sponsor" means a licensed General or Master falconer with a valid Arizona Sport Falconry license who has committed to mentoring an Apprentice falconer.

"Suitable perch" means a perch that is of the appropriate size and texture for the species of raptor using the perch.

"Wild raptor" means a raptor taken from the wild, regardless of how long the raptor is held in captivity or whether the raptor is transferred to another licensed falconer or other permit type.

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- B.** An Arizona Sport Falconry license permits a person to capture, possess, train, and transport a raptor for the purpose of sport falconry in compliance with the Migratory Bird Treaty Act and the Endangered Species Act of 1973.
1. The sport falconry license validates the appropriate license for hunting or taking quarry with a trained raptor. When taking quarry using a raptor, a person must possess a valid:
    - a. Sport falconry license, and
    - b. Appropriate hunting license.
  2. The sport falconry license is valid until the third December from the date of issuance.
  3. A licensed falconer may capture, possess, train, or transport wild, captive-bred, or hybrid raptors, subject to the limitations established under subsections (H)(1), (H)(2), and (H)(3), as applicable.
- C.** The Department shall comply with the licensing time-frame established under R12-4-106.
- D.** A resident who possesses or intends to possess a raptor for the purpose of sport falconry shall hold an Arizona Sport Falconry license, unless the person is exempt under A.R.S. § 17-236(C) or possesses only raptors not listed under 50 C.F.R. Part 10.13, revised October 1, 2014, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.
- E.** In addition to the requirements established under this Section, a licensed falconer shall also comply with special license requirements established under R12-4-409.
- F.** The license holder shall be responsible for compliance with all applicable regulatory requirements; the sport falconry license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations;
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license; or
  3. Authorize a licensed falconer to capture or release a raptor or practice falconry on public lands where prohibited or on private property without permission from the land owner or land management agency.
- G.** The Department shall deny a sport falconry license to a person who fails to meet the requirements established under R12-4-409, R12-4-428, or this Section. The Department shall provide a written notice to an applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- H.** The Department may issue a Sport Falconry license for the following levels to an eligible person:
1. Apprentice level license:
    - a. An Apprentice falconer shall:
      - i. Be at least 12 years of age; and
      - ii. Have a sponsor while practicing falconry as an apprentice. When a sponsorship is terminated, the apprentice is prohibited from practicing falconry until a new sponsor is acquired. After acquiring a new sponsor, an apprentice shall submit a written statement from the new sponsor to the Department within 30 days. The written statement shall meet the requirements established under subsection (K)(3)(a)(vi).
  2. General level license:
    - a. A General falconer shall:
      - i. Be at least 16 years of age; and
      - ii. Have practiced falconry as an apprentice falconer for at least two years, including maintaining, training, flying, and hunting with a raptor for at least four months in each year. An applicant cannot substitute any falconry school or educational program to shorten the two-year Apprentice period.
    - b. A General falconer may possess up to three raptors at a time for use in falconry.
    - c. A General falconer is prohibited from possessing a:
      - i. Bald eagle,
      - ii. White-tailed eagle,
      - iii. Steller's sea-eagle, or
      - iv. Golden eagle.
  3. Master level license:
    - a. A Master falconer shall have practiced falconry as a General falconer for at least five years using raptors possessed by that falconer.
    - b. A Master falconer may possess:
      - i. Any species of wild, captive-bred, or hybrid raptor.
      - ii. Any number of captive-bred raptors provided they are trained and used in the pursuit of wild game; and
      - iii. Up to three of the following species, provided the requirements established under subsection (H)(3)(d) are met: Golden eagle, White-tailed eagle, or Steller's Sea eagle.
    - c. A Master falconer is prohibited from possessing:
      - i. More than three eagles
      - ii. A bald eagle, or
      - iii. More than five wild caught raptors.
    - d. A Master falconer who wishes to possess an eagle shall apply for and receive approval from the Department before possessing an eagle for use in falconry. The licensed falconer shall submit the following documentation to the Department before a request may be considered:
      - i. Proof the licensed falconer has experience in handling large raptors such as, but not limited to, ferruginous hawks (*Buteo regalis*) and goshawks (*Accipiter gentilis*);
- b.** An Apprentice falconer may possess only one raptor at a time for use in falconry.
- c.** An Apprentice falconer is prohibited from possessing any:
- i. Species listed under 50 C.F.R. 17.11, revised October 1, 2014, and subspecies,
  - ii. Raptor taken from the wild as a nestling,
  - iii. Raptor that has imprinted on humans,
  - iv. Bald eagle (*Haliaeetus leucocephalus*),
  - v. White-tailed eagle (*Haliaeetus albicilla*),
  - vi. Steller's sea-eagle (*Haliaeetus pelagicus*), or
  - vii. Golden eagle (*Aquila chrysaetos*).
  - viii. For the purposes of subsection (H)(1)(c)(i), this incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

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- ii. Information regarding the raptor species, to include the type and duration of the activity in which the experience was gained; and
  - iii. Written statements of reference from two persons who have experience handling or flying large raptors such as, but not limited to, eagles, ferruginous hawks, and goshawks. Each written statement shall contain a concise history of the author's experience with large raptors, and an assessment of the applicant's ability to care for and fly an eagle.
- I. A sponsor shall:
  - 1. Be at least 18 years of age;
  - 2. Have practiced falconry as a General falconer for at least two years;
  - 3. Sponsor no more than three apprentices during the same period of time;
  - 4. Notify the Department within 30 consecutive days after a sponsorship is terminated;
  - 5. Determine the appropriate species of raptor for possession by an apprentice; and
  - 6. Provide instruction pertaining to the:
    - a. Husbandry, training, and trapping of raptors held for falconry;
    - b. Hunting with a raptor; and
    - c. Relevant wildlife laws and regulations.
- J. A falconer licensed in another state or country is exempt from obtaining an Arizona Sport Falconry license under R12-4-407(B)(9), unless remaining in Arizona for more than 180 consecutive days. A falconer licensed in another state or country and who remains in this state for more than the 180-day period shall apply for an Arizona Sport Falconry license in order to continue practicing sport falconry in this state. The falconer licensed in another state or country shall present a copy of the out-of-state or out-of-country falconry license, or its equivalent, to the Department upon request.
  - 1. A falconer licensed in another state shall:
    - a. Comply with all applicable state and federal falconry regulations;
    - b. Possess only those raptors authorized under the out-of-state sport falconry license, and
    - c. Provide a health certificate for each raptor possessed under the out-of-state sport falconry license when the raptor is present in this state for more than 30 consecutive days. The health certificate may be issued after the date of the interstate importation, but shall have been issued no more than 30 consecutive days prior to the interstate importation.
  - 2. A falconer licensed in another country may possess, train, and use for falconry only those raptors authorized under the out-of-country sport falconry license, provided the import of that species into the United States is not prohibited. This subsection does not prohibit the falconer from flying or training a raptor lawfully possessed by any other licensed falconer.
  - 3. A falconer licensed in another country is prohibited from leaving an imported raptor in this state, unless authorized under federal permit. The falconer shall report the death or escape of a raptor possessed by that falconer to the Department as established under subsection (O)(1) or prior to leaving the state, whichever occurs first.
  - 4. A falconer licensed in another country shall:
    - a. Comply with all applicable state and federal falconry regulations;
- K. A person applying for a Sport Falconry license shall submit an application to the Department. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov).
  - 1. An applicant shall provide the following information on the application:
    - a. Falconry level desired;
    - b. Name;
    - c. Date of birth;
    - d. Mailing address;
    - e. Telephone number, when available;
    - f. Department I.D. number;
    - g. Applicant's physical description, to include the applicant's eye color, hair color, height, and weight;
    - h. Arizona Hunting license number, when available;
    - i. Number of years of experience as a falconer;
    - j. Current Falconry license level;
    - k. Physical address of a facility when the raptor is kept at another location, when applicable;
    - l. Information documenting all raptors possessed by the applicant at the time of application, to include:
      - i. Species;
      - ii. Subspecies, when applicable;
      - iii. Age;
      - iv. Sex;
      - v. Band or microchip number, as applicable;
      - vi. Date and source of acquisition; and
    - m. The certification required under R12-4-409(C);
    - n. Parent or legal guardian's signature, when the applicant is under the age of 18;
    - o. Date of application; and
    - p. Any other information required by the Department.
  - 2. An applicant shall certify that the applicant has read and is familiar with applicable state laws and rules and the regulations under 50 C.F.R. Part 13 and the other applicable parts in 50 C.F.R. Chapter I, Subchapter B and that the information submitted is complete and accurate to the best of their knowledge and belief.
  - 3. In addition to the information required under subsection (K)(1), a person applying for:
    - a. An Apprentice level license shall also provide the sponsor's:
      - i. Name,
      - ii. Date of birth,
      - iii. Mailing address,
      - iv. Department I.D. number,
      - v. Telephone number, and
      - vi. A written statement from the sponsor stating that the falconer agrees to sponsor the applicant.
    - b. A General level license shall also provide:
      - i. Information documenting the applicant's experience in maintaining falconry raptors, to include the species and period of time each rap-
- b. Comply with falconry licensing requirements prescribed by the country of licensure not in conflict with federal or state law;
  - c. Notify the Department no less than 30 consecutive days prior to importing a raptor into this state;
  - d. Provide a health certificate, issued no earlier than 30 consecutive days prior to the date of importation, for each raptor imported into this state; and
  - e. Attach two functioning radio transmitters to any raptor imported into this country by the falconer while flown free in this state by any falconer.

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- tor was possessed while licensed as an Apprentice falconer; and
- ii. A written statement from the sponsor certifying that the applicant has practiced falconry at the Apprentice falconer level for at least two years, and maintained, trained, flown, and hunted with a raptor for at least four months in each year.
- c. A Master level license shall certify that the falconer has practiced falconry as a General falconer for at least five years.
- L.** An applicant for any level Sport Falconry license shall pay all applicable fees established under R12-4-412.
- M.** The Department may inspect the applicant's raptor facilities, materials, and equipment to verify compliance with requirements established under R12-4-409(I), R12-4-428, and this Section before issuing a Sport Falconry license. The applicant or licensed falconer shall ensure all raptors currently possessed by the falconer and kept in the facility are present at the time of inspection.
1. Department may inspect a facility:
- a. After a change of location, when the Department cannot verify the facility is the same facility as the one approved by a previous inspection, or
- b. Prior to the acquisition of a new species or addition of another raptor when the previous inspection does not indicate the facilities can accommodate a new species or additional raptor.
2. A licensed falconer shall notify the Department no more than five business days after changing the location of a facility.
3. When a facility is located on property not owned by the licensed falconer, the falconer shall provide a written statement signed and dated by the property owner at the time of inspection. The written statement shall specify that the licensed falconer has permission to keep a raptor on the property and the property owner permits the Department to inspect the falconry facility at any reasonable time of day and in the presence of the licensed falconer.
4. A licensed falconer shall ensure the facility:
- a. Provides a healthy and safe environment,
- b. Is designed to keep predators out,
- c. Is designed to avoid injury to the raptor,
- d. Is easy to access,
- e. Is easy to clean, and
- f. Provides access to fresh water and sunlight.
5. In addition to the requirements established under R12-4-409(I) and R12-4-428:
- a. A licensed falconer shall ensure facilities where raptors are held have:
- i. A suitable perch that is protected from extreme temperatures, wind, and excessive disturbance for each raptor;
- ii. At least one opening for sunlight; and
- iii. Walls that are solid, constructed of vertical bars spaced narrower than the width of the body of the smallest raptor housed therein, or any other suitable materials approved by the Department.
- b. A licensed falconer shall possess all of the following equipment:
- i. At least one flexible, weather-resistant leash;
- ii. One swivel appropriate to the raptor being flown;
- iii. At least one water container, available to each raptor kept in the facility, that is at least two inches deep and wider than the length of the largest raptor using the container;
- iv. A reliable scale or balance suitable for weighing raptors, graduated in increments of not more than 15 grams;
- v. Suitable equipment that protects the raptor from extreme temperatures, wind, and excessive disturbance while transporting or housing a raptor when away from the permanent facility where the raptor is kept, and
- vi. At least one pair of jesses constructed of suitable material or Alymeri jesses consisting of an anklet, grommet, and removable strap that attaches the anklet and grommet to a swivel. The falconer may use a one-piece jess only when the raptor is not being flown.
6. A licensed falconer may keep a falconry raptor inside the falconer's residence provided a suitable perch is supplied. The falconer shall ensure all flighted raptors kept inside a residence are tethered or otherwise restrained at all times, unless the falconer is moving the raptor into or out of the residence. This subsection does not apply to unflighted eyas, which do not need to be tethered or otherwise restrained.
7. A licensed falconer may keep multiple raptors together in one enclosure untethered only when the raptors are compatible with each other.
8. A licensed falconer may keep a raptor temporarily outdoors in the open provided the raptor is continually under observation by the falconer or an individual designated by the falconer.
9. A licensed falconer may keep a raptor in a temporary facility that the Department has inspected and approved for no more than 120 consecutive days.
10. A licensed falconer may keep a raptor in a temporary facility that the Department has not inspected or approved for no more than 30 consecutive days. The falconer shall notify the Department of the temporary facility prior to the end of the 30-day period. The Department may inspect a temporary facility as established under R12-4-409(I).
- N.** Prior to the issuance of a Sport Falconry license, an applicant shall:
1. Present proof of a previously held state-issued sport falconry license, or
2. Correctly answer at least 80% of the questions on the Department administered written examination.
- a. A person whose Sport Falconry license is expired more than five years shall take the examination. The Department shall issue to an eligible applicant a license for the sport falconry license type previously held by the applicant after the applicant correctly answers at least 80% of the questions on the written examination and presents proof of the previous Sport Falconry license.
- b. A person who holds a falconry license issued in another country shall correctly answer at least 80% of the questions on the written examination. The Department shall determine the level of license issued based upon the applicant's documentation.
- O.** A licensed falconer shall submit electronically a 3-186A form to report:
1. Any of the following raptor possession changes to the Department no more than 10 business days after the occurrence:
- a. Acquisition,

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- b. Banding,
  - c. Escape into the wild without recovery after 30 consecutive days have passed,
  - d. Death,
  - e. Microchipping,
  - f. Rebanding,
  - g. Release,
  - h. Take, or
  - i. Transfer.
- 2. Upon discovering the theft of a raptor, a licensed falconer shall immediately report the theft of a raptor to the Department and USFWS by:
  - a. Contacting the Department's regional office within 48 hours; and
  - b. Submitting the electronic 3-186A form within 10 days.
- P. A licensed falconer shall print and maintain copies of all required electronic database submissions for each falconry raptor possessed by the falconer. The falconer shall retain copies of all submissions for a period of five years from the date on which the raptor left the falconer's possession.
- Q. A licensed falconer or a person with a valid falconry license, or its equivalent, issued by any state meeting federal falconry standards may capture a raptor for the purpose of falconry only when authorized by Commission Order.
  - 1. A falconer attempting to capture a raptor shall possess:
    - a. A valid Arizona Sport Falconry license or valid falconry license, or its equivalent, issued by another state, and
    - b. Any required Arizona hunt permit-tag issued to the licensed falconer for take of the authorized raptor, and
    - c. A valid Arizona hunting or combination license. A short-term combination hunting and fishing license is not valid for capturing a raptor under this subsection.
  - 2. An Apprentice falconer may take from the wild:
    - a. Any raptor not prohibited under subsection (H)(1)(c) that is less than one year of age, except nestlings or
    - b. An adult raptor.
  - 3. A General or Master falconer may take from the wild:
    - a. A raptor of any age, including nestlings, provided at least one nestling remains in the nest; or
    - b. An adult raptor.
  - 4. A licensed falconer shall take no more than two raptors from the wild for use in falconry each calendar year. For the purpose of take limits, a raptor is counted towards the licensed falconer's take limit by the falconer who originally captured the raptor.
  - 5. A falconer attempting to capture a raptor shall:
    - a. Not use stupefying substances;
    - b. Use a trap or bird net that is not likely to cause injury to the raptor;
    - c. Ensure that each trap or net the falconer is using is continually attended; and
    - d. Ensure that each trap used for the purpose of capturing a raptor is marked with the falconer's name, address, and license number.
  - 6. A licensed falconer shall report the injury of any raptor injured due to capture techniques to the Department. The falconer shall transport the injured raptor to a veterinarian or licensed rehabilitator and pay for the cost of the injured raptor's care and rehabilitation. After the initial medical treatment is completed, the licensed falconer shall either:
    - a. Keep the raptor and the raptor shall count towards the falconer's take and possession limit, or
    - b. Transfer the raptor to a permitted wildlife rehabilitator and the raptor shall not count against the falconer's take or possession limit.
  - 7. When a licensed falconer takes a raptor from the wild and transfers the raptor to another falconer who is present at a capture site, the falconer receiving the raptor is responsible for reporting the take of the raptor.
  - 8. A General or Master falconer may capture a raptor that will be transferred to another licensed falconer who is not present at the capture site. The falconer who captured the raptor shall report the take of the raptor and the capture shall count towards the General or Master falconer's take limit. The General or Master falconer may then transfer the raptor to another falconer.
  - 9. A General or Master falconer may capture a raptor for another licensed falconer who cannot attend the capture due to a long-term or permanent physical impairment. The licensed falconer with the physical impairment is responsible for reporting the take of the raptor and the raptor shall count against their take and possession limits.
  - 10. A licensed falconer may capture any raptor displaying a seamless metal band, or any other item identifying it as a falconry raptor, regardless of whether the falconer is prohibited from possessing the raptor. The falconer shall return the recaptured raptor to the falconer of record. The raptor shall not count towards the falconer's take or possession limits, provided the falconer reports the temporary possession of the raptor to the Department no more than five consecutive days after capturing the raptor.
    - a. When the falconer of record cannot or does not wish to possess the raptor, the falconer who captured the raptor may keep the raptor, provided the falconer is eligible to possess the species and may do so without violating any requirement established under this Section.
    - b. When the falconer of record cannot be located, the Department shall determine the disposition of the recaptured raptor.
  - 11. A licensed falconer may capture and shall report the capture of any raptor wearing a transmitter to the Department no more than five business days after the capture. The falconer shall attempt to contact the researcher or licensed falconer who applied the transmitter and facilitate the replacement or retrieval of the transmitter and raptor. The falconer may possess the raptor for no more than 30 consecutive days while waiting for the researcher or falconer to retrieve the transmitter and raptor. The raptor shall not count towards the falconer's take or possession limits, provided the falconer reports the temporary possession of the raptor to the Department no more than five consecutive days after capturing the raptor. The Department shall determine the disposition of a raptor when the researcher or falconer does not replace the transmitter or retrieve the raptor within the initial 30-day period.
  - 12. A licensed falconer may capture any raptor displaying a federal Bird Banding Laboratory (BBL) aluminum research band or tag, except a peregrine falcon (*Falco peregrinus*). A licensed falconer who captures a raptor wearing a research band or tag shall report the following information to BBL and the Department:
    - a. Species,
    - b. Band or tag number,
    - c. Location of the capture, and
    - d. Date of capture.

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- e. A person can report the capture of a raptor wearing a research band or tag to BBL by calling 1(800) 327-2263.
- 13. A licensed falconer may recapture a falconer's lost or any escaped falconry raptor at any time. The Department does not consider the recapture of a wild falconry raptor as taking a raptor from the wild.
- 14. When attempting to trap a raptor in Cochise, Graham, Pima, Pinal, or Santa Cruz counties, a licensed falconer shall:
  - a. Not begin trapping while a northern aplomado falcon (*Falco femoralis septentrionalis*) is observed in the vicinity of the trapping location.
  - b. Suspend trapping when a northern aplomado falcon arrives in the vicinity of the trapping location.
- 15. In addition to the requirements in subsection (Q)(14), an apprentice falconer shall be accompanied by a General or Master falconer when attempting to capture a raptor in Cochise, Graham, Pima, Pinal, or Santa Cruz counties.
- 16. A licensed Master falconer may take up to two golden eagles from the wild only as authorized under 50 C.F.R. part 22. The Master falconer may:
  - a. Capture an immature or sub-adult golden eagle, or
  - b. Take a nestling from its nest or a nesting adult golden eagle in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area determines the adult eagle is preying on livestock or wildlife and that any nestling of the adult will be taken by a falconer authorized to possess it.
  - c. The falconer shall inform the Department of the capture plans in person, in writing, or by telephone at least three business days before trapping is initiated. The falconer may send written notification to the Arizona Game and Fish Department's Law Enforcement Programs Coordinator at 5000 West Carefree Highway, Phoenix, Arizona 85086.
- 17. A licensed falconer shall ensure any falconry activities the falconer is conducting do not cause unlawful take under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., or the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 through 668d. The Department or USFWS may provide information regarding where take is likely to occur. The falconer shall report the take of any federally listed threatened or endangered species or bald or golden eagle to the USFWS Arizona Ecological Services Field Office.
- R. A licensed falconer shall comply with all of the following banding requirements:
  - 1. A licensed falconer shall ensure the following raptors are banded after capture:
    - a. Northern Goshawk,
    - b. Harris's hawk (*Parabuteo unicinctus*), and
    - c. Peregrine falcon.
  - 2. The falconer shall request a band no more than five consecutive days after the capture of a raptor by contacting the Department. A Department representative or a General or Master licensed falconer may attach the USFWS leg band to the raptor.
  - 3. A licensed falconer shall not use a counterfeit, altered, or defaced band.
  - 4. A falconer holding a federal propagation permit shall ensure a raptor bred in captivity wears a seamless metal band furnished by USFWS, as prescribed under 50 C.F.R. 21.30.
  - 5. A licensed falconer may remove the rear tab on a band and smooth any imperfections on the surface, provided doing so does not affect the band's integrity or numbering.
  - 6. A licensed falconer shall report the loss of a band to the Department no more than five business days after discovering the loss. The falconer shall reband the raptor with a new USFWS leg band furnished by the Department.
- S. A licensed falconer may request Department authorization to implant an ISO-compliant [134.2 kHz] microchip in lieu of a band into a captive-bred raptor or raptor listed under subsection (R)(1).
  - 1. The falconer shall submit a written request to the Department.
  - 2. The falconer shall retain a copy of the Department's written authorization and any associated documentation for a period of five years from the date the raptor permanently leaves the falconer's possession.
  - 3. The falconer is responsible for the cost of implanting the microchip and any associated veterinary fees.
- T. A licensed falconer may allow a falconry raptor to feed on any species of wildlife incidentally killed by the raptor for which there is no open season or for which the season is closed, but shall not take such wildlife into possession.
- U. A General or Master falconer may hack a falconry raptor. Any raptor the falconer is hacking shall count towards the falconer's possession limit during hacking.
  - 1. A falconer is prohibited from hacking a raptor near the nesting area of a federally threatened or endangered species or in any other location where the raptor is likely to disturb or harm a federally listed threatened or endangered species. The Department may provide information regarding where this is likely to occur.
  - 2. A licensed falconer shall ensure any hybrid raptor flown free or hacked by the falconer is equipped with at least two functioning radio transmitters.
- V. A licensed falconer may release:
  - 1. A wild-caught raptor permanently into the wild under the following circumstances:
    - a. The raptor is native to Arizona,
    - b. The falconer removes the raptor's falconry band and any other falconry equipment prior to release, and
    - c. The falconer releases the raptor in a suitable habitat and under suitable seasonal conditions.
  - 2. A captive-bred raptor permanently into the wild only when the raptor is native to Arizona and the Department approves the release of the raptor. The falconer shall request permission to release the captive-bred raptor by contacting the Department. When permitted by the Department and before releasing the captive-bred raptor, the General or Master falconer shall hack the captive-bred raptor in a suitable habitat and the appropriate season.
  - 3. A licensed falconer is prohibited from intentionally releasing any hybrid or non-native raptor permanently into the wild.
- W. A Master falconer may conduct and receive payment for any abatement services conducted with a falconry raptor. The falconer shall apply for and obtain all required federal permits prior to conducting any abatement activities. A General falconer may conduct abatement services only when authorized under the federal permit held by the Master falconer.
- X. A person other than a licensed falconer may temporarily care for a falconry raptor for no more than 45 consecutive days, unless approved by the Department. The raptor under temporary care shall remain in the falconer's facility. The raptor shall



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continue to count towards the falconer's possession limit. An unlicensed caretaker shall not fly the raptor. The falconer may request an extension from the Department to the temporary possession period if extenuating circumstances occur. The Department shall evaluate extension requests on a case-by-case basis.

- Y.** A licensed falconer may serve as a caretaker for another licensed falconer's raptor for no more than 120 consecutive days, unless approved by the Department. The falconer shall provide the temporary caretaker with a signed and dated statement authorizing the temporary possession of each raptor. The statement shall also include the temporary possession period and activities the caretaker may conduct with the raptor. The raptor under temporary care shall not count toward the caretakers possession limit. The temporary caretaker may fly or train the raptor when permitted by the falconer in writing. The falconer may request an extension from the Department to the temporary possession period if extenuating circumstances occur. The Department shall evaluate extension requests on a case-by-case basis.
- Z.** A licensed falconer may assist a wildlife rehabilitator in conditioning a raptor in preparation for the raptor's release to the wild. The falconer may temporarily remove the raptor from the rehabilitation facilities while conditioning the raptor. The raptor shall remain under the rehabilitator's license and shall not count towards the falconer's possession limit. The rehabilitator shall provide the licensed falconer with a written statement authorizing the falconer to assist the rehabilitator. The written statement shall also identify the raptor by species, type of injury, and band number, when available. The licensed falconer shall return the raptor to the rehabilitator within the 180-day period established under R12-4-423(T), unless the raptor is:
  - 1. Released into the wild in coordination with the rehabilitator and as authorized under this subsection,
  - 2. Allowed to remain with the rehabilitator for a longer period of time as authorized under R12-4-423(U), or
  - 3. Transferred permanently to the falconer, provided the falconer may legally possess the raptor and the Department approves the transfer. The raptor shall count towards the falconer's possession limit.
- AA.** A licensed falconer may use a raptor possessed for falconry in captive propagation, when permitted by USFWS. A licensed falconer is not required to transfer a raptor from a Sport Falconry license to another license when the raptor is used for captive propagation less than eight months in a year.
- BB.** A General or Master licensed falconer may use a lawfully possessed raptor in a conservation education program presented in a public venue. An Apprentice falconer, under the direct supervision of a General or Master falconer, may use a lawfully possessed raptor in a conservation education program presented in a public venue. The primary use for a raptor is falconry; a licensed falconer shall not possess a raptor solely for the purpose of providing a conservation education program. The falconer shall ensure the focus of the conservation education program is to provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds. The falconer may charge a fee for presenting a conservation education program; however, the fee shall not exceed the amount required to recoup the falconer's costs for providing the program. As a condition of the Sport Falconry License, the licensed falconer agrees to indemnify the Department, its officers, and employees. The falconer is liable for any damages associated with the conservation education activities.
- CC.** A licensed falconer may allow the photography, filming, or similar uses of a falconry raptor possessed by the licensed falconer, provided:
  - 1. The falconer is not compensated for these activities; and
  - 2. The final product from these activities:
    - a. Promotes the practice of falconry;
    - b. Provides information about the biology, ecological roles, and conservation needs of raptors and other migratory birds;
    - c. Endorses a nonprofit falconry organization or association, products, or other endeavors related to falconry; or
    - d. Is used in scientific research or science publications.
- DD.** A licensed falconer may use or dispose of lawfully possessed falconry raptor feathers. A falconer shall not buy, sell, or barter falconry raptor feathers. A falconer may possess feathers for imping from each species of raptor that the falconer currently possesses or has possessed.
  - 1. The licensed falconer may transfer or receive feathers for imping from:
    - a. Another licensed falconer,
    - b. A licensed wildlife rehabilitator, or
    - c. Any licensed propagator located in the United States.
  - 2. A licensed falconer may donate falconry raptor feathers, except bald and golden eagle feathers, to:
    - a. Any person or institution permitted to possess falconry raptor feathers,
    - b. Any person or institution exempt from the permit requirement under 50 C.F.R. 21.12, or
  - c. A non-eagle feather repository. The Department may provide information regarding the submittal of falconry raptor feathers to a non-eagle feather repository.
  - 3. A licensed falconer shall gather primary and secondary flight feathers or retrices that are molted or otherwise lost from a golden eagle and either retain the feathers for imping purposes or submit the feathers to the U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022.
  - 4. A falconer whose license is either revoked or expired shall dispose of all falconry raptor feathers in the falconer's possession.
- EE.** Arizona licensed falconers importing raptors into Arizona shall have a health certificate issued no more than 30 consecutive days:
  - 1. Prior to the international importation, or
  - 2. Prior to or after the inter-state importation.
- FF.** A licensed falconer may conduct any of the following activities with any captive-bred raptor provided the raptor is wearing a seamless band and the person receiving the raptor possesses an appropriate special license:
  - 1. Barter,
  - 2. Offer for barter,
  - 3. Gift,
  - 4. Purchase,
  - 5. Sell,
  - 6. Offer for sale, or
  - 7. Transfer.
- GG.** A licensed falconer is prohibited from conducting any of the following activities with any wild-caught raptor protected under the Migratory Bird Treaty Act:
  - 1. Barter,
  - 2. Offer for barter,
  - 3. Purchase,
  - 4. Sell, or

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5. Offer for sale.
- HH.** A licensed falconer may transfer:
1. Any wild-caught falconry raptor lawfully captured in Arizona with or without a permit tag to another Arizona Sport Falconry License holder at any time.
    - a. The raptor shall count towards the take limit for that calendar year for the falconer taking the raptor from the wild.
    - b. The raptor shall not count against the take limit of the falconer receiving the raptor.
  2. Any wild-caught falconry raptor to another license or permit type under this Article or federal law, provided the raptor has been used in the sport of falconry for at least two years preceding the transfer.
  3. A wild-caught falconry sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), merlin (*Falco columbarius*), or American kestrel (*Falco sparverius*) to another license or permit type under this Article or federal law, provided the raptor has been used in the sport of falconry for at least one-year preceding the transfer.
  4. Any hybrid or captive-bred raptor to another licensed falconer or permit type under this Article or federal law at any time.
  5. Any falconry raptor that is no longer capable of being flown, as determined by a veterinarian or licensed rehabilitator, to another permit type at any time. The licensed falconer shall provide a copy of the documentation from the veterinarian or rehabilitator stating that the raptor is not useable in falconry to the Federal Migratory Bird Permits office that administers the other permit type.
- II.** A licensed falconer shall not transfer a wild-caught raptor species to a licensed falconer in another state for at least one year from the date of capture if either resident or nonresident take is managed through Commission Order by way of a permit-tag, nonpermit-tag, or annual harvest quota system. However, a licensed falconer may transfer a wild-caught raptor that is not managed through Commission Order by way of a permit-tag, nonpermit-tag, or annual harvest quota system to a licensed falconer in another state at any time.
- JJ.** A surviving spouse, executor, administrator, or other legal representative of a deceased or incapacitated licensed falconer shall transfer any raptor held by the licensed falconer to another licensed falconer no more than 90 consecutive days after the death of the falconer. The Department shall determine the disposition of any raptor not transferred prior to the end of the 90-day period.
- KK.** A licensed falconer shall conduct the following activities, as applicable, no more than 10 business days after either the death of a falconry raptor or the final examination of a deceased raptor by a veterinarian:
1. For a bald or golden eagle, send the entire body, including all feathers, talons, and other parts, to the National Eagle Repository;
  2. For any euthanized non-eagle raptor, to prevent secondary poisoning of other wildlife, the falconer shall either submit the carcass to a non-eagle repository or burn, bury, or otherwise destroy the carcass;
  3. For all other species:
    - a. Submit the carcass to a non-eagle repository;
    - b. Submit the carcass to the Department for submission to a non-eagle repository;
    - c. Donate the body or feathers to any person or institution exempt under 50 C.F.R. 21.12 or authorized by USFWS to acquire and possess such parts or feathers;
  - d. Retain the carcass or feathers for imping purposes as established under subsection (DD);
  - e. Burn, bury, or otherwise destroy the carcass; or
  - f. Mount the raptor carcass. The falconer shall ensure any microchip implanted in the raptor is not removed and any band attached to the raptor remains on the mount. The falconer may use the mount for a conservation education program. The falconer shall ensure copies of the license and all relevant 3-186A forms are retained with the mount. The mount shall not count towards the falconer's possession limit.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 958, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-423. Wildlife Rehabilitation License**

- A.** For the purposes of this Section, "volunteer" means a person who:
- Is not designated as an agent, as defined under R12-4-401,
  - Assists a wildlife rehabilitation license holder without compensation, and
  - Is under the direct supervision of the license holder at the location specified on the wildlife rehabilitation license.
- B.** A wildlife rehabilitation license is issued for the sole purpose of restoring and returning wildlife to the wild through rehabilitative services. The license allows a person 18 years of age or older to conduct any of the following activities with live injured, disabled, orphaned or otherwise debilitated wildlife specified on the rehabilitation license:
1. Capture;
  2. Euthanize;
  3. Export to a licensed zoo, when authorized by the Department;
  4. Rehabilitate;
  5. Release;
  6. Temporarily possess;
  7. Transport; or
  8. Transfer to one of the following:
    - a. Licensed veterinarian for treatment or euthanasia;
    - b. Another appropriately licensed special license holder;
    - c. Licensed zoo, when authorized by the Department; or
  9. As otherwise directed in writing by the Department.
- C.** A wildlife rehabilitation license authorizes the possession of the following taxa or species:
1. Amphibians;
  2. Reptiles;
  3. Birds:
    - a. Non-passerines, birds in any order other than those named in subsections (b) through (e);
    - b. Birds in the orders *Falconiformes* or *Strigiformes*, raptors;
    - c. Birds in the order, *Galliformes* quails and turkeys;
    - d. Birds in the order *Columbiformes*, doves;
    - e. Birds in the order *Trochiliformes*, hummingbirds; and
    - f. Birds in the order *Passeriformes*, passerines;

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4. Mammals:
  - a. Nongame mammals;
  - b. Bats;
  - c. Big game mammals other than cervids: bighorn sheep, bison, black bear, javelina, mountain lion, pronghorn;
  - d. Carnivores: bobcat, coati, coyote, foxes, raccoons, ringtail, skunks, and weasels; and
  - e. Small game mammals.
- D. A wildlife rehabilitation license authorizes the possession of the following taxa or species only when specifically requested at the time of application:
  1. Eagles;
  2. Species listed under 50 C.F.R. 17.11, revised October 1, 2013; and
  3. The Department's Tier 1 Species of Greatest Conservation Need, as defined under R12-4-401.
  4. For the purposes of subsection (D)(2), this incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
- E. All wildlife held under the license is the property of the state and shall be surrendered to the Department upon request.
- F. The wildlife rehabilitation license expires on the last day of the third December from the date of issuance.
- G. In addition to the requirements established under this Section, a wildlife rehabilitation license holder shall comply with the special license requirements established under R12-4-409.
- H. The Department shall deny a wildlife rehabilitation license to a person who fails to meet the requirements and criteria established under R12-4-409, R12-4-428, or this Section or when the person's wildlife rehabilitation license is suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409 to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.
- I. The license holder shall be responsible for compliance with all applicable regulatory requirements; the wildlife rehabilitation license does not:
  1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- J. Before applying for a wildlife rehabilitation license, a person shall successfully complete an examination conducted by the Department. The Department shall consider only those parts of the examination that are applicable to the taxa of wildlife for which the license is sought in establishing the qualifications of the applicant.
  1. Examinations are provided by appointment, only.
  2. An applicant may request a verbal or written examination.
  3. The examination shall include questions regarding:
    - a. Wildlife rehabilitation;
    - b. Safe handling of wildlife;
    - c. Transporting wildlife;
    - d. Humane treatment;
    - e. Nutritional requirements;
    - f. Behavioral requirements;
    - g. Developmental requirements;
    - h. Ecological requirements;
    - i. Habitat requirements;
    - j. Captivity standards established under R12-4-428;
    - k. Human and wildlife safety considerations;
    - l. State statutes, rules, and regulations regarding wildlife rehabilitation; and
    - m. National Wildlife Rehabilitation Association minimum standards for wildlife rehabilitation.
4. The applicant must successfully complete the examination within three years prior to the date on which the initial application for the license is submitted to the Department.
- K. A person applying for a wildlife rehabilitation license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide the following information on the application:
  1. The applicant's information:
    - a. Name;
    - b. Date of birth;
    - c. Mailing address;
    - d. Telephone number;
    - e. Facility address, if different from mailing address;
    - f. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates; and;
    - g. Department ID number, when applicable;
  2. The wildlife taxa or species listed under subsection (C) that will be possessed under the license;
  3. For each location where the wildlife will be used, the land owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
  4. A detailed description, diagram, and photographs of the facility where the applicant will hold the wildlife, and a description of how the facility complies with R12-4-428 and any other captivity standards established under this Section;
  5. Any other information required by the Department; and
  6. The certification required under R12-4-409(C).
- L. In addition to the requirements listed under subsection (K), at the time of application, an applicant for a wildlife rehabilitation license shall also submit:
  1. Any one or more of the following:
    - a. A valid, current license issued by a state veterinary medical examination authority that authorizes the applicant to practice as a veterinarian;
    - b. Proof of at least six months of experience performing wildlife rehabilitative work with an average of at least eight hours each week for the taxa or species of animal listed on the application; or
    - c. A current and valid license, permit, or other form of authorization issued by another state or the federal government that allows the applicant to perform wildlife rehabilitation;

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2. Proof the applicant successfully completed the examination required under subsection (J) no more than three years prior to submitting the application;
  3. An affidavit signed by the applicant affirming either of the following:
    - a. The applicant is a licensed veterinarian; or
    - b. A licensed veterinarian is reasonably available to provide veterinary services as necessary to facilitate rehabilitation of wildlife.
  4. A written statement describing:
    - a. The applicant's preferred method of disposing of non-releasable live wildlife as listed under subsection (B); and
    - b. A statement of the applicant's training and experience in handling, capturing, rehabilitating, and caring for the taxa or species when the applicant is applying for a license to perform authorized activities with taxa or species of wildlife listed under subsection (C).
- M.** A wildlife rehabilitation license holder who wishes to continue activities authorized under the license shall renew the license before it expires.
1. When renewing a license without change to the species, location, or design of the facility where wildlife is held as authorized under the current license, the license holder may reference supporting materials previously submitted in compliance with subsection (K).
  2. A license holder applying for a renewal of the license shall successfully complete the examination at the time of renewal when the annual report submitted under subsection (Z) indicates the license holder did not perform any rehabilitative activities under the license.
  3. A license holder applying for a renewal of the license shall submit proof the license holder has completed the continuing education requirement established under subsection (N).
- N.** During the license period a wildlife rehabilitation license holder shall complete eight or more hours of continuing education sessions on wildlife rehabilitation or veterinary medicine. Acceptable continuing education sessions may be obtained from:
1. An accredited university or college;
  2. The National Wildlife Rehabilitators Association, 2625 Clearwater Rd. Suite 110, St. Cloud, MN 56301;
  3. The International Wildlife Rehabilitation Council, PO Box 3197, Eugene, OR 97403; or
  4. Other applicable training opportunities approved by the Department in writing. A license holder who wishes to use other applicable training to meet the eight hour continuing education requirement shall request approval of the other applicable training prior to participating in the education session.
- O.** A wildlife rehabilitation license holder may request authorization to allow an agent to assist the license holder in carrying out activities authorized under the wildlife rehabilitation license by submitting a written request to the Department.
1. An applicant may request the ability to allow a person to act as an agent on the applicant's behalf, provided:
    - a. An employment or supervisory relationship exists between the applicant and the agent, and
    - b. The agent's privilege to take or possess live wildlife is not suspended or revoked in any state
  2. The license holder shall obtain approval from the Department prior to allowing the agent assist in any activities.
  3. The license holder is liable for all acts the agent performs under the authority of this Section.
  4. The Department, acting on behalf of the Commission, may suspend or revoke a license for violation of this Section by an agent.
  5. The license holder shall ensure the agent possesses a legible copy of the license while conducting any activity authorized under the wildlife rehabilitation license and presents it for inspection upon the request of any Department employee or agent.
- P.** At any time during the license period, a wildlife rehabilitation license holder may request permission to amend the license to add or delete an agent or a location where wildlife is held; or to obtain authority to rehabilitate additional taxa of wildlife. To request an amendment, the license holder shall submit the following information to the Department, as applicable:
1. To add or delete an agent, the information stated in subsections (K)(1) through (K)(4) and (L)(2), as applicable to the agent;
  2. To add or delete a location, the information stated in subsection (K)(1) through (K)(5); and
  3. To obtain authority to rehabilitate additional taxa or wildlife, the information stated in subsection (K)(1) through (K)(5) and (L)(1) through (L)(4).
- Q.** A wildlife rehabilitation license holder authorized to rehabilitate wildlife species listed under subsection (C)(3)(c), (C)(4)(c) and (C)(4)(d) or (D) shall contact the Department within 24 hours of receiving the individual animal to obtain instructions in handling or transferring that animal. While awaiting instructions, the license holder shall ensure that emergency veterinary care is provided as necessary.
- R.** A wildlife rehabilitation license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article.
  3. Ensure each facility is inspected by the attending veterinarian at least once every year.
  4. Capture, remove, transport, and release wildlife held under the requirements of this Section in a manner that is least likely to cause injury to the affected wildlife.
  5. Conduct rehabilitation only at the location listed on the license
  6. Be responsible for all expenses incurred, including veterinary expenses, and all actions taken under the license, including all actions or omissions of all agents and volunteers when performing activities under the license.
  7. Immediately surrender wildlife held under the license to the Department upon request.
  8. Dispose of all wildlife that is euthanized or that otherwise dies within 30 days of death either by burial, incineration, or transfer to a scientific research institution, except that the license holder shall transfer all carcasses of endangered or threatened species, species listed under the Department's Tier 1 Species of Greatest Conservation Need, or eagles as directed by the Department.
  9. Maintain a current log that records the information specified under subsection (Z).
  10. Possess the license or legible copy of the license at each authorized location and while conducting any rehabilitation activities and presents it for inspection upon the request of any Department employee or agent.
  11. Ensure a copy of the wildlife rehabilitation license accompanies each transfer or shipment of wildlife.
- S.** A wildlife rehabilitation license holder shall not:

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1. Display for educational purposes any wildlife held under the license.
2. Exhibit any wildlife held under the license.
3. Permanently possess any wildlife held under the license.
- T. A wildlife rehabilitation license holder may possess:
  1. All wildlife for no more than 90 days; or
  2. A bird for no more than 180 days, unless the Department has authorized possession for a longer period of time.
- U. A license holder may request permission to possess wildlife for a longer period of time than specified in subsection (T) by submitting a written request to the Department.
  1. The Department shall approve or deny the request within ten days of receiving the request.
  2. For requests made due to a medical necessity, the Department may require the license holder to provide a written statement listing the medical reasons for the extension, signed by a licensed veterinarian.
  3. The license holder may continue to hold the specified wildlife while the Department considers the request.
  4. If the request is denied, the Department shall send a written notice to the license holder which shall include specific, time-dated directions for the surrender or disposition of the animal.
- V. A wildlife rehabilitation license holder may allow a licensed falconer to assist in conditioning a raptor in preparation for the raptor's release to the wild.
  1. The license holder may allow the licensed falconer to temporarily remove the raptor from the license holder's facility while conditioning the raptor.
  2. The license holder shall provide the licensed falconer with a written statement authorizing the falconer to assist the license holder.
  3. The written statement shall identify the raptor by species, type of injury, and band number, when available.
  4. The license holder shall ensure the licensed falconer returns the raptor to the license holder within the 180-day period established under subsection (T).
- W. A wildlife rehabilitation license holder may hold wildlife under the license after the wildlife reaches a state of restored health only for the amount of time reasonably necessary to prepare the wildlife for release. Rehabilitated wildlife shall be released:
  1. In an area without immediate threat to the wildlife or contact with humans;
  2. During an ecologically appropriate time of year and time of day; and
  3. Into a suitable habitat in the same geographic area where the animal was originally obtained; or
  4. In an area designated by the Department.
- X. Wildlife that is not releasable after the time-frames specified in subsection (T) shall be transferred, disposed of, or euthanized as determined by the Department.
- Y. To permanently hold rehabilitated wildlife that is unsuitable for release, a wildlife rehabilitation license holder shall apply for and obtain a wildlife holding license in compliance with under R12-4-417.
- Z. A wildlife rehabilitation license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
  1. A report is required regardless of whether or not activities were performed during the previous year.
  2. The wildlife rehabilitation license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall contain the following information:
  - a. The license holder's:
    - i. Name;
    - ii. Mailing address; and
    - iii. Telephone number;
  - b. Each agent's:
    - i. Name;
    - ii. Mailing address; and
    - iii. Telephone number;
  - c. The permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the license holder; and
  - d. An itemized list of each animal held under the license during the calendar year for which activity is being reported. For each animal held by the license holder or agent, the itemization shall include:
    - i. Species;
    - ii. Condition that required rehabilitation;
    - iii. Date of acquisition;
    - iv. Source of acquisition;
    - v. Location of acquisition;
    - vi. Age class at acquisition, when reasonably determinable;
    - vii. Status at disposition or end-of-year in relation to the condition requiring rehabilitation;
    - viii. Method of disposition;
    - ix. Location of disposition; and
    - x. Date of disposition.
  - e. For activities related to federally-protected wildlife, a copy of the rehabilitator's federal permit report of activities related to federally-protected wildlife satisfies the reporting requirement established under subsection (Z)(4)(c) for federally protected wildlife.
- AA. A wildlife rehabilitation license holder shall comply with the requirements established under R12-4-409, R12-4-428, and R12-4-430, as applicable.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
 Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4).  
 Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3).  
 Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-424. White Amur Stocking and Holding License**

- A. For the purposes of this Section:
 

"Closed aquatic system" means any body of water, water system, canal system, or series of lakes, canals, or ponds where triploid white amur are prevented from entering or exiting the system by any natural or man-made barrier, as determined by the Department.

"Triploid" means a species having 1.5 chromosome sets that renders them sterile.
- B. A white amur stocking and holding license allows a person to import, possess, stock in a closed aquatic system, and transport triploid white amur (*Ctenopharyngodon idella*).
- C. The white amur stocking and holding license is valid for no more than 20 consecutive days.

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- D.** In addition to the requirements established under this Section, a white amur stocking and holding license holder shall comply with the special license requirements established under R12-4-409.
- E.** The license holder shall be responsible for compliance with all applicable regulatory requirements; the white amur stocking and holding license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.
- F.** The Department shall deny a white amur stocking and holding license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a white amur stocking license when it determines the issuance of the license may result in a negative impact on native wildlife.
- G.** A person applying for a white amur stocking and holding license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to stock white amur. The application is furnished by the Department and is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide the following information on the application:
1. The applicant's information:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Department ID number, when applicable;
  2. If the applicant will use the wildlife for a commercial purpose, the applicant's business:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number;
  3. For each location where the white amur will be held, stocked, or restocked, the land owner's:
    - a. Name;
    - b. Mailing address;
    - c. Telephone number; and
    - d. Physical location description to include the Global Positioning System location or Universal Transverse Mercator coordinates;
    - e. For the purposes of this subsection, the following systems may qualify as separate locations, as determined by the Department:
      - i. Each closed aquatic system;
      - ii. Each separately managed portion of a closed aquatic system; or
      - iii. Multiple separate closed aquatic systems owned, controlled, or legally held by the same applicant where stocking is to occur;
  4. A detailed description and diagram of each enclosed aquatic system where the applicant will stock and hold the white amur, as prescribed under A.R.S. § 17-317, which shall include the following information, as applicable:
    - a. A description of how the system meets the definition of a "closed aquatic system" in subsection (A);
    - b. Size of waterbody proposed for stocking;
    - c. Nearest river, stream, or other freshwater system;
    - d. Points where water enters into each water body;
    - e. Points where water leaves each water body; and
    - f. Location of fish containment barriers;
  5. For each wildlife supplier from whom the applicant will obtain white amur, the supplier's:
    - a. Name;
    - b. Federal Tax Identification Number;
    - c. Mailing address; and
    - d. Telephone number;
  6. The number and average length of white amur to be stocked;
  7. The dates white amur will be stocked, or restocked;
  8. Any other information required by the Department; and
  9. The certification required under R12-4-409(C).
- H.** When the Department determines an applicant proposes to stock and hold white amur in a watershed in a manner that conflicts with the Department's efforts to conserve wildlife, in addition to the requirements listed under subsection (G), the applicant shall also submit a written proposal to the Department at the time of application. The written proposal shall contain all of the following:
1. Anticipated benefits from introducing white amur;
  2. Potential risks introducing white amur may create for wildlife, including:
    - a. Whether white amur are compatible with native aquatic species or game fish; and
    - b. Method for evaluating the potential impact introducing white amur will have on wildlife;
  3. Assessment of probable impacts to sensitive species in the area using the list generated by the Department's On-Line Environmental Review Tool, which is available at [www.azgfd.gov](http://www.azgfd.gov). The proposal must address each species listed.
- I.** A white amur stocking license holder who applies to renew the license shall pay fees as prescribed under R12-4-412.
- J.** A white amur stocking and holding license holder shall comply with the requirements established under R12-4-409.
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
  2. Obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private non-commercial fish pond certified free of the diseases and causative agents through the following actions:
    - a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the fish farm or pond where the aquatic wildlife or biological material is held before it is shipped to the license holder.
    - b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to stocking.
    - c. The applicant shall submit a copy of the certification to the Department prior to conducting any stocking activities.
  3. Allow the Department to conduct inspections of an applicant's or license holder's facility, records, and any waters proposed for stocking at any time before or during the

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license period to determine compliance with the requirements of this Article and to determine the appropriate number of white amur to be stocked.

4. Ensure all shipments of white amur are accompanied by a USFWS, or similar agent, certificate confirming the white amur are triploid.
  5. Possess the license or legible copy of the license while conducting any activities authorized under the white amur stocking and holding license and presents it for inspection upon the request of any Department employee or agent.
- K.** A white amur stocking and holding license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

**Historical Note**

Adopted as an emergency effective July 5, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3).

Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency effective January 24, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments**

- A.** A person who lawfully possessed restricted live wildlife without a license or permit from the Department before the effective date of this Section or any subsequent amendments to R12-4-406, this Section, or this Article may continue to possess the wildlife and to use it for any purpose that was lawful, except propagation, before the effective date of R12-4-406, this Section, or this Article or any subsequent amendments, provided the person complies with the requirements established under subsections (A)(1) or (A)(2).
1. The person submits written notification to the Department's regional office in which the restricted live wildlife is held. The person shall submit the written notification to the regional office within 30 calendar days of the effective date of any subsequent amendments to this Section, R12-4-406, or this Article. The written notification shall include all of the following information:
    - a. The number of individuals of each species,
    - b. The purpose for which it is possessed, and
    - c. The unique identifier for each individual wildlife possessed by the person, as established under subsection (F); or
  2. The person maintains documentation of the restricted live wildlife held. The documentation shall include:
    - a. The number of individuals of each species,

- b. Proof the individuals were legally acquired before the effective date of the amendment causing the wildlife to be restricted,
- c. The purpose for which it is used, and
- d. The unique identifier for each wildlife possessed by the person, as established under subsection (F).

3. The person shall report the birth or hatching of any progeny conceived before and born after the effective date of this Section, R12-4-406, or this Article to the Department and comply with the requirements established under subsection (F).
- B.** The person shall ensure the written notification described under subsection (A)(1) and (A)(2) includes the person's name, address, and the location where the wildlife is held. A person who maintains their own documentation under subsection (A)(2) shall make it available to the Department upon request.
- C.** A person who possesses wildlife under this Section shall dispose of it using any one of the following methods:
1. Exportation;
  2. Euthanasia;
  3. Transfer to an Arizona special license holder, provided the special license authorizes possession of the species involved; or
  4. As otherwise directed by the Department in writing.
- D.** If a person transfers restricted live wildlife possessed under this Section to a special license holder:
1. The exemption for that wildlife under this Section expires, and
  2. The special license holder shall use, possess, and report the wildlife in compliance with this Article and any stipulations applicable to that special license.
- E.** A person who exports wildlife held under this Section shall not import the wildlife back into this state unless the person obtains a special license prior to importing the wildlife back into this state.
- F.** A person who possesses wildlife under this Section shall permanently and uniquely mark the wildlife with a unique identifier as follows:
1. Within 30 calendar days of the effective date of this Section, R12-4-406, or this Article if the person has notified the Department as provided under subsection (A)(1); or
  2. Within 30 calendar days of receiving written notice from the Department directing the person to permanently mark the wildlife.
- G.** A person possessing a desert tortoise (*Gopherus agassizii*) is not subject to the requirements of this Section and shall comply with requirements established under R12-4-404 and R12-4-407.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-426. Possession of Nonhuman Primates**

- A.** A person is prohibited from possessing a nonhuman primate, unless authorized under a special license or lawful exemption.
- B.** A person shall not import a nonhuman primate into this state unless:
1. A person lawfully possessing a nonhuman primate shall ensure the primate is tested and reported to be free of any zoonotic disease that poses a serious health risk as determined by the Department. Zoonotic diseases that pose a serious health risk include, but are not limited to:
    - a. Tuberculosis;

- b. Simian Herpes B virus;
  - c. Simian Immunodeficiency Virus;
  - d. Simian T Lymphotropic Virus; and
  - e. Gastrointestinal pathogens such as, but not limited to, Shigella, Salmonella, E. coli, and Giardia.
- 2. A qualified person, as determined by the Department, performs the test and provides the test results; and
- 3. The tests required under subsection (B)(1) are:
  - a. Conducted no more than 30 days before the person imports the nonhuman primate; and
  - b. The person submits the results to the Department prior to importation.
- C. A person lawfully possessing the nonhuman primate shall contain the primate within the confines of the person's private property or licensed facility.
- D. A person possessing a nonhuman primate may only transport the primate by way of a secure cage, crate, or carrier. A person possessing a primate shall only transport the primate to the following locations:
  - 1. To or from a licensed veterinarian;
  - 2. Into or out of the state for lawful purposes.
- E. A person lawfully possessing a nonhuman primate that bit, scratched, or otherwise exposed a human to pathogenic organisms, as determined by the Department, shall ensure the primate is examined and laboratory tested for the presence of pathogens as follows:
  - 1. The Department shall prescribe examinations and laboratory testing for the presence of pathogens.
  - 2. The person shall have the nonhuman primate examined by a state licensed veterinarian who shall perform any examinations or laboratory tests as directed by the Department.
    - a. The licensed veterinarian shall provide the laboratory results to the Department within 24 hours of receiving the results.
    - b. The Department shall notify the exposed person and the Department of Health Services, Vector Borne and Zoonotic Disease Section within 10 days of receiving notice of the test results.
  - 3. The person possessing the nonhuman primate shall pay all costs associated with the examination, laboratory testing, and maintenance of the primate.
- F. A person lawfully possessing a nonhuman primate shall ensure a primate that tests positive for a zoonotic disease that poses a serious health risk to humans, or is involved in more than one incident of biting, scratching, or otherwise exposing a human to pathogenic organisms, is maintained in captivity or disposed of as directed in writing by the Department.
- G. A zoo license holder or a person using nonhuman primates at a research facility, as defined under R12-4-401, possessing a primate that bit, scratched, or otherwise exposed a human to pathogenic organisms shall quarantine and test the primate in accordance with procedures approved by the Department.
- H. A person lawfully possessing a nonhuman primate is subject to the requirements established under R12-4-428.

#### Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Rule expired December 31, 1989; text rescinded (Supp. 93-2). New Section adopted by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Section R12-4-426(C) corrected to include subsection (C)(1), under A.R.S. § 41-1011 and A.A.C. R1-1-108, Office File No. M11-77, filed March 4, 2011 (Supp. 10-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015

(Supp. 15-4).

#### R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License

- A. A person may possess, provide rehabilitative care to, and release to the wild any live wildlife listed below that is injured, orphaned, or otherwise debilitated:
  - 1. The order *Passeriformes*: passerine birds;
  - 2. The order *Columbiformes*: doves;
  - 3. The family *Phasianidae*: quail, pheasant, and chukars;
  - 4. The order *Rodentia*: rodents; and
  - 5. The order *Lagomorpha*: hares and rabbits.
- B. This Section does not:
  - 1. Exempt the person from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
  - 2. Authorize the person to engage in authorized activities using federally-protected wildlife, unless the person possesses a valid license, permit, or other form of documentation issued by the United States that authorizes the license holder to use that wildlife in a manner consistent with the special license.
- C. This Section does not authorize the possession of any of the following:
  - 1. Eggs of wildlife;
  - 2. Wildlife listed as Species of Greatest Conservation Need, as defined under R12-4-401; or
  - 3. More than 25 animals at the same time.
- D. A person taking and caring for wildlife listed under this Section is not required to possess a hunting license.
- E. A person shall only take wildlife listed under subsection (A) by hand or by a hand-held implement.
- F. A person shall not possess wildlife lawfully held under this Section for more than 60 days.
- G. The exemptions granted under this Section shall not apply to any person who, by their own action, has unlawfully injured, orphaned, or otherwise debilitated the wildlife.
- H. If the wildlife is rehabilitated and suitable for release, the person who possesses the wildlife shall release it within the 60-day period established under subsection (C):
  - 1. Into a habitat that is suitable to sustain the wildlife, or
  - 2. As close as possible to the same geographic area from where it was taken.
- I. If the wildlife is not rehabilitated within the 60-day period or the wildlife requires care normally provided by a veterinarian, the person who possesses it shall:
  - 1. Transfer it to a wildlife rehabilitation license holder or veterinarian;
  - 2. Euthanize it; or
  - 3. Obtain a wildlife holding permit as established under R12-4-417.

#### Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

#### R12-4-428. Captivity Standards

- A. For the purposes of this Section, "animal" means any wildlife possessed under a special license, unless otherwise indicated.
- B. A person possessing wildlife under a special license authorized under this Article shall comply with the minimum standards for the humane treatment of animals established under this Section.



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- C. A person possessing wildlife under an authority granted under this Article shall ensure all facilities meet the following minimum standards:
1. The facility shall be:
    - a. Constructed of material of sufficient strength to resist any force the animal may be capable of exerting against it.
    - b. Constructed in a manner designed to reasonably prevent the animal's escape or the entry of unauthorized persons, wildlife, or domestic animals.
    - c. Constructed and maintained in good repair to protect animals from injury, disease, or death and to enable the humane practices established under this Section.
  2. If required to comply with related requirements established under this Section, each facility shall be equipped with safe, reliable and adequate electric power.
    - a. All electric wiring shall be constructed and maintained in accordance with all applicable governmental building codes.
    - b. Electrical construction and maintenance shall be sufficient to ensure that no animal has direct contact with any electrical wiring or electrical apparatus and the animal is fully protected from any possibility of injury, shock, or electrocution.
  3. Each animal shall be supplied with sufficient potable water to meet its needs.
    - a. All water receptacles shall be kept in clean and sanitary condition.
    - b. Water shall be readily available and monitored at least once daily or more often when the needs of the animal dictate.
    - c. If potable water is not accessible to the animal at all times, it shall be provided as often as necessary for the health and comfort of the animal.
  4. Food shall be suitable, wholesome, palatable, free from contamination, and of sufficient appeal, quantity, and nutritive value to maintain the good health of each animal held in the facility.
    - a. Each animal's diet shall be prepared based upon the nutritional needs and preferences of the animal with consideration for the animal's age, species, condition, health, size, and all veterinary directions or recommendations in regard to diet.
    - b. Each animal shall be fed as often as its needs dictate, taking into consideration behavioral adaptations, veterinary treatment or recommendations, normal fasts, or other professionally accepted humane practices.
    - c. The quantity or level of available food for each animal shall be monitored at least once daily, except for those periods of time when professionally accepted humane practices dictate that the animal not consume any food during the entire day.
    - d. Food and food receptacles, when used, shall be sufficient in quantity and accessible to all animals in the facility and shall be placed to minimize potential contamination and conflict between animals using the receptacles.
    - e. Food receptacles shall be kept clean and sanitary at all times.
    - f. Any self-feeding food receptacles shall function properly and the food they provide shall be monitored at least once daily and shall not be subject to deterioration, contamination, molding, caking, or any other process that would render the food unsafe or unpalatable for the animal.
  5. The facility shall be kept sanitary and regularly cleaned as the nature of the animal requires:
    - a. Adequate provision shall be made for the removal and disposal of animal waste, food waste, unusable bedding materials, trash, debris and dead animals not intended for food.
    - b. The facility shall be maintained to minimize the potential of vermin infestation, disease, and unseemly odors.
    - c. Excreta shall be removed from the primary enclosure facility as often as necessary to prevent contamination, minimize hazard of disease, and reduce unseemly odors.
    - d. The sanitary condition of the facility shall be monitored at least once daily.
    - e. When the facility is cleaned by hosing, flushing, or the introduction of any chemical substances, adequate measures shall be taken to ensure the animal has no direct contact with any chemical substance and is not directly sprayed with water, steam, or chemical substances or otherwise wetted involuntarily.
  6. A sanitary and humane method shall be provided to rapidly eliminate excess water from the facility. If drains are utilized, they shall be:
    - a. Properly constructed.
    - b. Kept in good repair to avoid foul odors or vermin infestation.
    - c. Installed in a manner that prevents the backup or accumulation of debris or sewage.
  7. No animal shall be exposed to any human activity or environment that may have an inhumane or harmful effect upon the animal that is inconsistent with the purpose of the special license.
  8. Facilities shall not be constructed or maintained in proximity to any physical condition which may pose any health threat or unnecessary stress to the animal.
  9. Persons caring for the animals shall conduct themselves in a manner that prevents the spread of disease, minimizes stress, and does not threaten the health of the animal.
  10. All animals housed in the same facility or within the same enclosed area shall be compatible and shall not pose a substantial threat to the health, life or well-being of any other animal in the same facility or enclosure, whether or not the other animals are held under a special license. This subsection shall not apply to live animals utilized as food items in the enclosures.
  11. Facilities for the enclosure of animals shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement to make normal postural and social adjustments.
    - a. The facility area shall be large enough and constructed in a manner to allow the animal proper and adequate exercise as is characteristic to each animal's natural behavior and physical needs.
    - b. Facilities for digging or burrowing animals shall have secure safe floors below materials supplied for digging or burrowing activity.
    - c. Animals that naturally climb or perch shall be provided with safe and adequate climbing or perching apparatus.

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- d. Animals that naturally live in an aquatic environment shall be supplied with sufficient access to safe water so as to meet their aquatic behavioral needs.
  - e. The facility and holding environment shall be structured to reasonably promote the psychological well-being of any animal held in the facility.
12. A special license holder shall ensure that a sufficient number of properly trained personnel are utilized to meet all the humane husbandry practices established under this Section. The license holder shall be responsible for the actions of all animal care personnel and all other persons that come in contact with the animals.
13. The special license holder shall designate a veterinarian licensed to practice in this state as the primary treating veterinarian for each species of animal to be held.
- a. The license holder shall ensure that all animals in their care receive proper, adequate, and humane veterinary care as the needs of each animal dictate.
  - b. Each animal held for more than one year shall be inspected by the attending veterinarian at least once every year.
  - c. Every animal shall promptly receive licensed veterinary care whenever it appears that the animal is injured, sick, wounded, diseased, infected by parasites, or behaving in a substantially abnormal manner, including but not limited to exhibiting loss of appetite or disinclination to normal physical activity.
  - d. All medications, treatments and other directions prescribed by the attending veterinarian shall be properly administered by the license holder, authorized agent, or volunteer. A license holder, authorized agent, or volunteer shall not administer prescription medicine, unless under the direction of a veterinarian.
14. Any animal that is suspected of or diagnosed as harboring any infectious or transmissible disease, whether or not the animal is held under a special license, shall be isolated immediately upon suspicion or diagnosis.
- a. The isolated animal shall continue to be kept in a humane manner as required under this Section.
  - b. When there is an animal with an infectious or transmissible disease in any animal facility, whether or not the animal is held under a special license, the facility shall be sanitized so as to reasonably eliminate the chance of other animals being exposed to infection. Sanitation procedures may include, but are not limited to:
    - i. Washing facilities or animal-related materials with appropriate antibacterial chemical agents, soaps or detergents;
    - ii. Appropriate application of hot water or steam under pressure; and
    - iii. Replacement of gravel, dirt, sand, water, or food. All residue of chemical agents utilized in the sanitation process shall be reasonably eliminated from the facility before any animal is returned to the facility.
  - c. Parasites and vermin shall be controlled and eliminated so as to ensure the continued health and well-being of all animals.
- D.** In addition the standards established under subsection (C), a person shall ensure all indoor facilities meet the following minimum standards:
- 1. Heating and cooling equipment shall be sufficient to regulate the temperature of the facility to protect the animals from temperature extremes as the nature of the wildlife requires to provide a healthy, comfortable, and humane living environment.
  - 2. Indoor facilities shall be adequately ventilated with fresh air to provide for the healthy, comfortable, and humane keeping of any animal and to minimize drafts, odors, and moisture condensation.
  - 3. Indoor facilities shall have lighting of a quality, distribution, and duration as is appropriate for the biological needs of the animals held and to facilitate the inspection and maintenance of the facility.
    - a. Artificial lighting, when used, shall be utilized in regular cycles as the animal's needs dictate.
    - b. Lighting shall be designed to protect the animals from excessive or otherwise harmful aspects of illumination.
- E.** In addition the standards established under subsection (C), a person shall ensure that all outdoor facilities meet the following minimum standards:
- 1. Sufficient shade to prevent the overheating or discomfort of any animal shall be provided.
  - 2. Sufficient shelter appropriate to protect animals from normal climatic conditions throughout the year. Each animal shall be acclimated to outdoor climatic conditions before they are housed in any outdoor facility or otherwise exposed to the extremes of climate.
- F.** A person who handles an animal shall ensure the animal is handled in an expeditious and careful manner to ensure no unnecessary discomfort, behavioral stress, or physical harm to the animal.
- a. An animal shall be transported in a secure, expeditious, careful, temperature appropriate, and humane manner. An animal shall not be transported in any manner that poses a substantial threat to the life, health, or behavioral well-being of the animal.
  - b. An animal placed on public exhibit or educational display shall be handled in a manner that minimizes the risk of harm to members of the public and to the animal, which includes but is not limited to providing and maintaining a sufficient distance between the animal and the viewing public.
  - c. Any restraint used on an animal shall not cause physical harm or unnecessary discomfort.
- G.** The Department may impose additional requirements on facilities that hold animals to meet the needs of the particular animal and ensure public health and safety. Any additional special license facility requirements shall be set forth in writing by the Department at the time the special license is issued.

**Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**R12-4-429. Expired****Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 3127, effective July 1, 2002 for a period of 180 days (Supp. 02-3). Emergency rulemaking renewed under A.R.S. § 41-1026(D) for an additional 180-day period at 9 A.A.R. 132, effective December 27, 2002 (Supp. 02-4). Section expired effective June 24, 2003 (Supp. 03-2).

**R12-4-430. Importation, Handling, and Possession of Cervids**

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- A. The Department shall not issue a new special license authorizing the possession of a live cervid, except as provided under R12-4-418 and R12-4-420.
- B. A person shall not import a live cervid into Arizona, except a zoo license holder may import any live nonnative cervid for exhibit, educational display, or propagation provided the nonnative cervid is quarantined for 30 days upon arrival and is procured from a facility that meets all of the following requirements:
  - 1. The exporting facility has a disease surveillance program and no history of chronic wasting disease or other wildlife disease that pose a serious health risk to wildlife or humans and there is accompanying documentation from the facility certifying there is no history of disease at the facility;
  - 2. The nonnative cervid is accompanied by a health certificate, issued no more than 30 days prior to importation by a licensed veterinarian in the jurisdiction of origin; and
  - 3. The nonnative cervid is accompanied by evidence of lawful possession, as defined under R12-4-401.
- C. A person shall not transport a live cervid within Arizona, except to:
  - 1. Export the live cervid from Arizona for a lawful purpose;
  - 2. Transport the live cervid to a facility for the purpose of slaughter, when the slaughter will take place within five days of the date of transport;
  - 3. Transport the live cervid to or from a licensed veterinarian for medical care;
  - 4. Transport the live cervid to a new holding facility owned by, or under the control of, the cervid owner, when all of the following apply:
    - a. The current holding facility has been sold or closed;
    - b. Ownership, possession, custody, or control of the cervid will not be transferred to another person; and
    - c. The owner of the cervid has prior written approval from the Department; or
  - 5. Transport the live nonnative cervid within Arizona for the purpose of procurement or propagation when all of the following apply:
    - a. The nonnative cervid is transported to or from a zoo licensed under R12-4-420;
    - b. The nonnative cervid is quarantined for 30 days upon arrival at its destination;
    - c. The nonnative cervid is procured from a facility that meets all of the requirements established under subsection (B)(1) through (B)(3).
- D. A person who lawfully possesses a live cervid, except any cervid held under a private game farm or zoo license, shall comply with the requirements established under R12-4-425.
- E. A person shall comply with the requirements established under R12-4-305 when transporting a cervid carcass, or its parts, from a licensed private game farm.
- F. In addition to the recordkeeping requirements of R12-4-413 and R12-4-420, a person who possesses a live cervid under a private game farm or zoo license shall:
  - 1. Permanently mark each live cervid with either an individually identifiable microchip or tattoo within 30 days of acquisition or birth of the cervid; and
  - 2. Include in the annual report submitted to the Department before January 31 of each year, the following for each native cervid in the license holder's possession:
    - a. Name of the license holder,
    - b. License holder's mailing address,
    - c. License holder's telephone number,
    - d. Number and species of live cervids held,
    - e. The microchip or tattoo number of each live native cervid held,
    - f. The disposition of all cervids that were moved or died during the current reporting period
    - h. Any other information required by the Department to ensure compliance with this Section.
- G. The holder of a private game farm, scientific collecting, or zoo license shall ensure that the retropharyngeal lymph nodes or obex from the head of a cervid over one year of age that dies while held under the special licenses is collected by either a licensed veterinarian or the Department and submitted within 72 hours of the time of death to an Animal and Plant Health Inspection Service certified veterinary diagnostic laboratory for chronic wasting disease analysis. A list of approved laboratories is available at any Department office and online at [www.azgfd.gov](http://www.azgfd.gov) or [www.aphis.usda.gov](http://www.aphis.usda.gov). The license holder shall:
  - 1. Ensure the shipment of the deceased animal's tissues is made by a common, private, or contract carrier that utilizes a tracking number system to track the shipment.
  - 2. Include all of the following information with the shipment of the deceased animal's tissues, the license holder's:
    - a. Name,
    - b. Mailing address, and
    - c. Telephone number.
  - 3. Designate, on the sample submission form, test results shall be sent to the Department within 10 days of completing the analysis. The sample submission form is furnished by the diagnostic laboratory providing the test.
  - 4. Be responsible for all costs associated with the laboratory analysis.
- H. A person who possesses a cervid shall comply with all procedures for:
  - 1. Tuberculosis control and eradication for cervids as prescribed under the United States Department of Agriculture publication "Bovine Tuberculosis Eradication: Uniform Methods and Rules" USDA APHIS 91-45-011, revised January 1, 2005, which is incorporated by reference in this Section. available
  - 2. Prevention, control, and eradication of Brucellosis in cervids as prescribed under the United States Department of Agriculture publication "Brucellosis in Cervidae: Uniform Methods and Rules" U.S.D.A. A.P.H.I.S. 91-45-16, effective September 30, 2003.
  - 3. The incorporated material is available at any Department office, online at [www.aphis.usda.gov](http://www.aphis.usda.gov), or may be ordered from the USDA APHIS Veterinary Services, Cattle Disease and Surveillance Staff, P. O. Box 96464, Washington D.C. 20090-6464.
  - 4. The material incorporated by reference in this Section does not include any later amendments or editions.
- I. The Department has the authority to seize, euthanize, and dispose of any cervid possessed in violation of this Section, at the owner's expense.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

**ARTICLE 5. BOATING AND WATER SPORTS****R12-4-501. Boating and Water Sports Definitions**

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In addition to the definitions provided under A.R.S. § 5-301, the following definitions apply to this Article unless otherwise specified:

“Abandoned watercraft” means any watercraft that has remained:

On private property without the consent of the private property owner;

Unattended for more than 48 hours on a highway, public street, or other public property;

Unattended for more than 72 hours on state or federal lands; or

Unattended for more than 14 days on state or federal waterways.

“Aids to navigation” means buoys, beacons, or other fixed objects placed on, in, or near the water to mark obstructions to navigation or to direct navigation through channels or on a safe course.

“AZ number” means the Department-assigned identification number with the prefix “AZ.”

“Bill of sale” means a written agreement transferring ownership of a watercraft that includes all of the following information:

Name of buyer;

Name of seller;

Manufacturer of the watercraft, when known;

Hull identification number, unless exempt under R12-4-505;

Purchase price and sales tax paid, when applicable; and

Signature of seller.

“Boats keep out” in reference to a regulatory marker means the operator or user of a watercraft, or a person being towed by a watercraft on water skis, a surfboard, or similar device or equipment shall not enter.

“Certificate of number” means the Department-issued document that is proof that a motorized watercraft is registered in the name of the owner.

“Certificate of origin” means a document provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, or the original purchaser establishing the initial chain of ownership for a watercraft, such as but not limited to:

Manufacturer’s certificate of origin (MCO);

Manufacturer’s statement of origin (MSO);

Importer’s certificate of origin (ICO);

Importer’s statement of origin (ISO); or

Builder’s certification (Form CG-1261).

“Controlled-use marker” means an anchored or fixed marker on the water, shore, or a bridge that controls the operation of watercraft, water skis, surfboards, or similar devices or equipment.

“Dealer” means any person who engages in whole or in part in the business of buying, selling, or exchanging new or used watercraft, or both, either outright or on conditional sale, consignment, or lease.

“Homemade watercraft” means a watercraft that is not fabricated or manufactured for resale and to which a manufacturer

has not attached a hull identification number. If a watercraft is assembled from a kit or constructed from an unfinished manufactured hull and does not have a manufacturer assigned hull identification number it is a “homemade watercraft.”

“Hull identification number” means a number assigned to a specific watercraft by the manufacturer or by a government jurisdiction as prescribed by the U.S. Coast Guard.

“Junk watercraft” means any hulk, derelict, wreck, or parts of any watercraft in an unseaworthy or dilapidated condition that cannot be profitably dismantled or salvaged for parts or profitably restored.

“Letter of gift” means a document transferring ownership of a watercraft that includes all of the following information:

Name of previous owner;

Name of new owner;

Name of manufacturer of the watercraft, when known;

Hull identification number, unless exempt under R12-4-505;

A statement that the watercraft is a gift; and

Signature of previous owner.

“Livery” means a business authorized to rent watercraft without an operator as prescribed under A.R.S. § 5-371.

“Manufacturer” means any person engaged in the business of manufacturing or importing new watercraft for the purpose of sale or trade.

“Motorized watercraft” means any watercraft propelled by machinery and powered by electricity, fossil fuel, or steam.

“No ski” in reference to a regulatory marker means a person shall not be towed on water skis, an inflatable device, or similar equipment.

“Nonresident Boating Safety Infrastructure Decal” means the Department-issued decal that is proof of payment of the fee authorized under A.R.S. § 5-327.

“No wake” in reference to a regulatory marker has the same meaning as “wakeless speed” as defined under A.R.S. § 5-301.

“Operate” in reference to a watercraft means use, navigate, or employ.

“Owner” in reference to a watercraft means a person who claims lawful possession of a watercraft by virtue of legal title or equitable interest that entitles the person to possession.

“Personal flotation device” means a U.S. Coast Guard approved Type I, II, III, or V wearable, or Type IV throwable device for use on any watercraft, as prescribed under A.R.S. §§ 5-331, 5-350(A), and R12-4-511.

“Regatta” means an organized water event of limited duration affecting the public use of waterways, for which a lawful jurisdiction has issued a permit.

“Registered owner” means the person or persons to whom a watercraft is currently registered by any jurisdiction.

“Registration decal” means the Department-issued decal that is proof of watercraft registration.

“Regulatory marker” means a waterway marker placed on, in, or near the water to indicate the presence of:

A danger,

A restricted or controlled-use area, or

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To convey general information and directions.  
 “Release of interest” means a statement surrendering or abandoning unconditionally any claim or right of ownership or use in a watercraft.

“Sound level” means the noise level measured in decibels on the A-weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer’s instructions.

“Staggered registration” means the system of renewing watercraft registrations in accordance with the schedule provided under R12-4-504.

“State of principal operation” means the state in whose waters the watercraft is used or will be operated most during the calendar year.

“Unreleased watercraft” means a watercraft for which there is no written release of interest from the registered owner.

“Watercraft” means a boat or other floating device of rigid or inflatable construction designed to carry people or cargo on the water and propelled by machinery, oars, paddles, or wind action on a sail. Exceptions are sea-planes, makeshift contrivances constructed of inner tubes or other floatable materials that are not propelled by machinery, personal flotation devices worn or held in hand, and other objects used as floating or swimming aids.

“Watercraft agent” means a person authorized by the Department to collect applicable fees for the registration and numbering of watercraft.

“Watercraft registration” means the validated certificate of number and validating decals issued by the Department.

#### Historical Note

Editorial correction subsection (A) (Supp. 78-5). Former Section R12-4-83 renumbered as Section R12-4-501 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-501 renumbered to R12-4-515, new Section R12-4-501 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

#### R12-4-502. Application for Watercraft Registration

- A. Only motorized watercraft as defined under R12-4-501 are subject to watercraft registration.
- B. A person shall apply for watercraft registration under A.R.S. § 5-321 using a form furnished by the Department and available at any Department office or online at [www.azgfd.gov](http://www.azgfd.gov). The applicant shall provide the following information for registration of all motorized watercraft except homemade watercraft, which are addressed under subsection (C):
  1. Type of watercraft;
  2. Propulsion type;
  3. Engine drive type;
  4. Overall length of watercraft;
  5. Make and model of watercraft, if known;
  6. Year built or model year, if known;
  7. Hull identification number;
  8. Hull material;
  9. Fuel type;
  10. Category of use;

11. Watercraft or AZ number previously issued for the watercraft, if any;
12. State of principal operation; and
13. For watercraft:
  - a. Owned by an individual:
    - i. Name,
    - ii. Mailing address, and
    - iii. Date of birth.
  - b. Owned by a business:
    - i. Name of business
    - ii. Business address, and
    - iii. Tax Identification Number
  - c. Held in a trust:
    - i. Name of trust,
    - ii. Primary trustee’s address, and
    - iii. Date of trust.
14. When ownership of the watercraft is in more than one name, the applicant shall indicate ownership designation by use of one of the following methods:
  - a. Where ownership is joint tenancy with right of survivorship, the applicant shall use “and/or” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. Upon legal proof of the death or incompetency of either owner, the remaining owner may transfer registration of the watercraft.
  - b. Where ownership is a tenancy in common the applicant shall use “and” between the names of the owners. To transfer registration of the watercraft, each owner shall provide a signature. In the event of the death or incompetency of any owner, the disposition of the watercraft shall be handled through appropriate legal proceedings.
  - c. Where the ownership is joint tenancy or is community property with an express intent that either of the owners has full authority to transfer registration, the applicant shall use “or” between the names of the owners. Each owner shall sign the application for registration. To transfer registration, either owner’s signature is sufficient for transfer.
- C. The builder, owner, or owners of a homemade watercraft shall present the watercraft for inspection at a Department office. The applicant shall provide the following information for registration of homemade watercraft, using the same ownership designations specified in subsection (A)(14):
  1. Type of watercraft;
  2. Propulsion type;
  3. Engine drive type;
  4. Overall length of watercraft;
  5. Year built;
  6. Hull material;
  7. Fuel type;
  8. Category of use;
  9. Each owner’s:
    - a. Name,
    - b. Mailing address, and
    - c. Date of birth;
  10. State of principal operation;
  11. Whether the watercraft was assembled from a kit or rebuilt from a factory or manufacturer’s hull;
  12. Hull identification number, if assigned; and
  13. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- D. As prescribed under A.R.S. § 5-321, the applicant shall submit a use tax receipt issued by the Arizona Department of Revenue

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with the application for registration unless any one of the following conditions apply:

1. The applicant is exempt from use tax as provided under A.A.C. Title 15, Chapter 5,
  2. The applicant is transferring the watercraft from another jurisdiction to Arizona without changing ownership,
  3. The applicant submits a bill of sale or receipt showing the sales or use tax was paid at the time of purchase, or
  4. The applicant submits a notarized affidavit of exemption stating that the acquisition of the watercraft was for rental or resale purposes.
- E.** An applicant for a watercraft dealer registration authorized under A.R.S. § 5-322(F), shall be a business offering watercraft for sale or a watercraft manufacturer registered by the U.S. Coast Guard. A person shall display dealer registration for demonstration purposes only. For the purposes of this Section, "demonstration" means to operate a watercraft on the water for the purpose of selling, trading, negotiating, or attempting to negotiate the sale or exchange of interest in new watercraft, which includes operation by a manufacturer for purposes of testing a watercraft. Demonstration does not include operation of a watercraft for personal purposes by a dealer or manufacturer or an employee, family member, or an associate of a dealer or manufacturer. A watercraft dealer registration applicant shall submit an application to the Department. The application is furnished by the Department and is available at any Department office. The applicant shall provide the following information on the application:
1. All business names used for the sale or manufacture of watercraft in Arizona;
  2. Mailing address and telephone number for each business for which a watercraft dealer registration is requested;
  3. Tax privilege license number;
  4. U.S. Coast Guard manufacturer identification code, when applicable;
  5. Total number of certificates of number and decals requested; and
  6. The business owner's or manager's:
    - a. Name,
    - b. Business address,
    - c. Telephone number, and
    - d. Signature.
- F.** In addition to submitting the application form and any other information required under this Section, the applicant for watercraft registration shall submit one of the following additional forms of documentation:
1. Original title if the watercraft is titled in another state,
  2. Original registration if the watercraft is from a non-titling state,
  3. Bill of sale as defined under R12-4-501 if the watercraft has never been registered or titled in any state,
  4. Letter of gift as defined under R12-4-501 if the watercraft was received as a gift and was never registered or titled in another state,
  5. Court order or other legal documentation establishing lawful transfer of ownership, or
  6. Statement of facts form furnished by the Department and available from any Department office when none of the documentation identified under subsections (F)(1) through (F)(5) exists either in the possession of the watercraft owner or in the records of any jurisdiction responsible for registering or titling watercraft. An applicant for watercraft registration under a statement of facts shall present the watercraft for inspection at a Department office. The statement of facts form shall include the following information:
    - a. Hull identification number,
    - b. Certification that the watercraft meets one of the following conditions:
      - i. The watercraft was manufactured prior to 1972, is 12 feet in length or less, and is not propelled by an inboard engine;
      - ii. The watercraft is owned by the applicant and has never been registered or titled;
      - iii. The watercraft was owned in a state that required registration, but was never registered or titled; or
      - iv. The watercraft was purchased, received as a gift, or received as a trade and has not been registered, titled, or otherwise documented in the past five years.
    - c. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- 7.** An original certificate of origin when all of the following conditions apply:
- a. The watercraft was purchased as new,
  - b. The applicant is applying for watercraft registration within a year of purchasing the watercraft, and
  - c. The certificate of origin is not held by a lien holder.
- G.** If the watercraft is being transferred to a person other than the original listed owner, the applicant for a watercraft registration shall submit a release of interest.
- H.** If the original title is held by a lien holder, the applicant for a watercraft registration shall submit a form furnished by the Department and available from any Department office along with a copy of the title. The applicant shall comply with the following requirements when submitting the form:
1. The applicant shall provide the following information on the form:
    - a. Applicant's name,
    - b. Applicant's mailing address,
    - c. Watercraft make, and
    - d. Watercraft hull identification number.
  2. The applicant shall ensure the lien holder provides the following information on the form:
    - a. Lien holder's name,
    - b. Lien holder's mailing address,
    - c. Name of person completing the form for the lien holder,
    - d. Title of person completing the form for the lien holder, and
    - e. Signature of the person completing the form for the lien holder, acknowledged before a Notary Public or witnessed by a Department employee.
- I.** The Department shall issue a watercraft registration within 30 calendar days of receiving a valid application and documentation required by this Section, whether from the applicant or from a watercraft agent authorized under R12-4-509.
- J.** The Department shall register a watercraft, if the watercraft's original title or registration is lost, upon receipt of one of the following:
1. A letter or printout from any jurisdiction responsible for registering or titling watercraft that verifies the owner of record for that specific watercraft;
  2. A printout of the Vessel Identification System from the U.S. Coast Guard and verification from the appropriate state agency that the information regarding the owner of record for that specific watercraft is correct and current;
  3. A statement of facts by the applicant as described under subsection (F)(6) if the watercraft has not been registered, titled, or otherwise documented in the past five years; or

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4. The abandoned or unreleased watercraft approval letter issued by the Department, as established under R12-4-507(I).
- K. All watercraft registrations and supporting documentation are subject to verification by the Department and to the requirements established under R12-4-505. The Department shall require a watercraft to be presented for inspection to verify the information provided by an applicant if the Department has reason to believe the information provided by the applicant is inaccurate.
- L. The Department shall deem an application invalid if the Department receives legal documentation of any legal action that may affect ownership of the watercraft.
- M. The Department shall invalidate a watercraft registration if the registration is obtained by an applicant who makes a false statement or provides false information on any application, statement of facts, or written instrument submitted to the Department.

**Historical Note**

Former Section R12-4-84 renumbered as Section R12-4-502 without change effective August 13, 1981 (Supp. 81-4). Amended effective January 2, 1985 (Supp. 85-1). Former Section R12-4-502 repealed, new Section R12-4-502 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-503. Renewal of Watercraft Registration**

- A. The owner of a registered watercraft shall ensure the watercraft's registration is renewed no later than the day before the prior registration period expires.
- B. To renew a watercraft's registration in person or by mail, an applicant shall pay the registration fee authorized under A.R.S. § 5-321 and present one of the following:
1. Current or prior certificate of number,
  2. Valid driver's license,
  3. Valid Arizona Motor Vehicle Division identification card,
  4. Valid passport, or
  5. Department-issued renewal notice.
- C. To renew a watercraft's registration online, an applicant shall electronically pay the registration fee authorized under A.R.S. § 5-321, provide the assigned Arizona watercraft AZ number of the watercraft being renewed, and one of the following to the Department or its agent:
1. Department-assigned authorization number,
  2. Applicant's date of birth, or
  3. Applicant's password.
- D. When a watercraft registration is renewed by mail or online, the Department shall mail the renewal to the address of record, unless the Department receives a notarized request from the registered owner instructing the Department to mail the renewal to another address.

**Historical Note**

Former Section R12-4-85 renumbered as Section R12-4-503 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-503 renumbered to R12-4-519, new Section R12-4-503 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19

A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-504. Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule**

- A. The following fees are required, when applicable as authorized under A.R.S. §§ 5-321 and 5-322:
1. Motorized watercraft registration fees are assessed as follows:
    - a. Twelve feet and less: \$20
    - b. Twelve feet one inch through sixteen feet: \$22
    - c. Sixteen feet one inch through twenty feet: \$30
    - d. Twenty feet one inch through twenty-six feet: \$35
    - e. Twenty-six feet one inch through thirty-nine feet: \$39
    - f. Thirty-nine feet one inch through sixty-four feet: \$44
    - g. Sixty-four feet one inch and over: \$66
    - h. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
  2. Motorized watercraft transfer fee: \$4.
  3. Duplicate motorized watercraft registration: \$2.
  4. Duplicate decal: \$2.
  5. Watercraft dealer certificate of number: \$2.50.
- B. The Department or its agent shall collect the entire registration fee for a late registration renewal and a penalty fee of \$5, unless exempt under A.R.S. § 5-321(L), or unless the expiration date falls on a Saturday, Sunday, or state holiday, and the registration is renewed before the close of business on the next working day. The Department or its agent shall not assess a penalty fee when a renewal is mailed before the expiration date, as evidenced by the postmark.
- C. All new watercraft registrations expire 12 months after they are issued.
- D. Resident and nonresident watercraft registration renewals expire on the last day of the month indicated by the last two numeric digits of the AZ number, as shown in the following table:

Last two numeric digits of AZ number									Expiration month
00	12	24	36	48	60	72	84	96	December
01	13	25	37	49	61	73	85	97	January
02	14	26	38	50	62	74	86	98	February
03	15	27	39	51	63	75	87	99	March
04	16	28	40	52	64	76	88		April
05	17	29	41	53	65	77	89		May
06	18	30	42	54	66	78	90		June
07	19	31	43	55	67	79	91		July
08	20	32	44	56	68	80	92		August
09	21	33	45	57	69	81	93		September
10	22	34	46	58	70	82	94		October
11	23	35	47	59	71	83	95		November

- C. Watercraft dealer, manufacturer, and governmental use registration renewals expire on October 31 of each year.
- D. Livery and all other commercial use registration renewals expire on November 30 of each year.

**Historical Note**

Amended effective December 5, 1978 (Supp. 78-6). Amended effective March 6, 1980 (Supp. 80-2). Former

Section R12-4-86 renumbered as Section R12-4-504 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-504 repealed, new Section R12-4-504 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking pursuant to A.R.S. § 41-1005(A)(2)(b) at 21 A.A.R. 1046, effective June 16, 2015 (Supp. 15-2).

#### **R12-4-505. Hull Identification Numbers**

- A. The Department shall not register a watercraft without a hull identification number.
- B. The Department shall verify watercraft manufactured after November 1, 1972, have a primary hull identification number that complies with the requirements established under 33 CFR 181, subpart C. The Department shall assign a hull identification number when the watercraft hull identification number does not meet the requirements established under 33 CFR 181, subpart C.
- C. The hull identification number shall be fully visible and unobstructed at all times. Watercraft manufactured prior to August 1, 1984, are exempt from this requirement provided the obstruction is original equipment and was attached by the manufacturer.
- D. The Department shall assign a hull identification number to a watercraft with a missing hull identification number only if the Department determines:
  1. The hull identification number was not illegally removed or altered, unless the application is accompanied by an order of forfeiture, order of seizure, or other civil process; or
  2. The missing hull identification number was caused by error of the manufacturer or a government jurisdiction or failure of a previous owner of a watercraft to comply with this rule, or because the watercraft is a homemade watercraft as defined under R12-4-501.
- E. The Department may assign a hull identification number within 30 days of receipt of a valid application, as described under R12-4-502.
- F. The Department may accept a bill of sale presented with a missing or improper hull identification number for registration purposes only if:
  1. It matches the improper hull identification number or there is no hull identification number on the watercraft; or
  2. A hull identification number is issued by the Department under subsection (D).
- G. Within 30 days of issuance, the applicant or registered owner shall:
  1. Burn, carve, stamp, emboss, mold, bond, or otherwise permanently affix each hull identification number to a non-removable part of the watercraft in a manner that ensures any alteration, removal, or replacement will be obvious.
  2. Ensure the characters of each hull identification number affixed to the watercraft are no less than 1/4 inch in height.
  3. Permanently affix the hull identification number as follows:
    - a. On watercraft with transoms, affix the hull identification number to the right or starboard side of the transom within two inches of the top of the transom or hull/deck joint, whichever is lower.

- b. On watercraft without a transom, affix the hull identification number to the starboard outboard side of the hull, back or aft within one foot of the stern and within two inches of the top of the hull, gunwale, or hull/deck joint, whichever is lowest.
  - c. On a catamaran or pontoon boat, affix the hull identification number on the aft crossbeam within one foot of the starboard hull attachment.
  - d. As close as possible to the applicable location established under subsections (a), (b), or (c) when rails, fittings, or other accessories obscure the visibility of the hull identification number.
  - e. Affix a duplicate of the visibly affixed hull identification number in an unexposed location on a permanent part of the hull.
4. Certify to the Department that the hull identification number was permanently affixed to the watercraft as required under subsection (G). The certification statement is furnished by the Department when the hull identification number is issued. The certification statement shall include the location of the permanently affixed hull identification number.

#### **Historical Note**

Amended effective January 1, 1980 (Supp. 79-6). Former Section R12-4-87 renumbered as Section R12-4-505 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-505 repealed, new Section R12-4-505 adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

#### **R12-4-506. Invalidation of Watercraft Registration and Decals**

- A. Any watercraft registration obtained by fraud or misrepresentation is invalid from the date of issuance.
- B. A certificate of number and any decals issued by the Department under R12-4-502 and R12-4-529 are invalid if any of the following occurs:
  1. Any check, money order, or other currency certificate presented to the Department for payment of watercraft registration or renewal is found to be non-negotiable;
  2. Any person whose name appears on the certificate of number loses ownership of the watercraft by legal process;
  3. Arizona is no longer the state of principal operation;
  4. The watercraft is documented by the U.S. Coast Guard;
  5. An applicant provides incomplete or incorrect information to the Department and fails to provide the correct information within 30 days after a request by the Department;
  6. The Department revokes the certificate of number, AZ numbers, and decals as provided under A.R.S. § 5-391(I); or
  7. The Department erroneously issued a certificate of number or any decals.
- C. A person shall surrender the invalid certificate of number and decals to the Department within 15 calendar days of receiving written notification from the Department.
- D. The Department shall not validate or renew an invalid watercraft registration or decals until the reason for invalidity is corrected or no longer exists.



**Historical Note**

Adopted effective December 4, 1984 (Supp. 84-6). Amended subsection (B) effective December 30, 1988 (Supp. 88-4). Correction, former Historical Note should read "Amended subsection (B) effective January 1, 1989, filed December 30, 1988" (Supp. 89-2). Former Section R12-4-506 repealed, new Section R12-4-506 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft**

- A.** A person who has knowledge and custody of a watercraft abandoned on private property owned by that person may attempt to obtain ownership of the watercraft by way of the abandoned watercraft transfer process.
- B.** The last registered owner of an abandoned or unreleased watercraft is presumed to be responsible for the watercraft, unless the watercraft is reported stolen.
- C.** The operator of a self-storage facility located in this state and having a possessory lien shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 15, Article 1 when attempting to obtain ownership of a watercraft abandoned while in storage.
- D.** A person having a possessory lien under a written rental agreement shall comply with the requirements prescribed under A.R.S. Title 33, Chapter 7, Article 6 when attempting to obtain ownership of a watercraft for which repairs or service fees remain unpaid.
- E.** Only a person acting within the scope of official duties as an employee or authorized agent of a government agency may order the removal of a watercraft abandoned on public property or a public waterway.
- F.** A person seeking ownership of an abandoned or unreleased watercraft shall submit an application to the Department. The application is furnished by the Department and available at any Department office. The application shall include the following information, if available:
  1. Hull identification number, unless exempt under R12-4-505;
  2. Registration number;
  3. Decal number;
  4. State of registration;
  5. Year of registration;
  6. Name, address, and daytime telephone number of the person who found the watercraft;
  7. For abandoned watercraft:
    - a. Address or description of the location where the watercraft was found,
    - b. Whether the watercraft was abandoned on private or public property, and
    - c. When applicable, for watercraft abandoned on private property, whether the applicant is the legal owner of the property;
  8. Condition of the watercraft: wrecked, stripped, or intact;
  9. State in which the watercraft will be operated;
  10. Length of time the watercraft was abandoned;
  11. Reason why the applicant believes the watercraft is abandoned; and
  12. Signature of the applicant, acknowledged before a Notary Public or witnessed by a Department employee.
- G.** This state and its agencies, employees, and agents are not liable for relying in good faith on the contents of the application.
- H.** The Department shall attempt to determine the name and address of the registered owner by:
  1. Conducting a search of its watercraft database when documentation indicates the watercraft was previously registered in this state, or
  2. Requesting the watercraft record from the other state when documentation indicates the watercraft was previously registered in another state.
- I.** If the Department is able to determine the name and address of the registered owner, the Department shall send written notice of the applicant's attempt to register the watercraft to the owner by certified mail, return receipt requested.
  1. If service is successful or upon receipt of a response from the registered owner, the Department shall send the following written notification to the applicant, as appropriate:
    - a. If the registered owner provides a written release of interest in the watercraft, the Department shall mail the release of interest and an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
    - b. If the registered owner provides written notice to the Department refusing to release interest in the watercraft, the Department shall notify the applicant of the owner's refusal. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502.
    - c. If the registered owner does not respond to the notice in writing within 30 days from the date of receipt, the Department shall notify the applicant of the owner's failure to respond. The Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with the requirements established under R12-4-502;
    - d. If the registered owner does not respond to the notice within 180 days from the date of receipt of the notice, this failure to act shall constitute a waiver of interest in the watercraft by any person having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes. The Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
  2. If the written notice is returned unclaimed or refused, the Department shall notify the applicant within 15 days of the notice being returned that the attempt to contact the registered owner was unsuccessful.
- J.** If the Department is unable to identify or serve the registered owner, the Department shall publish a notice of intent once in a newspaper or other publication of general circulation in this state within 45 days of the Department's notification to the applicant as provided in subsection (I)(2).
  1. The published notice shall include a statement of the Department's intent to transfer ownership of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten day period following publication.
  2. Upon request, the Department shall make available to the public a description of the abandoned or unreleased watercraft subject to transfer of ownership.

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3. If the watercraft remains unclaimed after the ten day period, the Department shall mail an abandoned or unreleased watercraft approval letter to the applicant. The applicant shall apply for watercraft registration in compliance with the requirements established under R12-4-502.
- K.** A government agency may submit an application for authorization to dispose of a junk watercraft abandoned on state or federal lands or waterways. The application is furnished by the Department and is available at any Department Office. Upon receipt of the application, the Department shall attempt to determine the name and address of the registered owner. If the Department is unable to identify and serve the registered owner, the Department shall publish a notice of intent to authorize the disposal of the junk watercraft as described in subsection (J).
  1. The published notice shall include a statement of the Department's intent to authorize the disposal of the watercraft ten days after the date of publication, unless the Department receives notice from the registered owner refusing to release interest in the watercraft within that ten day period following publication.
  2. If the watercraft remains unclaimed after the ten day period, the Department shall mail an authorization to dispose of the junk watercraft to the government agency. The government agency may dispose of the abandoned watercraft and all indicia for that watercraft in any manner the agency determines expedient or convenient.

**Historical Note**

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-508. New Watercraft Exchanges**

- A.** A person may request a no-fee replacement registration for a new watercraft, provided all of the following conditions apply:
  1. The person purchased the newly registered watercraft from a new watercraft dealer,
  2. The person returned the watercraft to the new watercraft dealer within 30 days of purchase, and
  3. The new watercraft dealer exchanged the returned watercraft for a watercraft of the same year, make, and model within the same 30 day period.
- B.** To obtain a no-fee replacement registration, the person shall submit the original watercraft registration and a letter from the new watercraft dealer to the Department. The letter shall include all of the following information:
  1. A statement that the original watercraft was replaced,
  2. The hull identification number for the original watercraft,
  3. The hull identification number for the replacement watercraft,
  4. The buyer's name, and
  5. The new watercraft dealer's name.

**Historical Note**

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-509. Watercraft Agents**

- A.** The Department has the authority to authorize a watercraft dealer to act as an agent on behalf of the Department for the

purpose of issuing temporary certificates of number valid for 30 days for new watercraft, provided:

1. The applicant's previous authority to act as a watercraft agent under A.R.S. § 5-321(I) has not been canceled by the Department within the preceding 24 months, and
2. The applicant is a business located and operating within this state and sells watercraft for an identified manufacturer.
- B.** An applicant seeking watercraft dealer authorization shall submit an application to the Department. The application is furnished by the Department and available at the Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, AZ 85086. The applicant shall provide the following information on the application:
  1. Principal business or corporation name, address, and telephone number or if not a corporation, the full name, address, and telephone number of all owners or partners;
  2. Name, address, and telephone number of the owner or manager responsible for compliance with this Section;
  3. Whether the applicant has previously issued temporary certificates of number under A.R.S. § 5-321(I);
  4. All of the following information specific to the location from which new watercraft are to be sold and temporary certificates of number issued:
    - a. Name of owner or manager;
    - b. Business hours;
    - c. Business telephone number;
    - d. Business type;
    - e. Storefront name; and
    - f. Street address;
  5. Manufacturers of the watercraft to be distributed; and
  6. Signature of person named under subsection (B)(2).
- C.** The Department shall either approve or deny the application within the licensing time-frame established under R12-4-106.
- D.** The watercraft dealer shall:
  1. Use the assigned watercraft dealer number when issuing a temporary certificate of number,
  2. Use the online application system or forms supplied by the Department; and
  3. Collect the appropriate fee as prescribed under A.R.S. §§ 5-321 and 5-327.
- E.** Authorization to act as a watercraft agent is specific to the dealer's business location designated on the application and approved by the Department, unless the dealer is participating in a scheduled, advertised boat show for the purpose of selling watercraft.
- F.** A watercraft dealer shall not destroy prenumbered temporary certificate of number applications provided by the Department. The watercraft dealer shall mark the unused prenumbered application "void" and return the application to the Department with the monthly report required under subsection (J).
- G.** The Department shall provide supplies within 30 calendar days after receipt of the watercraft dealer's request form. The watercraft dealer shall verify supplies were received within seven days of receipt.
- H.** A watercraft dealer issuing a temporary certificate of number to the purchaser of a new watercraft shall comply with all the following:
  1. The watercraft dealer shall obtain an application if the watercraft is purchased from the dealer or the applicant's bill of sale containing the following information:
    - a. Statement that the watercraft is new;
    - b. Names and addresses of the buyer and seller;
    - c. Date of purchase;
    - d. Amount of sales tax paid;

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- e. Purchase price;
  - f. Make and model of watercraft, if known;
  - g. Engine drive type;
  - h. Length of the watercraft;
  - i. Year of manufacture; and
  - j. Hull identification number.
2. The watercraft dealer shall identify to the applicant the state registration fee and the nonresident boating safety infrastructure fee, when applicable, separately from any other costs.
  3. Within 72 hours after issuing a temporary certificate of number, a watercraft dealer shall deliver or mail the legible original application, a legible original or copy of the bill of sale, the original certificate of origin, and the state's fees to the Arizona Game and Fish Department, Watercraft Agent Representative, 5000 W. Carefree Highway, Phoenix, AZ 85086.
  4. The state's fees shall be submitted by check or money order with the required documentation or electronically prior to the submission of the required documentation.
- I.** The Department shall accept online applications or prenumbered temporary certificate of number application forms provided to the watercraft dealer by the Department, as established under R12-4-502.
- J.** By the 10th day of each month, a watercraft dealer shall submit a report of activity for the previous month to the Department on a form furnished by the Department and available at the Department office listed under subsection (H)(3). The watercraft dealer shall submit the report whether or not any activity occurred during the reporting period. The report shall include all of the following:
1. Name and address of the watercraft dealer;
  2. Department assigned watercraft agent number;
  3. For each temporary certificate of number issued:
    - a. Application number;
    - b. Name of the purchaser;
    - c. Hull identification number; and
    - d. Date of issuance; and
  4. A list of any voided or missing application numbers, with explanation.
  5. A watercraft dealer who processes all transactions using the Department's online application system is exempt from subsection (J).
- K.** The Department may cancel the watercraft dealer's authorization and demand the return of or collect all supplies issued to the agent if the dealer does any one of the following:
1. Fails to comply with the requirements established under this Section;
  2. Submits more than one check, draft, order, or electronic payment dishonored because of insufficient funds, payments stopped, or closed accounts to the Department within a calendar year;
  3. Predates, postdates, alters, or provides or knowingly allows false information to be provided on or with an application for a temporary certificate of number;
  4. Issues a temporary certificate of number for a used watercraft;
  5. Falsifies the application for authorization as a watercraft agent; or 6. Falsifies the monthly report required by subsection (J).
- L.** Denial of a dealer's application to become a watercraft agent, or cancellation of watercraft agent status by the Department may be appealed to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective May 27, 1992 (Supp. 92-2). Amended

by final rulemaking at 9 A.A.R. 1613, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-510. Refund of Fees Paid in Error**

- A.** The Department shall issue a refund for watercraft fees paid in error under the following circumstances:
1. The Department shall issue a refund for the watercraft registration renewal fee and, when applicable, the Non-resident Boating Safety Infrastructure fee when the registered owner has erroneously paid those fees twice for the same watercraft.
  2. The Department shall issue a refund for the watercraft registration renewal fee and, when applicable, the Non-resident Boating Safety Infrastructure fee when the registered owner has erroneously paid those fees for a watercraft that has already been sold to another individual.
- B.** To request a refund of fees paid in error, the person applying for the refund shall surrender all of the following to the Department:
1. Original certificate of number;
  2. Registration decals; and
  3. Nonresident Boating Safety Infrastructure Decal, when applicable.
- C.** A person requesting a refund of fees under subsections (A)(1) or (A)(2) shall submit the request to the Department within 30 calendar days of the date the payment was received by the Department.
- D.** The Department shall not refund any late registration penalty fee.

**Historical Note**

Adopted effective May 27, 1992 (Supp. 92-2). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-511. Personal Flotation Devices**

- A.** For the purpose of this Section, "wear" means:
1. The personal flotation device is worn according to the manufacturer's design or recommended use;
  2. All of the device's closures are fastened, snapped, tied, zipped, or secured according to the manufacturer's design or recommended use; and
  3. The device is adjusted for a snug fit.
- B.** The operator of a canoe, kayak, or other watercraft shall ensure the canoe, kayak, or other watercraft is equipped with at least one appropriately-sized, U.S. Coast Guard-approved, wearable personal flotation device that is in good and serviceable condition for each person on board the canoe, kayak, or other watercraft. The operator of a canoe, kayak, or other watercraft shall also ensure the wearable personal flotation devices on board the canoe, kayak, or other watercraft are readily accessible and available for immediate use. The following wearable personal flotation devices are approved by the U.S. Coast Guard:
1. Type I Personal Flotation Device: off-shore life jacket,
  2. Type II Personal Flotation Device: near-shore buoyancy vest,
  3. Type III Personal Flotation Device: flotation aid, and
  4. Type V Special Use Device.
- C.** In addition to the personal flotation devices described under subsection (B), the operator of a watercraft that is 16 feet or more in length shall ensure the watercraft is also equipped with a U.S. Coast Guard-approved Type IV Personal Flotation

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Device: buoyant cushion, ring buoy, or horseshoe buoy. Canoes and kayaks are not subject to this subsection.

- D. The operator of a watercraft shall ensure an individual twelve years of age or under on board a watercraft shall wear a U.S. Coast Guard approved type I, II or III personal flotation device whenever the watercraft is underway.
- E. The operator of a personal watercraft shall ensure each individual aboard the personal watercraft is wearing a wearable personal flotation device approved by the U.S. Coast Guard whenever the personal watercraft is underway.
- F. Subsections (B), (C), and (D) do not apply to the operation of a racing shell or rowing skull during competitive racing or supervised training, if the racing shell or rowing skull is manually propelled, recognized by a national or international association for use in competitive racing, and designed to carry and does carry only equipment used solely for competitive racing.

**Historical Note**

Amended effective May 26, 1978 (Supp. 78-3). Former Section R12-4-80 renumbered as Section R12-4-511 without change effective August 13, 1981 (Supp. 81-4). Amended effective May 27, 1992 (Supp. 92-2). Amended effective January 1, 1996; filed in the Office of the Secretary of State December 18, 1995 (Supp. 95-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-512. Fire Extinguishers Required for Watercraft**

- A. The operator of watercraft shall ensure all required fire extinguishers are readily accessible and available for immediate use.
- B. As prescribed under A.R.S. § 5-332, an operator of a:
  - 1. Watercraft less than 26 feet in length shall carry one U.S. Coast Guard-approved B-I type fire extinguisher on board if the watercraft has one or more of the following:
    - a. An inboard engine,
    - b. Closed compartments where portable fuel tanks may be stored,
    - c. Double bottoms not sealed to the hull or which are not completely filled with flotation materials,
    - d. Closed living spaces,
    - e. Closed stowage compartments in which combustible or flammable materials are stored,
    - f. Permanently installed fuel tanks (fuel tanks that cannot be moved in case of a fire or other emergency are considered permanently installed), and
    - g. A fixed fire extinguishing system installed in the engine compartment.
  - 2. Watercraft 26 feet to less than 40 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
    - a. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher, or
    - b. At least one B-I type approved hand-portable fire extinguisher if a fixed fire extinguishing system is installed in the engine compartment.
  - 3. Watercraft 40 feet to not more than 65 feet shall carry on board the following equipment as designated and approved by the U.S. Coast Guard:
    - a. At least three B-I type hand-portable fire extinguishers or at least one B-I and one B-II type hand-portable fire extinguishers, or

- b. At least two B-I type hand-portable fire extinguishers or at least one B-II type hand-portable fire extinguisher when a fixed fire extinguishing system is installed in the engine compartment.

**Historical Note**

Former Section R12-4-81 renumbered as Section R12-4-512 without change effective August 13, 1981 (Supp. 81-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-513. Watercraft Accident and Casualty Reports**

- A. The operator or owner of a watercraft involved in any collision, accident or other casualty resulting in injury, death, or property damage exceeding \$500 shall submit the report required under A.R.S. § 5-349 to the Department. The report shall be made on a form furnished by the Department and provided by the law enforcement officer investigating the collision, incident, or other casualty. The operator or owner of the watercraft shall complete the form in full and clearly identify on the form any information that is either not applicable or unknown. The operator or owner of the watercraft submitting the report shall provide the following information:
  - 1. The operator's personal information;
  - 2. The owner's personal information;
  - 3. The operator's hours of experience in operating watercraft;
  - 4. The operator's amount of boating safety instruction;
  - 5. Information on the watercraft involved;
  - 6. Information on the accident;
  - 7. Estimated cost of damage to the watercraft;
  - 8. Whether the watercraft sank, and if so, information regarding the recovery of the watercraft;
  - 9. Information regarding U.S. Coast Guard-approved personal flotation devices;
  - 10. Information regarding fire extinguishers;
  - 11. Personal information for operators and owners of each of the other watercraft involved in the accident;
  - 12. Personal information for persons killed or injured in the accident;
  - 13. Personal information for all passengers in the watercraft;
  - 14. The location of passengers, skiers, and swimmers at the time of the accident;
  - 15. Information regarding damage to property other than any of the watercraft involved;
  - 16. Contact information for any witnesses other than passengers;
  - 17. A diagram and narrative explaining the accident;
  - 18. Contact information for the person completing the form;
  - 19. The signature of the person completing the form;
  - 20. The date the person completing the form submits the form to the Department; and
  - 21. Any other information required by the Department to ensure compliance with 33 CFR 173.57.
- B. The person completing the form shall deliver or mail the form to the Arizona Game and Fish Department, Law Enforcement Branch at 5000 W. Carefree Hwy, Phoenix, AZ 85086.
- C. The operator or owner of a watercraft involved in any collision, accident or other casualty resulting in injury or death shall submit the report to the Department no later than 48 hours after the incident.
- D. The operator or owner of a watercraft involved in any collision, accident or other casualty resulting only in property damage exceeding \$500 shall submit the report to the Department no later than five days after the incident.

**Historical Note**

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-514. Liveries**

- A. As prescribed under A.R.S. § 5-371, a watercraft owned by a boat livery that requires registration and does not have the certificate of number on board shall be identified while in use by means of a receipt provided by the livery to the person operating the rented watercraft. The receipt shall contain the following information:
1. Business name and address of the livery as shown on the certificate of number,
  2. Watercraft registration number as issued by the Department,
  3. Beginning date and time of the rental period, and
  4. Written acknowledgment on the receipt of compliance with the requirements prescribed under A.R.S. § 5-371, signed by both the livery operator or the livery's agent and the renter.
- B. The person operating the rented watercraft shall carry the receipt and produce it upon request to any peace officer.

**Historical Note**

Adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-515. Display of AZ Numbers and Registration Decals**

- A. A person shall not use or operate, or grant permission to use or operate, a watercraft on the waters within the boundaries of this state unless such watercraft displays a valid number and current registration decal in the manner as established under subsection (B). This Section does not apply to undocumented watercraft displaying a valid temporary numbering certificate authorized under R12-4-509 or exempt under A.R.S. § 3-322.
- B. The owner of a watercraft shall ensure the AZ number and registration decals are displayed as follows:
1. The AZ numbers shall:
    - a. Be clearly visible and painted on or attached to each exterior side of the forward half of a non-removable portion of the watercraft;
    - b. Be in a color that contrasts with the watercraft's background color so as to be easily read from a distance;
    - c. Include the letters "AZ" and the suffix, separated by a hyphen or equivalent space between the letters "AZ" and the suffix; and
    - d. Read from left to right in well-proportioned block letters that are not less than three inches in height, excluding outline.
  2. The registration decals shall be affixed three inches in front of "AZ" on both sides of the forward half of a non-removable portion of the watercraft.
- C. On watercraft so constructed that it is impractical or impossible to display the AZ numbers in a prominent position on the forward half of the hull or permanent superstructure, the AZ numbers may be displayed on brackets or fixtures securely attached to the forward half of the watercraft.
- D. Persons possessing a dealer watercraft certificate of number issued under A.R.S. § 5-322(F) shall visibly display the AZ numbers and validating registration decals as established under this Section, except that the numbers and decals may be printed or attached to temporary, removable signs that are securely attached to the watercraft being demonstrated.

- E. Expired registration decals issued by any jurisdiction shall be covered or removed from the watercraft, so that only the current registration decals are visible.
- F. Invalid watercraft AZ numbers and registration decals shall not be displayed on any watercraft. The owner of the watercraft shall surrender the AZ numbers and registration decals to the Department in compliance with R12-4-506(C).

**Historical Note**

Section R12-4-515 renumbered from R12-4-501 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-516. Watercraft Sound Level Restriction**

- A. A person shall not operate a watercraft upon the waters of this state if the watercraft emits a noise level that exceeds any of the following.
1. A noise level of 86 dB(A), measured at a distance of 50 feet or more from the watercraft on the "A" weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer's instructions.
  2. For engines manufactured:
    - a. Before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; and
    - b. On or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004 and containing no later editions or amendments; or
  3. A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice shoreline sound test SAEJ1970, revised September 2003 and containing no later editions or amendments.
- B. The materials incorporated by reference in subsection (A) may be viewed at any Department office and are available for purchase from SAE International, 400 Commonwealth Dr, Warrendale, PA 15096-0001 or online at [www.sae.org](http://www.sae.org).
- C. A measurement of noise level that is in compliance with this Section does not preclude the conducting of a test or multiple tests of noise levels.
- D. A peace officer authorized to enforce the provisions of this Section who has reason to believe a watercraft is being operated in violation of the noise levels established in this Section may direct the operator of the watercraft to submit the watercraft to an onsite test to measure noise level.
- E. An operator of a watercraft who receives a request from a peace officer to test the noise level of the watercraft under subsection (D) shall allow the watercraft to be tested. If, based on a measurement or test to determine the noise level of a watercraft administered under this Section, the noise level of the watercraft exceeds one or more of the decibel level standards in subsection (A), the operator of the watercraft shall take immediate measures to correct the violation as prescribed under A.R.S. § 5-391(C).
- F. This Section shall not apply to watercraft operated under permits issued in accordance with A.R.S. § 5-336(C).

**Historical Note**

Former Section R12-4-82 renumbered as Section R12-4-516 without change effective August 13, 1981 (Supp. 81-4). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013

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(Supp. 13-1).

**R12-4-517. Watercraft Motor and Engine Restrictions**

A. A person operating a motorized watercraft on the following waters shall use an electric motor only:

1. Ackre Lake
2. Bear Canyon Lake
3. Bunch Reservoir
4. Carnero Lake
5. Chaparral Park Lake
6. Cluff Ponds
7. Coconino Reservoir
8. Coors Lake
9. Dankworth Pond
10. Dogtown Reservoir
11. Fortuna Lake
12. Goldwater Lake
13. Granite Basin Lake
14. Horsethief Basin Lake
15. Hulsey Lake
16. J.D. Dam Lake
17. Knoll Lake
18. Lee Valley Lake
19. McKellips Park Lake
20. Pratt Lake
21. Quigley Lake
22. Redondo Lake
23. Riggs Flat Lake
24. Roper Lake
25. Santa Fe Lake
26. Scott's Reservoir
27. Sierra Blanca Lake
28. Soldier Lake (in Coconino County)
29. Stehr Lake
30. Stoneman Lake
31. Tunnel Reservoir
32. Whitehorse Lake
33. Willow Valley Lake
34. Woodland Reservoir
35. Woods Canyon Lake

B. A person operating a motorized watercraft on the following waters shall use only a single electric motor or a single gasoline engine not exceeding 10 manufacturer-rated horsepower:

1. Arivaca Lake
2. Ashurst Lake
3. Becker Lake
4. Big Lake
5. Black Canyon Lake
6. Blue Ridge Reservoir
7. Cataract Lake
8. Chevelon Canyon Lake
9. Cholla Lake Hot Pond
10. Concho Lake
11. Crescent Lake
12. Fool Hollow Lake
13. Kaibab Lake
14. Kinnikinick Lake
15. Little Mormon Lake
16. Lower Lake Mary
17. Luna Lake
18. Lynx Lake
19. Marshall Lake
20. Mexican Hay Lake
21. Nelson Reservoir
22. Parker Canyon Lake
23. Peña Blanca Lake

24. Rainbow Lake
25. River Reservoir
26. Show Low Lake
27. Whipple Lake
28. White Mountain Lake (in Apache County)
29. Willow Springs Lake

C. A person shall not operate a watercraft on Frye Mesa Reservoir, Rose Canyon Lake, or Snow Flat Lake, except as authorized under subsection (D).

D. A person who possesses a valid use permit issued by the U.S. Forest Service may operate a non-motorized watercraft only on Rose Canyon Lake on any Tuesday, Wednesday, or Thursday during June and July from 9:30 a.m. to 4:30 p.m. Mountain Time Zone. This subsection does not exempt the person from complying with all applicable requirements imposed by federal or state laws, rules, regulations, or orders.

E. This Section does not apply to watercraft of governmental agencies or to Department-approved emergency standby watercraft operated by lake concessionaires if operating to address public safety or public welfare.

**Historical Note**

Amended as an emergency effective April 10, 1975 (Supp. 75-1). Amended effective May 3, 1976 (Supp. 76-3). Amended as an emergency effective July 9, 1976 (Supp. 76-4). Amended effective June 4, 1979 (Supp. 79-3). Former Section R12-4-89 renumbered as Section R12-4-517 without change effective August 13, 1981 (Supp. 81-4). Amended subsections (A) and (C) effective December 17, 1981 (Supp. 81-6). Amended effective December 28, 1982 (Supp. 82-6). Amended subsections (A) through (C) effective December 4, 1984 (Supp. 84-6). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by exempt rulemaking at 17 A.A.R. 1189, effective May 24, 2011 (Supp. 11-2). Subsection (A)(9) corrected clerical error (Supp. 11-3).

**R12-4-518. Regattas**

A. When a regatta permit is issued by the Coast Guard, the person in control of the regatta shall at all times be responsible for compliance with the stipulations as prescribed within the regatta permit. Such stipulations may include but not be limited to:

1. A specified number of patrol or committee boats and identified as such.
2. Availability of emergency medical services.
3. Spectator control if there exists a danger that life or property is in jeopardy.

B. Non-compliance with any stipulation of an authorized permit which jeopardizes the public welfare shall be cause to terminate the regatta until the person in control or a person designated by the one in control satisfactorily restores compliance.

C. When a regatta applicant is informed in writing by the Coast Guard that a permit is not required, such regatta may take place, but shall not relieve the regatta sponsor of any responsibility for the public welfare or confer any exemption from state boating and watersports laws and rules.

D. The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S. Title 17, Chapter 2, Article 3.1 and 12 A.A.C. 4, Article 11.

**Historical Note**

Adopted effective March 5, 1982 (Supp. 82-2). Amended by final rulemaking at 18 A.A.R. 196, effective January

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10, 2012 (Supp. 12-1).

**R12-4-519. Reciprocity**

As authorized under A.R.S. § 5-322(E), all watercraft currently numbered or exempt from numbering under the provisions of their state of principal operation are exempt from numbering for a period of 90 days after entering this state.

**Historical Note**

Section R12-4-519 renumbered from R12-4-503 and amended effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-520. Arizona Uniform State Waterway Marking System**

The Arizona uniform state waterway marking system is the same as that prescribed under 33 CFR 62, revised July 1, 2004, which is incorporated by reference in this Section. The incorporated material is available at any Department office, online at [www.gpoaccess.gov](http://www.gpoaccess.gov), or it may be ordered from the U.S. Government Printing Office, Stop: IDCC, Washington, D.C. 20401. This Section does not include any later amendments or editions of the incorporated material.

**Historical Note**

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-521. Placing or Tampering with Regulatory Markers or Aids to Navigation**

- A. A person shall not mark the waterways or their shorelines in this state with mooring buoys, regulatory markers, aids to navigation, or other types of permitted waterway marking devices as established under R12-4-520, without authorization from the governmental agency or the private interest having jurisdiction on such waters.
- B. A person shall not moor or fasten a watercraft to any marker not intended for mooring, or willfully damage, tamper with, remove, obstruct, or interfere with any aid to navigation, regulatory marker or other type of permitted waterway marking devices as established under R12-4-520, except in the performance of authorized maintenance responsibilities or as authorized under R12-4-518 or R12-4-522.

**Historical Note**

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-522. Establishment of Controlled-Use Markers**

- A. If a lawful jurisdiction has not exercised its authority to control watercraft under A.R.S. § 5-361, or if waters are directly under the jurisdiction of the Commission, the Department has the authority to control watercraft within that jurisdiction in accordance with the following requirements:
  - 1. The Department shall place controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and shall move or remove the markers only if the need for the protection changes.
  - 2. The Department shall ensure restrictions imposed are clearly communicated to the public as prescribed by rule or by wording on the markers.

- B. A governmental agency, excluding federal agencies with jurisdiction over federal navigable waterways, shall report to the Department when controlled-use markers have been placed or removed, unless the establishment or removal of markers is for a period of less than 30 days. The report shall be made within 30 days of establishment or removal of any controlled-use markers and shall include the:
  - 1. Report type,
  - 2. Purpose of markers,
  - 3. Placement of markers, and
  - 4. Whether the markers are expected to be permanent or temporary.

- C. Any person or government agency may request establishment, change, or removal of controlled-use markers on waters under the jurisdiction of the Commission or on waters not under the jurisdiction of another agency by submitting a written request providing the reasons for the request to the Arizona Game and Fish Department, 5000 W. Carefree Hwy, Phoenix, AZ 85086. The Department shall either approve or deny the request within 60 days of receipt.

- D. A person may appeal the Department's denial of a request to the Commission as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-523. Controlled Operation of Watercraft**

- A. A person shall not operate any watercraft, or use any watercraft to tow a person on water skis, a surfboard, inflatable device, or similar object, device or equipment in a manner contrary to the area restrictions imposed by lawfully placed controlled-use markers, except for:
  - 1. Law enforcement officers acting within the scope of their lawful duties;
  - 2. Persons involved in rescue operations;
  - 3. Persons engaged in government-authorized activities; and
  - 4. Persons participating in a regatta, during the time limits of the event only.
- B. The exemptions listed under subsection (A) do not authorize any person to operate a watercraft in a careless, negligent, or reckless manner as prescribed under A.R.S. § 5-341.

**Historical Note**

Section R12-4-520 adopted effective May 27, 1992 (Supp. 92-2). Amended by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-524. Water Skiing**

An operator of a watercraft shall ensure that the observer of a water skier is physically capable and mentally competent to act as an observer and at least 12 years of age.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4).

**R12-4-525. Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals**

- A. For the purposes of this Section, "person" has same meaning as prescribed under A.R.S. § 5-301.

- B. Upon notice of conviction of a person under A.R.S. § 5-391(G), the Department shall revoke for a period not to exceed two years the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of any Arizona registered watercraft owned by that person and involved in the violation.
- C. Upon notice of conviction of a person under A.R.S. § 5-391(H), the Department shall revoke for a period not to exceed one year the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals for any Arizona registered watercraft owned by that person and involved in the violation.
- D. Upon receiving notice of conviction, the Department shall serve notice under A.R.S. §§ 41-1092.03 and 41-1092.04 on the person convicted that the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals of watercraft the person owns are subject to revocation.
- E. A person whose certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals are subject to revocation may request a hearing. The person shall submit a written request to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Hwy, Phoenix, AZ 85086, within 30 calendar days of receiving the notice described under subsection (D).
- F. If the person requests a hearing, the Department shall, within 60 days of receiving the request, schedule a hearing as prescribed under A.R.S. § 41-1092.05.
- G. After a final decision to revoke the person's certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals, the Department shall serve upon the person an Order of Revocation. Within 15 calendar days of receipt of the notice, the person shall surrender to the Department the revoked certificates of number and decals.
- H. The revocation of the certificates of number, AZ numbers, registration decals, and Nonresident Boating Safety Infrastructure decals does not affect the legal title to or any property rights in the watercraft. Upon receipt of an application to transfer watercraft registration by the new watercraft owner, the Department shall terminate the revocation and allow the owner to transfer the owner's entire interest in the watercraft if the Department is satisfied the transfer is proposed in good faith and not for the purpose of defeating the revocation.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3025, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

#### R12-4-526. Unlawful Mooring

- A. A person, as defined under A.R.S. § 5-301, shall not moor, anchor, fasten to the shore, or otherwise secure a watercraft in any public body of water for more than 14 days within any period of 28 consecutive days unless:
  - 1. The person moves the watercraft at least 25 nautical miles from its previous location,
  - 2. The waters are a special anchorage area as defined under A.R.S. § 5-301,
  - 3. Authorized for private dock or moorage, or
  - 4. Authorized by the government agency or private interest having jurisdiction over the waters.
- B. The 14 day limit may be reached through either a number of separate moorings or 14 days of continuous overnight occupation during the 28 day period.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

#### R12-4-527. Transfer of Ownership of a Towed Watercraft

- A. For the purpose of this Section, "towed watercraft" means a watercraft that has been impounded by and is in the possession of a towing company located in this state.
- B. At the time a towing company requests watercraft registration information prescribed under A.R.S. § 5-324 for a towed watercraft, the towing company shall present the towed watercraft to the closest Department office for identification if there is no discernible hull identification number or state-issued registration number.
- C. A towing company seeking to transfer the ownership of a towed watercraft shall submit all of the following to the Director of the Department:
  - 1. Evidence of compliance with notification requirements prescribed under A.R.S. § 5-399;
  - 2. A report on a form furnished by the Department and available at any Department office. The form shall include all of the following information:
    - a. Name of towing company;
    - b. Towing company's business address;
    - c. Towing company's business telephone number;
    - d. Towing company's Arizona Department of Public Safety tow truck permit number;
    - e. Towed watercraft's hull identification number, if known;
    - f. Towed watercraft's state-issued registration number, registration decal, and year of expiration, if known;
    - g. Towed watercraft's trailer license number, if available;
    - h. State and year of trailer registration, if available;
    - i. Towed watercraft's color and manufacturer, if known;
    - j. Towed watercraft's condition, whether intact, stripped, damaged, or burned, along with a description of any damage;
    - k. Date the watercraft was towed;
    - l. Location from which the towed watercraft was removed;
    - m. Entity that ordered the removal of the towed watercraft, and if a law enforcement agency, include officer badge number, jurisdiction, and copy of report or towing invoice;
    - n. Location where the towed watercraft is stored; and
    - o. Name and signature of towing company's authorized representative; and
  - 3. Twenty-five dollar application fee authorized under A.R.S. § 5-399.03(2).
- D. If the Department is unsuccessful in its attempt to identify or contact the registered owner or lienholder of the towed watercraft and has determined the towed watercraft is not stolen, the towing company shall follow the application procedures established under A.R.S. § 5-399.02(B) and R12-4-502 to register the towed watercraft.

#### Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1241, effective May 26, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking repealed under A.R.S. § 41-1026(E) and permanent new Section made by final rulemaking at 9



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A.A.R. 1613, effective July 5, 2003 (Supp. 03-2).  
Amended by final rulemaking at 19 A.A.R. 597, effective  
July 1, 2013 (Supp. 13-1).

**R12-4-528. Watercraft Checkpoints**

- A. A law enforcement agency may establish a watercraft checkpoint to ensure public safety on state waterways, to screen for unsafe or impaired watercraft operators, or to gather demographic, statistical, and compliance information related to watercraft activities.
- B. An individual may be required to perform the following during a watercraft stop or at a watercraft checkpoint:
  1. Stop or halt as directed when being hailed by a peace officer or entering the established checkpoint boundary as prescribed under A.R.S. § 5-391, and
  2. Provide evidence of required safety equipment and registration documentation prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.
- C. This Section does not limit any state peace officer's authority to conduct routine watercraft patrol efforts prescribed under A.R.S. Title 5, Chapter 3, Boating and Water Sports.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 4511, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 597, effective July 1, 2013 (Supp. 13-1).

**R12-4-529. Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal**

- A. Before placing that watercraft on the waterways of this State, a nonresident owner of a recreational watercraft who establishes this State as the state of principal operation shall pay the applicable Nonresident Boating Safety Infrastructure Fee (NBSIF) as authorized under A.R.S. § 5-327:
  1. Twelve feet and less: \$80
  2. Twelve feet one inch through sixteen feet: \$88
  3. Sixteen feet one inch through twenty feet: \$192
  4. Twenty feet one inch through twenty-six feet: \$224
  5. Twenty-six feet one inch through thirty-nine feet: \$253
  6. Thirty-nine feet one inch through sixty-four feet: \$286
  7. Sixty-four feet one inch and over: \$429
  8. For the purposes of this subsection, the length of the motorized watercraft shall be measured in the same manner prescribed under A.R.S. § 5-321(C).
- B. The nonresident recreational watercraft owner shall carry and display proof of payment of the fee while the watercraft is underway, moored, or anchored on the waterways of this State. Acceptable proof of payment includes any one of the following:
  1. A current Arizona Watercraft Certificate of Number indicating the NBSIF was paid,
  2. A current Arizona Watercraft Temporary Certificate of Number indicating the NBSIF was paid,
  3. A current Arizona Watercraft Registration Decal indicating the NBSIF was paid, or
  4. A current Arizona Nonresident Boating Safety Infrastructure Decal.
- C. The Nonresident Boating Safety Infrastructure Decal shall be affixed in front of the Arizona Watercraft Registration Decal on both sides of the forward half of the watercraft.

**Historical Note**

Adopted effective October 22, 1976 (Supp. 76-5). Former Section R12-4-90 renumbered as Section R12-4-529 without change effective August 13, 1981 (Supp. 81-4). Repealed effective May 27, 1992 (Supp. 92-2). New Section made by final rulemaking at 19 A.A.R. 597, effective

July 1, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3).

**R12-4-530. Reserved**

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**R12-4-540. Reserved****R12-4-541. Repealed****Historical Note**

Former Section R12-4-88 renumbered as Section R12-4-541 without change effective August 13, 1981 (Supp. 81-4). Amended effective April 5, 1985 (Supp. 85-2). Repealed effective May 27, 1992 (Supp. 92-2).

**R12-4-542. Repealed****Historical Note**

Adopted as an emergency effective August 31, 1981, valid for ninety (90) days after filing pursuant to A.R.S. § 41-1003 (Supp. 81-4). Former Section R12-4-542 adopted as an emergency now adopted as permanent with further amendment effective March 5, 1982 (Supp. 82-2). Amended effective March 29, 1985 (Supp. 85-2). Repealed effective May 27, 1992 (Supp. 92-2).

**R12-4-543. Repealed****Historical Note**

Adopted effective January 29, 1982 (Supp. 82-1). Amended effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective July 3, 1984 (Supp. 84-4). Amended effective March 29, 1985 (Supp. 85-2). Correction, subsection (A), paragraph (2) as certified effective March 29, 1985 (Supp. 86-3). Amended subsection (A) effective June 18, 1987 (Supp. 87-2). Amended as an emergency effective May, 15, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Amended and readopted as an emergency effective August 25, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Emergency amendments adopted with changes effective January 5, 1990 (Supp. 90-1). Repealed effective May 27, 1992 (Supp. 92-2).

**R12-4-544. Repealed****Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective July 3, 1984 (Supp. 84-4). Amended subsection (A) effective June 18, 1987 (Supp. 87-2). Repealed effective May 27, 1992 (Supp. 92-2).

**R12-4-545. Repealed****Historical Note**

Adopted effective April 5, 1985 (Supp. 85-2). Amended by emergency effective May 18, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted effective August 28, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Repealed effective May 27, 1992 (Supp. 92-2).

**ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION****R12-4-601. Petition for Rule or Review of Practice or Policy**

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- A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section.
- B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section.
- C. A petitioner shall not address more than one rule, practice, or substantive policy in the petition.
- D. If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.
- E. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033.
- F. Within five working days after a petition is submitted, the Director shall determine whether the petition complies with this Section.
  - 1. If the petition complies with this Section, the Director shall place the petition on a Commission open meeting agenda. The petitioner may present oral testimony at that meeting, as established under R12-4-603.
  - 2. If a petition does not comply with subsections (G) through (L) of this Section, the Director shall return a copy of the petition as filed to the petitioner and indicate in writing why the petition does not comply with this Section. The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five-year review process.
- G. Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.
- H. The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:
  - 1. If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;
  - 2. If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner; or the names and addresses of all individuals represented by the petitioner; or
  - 3. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.
- I. The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:
  - 1. If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;
  - 2. If the request is for amendment of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the current rule proposed for amendment, the heading of the rule, the specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;
  - 3. If the request is for repeal of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the rule proposed for repeal and the heading of the rule; or
  - 4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.
- J. The title of Part 3 shall be "Reason for the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:
  - 1. The reason the petitioner believes rulemaking or review of a practice or policy is necessary;
  - 2. Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;
  - 3. An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and
  - 4. If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.
- K. The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.
- L. The title of Part 5 shall be "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:
  - 1. An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (2); or
  - 2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
  - 3. The month, day, and year that the petition is signed.

**Historical Note**

Adopted effective December 22, 1987 (Supp. 87-4).  
 Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

**R12-4-602. Written Comments on Proposed Rules**

Any individual may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State under A.R.S. § 41-1022. An individual who submits written comments to the Commission may voluntarily provide their name and mailing address. To be placed into the rulemaking record

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and considered by the Commission for a final decision, the individual submitting the written comments shall ensure that they:

1. Are received before or on the closing date for written comments, as published by the Secretary of State in the Arizona Administrative Register;
2. Indicate, if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category; and
3. Are submitted to the employee designated by the Department to receive written comments, as published in the Arizona Administrative Register.

**Historical Note**

Adopted effective December 22, 1987 (Supp. 87-4).

Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-603. Oral Proceedings Before the Commission**

- A. For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.
- B. The Commission may allow an oral proceeding on any matter. At an oral proceeding:
  1. The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
  2. Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
  3. The Chair may order the removal of any individual who is disrupting the proceeding.
  4. Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
  5. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.
- C. The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.
- D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:
  1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
  2. Demonstrate that the proceeding has not been continued more than twice; and
  3. Demonstrate good cause for the continuance.

**Historical Note**

Adopted effective December 22, 1987 (Supp. 87-4).

Amended effective November 10, 1997 (Supp. 97-4).

Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-604. Ex Parte Communication**

- A. For purposes of this Section:
  1. "Individual outside the Commission" means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the

Commission, or an attorney representing the Commission.

2. "Ex parte communication" means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.
- B. In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication:
  1. An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decision-making process of the proceeding, an ex parte communication relevant to the merits of the proceeding;
  2. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding.
- C. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:
  1. A copy of each written communication;
  2. A memorandum stating the substance of each oral communication; and
  3. A copy of each response and memorandum stating the substance of each oral response to any communication governed by subsections (C)(1) and (C)(2).
- D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
- E. The provisions of this Section apply from the date that a notice of hearing for a contested case is served, a notice of appealable agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge.

**Historical Note**

Adopted effective December 22, 1987 (Supp. 87-4).

Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-605. Standards for Revocation, Suspension, or Denial of a License**

- A. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for an individual who has been convicted of any of the following offenses:

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1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill animal or an animal that was engaged in depredation is not considered "possessing during a closed season" for the purposes of this subsection.
  2. Destroying, injuring, or molesting livestock, or damaging or destroying personal property, notices or signboards, other improvements, or growing crops while hunting, fishing, or trapping.
  3. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person, if the act of discharging the firearm was deliberate.
  4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
  5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
  6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
- B.** Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:
1. Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:
    - a. The big game was taken without a valid license or permit.
    - b. The unlawful taking was willful and deliberate.
    - c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.
  2. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:
    - a. The taking was willful and deliberate.
    - b. The possession was in excess of the lawful possession limit plus the daily bag limit.
  3. Unlawfully taking wildlife species if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.
  4. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.
  5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.
  6. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.
  7. Violation of A.R.S. § 17-306 for unlawful possession of wildlife.
- C.** Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, or special license (as defined in R12-4-401) in any case where license revocation is authorized by law.

**Historical Note**

Adopted effective December 22, 1987 (Supp. 87-4).

Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages**

- A.** The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-238, 17-340, 17-362, 17-363, 17-364, R12-4-105, and R12-4-605. The Director may also commence a proceeding for civil damages under A.R.S. § 17-314.
- B.** The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. A respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to order recovery of civil damages or wildlife parts.
- C.** If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard is provided, unless rehearing or review is granted under R12-4-607. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing required by A.R.S. § 17-340(D). The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D.** The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.
- E.** Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair has the authority to issue the subpoenas.
1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission chair.
  2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).
- F.** A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of

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fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A denial of the right to obtain a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

- G.** A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been completed. Under A.R.S. § 17-340(A), a suspension of a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

**Historical Note**

Adopted effective December 22, 1987 (Supp. 87-4).  
Amended effective November 10, 1997 (Supp. 97-4).  
Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-607. Rehearing or Review of Commission Decisions**

- A.** For purposes of this Section the following terms apply:
1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
  2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).
- B.** Except as provided in subsection (G), any party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review within 30 calendar days after service of the final administrative decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum, specifying the grounds for the motion.
- C.** A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has 15 calendar days after service to respond to the motion or the amended motion. The Commission has the authority to require that the parties file written briefs on any issue raised in a motion or response, and allow for oral argument.
- D.** The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
  7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Commission may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission's order modifying a decision or granting a rehearing shall specify the grounds for the order, and any rehearing shall cover only those specified matters.

- F.** Not later than 15 calendar days, after a decision, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.

- G.** When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.

**Historical Note**

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered without change as Section R12-4-607 effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-608. Expired****Historical Note**

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-1). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective January 31, 2002 (Supp. 02-1).

**R12-4-609. Commission Orders**

- A.** Except as provided in subsection (B):
1. At least 20 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting.
  2. The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting.
  3. The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.
- B.** The requirements of subsection (A) do not apply to Commission orders establishing:
1. Supplemental hunts as prescribed in R12-4-115, and
  2. Special seasons for individuals that possess special license tags issued under A.R.S. § 17-346 and R12-4-120.
- C.** The Department shall publish the content of all Commission orders and make them available to the public without charge.

**Historical Note**

Adopted effective March 1, 1991; filed February 28,

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1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

**R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles**

- A. An individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B. A petition shall not address more than one contiguous closure request.
- C. Once the Commission has considered and denied a petition, an individual who subsequently submits a petition that addresses the same contiguous closure request shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.
- D. A petitioner shall submit an original and one copy of the petition to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regularly-scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly-scheduled open meeting.
- E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.
  1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.
  2. If a petition does not meet the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
  3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- F. The petitioner shall submit a petition that:
  1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper;
  2. Has a concise map that shows the specific location of the proposed closure;
  3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;
  4. Is in four parts, with titles designating each part as prescribed in this subsection;
  5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
    - a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
    - b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
    - c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
  6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
    - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
    - b. A complete legal description of the area to be closed;
    - c. The name or identifying number of any road and the portion of the road affected by the closure; and
    - d. The dates proposed for the closure:
      - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
      - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
  7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
    - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
    - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
    - c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
    - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
    - e. A proposed alternate access route, under R12-4-110.
  8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
    - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
    - b. The month, day, and year when the petition was signed.

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**Historical Note**

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

**R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy**

- A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.
- B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.
- C. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086.
- D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E. The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
  1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
  2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
  3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G. The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
  1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
  2. The month, day, and year that the petition is signed.
- I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.

- J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly scheduled Commission meeting.
- K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L. This Section does not apply to the following:
  1. A matter related to a license revocation or civil assessment;
  2. An unsuccessful hunt permit-tag computer draw application, where there was no error on the part of the Department; or
  3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 7. HERITAGE GRANTS****R12-4-701. Heritage Grant Definitions**

In addition to the definitions provided under A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

"Administrative subunit" means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant. For example, an individual:

Administrative department, but not an entire city government;

Field office or project office, but not an entire agency; or

School, but not an entire school district.

"Eligible applicant" means any public agency, non-governmental organization, or nonprofit organization that meets the applicable requirements of this Article.

"Facilities" means any structure or site improvements.

"Fund" means the Arizona Game and Fish Commission Heritage Fund, established under A.R.S. § 17-297.

"Grant agreement" means a document that details the terms and conditions of a grant project.

"Grant effective date" means the date the Department Director signs the Grant Agreement.

"In-kind" means contributions other than cash, which include individual and material resources that the applicant makes available to the project, e.g. a public employee's salary, volunteer time, materials, supplies, space, or other donated goods and services.

"Participant" means an eligible applicant who has been awarded a grant from the Heritage Fund.

"Project" means an activity, or series of related activities, or services described in the specific project scope of work and results in specific end products.

"Project period" means the time during which a participant shall complete all approved work and related expenditures associated with an approved project.

"Public agency" means the federal government or any federal department or agency, an Indian tribe, this state, all state departments, agencies, boards, and commissions, counties,

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school districts, public charter schools, cities, towns, all municipal corporations, administrative subunits, and any other political subdivision.

“Publicly held lands” means federal, public, and reserved land, State Trust Land, and other lands within Arizona that are owned, controlled, or managed by the federal government, a state agency, or political subdivision.

“Term of public use” means the time period during which the project or facility is expected to be maintained for public use.

#### Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

#### R12-4-702. General Provisions; Heritage Grant Fund Requirements

- A. The Department, in its sole discretion, may make Heritage Fund Grants available for projects that:
  1. Are located in Arizona or benefit Arizona wildlife or its habitat; and
  2. Meet the criteria established in the Heritage Grant application materials.
- B. The Department shall:
  1. Provide public notice of the time, location, and due date for application submission; and
  2. Furnish materials necessary to complete the application.
- C. An applicant seeking Heritage Grant funding shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. An applicant shall provide the following information on the Heritage Grant application form:
  1. The name of the applicant;
  2. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
  3. The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;
  4. Identification of the application criterion established in the Heritage Grant application materials;
  5. A descriptive project title;
  6. The name of the site, primary location, and any other locations of the project;
  7. Description of the:
    - a. Scope of work and the objective of the proposed project,
    - b. Methods for achieving the objective, and
    - c. Desired result of the project;
  8. The beginning and ending dates for the project;
  9. The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions; and
  10. Any additional supporting information required by the Department.
  11. Signature and date. The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.
- D. A person applying for multiple projects shall submit a separate application for each project.
- E. An applicant shall demonstrate ownership or control of the project. Ownership or control may be demonstrated through fee title, lease, easement, or agreement. For all other project types related to sites not controlled by an applicant, an applicant shall provide written permission from the property owner authorizing the project activities and access. The applicant’s proof of ownership or control or written permission shall demonstrate:
  1. Permission for access is not revocable at will by the property owner, and
  2. Public access will be granted to the project site for the life of the project, unless the purpose of the project proposal is to limit access.
- F. Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project’s compatibility with the priorities of the Department, as approved by the Commission.
- G. The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Department determines that the modification is necessary for the successful completion of the project.
- H. When applicable, the Department shall not release Heritage Grant funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project’s potential impact on historic and archaeological properties and resources.
- I. The Department shall notify an applicant in writing of the results of the applicant’s submission and announce Heritage Grant awards at a regularly scheduled open meeting of the Commission.
- J. A participant shall:
  1. Sign the Grant Agreement before the Department transfers any grant funds.
  2. Deposit transferred Heritage Grant funds in a dedicated account carrying the name and number of the project. In the event the funds are deposited in an interest-bearing account, any interest earned shall be:
    - a. Used for the purpose of furthering the project, with prior approval from the Department; or
    - b. Remitted to the Department upon completion of the project.
  3. Complete the project as specified under the terms and conditions of the Grant Agreement.
  4. Use awarded Heritage Grant funds solely for the project described in the application and as approved by the Department.
  5. Bear full responsibility for performance of its subcontractors to ensure compliance with the Grant Agreement.
  6. Pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.
  7. Submit records that substantiate the expenditure of Heritage Grant funds. In addition, each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department’s request, a participant or subcontractor shall produce a legible copy of these records.
  8. Allow Department employees or agents to conduct inspections and reviews:



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- a. To ensure compliance with all terms and conditions established under the Grant Agreement.
  - b. Before release of the final payment.
- 9. Give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.
- K. A participant shall not:
  - 1. Begin a project described in the application until after the grant effective date.
  - 2. Use Heritage Grant funds for the purpose of producing income unless authorized by the Department. A participant shall use all income generated to further the purpose of the approved project or surrender the income to the original funding source.
  - 3. Comingle Heritage Grant funds with any other funds.
  - 4. Use Heritage Grant funds to pay the salary of any public agency employee. A participant may use a public agency's employee's time as in-kind match for the project specified in the Grant Agreement.
- L. The parties may amend the terms of the Grant Agreement by mutual written consent. The Department shall prepare any approved amendment in writing, and both the Department and the Grantee shall sign the amendment.
- M. The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.
- N. A participant shall submit project status reports, as required in the Grant Agreement. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports. The project status report shall include the following information, as applicable:
  - 1. Progress in completing approved work;
  - 2. Itemized, cumulative project expenditures;
  - 3. A financial accounting of:
    - a. Heritage Grant Funds,
    - b. Matching funds,
    - c. Donations, and
    - d. Income derived from project funds;
  - 4. Any delays or problems that may prevent the on-time completion of the project; and
  - 5. Any other information required by the Department.
- O. At the end of the project period and for each year until the end of the term of public use, a participant shall:
  - 1. Certify compliance with the Grant Agreement, and
  - 2. Complete a post-completion report form furnished by the Department.
- P. Upon completion of approved project elements, if a balance of awarded Heritage Grant funds remains, the participant may:
  - 1. Use the unexpended funds for an additional project consistent with the original scope of work, when approved by the Department; or
  - 2. Surrender the unexpended funds to the Department.
- Q. Upon completion of the project a participant shall:
  - 1. Surrender equipment with an acquisition cost of more than \$500 to the Department upon completion, or
  - 2. Use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement.
- R. A participant may request an extension beyond the approved project period by writing to the Department.
  - 1. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period.
  - 2. If approved, an extension shall be signed by both the participant and the Department.
- S. A participant that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.
- T. In addition, the Department may administratively extend the project period for good cause such as, but not limited to, inclement weather, internal personnel changes, or to complete the final closure documents.
- U. A participant that failed to comply with the terms and conditions of a Grant Agreement shall not apply for, nor be considered for, further Heritage Grants until the participant's project is brought into compliance.
- V. If a participant is not in compliance with the Grant Agreement, the Department may:
  - 1. Terminate the Grant Agreement,
  - 2. Seek recovery of grant monies awarded, and
  - 3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.

**Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-703. Repealed****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-703 renumbered to R12-4-705; new Section R12-4-703 made by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-704. Repealed****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-704 repealed; new Section R12-4-704 renumbered from R12-4-709 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-705. Repealed****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended

by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-705 repealed; new Section R12-4-705 renumbered from R12-4-703 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-706. Repealed****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-706 repealed; new Section R12-4-706 renumbered from R12-4-710 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-707. Repealed****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-707 repealed; new Section R12-4-707 renumbered from R12-4-711 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-708. Repealed****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-708 repealed; new Section R12-4-708 renumbered from R12-4-712 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2200, effective August 2, 2016 (Supp. 16-4).

**R12-4-709. Renumbered****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-709 renumbered to R12-4-704 by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

**R12-4-710. Renumbered****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-710 renumbered to R12-4-706 by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

**R12-4-711. Renumbered****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4).

R12-4-711 renumbered to R12-4-707 by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

**R12-4-712. Renumbered****Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-712 renumbered to R12-4-708 by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

**ARTICLE 8. WILDLIFE AREAS AND DEPARTMENT PROPERTY****R12-4-801. General Provisions****A. Wildlife Areas:**

1. Wildlife areas shall be established to:
  - a. Provide protective measures for wildlife, habitat, or both;
  - b. Allow for hunting, fishing, and other recreational activities that are compatible with wildlife habitat conservation and education;
  - c. Allow for special management or research practices; and
  - d. Enhance wildlife and habitat conservation.
2. Wildlife areas shall be:
  - a. Lands owned, leased, or otherwise managed by the Commission;
  - b. Federally-owned lands of unique wildlife habitat where cooperative agreements provide wildlife management and research implementation; or
  - c. Any lands with property interest conveyed to the Commission by any entity, through an approved land use agreement, including but not limited to deeds, patents, leases, conservation easements, special use permits, licenses, management agreements, inter-agency agreements, letter agreements, and right-of-entry, where the property interest conveyed is sufficient for management of the lands consistent with the objectives of the wildlife area.
3. Land qualified for wildlife areas shall be:
  - a. Lands with unique topographic or vegetative characteristics that contribute to wildlife,
  - b. Lands where certain wildlife species are confined because of habitat demands,
  - c. Lands that can be physically managed and modified to attract wildlife, or
  - d. Lands that are identified as critical habitat for certain wildlife species during critical periods of their life cycles.
4. The Department may restrict public access to and public use of wildlife areas and the resources of wildlife areas for up to 90 days when necessary to protect property, ensure public safety, or to ensure maximum benefits to wildlife. Closures or restrictions exceeding 90 days shall require Commission approval.
5. Closures of all or any part of a wildlife area to public entry, and any restriction to public use of a wildlife area, shall be listed in this Article or shall be clearly posted at each entrance to the wildlife area. No person shall conduct an activity restricted by this Article or by such posting.
6. When a wildlife area is posted against travel except on existing roads, no person shall drive a motor-operated vehicle over the countryside except by road.

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7. The Department may post signs that place additional restrictions on the use of wildlife areas. Such restrictions may include the timing, type, or duration of certain activities, including the prohibition of access or nature of use.
- B. Commission-owned real property other than Wildlife Areas:**
1. The Department may take action to manage public access and use of any Commission-owned real property or facilities. Such actions may include restrictions on the timing, type, or duration of certain activities, including the prohibition of access or nature of use.
  2. No person shall access or use any Commission-owned real property or facilities in violation of any Department actions authorized under subsection (B)(1), if signs are posted providing notice of the restrictions.
- Historical Note**
- New Section adopted by exempt rulemaking at 6 A.A.R. 1731, effective May 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Amended by exempt rulemaking at 18 A.A.R. 1070, effective June 15, 2012 (Supp. 12-2). Amended by exempt rulemaking at 22 A.A.R. 951, effective June 7, 2016 (Supp. 16-2).
- R12-4-802. Wildlife Area and Other Department Managed Property Restrictions**
- A.** No person shall violate the following restrictions on Wildlife Areas:
1. Alamo Wildlife Area (located in Units 16A and 44A):
    - a. Wood collecting limited to dead and down material, for onsite noncommercial use only.
    - b. Overnight public camping in the wildlife area outside of Alamo State Park allowed for no more than 14 days within a 45-day period.
    - c. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    - d. Posted portions closed to all public entry.
    - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
  2. Allen Severson Wildlife Area (located in Unit 3B):
    - a. No open fires.
    - b. No firewood cutting or gathering.
    - c. No overnight public camping.
    - d. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    - e. Posted portions closed to discharge of all firearms from April 1 through July 25 annually.
    - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from April 1 through July 25 annually.
  3. Aravaipa Canyon Wildlife Area (located in Units 31 and 32):
    - a. Access through the Aravaipa Canyon Wildlife Area within the Aravaipa Canyon Wilderness Area is by permit only, available through the Safford Office of the Bureau of Land Management. Motorized vehicle travel is not permitted on the wildlife area. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  4. Arlington Wildlife Area (located in Unit 39):
    - a. No open fires.
    - b. No firewood cutting or gathering.
    - c. No overnight public camping.
    - d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    - e. Target or clay bird shooting permitted in designated areas only.
    - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
      - i. Posted portions around Department housing are closed to the discharge of all firearms; and
      - ii. Wildlife area is closed to the discharge of centerfire rifled firearms.
  5. Base and Meridian Wildlife Area (located in Units 39, 26M, and 47M):
    - a. No open fires.
    - b. No firewood cutting or gathering.
    - c. No overnight public camping.
    - d. Motorized vehicle travel is not permitted on the wildlife area. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    - e. No target or clay bird shooting.
    - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of rifled firearms.
  6. Becker Lake Wildlife Area (located in Unit 1):
    - a. No open fires.
    - b. No overnight public camping.
    - c. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
    - d. The Becker Lake boat launch access road and parking areas along with any other posted portions of the wildlife area will be closed to all public entry from one hour after sunset to one hour before sunrise daily.
    - e. Posted portions closed to all public entry.
    - f. Posted portions closed to hunting.
    - g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of rifled firearms.
  7. Bog Hole Wildlife Area (located in Unit 35B):
    - a. No open fires.
    - b. No firewood cutting or gathering.
    - c. No overnight public camping.
    - d. Motorized vehicle travel is not permitted on the wildlife area. This subsection does not apply to Department authorized vehicles or law enforcement, fire response or other emergency vehicles.
    - e. Open to all hunting in season, by foot access only, as permitted under R12-4-304 and R12-4-318.
  8. Chevelon Canyon Ranches Wildlife Area (located in Unit 4A):
    - a. No open fires.

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- b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads and areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
9. Chevelon Creek Wildlife Area (located in Unit 4B):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads and areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Posted portions closed to all public entry.
  - f. Additional posted portions closed to all public entry from October 1 through February 1 annually.
  - g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from October 1 through February 1 annually.
10. Cibola Valley Conservation and Wildlife Area (located in unit 43A):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated and administrative roads and areas only, except as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Posted portions closed to all public entry.
  - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of rifled firearms.
11. Clarence May and C.H.M. May Memorial Wildlife Area (located in Unit 29):
- a. Closed to the discharge of all firearms, except as authorized under subsection (A)(1)(b).
  - b. Closed to hunting, except for predator hunts authorized by Commission Order.
12. Cluff Ranch Wildlife Area (located in Unit 31):
- a. Open fires allowed in designated areas only.
  - b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
  - c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 45-day period.
  - d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Posted portions around Department housing and Pond Three are closed to discharge of all firearms.
  - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of centerfire rifled firearms.
13. Colorado River Nature Center Wildlife Area (located in Unit 15D):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads or areas only. This subsection does not apply to Department authorized vehicles, law enforcement, fire response, or other emergency vehicles.
  - e. Closed to hunting.
14. Fool Hollow Lake Wildlife Area (located in Unit 3C):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads, trails, or areas only. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. The parking area adjacent to Sixteenth Avenue and other posted portions of the wildlife area will be closed to all public entry daily from one hour after sunset to one hour before sunrise, except for anglers possessing a valid fishing license accessing Fool Hollow Lake/Show Low Creek.
  - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
15. House Rock Wildlife Area (located in Unit 12A):
- a. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles, law enforcement, fire response, or other emergency vehicles.
  - b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
  - c. Members of the public are prohibited from being within 1/4 mile of the House Rock bison herd while on House Rock Wildlife Area, except when taking bison or accompanied by Department personnel.
16. Jacques Marsh Wildlife Area (located in Unit 3B):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of rimfire and centerfire rifled firearms.
17. Lamar Haines Wildlife Area (located in Unit 7):
- a. Wood cutting by permit only and collecting limited to dead and down material, for noncommercial use only. Upon request, a person may obtain a wood cutting permit from the Flagstaff Game and Fish Department regional office.
  - b. No overnight public camping.
  - c. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - d. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.

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18. Lower San Pedro River Wildlife Area (located in Units 32 and 37B):
  - a. Open fires allowed in designated areas only. The following acts are prohibited:
    - i. Building, attending, maintaining, or using a fire without removing all flammable material from around the fire to adequately prevent the fire from spreading from the fire pit.
    - ii. Carelessly or negligently throwing or placing any ignited substance or other substance that may cause a fire.
    - iii. Building, attending, maintaining, or using a fire in any area that is closed to fires.
    - iv. Leaving a fire without completely extinguishing it.
  - b. Wood collecting limited to dead and down material, for onsite noncommercial use only.
  - c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 45-day period.
  - d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Posted portions closed to all public entry.
  - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.
  - g. Parking allowed within 300 feet of designated open roads and in designated areas only.
  - h. Discharge of a firearm or pre-charged pneumatic weapon prohibited within  $\frac{1}{4}$  mile of buildings.
  - i. A person shall not use a metal detector or similar device except as authorized by the Department. This subsection does not apply to law enforcement officers in the scope of their official duties, or to persons duly licensed, permitted, or otherwise authorized to investigate historical or cultural artifacts by a government agency with regulatory authority over cultural or historic artifacts.
19. Luna Lake Wildlife Area (located in Unit 1):
  - a. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - b. Posted portions closed to all public entry from February 15 through July 31 annually.
  - c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except when closed to hunting from April 1 through July 31 annually.
20. Mittry Lake Wildlife Area (located in Unit 43B):
  - a. Open fires allowed in designated areas only.
  - b. Overnight public camping allowed in designated areas only, for no more than 10 days per calendar year.
  - c. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - d. Posted portions closed to all public entry.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.
21. Planet Ranch Conservation and Wildlife Area (located in Units 16A and 44A):
  - a. No open fires.
  - b. No firewood cutting or gathering.
  - c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 45-day period.
  - d. Motorized vehicle travel:
    - i. Is permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H).
    - ii. Is prohibited within the posted Lower Colorado River Multi-Species Conservation Program habitat area.
    - iii. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.
22. Powers Butte (Mumme Farm) Wildlife Area (located in Unit 39):
  - a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on posted designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. If conducted during an event approved under R12-4-125, target or clay bird shooting is permitted in designated areas only.
  - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
    - i. Posted portions around Department housing are closed to the discharge of all firearms; and
    - ii. Wildlife area is closed to the discharge of centerfire rifled firearms.
23. Quigley-Achee Wildlife Area (located in Unit 41):
  - a. No open fires.
  - b. No overnight public camping.
  - c. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - d. Posted portions closed to all public entry.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting.
24. Raymond Wildlife Area (located in Unit 5B):
  - a. Overnight public camping permitted in designated sites only, for no more than 14 days within a 45-day period.
  - b. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110 (G). All-terrain and utility type vehicles are prohibited. For the purpose of this subsection, all-terrain and utility type vehicle means a motor vehicle having three or more wheels fitted with large tires and is designed chiefly for recreational use over roadless, rugged terrain. This subsection does not apply to Department authorized vehicles or law

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- enforcement, fire response, or other emergency vehicles.
  - c. Posted portions closed to all public entry from May 1 through July 29 annually.
  - d. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting periodically during hunting seasons.
  - e. Members of the public are prohibited from being within 1/4 mile of the Raymond bison herd while on Raymond Wildlife Area, except when taking bison or accompanied by Department personnel.
  - f. Prior to entering Raymond Wildlife Area, members of the public shall sign in at a posted sign-in kiosk and by doing so acknowledge they have read and shall comply with the posted Raymond Wildlife Areas restrictions.
25. Robbins Butte Wildlife Area (located in Unit 39):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads, trails, or areas only from one hour before sunrise to one hour after sunset daily, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Parking in designated areas only.
  - f. If conducted during an event approved under R12-4-125, target or clay bird shooting is permitted in designated areas only.
  - g. Open to all hunting in season as permitted under R12-4-304 and R12-4-318 except the wildlife area is closed to the discharge of centerfire rifled firearms.
26. Roosevelt Lake Wildlife Area (located in Units 22, 23, and 24B):
- a. Posted portions closed to all public entry from November 15 through February 15 annually.
  - b. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). No motorized travel is permitted within agriculture and crop production areas. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from November 15 through February 15 annually.
27. Santa Rita Wildlife Area (located in Unit 34A):
- a. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). Portions of the wildlife area may be posted as closed to motorized vehicle travel for periodical research purposes. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except that the take of wildlife with firearms is prohibited from March 1 through August 31.
28. Sipe White Mountain Wildlife Area (located in Unit 1):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions around Department housing is closed to the discharge of all firearms.
29. Springerville Marsh Wildlife Area (located in Unit 2B):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads or areas only. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Closed to the discharge of all firearms.
  - f. Open to all hunting as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of all firearms.
30. Sunflower Flat Wildlife Area (located in Unit 8):
- a. No overnight public camping.
  - b. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - c. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
31. Three Bar Wildlife Area (located in Unit 22):
- a. Motorized vehicle travel:
    - i. Is permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H).
    - ii. Is prohibited within the Three Bar Wildlife and Habitat Study Area.
    - iii. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - b. Open to all hunting in season, as permitted under R12-4-304 and R12-4-318, except the area within the fenced enclosure inside the loop formed by Tonto National Forest Road 647, also known as the Walnut Canyon Enclosure, which is closed to hunting, unless otherwise provided under Commission Order.
32. Tucson Mountain Wildlife Area (located in Unit 38M):
- a. Motorized vehicle travel permitted on designated roads and trails as part of the road system managed and regulated by the City of Tucson and Pima County. This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - b. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except:
    - i. Portions posted as closed to hunting, and
    - ii. Wildlife area is closed to the discharge of all firearms.
  - c. Archery deer and archery javelina hunters must check in with the Arizona Game and Fish Tucson Regional Office prior to going afield.
33. Upper Verde River Wildlife Area (located in Unit 8 and 19A):
- a. No open fires.
  - b. No firewood cutting or gathering.

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- c. No overnight public camping.
  - d. Motorized vehicle travel is not permitted. This subsection does not apply to Department authorized vehicles or law enforcement, fire department, or other emergency vehicles.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
  - f. All dogs must remain on leash except for hunting dogs during a legal open season.
34. Wenima Wildlife Area (located in Unit 2B):
- a. No open fires.
  - b. No firewood cutting or gathering.
  - c. No overnight public camping.
  - d. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
35. White Mountain Grasslands Wildlife Area (located in Unit 1):
- a. No open fires.
  - b. No overnight public camping.
  - c. Motorized vehicle travel permitted on designated roads or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - d. Posted portions closed to all public entry.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318.
36. Whitewater Draw Wildlife Area (located in Unit 30B):
- a. Open fires allowed in designated areas only.
  - b. Overnight public camping allowed in designated areas only, for no more than 14 days within a 45-day period.
  - c. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - d. Posted portions closed to all public entry from October 15 through March 15 annually.
  - e. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except the wildlife area is closed to the discharge of centerfire rifled firearms.
37. Willcox Playa Wildlife Area (located in Unit 30A):
- a. Open fires allowed in designated areas only.
  - b. No firewood cutting or gathering.
  - c. Overnight public camping allowed in designated areas only, for no more than 14 days within a 45-day period.
  - d. Motorized vehicle travel permitted on designated roads, trails, or areas only, except as permitted under R12-4-110(H). This subsection does not apply to Department authorized vehicles or law enforcement, fire response, or other emergency vehicles.
  - e. Posted portions closed to all public entry from October 15 through March 15 annually.
  - f. Open to all hunting in season as permitted under R12-4-304 and R12-4-318, except posted portions closed to hunting from October 15 through March 15 annually.
- B.** Notwithstanding Commission Order 40, public access and use of the Hirsch Conservation Education Area and Biscuit Tank is limited to activities conducted and offered by the Department and in accordance with the Department's special management objectives for the property, which include, but are not limited to, flexible harvest, season, and methods that:
1. Allow for a variety of fishing techniques, fish harvest, fish consumption, and catch and release educational experiences;
  2. Maintain a healthy, productive, and balanced fish community and
  3. Provide public education activities and training courses that are compatible with the management of aquatic wildlife.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1731, effective May 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 2107, effective May 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 9 A.A.R. 3141, effective August 23, 2003 (Supp. 03-2). Amended by exempt rulemaking at 10 A.A.R. 1976, effective May 14, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 1927, effective May 20, 2005 (Supp. 05-2). Amended by exempt rulemaking at 12 A.A.R. 1698, effective May 19, 2006 (Supp. 06-2). Amended by exempt rulemaking at 13 A.A.R. 1741, effective May 18, 2007 (Supp. 07-2). Amended by exempt rulemaking at 14 A.A.R. 1841, effective April 22, 2008 (Supp. 08-2). Amended by exempt rulemaking at 16 A.A.R. 397, effective March 5, 2010 (Supp. 10-1). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Amended by exempt rulemaking at 18 A.A.R. 1070, effective June 15, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 931, effective June 17, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 841, effective June 17, 2014 (Supp. 14-1). Amended by exempt rulemaking at 22 A.A.R. 951, effective June 7, 2016 (Supp. 16-2). Amended by exempt rulemaking at 22 A.A.R. 2209, effective October 4, 2016 (Supp. 16-4).

**R12-4-803. Wildlife Area and Other Department Managed Property Boundary Descriptions****A.** For the purposes of this Section:

- "B.C." means brass cap.
- "B.C.F." means brass cap flush.
- "G&SRB&M" means Gila and Salt River Base and Meridian.
- "M&B" means metes and bounds.
- "R" means Range line.
- "T" means Township line.

**B.** Wildlife Areas are described as follows:

1. Alamo Wildlife Area: The Alamo Wildlife Area shall be those areas described as follows:  
T10N, R13W; Section 3 N1/2, SW1/4, SE1/4 Mohave County only; Section 4, E1/2SW1/4, SE1/4; Section 9, NE1/4, E1/2NW1/4; Section 10, NW1/4NW1/4, NE1/4NW1/4 within designated Wilderness Area. T11N, R11W; Section 7, S1/2SW1/4; Section 18, N1/2 NW1/4; T11N, R12W; Section 4, Lots 2, 3 and 4, SW1/4NE1/4, S1/2NW1/4, SW1/4, W1/2SE1/4; Section 5, Lot 1, SE1/4NE1/4, E1/2SE1/4; Section 7, S1/2, SE1/4 NE1/4; Section 8, NE1/4, S1/2NW1/4, S1/2; Section 9; Section 10, S1/2NW1/4, S1/2; Section 11, S1/2S1/2; Section 12, S1/2S1/2; Section 13, N1/2, N1/2SW1/4, NW1/4SE1/4; Section 14, N1/2, E1/2SE1/4; Section 15, N1/2, SW1/4SW1/4, SW1/4SE1/4; Section 16, 17, 18 and 19; Section 20,

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- N1/2, N1/2SW1/4; Section 21, NW1/4; Section 29, SW1/4, SW1/4SE1/4; Section 30; Section 31, N1/2, N1/2S1/2; Section 32, NW1/4, N1/2SW1/4; T11N, R13W; Section 12, SE1/4SW1/4, SW1/4SE1/4, E1/2SE1/4; Section 13; Section 14, S1/2NE1/4, SE1/4SW1/4, SE1/4; Section 22, S1/2SW1/4, SE1/4; Section 23, E1/2, E1/2NW1/4, SW1/4NW1/4, SW1/4; Section 24, 25 and 26; Section 27, E1/2, E1/2W1/2; Section 34, E1/2, E1/2NW1/4, SW1/4; Section 35 W1/2, W1/2NE1/4; T12N, R12W; Section 19, E1/2, SE1/4SW1/4; Section 20, NW1/4NW1/4, SW1/4SW1/4; Section 28, W1/2SW1/4; Section 29, W1/2NW1/4, S1/2, SE1/4NW1/4; Section 30, E1/2, E1/2NW1/4, NE1/4SW1/4; Section 31, NE1/4NE1/4; Section 32, N1/2, N1/2SE1/4, SE1/4SE1/4; Section 33, W1/2E1/2, W1/2; all in G&SRB&M, Mohave and La Paz Counties, Arizona.
2. Allen Severson Memorial Wildlife Area: The Allen Severson Memorial Wildlife Area shall be that area including Pintail Lake and South Marsh lying within the fenced and posted portions of:  
T11N, R22E; Section 32, SE1/4; Section 33, S1/2SW1/4; T10N, R22E; Section 4, N1/2NW1/4; T10N, R22E; Section 4: the posted portion of the NW1/4SW1/4; all in G&SRB&M, Navajo County, Arizona, consisting of approximately 300 acres.
  3. Aravaipa Canyon Wildlife Area: The Aravaipa Canyon Wildlife Area shall be that area within the flood plain of Aravaipa Creek and the first 50 vertical feet above the streambed within the boundaries of the Aravaipa Canyon Wilderness Area administered by the Bureau of Land Management (BLM), Graham and Pinal Counties, Arizona.
  4. Arlington Wildlife Area: The Arlington Wildlife Area shall be those areas described as follows:  
T1S, R5W, Section 33, E1/2SE1/4; T2S, R5W, Section 3, W1/2W1/2, Section 4, E1/2, and Parcel 401-58-001A as described by the Maricopa County Assessor's Office; a parcel of land lying within Section 4, T2S, R5W, more particularly described as follows: commencing at the southwest corner of said Section 4, 2-inch aluminum cap (A.C.) in pothole stamped "RLS 36562", from which the northwest corner of said Section, a 1 1/2-inch B.C. stamped "T1S R5W S32 S33 S5 S4 1968", bears N 00°09'36" E (basis of bearing) a distance of 4130.10 feet, said southwest corner being the point of beginning; thence along the west line of said Section, N 00°09'36" E a distance of 16.65 feet; thence leaving said west line, S 89°48'28" E a distance of 986.79 feet; thence N 00°47'35" E a distance of 2002.16 feet; thence N 01°07'35" E a distance of 2102.65 feet to the north line of said Section; thence along said north line S 89°18'45" E a distance of 1603.61 feet to the N1/4 corner of said Section, a 1/2-inch metal rod; thence leaving said north line, along the north-south midsection line of said Section, S 00°08'44" E a distance of 4608.75 feet to the S1/4 corner of said Section, a 3-inch B.C.F. stamped "T2S R5W 1/4S4 S9 RLS 46118 2008"; thence leaving said north-south midsection line, along the south line of said Section, N 79°10'54" W a distance of 2719.41 feet to the point of beginning. Subject to existing rights-of-way and easements. This parcel description is based on the Record of Survey for Alma Richardson Property, recorded in Book 996, page 25, Maricopa County Records and other client provided information. This parcel description is located within an area surveyed by Wood, Patel & Associates, Inc. during the month of April, 2008 and October, 2009 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey; all in G&SRB&M, Maricopa County, Arizona. Section 9; NW1/4 and SW1/4; Section 3; LOT 4 SW1/4NW1/4, W1/2SW1/4 NE1/4SE1/4; Section 3; M&B in LOT 1 SE1/4NE1/4E1/2SE1/4; Section 9; M&B in NE1/4NE1/4; Section 10; SW1/4NW1/4; Section 15; those portions of S1/2W1/4 and N1/2SW1/4 lying west of the primary through road; Section 16; W1/2 M&B in E1/2E1/2 W1/2E1/2; Section 21; NE1/4NW1/4 and Parcel 401-61-008D as described by the Maricopa County Assessor's Office, more particularly described as follows: commencing at the BLM B.C. marking the northeast corner of said Section 21, from which the BLM B.C. marking the northwest corner of said Section 21 bears N 82°26'05" W a distance of 5423.64 feet; thence N 82°26'05" W along the north line of Section 21 a distance of 2711.82 feet to the NW1/4 corner of said Section 21; thence S 00°33'45" W along the north-southerly midsection line of said Section 21 a distance of 33.25 feet to the True Point of Beginning; thence continuing S 00° 33'45" W along said north-south midsection line a distance of 958.00 feet to a point on a line which is parallel with and 983.85 feet southerly, as measured at right angles from the north line of said Section 21; thence N 82°26'05" W along said parallel line a distance of 925.54 feet; thence N 26°12'18" W a distance of 153.32 feet; thence N 13°26'18" W a distance of 303.93 feet; thence N 34°15'49" W a distance of 189.27 feet; thence N 21°32'45" W a distance of 215.60 feet; thence N 89°25'47" W a distance of 95.37 feet to a point on the west line of the NE1/4N1/4 of said Section 21; thence N 00°34'13" E, along said west line a distance of 223.54 feet to a point on a line which is parallel with and 33.00 feet southerly, as measured at right angles from the north line of said Section 21; thence S 82°26'05" E along said parallel line, a distance of 1355.91 feet to the True Point of Beginning; all in G&SRB&M, Maricopa County, Arizona.
  5. Base and Meridian Wildlife Area: The Base and Meridian Wildlife Area shall be those areas described as follows:  
T1N, R1E, Section 31; Maricopa County APN 101-44-023, also known as Lots 3, 5, 6, 7, 8 and NE1/4SW1/4, and Maricopa County APN 101-44-003J, also known as the S1/2S1/2SW1/4NW1/4 except the west 55 feet thereof; and 101-44-003K, also known as the S1/2S1/2SW1/4NW1/4 except the west 887.26 feet thereof; and Maricopa County APN 104-44-002S, also known as that portion of the N1/2SE1/4, described as follows: commencing at the aluminum cap set at the E1/4 corner of said Section 31, from which the 3" iron pipe set at the southeast corner of said Section 31, S 00°20'56" W a distance of 2768.49 feet; thence S 00°20' 56" W along the east line of said SE1/4 of Section 31 a distance of 1384.25 feet to the southeast corner of said N1/2SE1/4; thence S 89°25'13" W along the south line of said N1/2SE1/4 a distance of 2644.35 feet to the southwest corner of said N1/2SE1/4 and the point of beginning; thence N 00°03'37" W along the west line of said SE1/4 a distance of 746.86 feet to the south line of the north 607.00 feet of said N1/2SE1/4; thence N 88°46' 12" E along said south line of the north 607.00 feet of the N1/2SE1/4 a distance of 656.09 feet; thence S 00°03'37" E parallel with said west line of the SE1/4 a distance of 754.31 feet to said south line of the N1/2SE1/4; Thence S 89°25' 13" W along said south line of the N1/2SE1/4 a distance of



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655.98 feet to the point of beginning. T1N, R1W, Section 34, N1/2SE1/4; Section 35, S1/2; Section 36. The Maricopa County APN 500-69-099; the W1/2SE1/4NE1/4. APN 500-69-099, 500-69-100, also known as that portion of the SE1/4SE1/4NE1/4. 500-69-010C, also known as that portion of the W1/2SE1/4NE1/4, except any portion of said W1/2SE1/4NE1/4 of Section 36 lying within the following described four parcels: Exception 1: commencing at the northeast corner of said W1/2SE1/4NE1/4 of Section 36; thence along the east line thereof S 00°10' E a distance of 846.16 feet to the point of beginning; thence continuing S 00°18' E a distance of 141.17 feet; thence S 87°51'15" W a distance of 570.53 feet; thence S 00°29' E a distance of 310.00 feet to the south line of said W1/2SE1/4NE1/4 of Section 36; thence N 89°29' W along the west line of said W1/2SE1/4NE1/4 of Section 36 a distance of 425.93 feet; said point bears S 00°29' E a distance of 895.93 feet from the northwest corner of said W1/2SE1/4NE1/4 of Section 36; thence N 85°54'33" E a distance of 647.01 feet to the point of beginning. Exception 2: commencing at the northeast corner of said W1/2SE1/4NE1/4 of Section 36; thence along the east line thereof S 00°18' E a distance of 846.16 feet to the point of beginning; said point being on the northerly line of the Flood Control District of Maricopa County parcel as shown in Document 84-26119, Maricopa County Records; thence S 85°54'33" W a distance of 647.01 feet to the west line of said W1/2SE1/4NE1/4 of Section 36; thence N 00°29' W along said west line a distance of 30 feet; thence N 84°23'15" E a distance of 228.19 feet; thence N 87°17'06" E a distance of 418.85 feet to the east line of the W1/2SE1/4NE1/4 of Section 36; thence S 00°18' E along said east line a distance of 26.00 feet to the point of beginning. Exception 3: the South 37.6 feet of said W1/2SE1/4NE1/4 of Section 36. Except all oil, gas and other hydrocarbon substances, helium or other substance of gaseous nature, coal, metals, minerals, fossils, fertilizer of every name and description and except all materials which may be essential to the production of fissionable material as reserved in Arizona Revised Statutes. Exception 4: that part of the W1/2SE1/4NE1/4 of Section 36, T1N, R1W lying north of the following described line: commencing at the northeast corner of said W1/2SE1/4NE1/4 of Section 36; thence along the east line thereof S 00°18'00" E a distance of 820.16 feet, to the point of beginning; said point being on the northerly line of the Flood District of Maricopa County parcel as shown in Document 85-357813, Maricopa County Records; thence S 87°17'06" W a distance of 418.85 feet; thence S 84°23'15" W a distance of 228.19 feet to the west line of said W1/2SE1/4NE1/4 of Section 36 and the point of terminus. The above described parcel contains 162,550 sq. ft. or 3.7316 acres 500-69-001L and 500-69-001M, also known as the N1/2SE1/4, except the south 892.62 feet thereof. 500-69-001N, 500-69-001P, 500-69-001Q, 500-69-001R, 500-69-001T, 500-69-001X, 500-69-001Y, also known as that portion of the south 892.62 feet of the N1/2SE1/4. The SE1/4SE1/4NE1/4 of Section 36, T1N, R1W, except the south 37.6 feet of said SE1/4SE1/4NE1/4, and except the east 55 feet of said SE1/4SE1/4NE1/4, and except that part of said SE1/4SE1/4NE1/4 lying north of the most southerly line of the parcel described in Record 84-026119, Maricopa County Records, said southerly line being described as follows: beginning at the NE1/4S1/2NE1/4SE1/4NE1/4 of said Section 36; thence S 00°07' E along the east line of Sec-

tion 36, a distance of 50.70 feet; thence S 89°53' W a distance of 55.00 feet to a point on the west line of the east 55.00 feet of said Section 36; thence S 00°07' E along said line, a distance of 510.00 feet; thence S 81°4'43" W a distance of 597.37 feet to a terminus point on the west line of said SE1/4SE1/4NE1/4 of Section 36, and except that part of said SE1/4SE1/4NE1/4 described as follows: commencing at the E1/4 corner of said Section 36; thence N 89°37'23" W along the south line of said SE1/4SE1/4NE1/4 of Section 36, a distance of 241.25 feet; thence N 18°53'04" E a distance of 39.65 feet to the point of beginning; thence continuing N 18°53'04" E a distance of 408.90 feet; thence S 81°04'43" W a distance of 222.55 feet; thence S 18°53'04" W a distance of 370.98 feet; thence S 89°37'23" E a distance of 207.58 feet to the point of beginning. That portion of land lying within the SE1/4SE1/4NE1/4 of Section 36, T1N, R1W, and the S1/2SW1/4NW1/4 of Section 31, T1N, R1E, as described in Document Number 99-1109246. Except the west 22 feet of the property described in Recorder Number 97-0425420, also known as APN 101-44-003G; and except the west 22 feet of the property described in Recorder Number 97-566498, also known as APN 101-44-013; all in G&SRB&M, Maricopa County, Arizona.

6. Becker Lake Wildlife Area: The Becker Lake Wildlife Area shall be that area including Becker Lake lying within the fenced and posted portions of:
 

T9N, R29E, Section 19, SE1/4SE1/4 also known as APN. 105-07-001; Section 20, SW1/4SW1/4; beginning at a point 1012 feet north of the southwest corner of the SE1/4SW1/4 of Section 20, T9N, R29E; thence north 1285 feet; thence east a distance of 462 feet; thence south a distance of 2122 feet, more or less to the center of U.S. Highway 60; thence in a northwesterly direction along the center of U.S. Highway 60 a distance of 944 feet, more or less; thence west a distance of 30 feet, more or less to the point of beginning, also known as APN 105-08-002; Section 29, W1/2NW1/4, NW1/4SW1/4, also known as APN 105-15-003; beginning at the S1/4 corner of said Section 29, said point being the True Point of Beginning; thence N 00°43'20" E along the western boundary of the SE1/4 of said Section 29, a distance of 1329.15 feet to the center-south 1/16 corner of said Section 29; thence S 89°53'01" W along the southern boundary of the NE1/4SW1/4 of said Section 29, a distance of 99.69 feet; thence N 00°43'20" E a distance of 417.54 feet; thence S 89°31'37" E a distance of 99.69 feet; thence N 00°43'20" E along the western boundary of the SE1/4 of said Section 29 a distance of 374.40 feet; thence N 88°49'48" E a distance of 474.94 feet; thence N 27°35'15" E a distance of 99.21 feet; thence N 04°13'26" W a distance of 160.59 feet; thence N 37°38'44" E a distance of 12.27 feet; thence S 26°22'25" E a distance of 371.13 feet; thence N 31°21'35" E a distance of 58.00 feet; thence S 26°22'27" E a distance of 1203.23 feet; thence S 63°58'58" W a distance of 200.00 feet; thence S 36°24'36" E a distance of 375.11 feet; thence S 00°24'06" W a distance of 490.79 feet; thence S 01°22'24" E a distance of 110.21 feet; thence S 22°27'23" E a distance of 44.27 feet; thence N 89°48'03" W a distance of 1331.98 feet to the True Point of Beginning, also known as APN 105-15-014E; beginning at the corner of Sections 28, 29, 32 and 33, T9N, R29E of G&SRB&M, Apache County, Arizona; thence N 54°21'09" W a distance of 1623.90 feet; thence N 26°00'59" W a distance of 100.00 feet; thence N 26°22'14" W a distance of 1203.23 feet to the

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True Point of Beginning; thence N 26°22'27" W a distance of 351.19 feet; thence S 55°14'10" W a distance of 38.42 feet; thence S 37°38'44" W a distance of 12.38 feet; thence S 26°22'14" E a distance of 371.13 feet; thence N 31°21'35" E a distance of 58.00 feet to the True Point of Beginning, also known as APN 105-15-014C. S1/2SW1/4, except the following described parcel: commencing at a 2-inch aluminum cap monument stamped LS 8906 located at the Section corner common to Sections 29, 30, 31 and 32 of said Township and Range; thence bear S 89°46'16" E along the Section line common to Sections 29 and 32, a distance of 1038.05 feet to the True Point of Beginning; thence N 35°17'33" E along the northwest boundary of the Springerville Municipal Airport a distance of 328.32 feet; thence S 39°31'26" E a distance of 349.55 feet to a point on the Section line common to Sections 29 and 32; thence N 89°46'44" W a distance of 131.96 feet to the W1/16 corner of Sections 29 and 32; thence N 89°46'16" W a distance of 280.18 feet to the True Point of Beginning. Section 30, NE1/4SE1/4, E1/2NE1/4 also known as APN 105-16-001; W1/2NE1/4, W1/2NE1/4 also known as APN 105-16-002; Section 32, beginning at the N1/4 corner of said Section 32, said point being the True Point of Beginning; thence S 89°48'03" E along the north line of said Section 32 a distance of 1331.98 feet; thence S 21°49'15" E a distance of 198.07 feet; thence S 20°56'35" W a distance of 191.75 feet; thence S 19°53'23" W a distance of 24.65 feet; thence S 39°17'55" W a distance of 86.61 feet; thence S 01°41'36" E a distance of 13.60 feet; thence S 50°13'33" W a distance of 1.29 feet; thence S 02°24'23" E a distance of 906.39 feet; thence S 00°44'11" W a distance of 466.82 feet; thence S 35°26'56" W a distance of 218.51 feet; thence S 89°57'05" W a distance of 1141.87 feet; thence N 07°57'52" E a distance of 328.83 feet; thence N 77°39'30" W a distance of 68.79 feet; thence N 00°30'56" W a distance of 334.16 feet to a 1/16th section corner; thence N 00°30'56" W a distance of 1349.10 feet to the True Point of Beginning. Except therefrom any portion lying in the S1/2SW1/4NE1/4 of said Section 32 also known as APN 105-18-008A; all that portion of the NE1/4NW1/4 of Section 32, T9N, R29E of G&SRB&M, Apache County, Arizona, lying east of the Becker Lake Roadway; except for the following described parcel: from the NW1/16 corner of said Section 32; thence S 89°45'28" E along the 1/16 line a distance of 736.55 feet to the True Point of Beginning, said point being in the west rights-of-way limits of Becker Lake Rd.; thence N 06°09'00" W along the west line of said right-of-way a distance of 266.70 feet to a 1/2-inch rebar with a tag marked LS 13014; thence N 06°21'43" W a distance of 263.42 feet to a 1/2-inch rebar with a tag marked LS 13014; thence N 06°21'43" W a distance of 198.60 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence N 78°43'10" E a distance of 158.40 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 47°05'42" E a distance of 65.65 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 29°24'20" E a distance of 202.48 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 48°03'17" W a distance of 146.19 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence South 19°36'10" West a distance of 115.75 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence South 00°38'05" East a distance of 74.66 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 14°52' 53" E a distance of

125.09 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 15°08'20" E a distance of 136.60 feet to a 5/8-inch rebar with a plastic cap marked LS 13014; thence S 89°58'07" W a distance of 144.13 feet to the True Point of Beginning, also known as APN 105-18-012G.

7. Bog Hole Wildlife Area: The Bog Hole Wildlife Area lying in Sections 29, 32 and 33, T22S, R17E shall be the fenced and posted area described as follows: beginning at the southeast corner of Section 32, T22S, R17E, G&SRB&M, Santa Cruz County, Arizona; thence N 21°42'20" W a distance of 1394.86 feet to the True Point of Beginning; thence N 9°15'26" W a distance of 1014.82 feet; thence N 14°30'58" W a distance of 1088.82 feet; thence N 36°12'57" W a distance of 20.93 feet; thence N 50°16'38" W a distance of 1341.30 feet; thence N 57°51'08" W a distance of 1320.68 feet; thence N 39°03'53" E a distance of 1044.90 feet; thence N 39°07'43" E a distance of 1232.32 feet; thence S 36°38'48" E a distance of 1322.93 feet; thence S 43°03'17" E a distance of 1312.11 feet; thence S 38°19'38" E a distance of 1315.69 feet; thence S 13°11'59" W a distance of 2083.31 feet; thence S 69°42'45" W a distance of 920.49 feet to the True Point of Beginning.
8. Chevelon Canyon Ranches Wildlife Area: The Chevelon Canyon Ranches Wildlife Area shall be those areas described as follows:  
 Duran Ranch: T12N, R14E; Sections 6 and 7, more particularly bounded and described as follows: beginning at Corner 1, from which the Standard Corner to Section 31 in T13N, R14E and Section 36 T13N, R13E, bears N 11°41' W 21.53 chains distant; thence S 26°5' E 6.80 chains to Corner 2; thence S 66° W 12.74 chains to Corner 3; thence S 19°16' W 13.72 chains to Corner 4; thence S 29°1' W 50.02 chains to Corner 5; thence N 64°15' W five chains to Corner 6; thence N 28°54' E 67.97 chains to Corner 7; thence N 55°36' E 11.02 to Corner 1; the place of beginning; all in G&SRB&M, Coconino County, Arizona. Dye Ranch: T12N, R14E Sections 9 and 16, more particularly described as follows: beginning at Corner 1 from which the Standard corner to Sections 32 and 33 in T13N, R14E, bears N 2° 24' E 127.19 chains distant; thence S 50°20' E 4.96 chains to corner 2; thence S 29°48' W 21.97 chains to Corner 3; thence S 14°45' W 21.00 chains to Corner 4; thence N 76°23' W 3.49 chains to Corner 5; thence N 10°13' W 14.02 chains to Corner 6; thence N 19°41' E 8.92 chains to Corner 7; thence N 38°2' E 24.79 chains to Corner 1, the place of beginning; all in G&SRB&M, Coconino County, Arizona. Tillman Ranch: T12N, R14E land included in H.E. Survey 200 embracing a portion of approximately Sections 9 and 10 in T12N, R14E of G&SRB&M; all in G&SRB&M, Coconino County, Arizona. Vincent Ranch: T12N, R13E; Sections 3 and 4, more particularly described as follows: beginning at Corner 1, from which the south corner to Section 33, T13N, R13E, bears N 40°53' W 16.94 chains distance; thence S 53° 08' E 2.98 chains to Corner 2; thence S 11°26' W 6.19 chains to Corner 3; thence S 49°43' W 22.41 chains to Corner 4; thence S 22°45' W 30.03 chains to Corner 5; thence N 67°35' W 6.00 chains to Corner 6; thence N 23° E 30.03 chains to Corner 7; thence N 42°18' E 21.19 chains to Corner 8; thence N 57°52' E 8.40 chains to Corner 1, the place of beginning; all in G&SRB&M, Coconino County, Arizona. Wolf Ranch: T12N, R14E, Sections 18 and 19, more particu-

larly bounded and described as follows: beginning at Corner 1, from which the U.S. Location Monument 184 H. E. S. bears S 88°53' E 4.41 chains distant; thence S 34°4' E 11.19 chains to Corner 2; thence S 40°31' W 31.7 chains to Corner 3; thence S 63°3' W 7.97 chains to Corner 4; thence S 23°15' W 10.69 chains to Corner 5; thence N 59° W 2.60 chains to Corner 6; thence N 18°45' E 10.80 chains to Corner 7; thence N 51°26' E 8.95 chains to Corner 8; thence N 30°19' E 34.37 chains to Corner 1; the place of beginning; all in G&SRB&M, Coconino County, Arizona.

9. Chevelon Creek Wildlife Area: The Chevelon Creek Wildlife Area shall be those areas described as follows:  
Parcel 1: The S1/2S1/2NW1/4SW1/4 of Section 23, T18N, R17E of G&SRB&M; Parcel 2: Lots 1, 2, 3 and 4 of Section 26, T18N, R17E of G&SRB&M; Parcel 1: That portion of the NE1/4 of Section 26 lying northerly of Chevelon Creek Estates East Side 1 Amended, according to the plat of record in Book 5 of Plats, page 35, records of Navajo County, Arizona, all in T18N, R17E of G&SRB&M, Navajo County, Arizona. Parcel 2: That part of Tract A, Chevelon Creek Estates East Side 1 Amended, according to the plat of record in Book 5 of Plats, page 35, records of Navajo County, Arizona lying northerly of the following described line: beginning at the southwest corner of Lot 3 of said subdivision; thence southwesterly in a straight line to the southwest corner of Lot 6 of said subdivision.
10. Cibola Valley Conservation and Wildlife Area: The Cibola Valley Conservation and Wildlife Area shall be those areas described as follows:  
Parcel 1: this parcel is located in the NW1/4 of Section 36, T1N, R24W of G&SRB&M, La Paz County, Arizona, lying east of the right of way line of the "Cibola Channelization Project of the United States Bureau of Reclamation Colorado River Front Work and Levee System," as indicated on Bureau of Reclamation Drawing 423-300-438, dated March 31, 1964, and more particularly described as follows: beginning at the northeast corner of the NW1/4 of said Section 36; thence south and along the east line of the NW1/4 of said Section 36, a distance of 2646.00 feet to a point being the southeast corner of the NW1/4 of said Section 36; thence westerly and along the south line of the NW1/4 a distance of 1711.87 feet to a point of intersection with the east line of the aforementioned right of way; thence northerly and along said east line of the aforementioned right of way, a distance of 2657.20 feet along a curve concave easterly, having a radius of 9260.00 feet to a point of intersection with the north line of the NW1/4 of said Section 36; thence easterly and along the north line of the NW1/4 of said Section 36, a distance of 1919.74 feet to the point of beginning.  
Parcel 2: this parcel is located in the U.S. Government Survey of Lot 1 and the E1/2SW1/4 of Section 36, T1N, R24W of G&SRB&M, La Paz County, Arizona, lying east of the right of way line of the "Cibola Channelization Project of the United States Bureau of Reclamation Colorado River Front Work and Levee System," as indicated on Bureau of Reclamation Drawing 423-300-438, dated March 31, 1964, and more particularly described as follows: beginning at the S1/4 corner of said Section 36; thence westerly and along the south line of said Section 36, a distance of 610.44 feet to a point of intersection with the east line of the aforementioned right of way; thence northerly along said east line of the of the aforementioned right of way and along a curve concave south-

westerly, having a radius of 17350.00 feet, a distance of 125.12 feet; thence continuing along said right of way line and along a reverse curve having a radius of 9260.00 feet, a distance of 2697.10 feet to a point of intersection with the east-west midsection line of said Section 36; thence easterly along said east-west midsection line, a distance of 1711.87 feet to a point being the center of said Section 36; thence south and along the north-south midsection line, a distance of 2640.00 feet to the point of beginning. Parcel 3: this parcel is located in the E1/2NE1/4 of Section 36, T1N, R24W of G&SRB&M, La Paz County, Arizona. Parcel 4: this parcel is located in the E1/2NW1/4SW1/4 of Section 21, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the south right of way line of U.S.A. Levee; except therefrom that portion lying within Cibola Sportsman's Park, according to the plat thereof recorded in Book 4 of Plats, Page 58, records of Yuma (now La Paz) County, Arizona; and further excepting the N1/2E1/2NW1/4SW1/4. Parcel 5: this parcel is located in the S1/2SW1/4 of Section 21, T1N, R23W of G&SRB&M, La Paz County, Arizona. Except the west 33.00 feet thereof; and further excepting that portion more particularly described as follows: the N1/2NW1/4SW1/4SW1/4 of said Section, excepting the north 33.00 feet and the east 33.00 feet thereof. Parcel 6: this parcel is located in the SW1/4SE1/4 of Section 21, T1N, R23W of G&SRB&M, La Paz County, Arizona. Parcel 7: this parcel is located in Sections 24 and 25, T1N, R24W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River and east of Meander line per BLM Plat 2647C. Parcel 8: this parcel is located in the W1/2 of Section 19, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River. Except that portion in condemnation suit Civil 5188PHX filed in District Court of Arizona entitled USA -vs- 527.93 acres of land; and excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 9: this parcel is located in the N1/2NE1/4SE1/4; and the W1/2SW1/4NE1/4SE1/4; and that portion of the SE1/4NE1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the south right of way line of the U.S.B.R. Levee; except the east 33.00 feet thereof; and further excepting that portion more particularly described as follows: commencing at the northeast corner of the SE1/4 of said Section 20; thence S 0°24'00" E along the east line, a distance of 380.27 feet; thence S 89°36'00" W a distance of 50.00 feet to the True Point of Beginning; thence continuing S 89°36'00" W a distance of 193.00 feet; thence N 0°24'00" W a distance of 261.25 feet; thence S 70°11'00" E a distance of 205.67 feet to the west line of the east 50.00 feet of said SE1/4 of Section 20; thence S 0°24'00" E a distance of 190.18 feet to the True Point of Beginning; excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 10: this parcel is located in the S1/2SE1/4 Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona; except the east 33.00 feet thereof. Parcel 11: This parcel is located in the SW1/4NE1/4; and the NW1/4SE1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River and west of the Meander line

- per BLM Plat 2546B; except any portion thereof lying within U.S.A. Lots 5 and 6 of said Section 20, as set forth on BLM Plat 2546B; and excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 12: this parcel is located in the SE1/4NE1/4SE1/4; and the E1/2SW1/4NE1/4SE1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona. Parcel 13: this parcel is located in the E1/2 of Section 19, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River; except the W1/2W1/2SE1/4SW1/4SE1/4; except the E1/2E1/2SW1/4SW1/4SE1/4; except the SW1/4SW1/4NE1/4; except the W1/2SE1/4SW1/4NE1/4; and excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 14: this parcel is located in the SW1/4SW1/4NE1/4; and the W1/2SE1/4SW1/4NE1/4 of Section 19, T1N, R23W of G&SRB&M, La Paz County, Arizona, lying south of the Colorado River and protection levees and front work, excepting therefrom any portion of said land lying within the bed or former bed of the Colorado River waterward of the natural ordinary high water line; and also excepting any artificial accretions to said line of ordinary high water. Parcel 15: this parcel is located in the W1/2 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona; except the west 133.00 feet thereof; except any portion lying within the U.S. Levee or Channel right of way or any portion claimed by the U.S. for Levee purposes or related works; and except the SE1/4SE1/4SW1/4 of said Section 20. Parcel 16: this parcel is located in the SE1/4SE1/4SW1/4 of Section 20, T1N, R23W of G&SRB&M, La Paz County, Arizona.
11. Clarence May and C.M.H. May Memorial Wildlife Area: Clarence May and C.M.H. May Memorial Wildlife Area: Clarence May and C.M.H. May Memorial Wildlife Area shall be the SE1/4 of Section 8 and N1/2NE1/4 of Section 17, T17S, R31E, and the W1/2SE1/4, S1/2NW1/4, and SW1/4 of Section 9, T17S, R31E, G&SRB&M, Cochise County, Arizona, consisting of approximately 560 acres.
  12. Cluff Ranch Wildlife Area: The Cluff Ranch Wildlife Area is that area within the fenced and posted portions of Sections 13, 14, 23, 24, and 26, T7S, R24E, G&SRB&M, Graham County, Arizona; consisting of approximately 788 acres.
  13. Colorado River Nature Center Wildlife Area: The Colorado River Nature Center Wildlife Area is Section 10 of T19N, R22W, bordered by the Fort Mojave Indian Reservation to the west, the Colorado River to the north, and residential areas of Bullhead City to the south and east, G&SRB&M, Mohave County, Arizona.
  14. Fool Hollow Lake Wildlife Area: The Fool Hollow Lake Wildlife Area shall be that area lying in those portions of the S1/2 of Section 7 and of the N1/2N1/2 of Section 18, T10N, R22E, G&SRB&M, described as follows: beginning at a point on the west line of the said Section 7, a distance of 990 feet south of the W1/4 corner thereof; thence S 86°12' E a distance of 2533.9 feet; thence S 41°02' E a distance of 634.7 feet; thence east a distance of 800 feet; thence south a distance of 837.5 feet, more or less to the south line of the said Section 7; thence S 89°53' W along the south line of Section 7 a distance of 660 feet; thence S 0°07' E a distance of 164.3 feet; thence N 89°32' W a distance of 804.2 feet; thence N 20°46' W a distance of 670 feet; thence S 88°12' W a distance of 400 feet; thence N 68°04' W a distance of 692 feet; thence S 2°50' W a distance of 581 feet; thence N 89°32' W a distance of 400 feet; thence N 12°40' W a distance of 370.1 feet, more or less, the north line of the SW1/4SW1/4SW1/4 of said Section 7; thence west a distance of 483.2 feet, more or less, along said line to the west line of Section 7; thence north to the point of beginning.
  15. House Rock Wildlife Area: House Rock Wildlife Area is that area described as follows: beginning at the common 1/4 corner of Sections 17 and 20, T36N, R4E; thence east along the south Section lines of Sections 17, 16, 15, 14, 13 T36N, R4E, and Section 18, T36N, R5E, to the intersection with the top of the southerly escarpment of Bedrock Canyon; thence southeasterly along the top of said escarpment to the top of the northerly escarpment of Fence Canyon; thence along the top of said north escarpment to its intersection with the top of the southerly escarpment of Fence Canyon; thence northeasterly along the top of said southerly escarpment to its intersection with the top of the escarpment of the Colorado River; thence southerly along top of said Colorado River escarpment to its intersection with Boundary Ridge in Section 29, T34N, R5E; thence westerly along Boundary Ridge to its intersection with the top of the escarpment at the head of Saddle Canyon; thence northerly along the top of the westerly escarpment to its intersection with a line beginning approximately at the intersection of the Cockscomb and the east fork of South Canyon extending southeast to a point approximately midway between Buck Farm Canyon and Saddle Canyon; thence northwest to the bottom of the east fork of South Canyon in the SW1/4SW1/4 of Section 16, T34N, R4E; thence northerly along the west side of the Cockscomb to the bottom of North Canyon in the SE1/4 of Section 12, T35N, R3E; thence northeasterly along the bottom of North Canyon to a point where the slope of the land becomes nearly flat; thence northerly along the westerly edge of House Rock Valley to the point of beginning; all in G&SRB&M, Coconino County, Arizona.
  16. Jacques Marsh Wildlife Area: The Jacques Marsh Wildlife Area is that area within the fenced and posted portions of the SE1/4, SW1/4SW1/4NE1/4, SE1/4NW1/4, SW1/4NW1/4, Section 11; and NE1/4NW1/4, NW1/4NE1/4, NE1/4NE1/4, Section 14; T9N, R22E, G&SRB&M, Navajo County, Arizona.
  17. Lamar Haines Wildlife Area: The Lamar Haines Wildlife Area is that area described as: T22N, R6E, Section 12 NW1/4, G&SRB&M, Coconino County, Arizona.
  18. Lower San Pedro River Wildlife Area: The Lower San Pedro River Wildlife Area shall be those areas described as follows:  
For the Triangle Bar Ranch Property: Parcel 1: that portion of the SE1/4 of Section 22, T7S, R16E, G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at the southeast corner of Section 22, to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence N 00°38'57" W along the east line of the SE1/4 of Section 22 a distance of 2626.86 feet to a point being the E1/4 corner of Section 22 a 2.5" Aluminum Cap stamped PLS 35235; thence S 89°00'32" W along the north line of the SE1/4 of Section 22 a distance of 1060.80 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 12°30'55" E a distance of 673.56 feet to a point being a 1/

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2" Iron Pin tagged PLS 35235; thence S 36°31'44" E a distance of 491.55 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 89°00'32" W a distance of 689 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 00°31'09" W a distance of 400.00 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 89°00'32" W a distance of 1320.00 feet to a point on the west line of the SE1/4 of Section 22 to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 00°31'09" E a distance of 1454.09 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°51'39" E a distance of 1387.86 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 53°14'11" E a distance of 322.56 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 01°05'49" W a distance of 321.71 feet to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°51'39" E along said South line of Section 22 a distance of 1011.31 feet to the point of beginning; containing 110.65 acres, more or less. Parcel 2: that portion of Sections 23 T7S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at the point on the south line of Section 23, which point is 720 feet east of the southwest corner of Section 23, said point being a 1/2" Iron Pin tagged PLS 35235; thence N 23°45'32" W a distance of 1833.68 feet (N 22°28'00" W a distance of 1834 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235 on the west line of Section 23; thence S 00°38'57" E a distance of 1691.03 feet (south, record) to the southwest corner of Section 23 to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence along the south line of Section 23 N 89°02'45" E a distance of 720.00 feet (east, a distance of 720.00 feet, recorded) to the point of beginning; containing 13.98 acres, more or less. Parcel 3: lots 2 and 3, and the NE1/4NW1/4, SE1/4NW1/4, and NE1/4SW1/4 of Sections 18 T7S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: commencing at the northwest corner of Section 18, said point being a GLO B.C. stamped Sec 18 CC; thence S 89°47'17" E along the north line of Section 18, a distance of 1271.33 feet to a point being a 1/2" Iron Pin tagged PLS 35235, and being the point of beginning, said point is the northwest corner of the NE1/4NW1/4; thence S 89°47'17" E a distance of 1320.00 feet to a point being the N1/4 corner of Section 18, to a point being a found stone marked 1/4; thence S 01°35'23" E a distance of 4020.67 feet to a point being a found 1/2" Iron Pin with added tag of PLS 35235 to a point being the southeast corner or the NE1/4SW1/4 of Section 18; thence N 89°37'16" W a distance of 2610.28 feet to a point on the west line of Section 18 to a point being a 1/2" Iron Pin tagged PLS 35235, to a point being the southwest corner of Lot 3; thence N 01°17'05" W along the west line of Section 18, a distance of 1360.825 feet to a point being the W1/4 corner of Section 18, to a point being a found stone marked 1/4; thence N 01°20'34" W along the west line of Section 18 a distance of 1325.845 feet to a point being a 1/2" Iron Pin tagged PLS 35235, to a point being the northwest corner of Lot 2; thence S 89°32'47" E a distance of 1279.09 feet to a point being a found 1/2" Iron Pin with added tag of PLS 35235 approximately 0.8 feet down from natural grade, to a point being the northeast corner of Lot 2; thence N 01°40'11" W along the west line of the NE1/4NW1/4 of Section 18, a distance of 1331.47 feet to a point on the north line of Section 18 and the point of beginning; containing 200.78 acres, more or less. Parcel 4: lots 3, 4, 5, 6, and 7 of Sec-

tion 9, T7S, R16E, of G&SRB&M, Pinal County, Arizona more particularly described as follows: beginning at the S1/4 corner of said Section 9, to a point being a 1.5" Open Iron Pipe with added tag PLS 35235; thence N 00°00'03" E along the north-south midsection line a distance of 2641.16 feet (N 00°38'48" E a distance of 2641.20 feet, record) to the center section of Section 9 to a point being a 1/2" Iron Pin tagged PLS 35235; thence continuing N 00°00'03" E along the north-south midsection line, a distance of 1349.83 feet (N 00°38'48" E a distance of 1349.83 feet, record) to the northeast corner of Lot 5 to a point being a found 1/2" Iron Pin with added tag PLS 35235; thence S 89°09'38" W along the north line of Lot 5 a distance of 1346.80 feet (S 89°44'19" W a distance of 1347.21 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, and the northwest corner of Lot 5 and the southeast corner of Lot 3; thence N 00°58'35" E along the east line of Lot 3 a distance of 1357.74 feet (N 00°37'27" E a distance of 1357.74 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235 and the northeast corner of Lot 3; thence N 89°24'33" W along the north line of Lot 3 a distance of 1323.90 feet (N 89°56'37" W a distance of 1323.945 feet, record) to the northwest corner of Section 9 to a point being a found Drill Steel with added tag PLS 35235; thence S 01°56'29" W along the west line of Section 9 a distance of 712.90 feet to a point on the west boundary line of Old Camp Grant and to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 23°03'26" E along said west boundary line of Old Camp Grant, a distance of 5011.05 feet to a point on the south line of Section 9 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 89°13'21" E along the south line of Section 9 a distance of 709.50 feet (N 89°51'39" E a distance of 709.50 feet, record) to the point of beginning; containing 181.71 acres, more or less. Together with those parts of Sections 15 and 22, T7S, R16E, of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at a point being a 1/2" Iron Pin tagged PLS 35235, N 89°00'32" E along the south line of the NE1/4 of Section 22, a distance of 2251.00 feet (east a distance of 2251 feet, record) of the center section corner of Section 22; thence N 47°16'51" W a distance of 1275.05 feet (N 46°47'00" W a distance of 1275.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 79°57'00" W a distance of 1344.00 feet (N 7°27'00" W a distance of 1344.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 65°05'02" W a distance of 399.00 feet (N 59°46'00" W a distance of 399.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 17°49'24" W a distance of 1382.47 feet (N 17°34'00" W a distance of 1385.00 feet, record) to a point on the Section line between Sections 15 and 22 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 21°43'45" W a distance of 1408.97 feet (N 20°49'00" W a distance of 1412.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235 and the Center corner of the SW1/4 of Section 15; thence S 01°06'32" W along the west line of the SE1/4SW1/4 of Section 15, a distance of 1317.07 feet (south, record) to a point on the south line of Section 15 and the southwest corner of the SE1/4SW1/4 of Section 15 to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 00°27'15" E along the west line of the E1/2NW1/4 of Section 22, a distance of 2637.50 feet (south, record) to a point on the south line of the NW1/4 of Section 22 and the southwest corner of the E1/2NW1/4 of

Section 22 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 89°00'56" E along said south line of the NW1/4 of Section 22 a distance of 1320.895 feet (east, record) to the center section corner of Section 22 to a point being a found 2.5" Aluminum Cap stamped C1/4 PLS 35235; thence N 89°00'32" E along the south line of the NE1/4 of Section 22 a distance of 2251.00 feet (east, record) to the point of beginning; containing 110.28 acres, more or less. Parcel 5: those parts of Sections 26 and 35 T7S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at a point N 89°31'56" E a distance of 571.74 feet (record 572 a distance of feet east) of the center section of Section 35 said point being a 1/2" Iron Pin tagged PE 9626; thence N 16°07'19" W a distance of 1369.92 feet (N 15°44'00" W a distance of 1371 feet, record) to a point being a Power Pole tagged PLS 35235; thence N 46°55'33" W a distance of 279.77 feet (N 45°00'00" W a distance of 283.00 feet, record) to the center of a 6" hollow iron fence post filled with concrete approximately 6 feet tall, tagged PLS 35235; thence N 79°45'23" W a distance of 500.00 feet (N 80°00'00" W a distance of 500.00 feet, record) to the center of a 6" hollow iron fence post filled with concrete approximately 6 feet tall, tagged PLS 35235; thence N 21°10'05" W a distance of 1104.18 feet (N 20°38'00" W a distance of 1104.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being a distance of 3.55 feet south of the north line of Section 35; thence N 07°46'25" E a distance of 1334.00 feet (N 08°08'00" E a distance of 1334.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 89°37'04" W a distance of 630.00 feet (west, a distance of 630.00 feet, record) to a point being a found 1/2" Iron Pin with added tag PLS 35235; thence N 01°11'34" W a distance of 1314.34 feet (north a distance of 1320.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being on the north line of the SW1/4; thence along the north line of the SW1/4 N 89°18'34" E a distance of 282.00 feet (east a distance of 282.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being S 89°18'34" W a distance of 992.74 from the center section corner of Section 26; thence N 13°48'15" W a distance of 1351.04 feet (N 13°40'00" W a distance of 1358.00 feet, record) to a point on the north line of the SE1/4NW1/4 of Section 26 to a point being a 1/2" Iron Pin tagged PLS 35235, said point being N 89°10'39" E a distance of 26.52 feet from the northwest corner of the SE1/4NW1/4 of Section 26; thence N 26°31'53" W a distance of 1458.00 feet (N 23°43'00" W a distance of 1442.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, that is on the north line of Section 26 said point being N 89°02'45" E along the north line of Section 26, a distance of 720.00 feet from the northwest corner of Section 26; thence N 23°45'32" W a distance of 1833.68 feet (N 22°28'00" W a distance of 1834.00 feet, record) to a point being a 1/2" Iron Pin tagged PLS 35235, said point being on the west line of Section 23; thence S 00°38'57" E along the west line of Section 23, a distance of 1690.37 feet (south, record) to the southwest corner of Section 23 and northwest corner of Section 26 to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence continuing S 01°16'16" E along the west line of Section 26 a distance of 2625.56 feet (south a distance of 2640.00 feet, record) to the W1/4 corner of Section 26 to a point being a 2.5" Aluminum Cap stamped PLS 35235; thence S 01°16'16"

E along the west line of Section 26, a distance of 2625.56 feet (south a distance of 2640.00 feet, record) to the southwest corner of Section 26 and northwest corner of Section 35 to a point being a 2.25" Capped Iron Pipe stamped with added tag PLS 35235; thence S 00°45'30" E along the west line of Section 35, a distance of 1317.94 feet (south a distance of 1320.00 feet, record) to a point being a 2.5" Capped Iron Pipe stamped with added tag PLS 35235, said point being the southwest corner of the N1/2NW1/4 of Section 35; thence N 89°41'45" E along the south line of the N1/2NW1/4 of Section 35, a distance of 2630.87 feet (east a distance of 2644.00 feet, record) to a point being an Oblong Iron Pin with added tag PLS 35235 said point being the southeast corner of the N1/2NW1/4 of Section 35; thence S 01°11'23" E a distance of 1319.08 (south a distance of 1320.00 feet, record) to a point being an Oblong Iron Pin, with added tag PLS 35235, said point being the center section corner of Section 35; thence N 89°31'56" E along the south line of the NE1/4 of Section 35 a distance of 571.74 feet (east a distance of 572.00 feet, record) to the point of beginning; excepting therefrom any portion of said lands lying and within Section 23, T7S, R16E, G&SRB&M; CONTAINING containing 249.46 acres, more or less. Parcel 6: that portion of Section 1, T8S, R16E of G&SRB&M, Pinal County, Arizona, more particularly described as follows: beginning at a point N 88°25'39" E a distance of 507.07 feet (east a distance of 510 feet record) of the southwest corner of the SE1/4SW1/4 of Section 1 said point being a 1/2" Iron Pin tagged RLS 10046; thence N 18°38'44" E a distance of 1399.18 feet (record N 19°41' E a distance of 1402 feet) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 03°51'10" W a distance of 1314.74 feet (record N 02°44' W a distance of 1321 feet) to a point being a 1/2" Iron Pin tagged RLS 10046; thence S 88°45'59" W a distance of 918.71 feet (record west, a distance of 919 feet) to a point being a 1/2" Iron Pin tagged RLS 10046; thence N 01°02'04" W a distance of 977.00 feet (record north a distance of 977 feet) to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 72°26'42" W a distance of 1384.43 feet (record N 71°22' W a distance of 1393 feet) to a point on the west line of Section 1 to a point being a 1/2" Iron Pin PLS 35235; thence S 01°07'43" E along the west line of Section 1, a distance of 1422.00 feet (record south a distance of 1412 feet) to the W1/4 corner of Section 1, said point being a 2.5" Aluminum Cap stamped PLS 35235; thence continuing S 01°07'43" E along the west line of Section 1, a distance of 1320.00 feet (record south a distance of 1320 feet) to the southwest corner of the NW1/4SW1/4 of Section 1 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°37'29" E a distance of 1311.56 feet (record east to the southwest corner of the NE1/4SW1/4) to the southwest corner of the NE1/4SW1/4 of Section 1 to a point being a 1/2" Iron Pin tagged PLS 35235; thence S 01°05'24" E a distance of 1316.31 feet (record, south a distance of 1320 feet) to the southwest corner of the SE1/4SW1/4 of Section 1 to a point being a 1/2" Iron Pin tagged PLS 35235; thence N 88°25'39" E a distance of 507.07 feet (record, east a distance of 510 feet) to the point of beginning; containing 126.84 acres, more or less. For the ASARCO Property: Parcel 1: Section 15: the W1/2SE1/4 and E1/2SW1/4 of Section 15, T7S, R16E of G&SRB&M, Pinal County, Arizona; except that portion of land situated in Government Lot 9 lying west of the center line of the San Pedro River, said portion being APN 300-35-002. Section

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- 22: That portion of the NE1/4NW1/4 and the NE1/4 of Section 22 T7S, R16E of G&SRB&M, Pinal County, Arizona, lying east of the San Pedro River. Section 23: that portion of the SW1/4 of Section 23, T7S, R16E of G&SRB&M, Pinal County, Arizona, lying east of the San Pedro River. Section 26: that portion of the N1/2NW1/4 of Section 26, T7S, R16E of G&SRB&M, Pinal County, Arizona, lying east of the San Pedro River. Parcel 2: Section 15: Government Lots 1, 2, 3, 4, 5, 6, and 7 of Section 15, T7S, R16E of G&SRB&M, Pinal County, Arizona. Parcel 3: Section 4: Government Lots 5, 8, 9, 11, 12, and 13 of Section 4 except that portion of land situated in Government Lot 13 lying east of State Highway 77 right-of-way, said portion of land being APN 300-31-005B. Section 5: Government Lots 2, 3, 4 and 5, except that portion of land situated in Government Lot 2, more particularly described as follows: beginning at the northeast corner of said Lot 2; thence along the east boundary of said Lot 2 due south 599.94 feet; thence leaving said east boundary due west 283.27 feet to the County Rd. right-of-way (El Camino Rd.); thence along said County Rd. right-of-way N 04°18'56" E a distance of 95.16 feet; thence continuing along said County Rd. right-of-way N 16°30'21" E a distance of 384.05 feet; thence continuing along said County Rd. right-of-way N 14°33'05" E a distance of 141.35 feet to the north boundary of said County Rd. right-of-way due east a distance of 131.48 feet along the north boundary of Government Lot 1 to the point of beginning.
19. Luna Lake Wildlife Area: The Luna Lake Wildlife Area shall be the fenced, buoyed, and posted area lying north of U.S. Highway 180 T5N, R31E, Section 17 N1/2, G&SRB&M, Apache County, Arizona.
  20. Mitty Lake Wildlife Area: The Mitty Lake Wildlife Area shall be those areas described as follows: T6S, R21W, Section 31: All of Lots 1, 2, 3, 4, E1/2W1/2, and that portion of E1/2 lying westerly of Gila Gravity Main Canal Right-of-Way; T7S, R21W; Section 5: that portion of SW1/4SW1/4 lying westerly of Gila Gravity Main Canal Right-of-Way; Section 6: all of Lots 2, 3, 4, 5, 6, 7 and that portion of Lot 1, S1/2NE1/4, SE1/4 lying westerly of Gila Gravity Main Canal R/W; Section 7: all of Lots 1, 2, 3, 4, E1/2W1/2, W1/2E1/2, and that portion of E1/2E1/2 lying westerly of Gila Gravity Main Canal R/W; Section 8: that portion of W1/2W1/2 lying westerly of Gila Gravity Main Canal R/W; Section 18: all of Lots 1, 2, 3, 4, E1/2NW1/4, and that portion of NE1/4, E1/2SW1/4, NW1/4SE1/4 lying westerly of Gila Gravity Main Canal R/W; T6S, R22W; Section 36: all of Lot 1. T7S, R22W; Section 1: all of Lot 1; Section 12: all of Lots 1, 2, SE1/4SE1/4; Section 13: all of Lots 1, 2, 3, 4, 5, 6, 7, 8, NE1/4, N1/2SE1/4, and that portion of S1/2SE1/4 lying northerly of Gila Gravity Main Canal R/W; all in G&SRB&M, Yuma County, Arizona.
  21. Planet Ranch Conservation and Wildlife Area: The Planet Ranch Wildlife Area shall be those areas described as follows: Mohave County (Parcels 1 through 5) Parcel No. 1: the S1/2S1/2 of Section 28, T11N, R16W of the G&SRB&M, Mohave County, Arizona; except 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes. Parcel No. 2: all of sections 32 and 34 T11N, R16W of the G&SRB&M, lying in Mohave County, Arizona; except 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes. Parcel No. 3: the S1/2S1/2 of Section 27, T11N, R16W of the G&SRB&M, Mohave County, Arizona; except oil, gas, coal, and minerals as reserved in deed recorded in Book 64 of Deeds, Page 599, records of Mohave County, Arizona. Parcel No. 4: all of Section 33 and 35, T11N, R16W of the G&SRB&M, lying in Mohave County, Arizona; except oil, gas, coal, and minerals as reserved in deed recorded in Book 64 of Deeds, Page 599, records of Mohave County, Arizona. Parcel No. 5: the S1/2S1/2N1/2 and the S1/2 of Section 36, T11N, R16W of the G&SRB&M, lying in Mohave County, Arizona; except 1/16 of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizer of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes. La Paz County (Parcels 6 through 9) Parcel No. 6: that portion of the S1/2 of Lot 2, all of Lots 3, and 4, the S1/2SE1/4NW1/4 and the S1/2S1/2NE1/4 of Section 31, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except all oil, gas, coal, and minerals as set forth in instrument recorded in Book 57, of Dockets, Page 310. Parcel No. 7: all of Section 32, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except any part of Section 32 lying within the Copper Hill Mining Claim as shown on the Plat of Mineral Survey Number 2675; except that portion of the SW1/4 of Section 32, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona, described as follows: commencing at the S1/4 corner of Section 32; thence west along the south line of Section 32, a distance of 1270.58 feet to the point of beginning; thence north 634.31 feet; thence S 76°41'15" W a distance of 94.09 feet to the southeasterly line of the Planet Ranch Road; thence along said line S 28°55'W a distance of 101.23 feet; thence southwesterly 250.25 feet through an angle of 54°22', along a tangent curve concave to the northwest, having a radius of 263.73 feet to a point of tangency, from which a radial line bears N 07°05' W; thence along said line S 82°55' W a distance of 96.52 feet; thence westerly 184.42 feet through an angle of 17°40'14" along a tangent curve concave to the north, having a radius of 597.96 feet to a point of tangency from which a radial line bears N 10°35'14" E; thence N 79°24'46" W a distance of 260.38 feet; thence leaving the southwesterly line of said Planet Ranch Road, south a distance of 429.61 feet to the south line of said Section 32; thence south along said south line east a distance of 874.42 feet more or less back to the point of beginning; and except that portion of the SW1/4 of Section 32, T11N, R16W of the G&SRB&M, La Paz County, Arizona, described as follows: beginning at the S1/4 corner of Section 32; thence west along the south line of Section 32, a distance of 1270.58 feet; thence north a distance of 634.31 feet; thence S 76°41'15" W a distance of 214.08 feet; thence N 13°18'45" W a distance of 25 feet; thence N 76°41'15" E a distance of 220 feet; thence east a distance of 1270.58 feet; thence south a distance of 660 feet back to the point of beginning. Parcel No. 8: those portions of Sections 33, 34, and 35, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal or stone, metals, minerals, fossils and

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- fertilizer of every name and description, together with all uranium, thorium, or any other material which is or may be determined by the laws of the production of fissionable materials, whether or not of commercial value, as reserved by the State of Arizona in Section 37-231, Arizona Revised Statutes, and in patent of record (Section 34); also except all oil, gas, coal, and minerals as set forth in instrument recorded in Book 57 of Dockets, Page 310 (Section 33 and 35). Parcel No. 9: the S1/2S1/2N1/2 and the S1/2 of Section 36, T11N, R16W of the G&SRB&M, lying in La Paz County, Arizona; except an undivided 1/16 of all oil, gases, and other hydrocarbon substances, coal or stone, metals, minerals, fossils and fertilizer of every name and description, together with all uranium, thorium, or any other material which is or may be determined by the laws of the production of fissionable materials, whether or not of commercial value, as reserved by the State of Arizona in Section 37-231, Arizona Revised Statutes, and in patent of record.
22. Powers Butte (Mumme Farm) Wildlife Area: The Powers Butte Wildlife Area shall be that area described as follows:  
T1S, R5W, Section 25, N1/2SW1/4, SW1/4SW1/4; Section 26, S1/2; Section 27, E1/2SE1/4; Section 34. T2S, R5W Section 3, E1/2W1/2, W1/2SE1/4, NE1/4SE1/4, NE1/4; Section 10, NW1/4, NW1/4NE1/4; Section 15, SE1/4SW1/4; Section 22, E1/2NW1/4, NW1/4NW1/4; all in G&SRB&M, Maricopa County, Arizona.
  23. Quigley-Achee Wildlife Area: The Quigley-Achee Wildlife Area shall be those areas described as follows:  
T8S, R17W; Section 13, W1/2SE1/4, SW1/4NE1/4, and a portion of land in the W1/2 of Section 13, more particularly described as follows: beginning at the S1/4 corner; thence S 89°17'09" W along the south line of said Section 13 a distance of 2627.50 feet to the southwest corner of said Section 13; thence N 41°49'46" E a distance of 3026.74 feet; thence N 0°13'30" W a distance of 1730.00 feet to a point on the north 1/16th line of said Section 13; thence N 89°17'36" E along said north 1/16th line a distance of 600.00 feet to the center of said Section 13; thence S 0°13'30" E. along the north-south midsection line a distance of 3959.99 feet to the point of beginning. Section 23, SE1/4NE1/4, and a portion of land in the NE1/4NE1/4 of Section 23, more particularly described as follows: beginning at the northeast corner; thence S 0°10'19" E along the east line of said Section 23, a distance of 1326.74 feet to a point on the south line of the NE1/4NE1/4 of said Section 23; thence S 89°29'58" W along said south line, a distance of 1309.64 feet; thence N 44°17'39" E a distance of 1869.58 feet to the point of beginning. Section 24, NW1/4, N1/2SW1/4, W1/2NE1/4; all in G&SRB&M, Yuma County, Arizona.
  24. Raymond Wildlife Area: The Raymond Wildlife Area is that area described as follows: All of Sections 24, 25, 26, 34, 35, 36, and the portions of Sections 27, 28, and 33 lying east of the following described line: beginning at the W1/4 corner of Section 33; thence northeasterly through the 1/4 corner common to Sections 28 and 33, 1/4 corner common to Sections 27 and 28 to the N1/4 corner of Section 27 all in T19N, R11E. All of Sections 15, 16, 17, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34 all in T19N, R12E.; all in G&SRB&M, Coconino County, Arizona.
  25. Robbins Butte Wildlife Area: The Robbins Butte Wildlife Area shall be those areas described as follows:  
T1S, R3W, Section 17, S1/2NE1/4, SE1/4, NW1/4SW1/4; Section 18, Lots 3, 4, and E1/2SW1/4, S1/2NE1/4, W1/2SE1/4, NE1/4SE1/4. T1S, R4W, Section 13, all except that portion of W1/2SW1/4SW1/4 lying west of State Route 85; Section 14, all except the W1/2NW1/4 and that portion of the SW1/4 lying north of the Arlington Canal; Section 19, S1/2SE1/4; Section 20, S1/2S1/2, NE1/4SE1/4; Section 21, S1/2, S1/2NE1/4, SE1/4NW1/4; Section 22, all except for NW1/4NW1/4; Section 23; Section 24, that portion of SW1/4, W1/2SW1/4NW1/4 lying west of State Route 85; Section 25, that portion of the NW1/4NW1/4 lying west of State Route 85; Section 26, NW1/4, W1/2NE1/4, NE1/4NE1/4; Section 27, N1/2, SW1/4; Section 28; Section 29, N1/2N1/2, SE1/4NE1/4; Section 30, Lots 5, 6, 7, 8, NE1/4, SE1/4SE1/4; all in G&SRB&M, Maricopa County, Arizona.
  26. Roosevelt Lake Wildlife Area: The Roosevelt Lake Wildlife Area is that area described as follows: beginning at the junction of A-Cross Rd. and Arizona Highway 188; south on Arizona Highway 188 to the main entrance of Roosevelt Lake Marina; northeast on this road towards the main marina launch; northeast across Roosevelt Lake to the south tip of Bass Point; northerly to Long Gulch Rd.; northeast on this road to the A-Cross Rd.; northwest on the A-Cross Rd. to the point of beginning; all in G&SRB&M, Gila County, Arizona.
  27. Santa Rita Wildlife Area: The Santa Rita Experimental Range is that area described as follows: Concurrent with the Santa Rita Experimental Range boundary and includes the posted portion of the following sections: Sections 33 through 36, T17S, R14E, Section 25, Section 35 and Section 36, T18S, R13E, Sections 1 through 4, Sections 9 through 16, and Sections 21 through 36, T18S, R14E, Sections 3 through 9, Sections 16 through 21, Sections 26 through 34, T18S, R15E, Sections 1 through 6, Sections 9 through 16, Section 23, T19S, R14E, Sections 3 through 10, Sections 16 through 18, T19S, R15E; all in G&SRB&M, Pima County, Arizona, and all being coincidental with the Santa Rita Experimental Range Area.
  28. Sipe White Mountain Wildlife Area: The Sipe White Mountain Wildlife Area shall be those areas described as follows:  
T7N, R29E, Section 1, SE1/4, SE1/4NE1/4, S1/2NE1/4NE1/4, SE1/4SW1/4NE1/4, NE1/4SE1/4SW1/4, and the SE1/4NE1/4SW1/4. T7N, R30E, Section 5, W1/2W1/2SE1/4SW1/4, and the SW1/4SW1/4; Section 6, Lots 1, 2, 3, 7, and 8, SW1/4NW1/4NW1/4, S1/2NW1/4NE1/4SE1/4, N1/2SE1/4SE1/4, E1/2SE1/4SE1/4SE1/4, SW1/4SE1/4 and the SE1/4SW1/4; Section 7, Parcel 10: Lots 1 and 2, E1/2NW1/4, E1/2E1/2NE1/4NE1/4, W1/2SW1/4NE1/4, NW1/4SE1/4, W1/2NE1/4SE1/4, NE1/4SW1/4, E1/2NW1/4SW1/4, and the NW1/4NE1/4; Section 8, NW1/4NW1/4, and the W1/2W1/2NE1/4NW1/4. T8N, R30E; Section 31, SE1/4NE1/4, SE1/4, and the SE1/4SW1/4; all in G&SRB&M, Apache County, Arizona.
  29. Springerville Marsh Wildlife Area: The Springerville Marsh Wildlife Area shall be those areas described as follows: S1/2 SE1/4 Section 27 and N1/2 NE1/4 Section 34, T9N, R29E, G&SRB&M, Apache County, Arizona.
  30. Sunflower Flat Wildlife Area: The Sunflower Flat Wildlife Area shall be those areas described as follows:  
T20N, R3E; Section 11, NE1/4SE1/4, N1/2NW1/4SE1/4, SE1/4NW1/4SE1/4, NE1/4SE1/4SE1/4, W1/2SE1/4NE1/4, S1/2SE1/4SE1/4NE1/4, E1/2SW1/4NE1/4; Section 12, NW1/4SW1/4SW1/4, NW1/4NE1/4SW1/4SW1/4, SW1/4NW1/4SW1/4, S1/2NW1/4NW1/4SW1/4, W1/



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- 2SE1/4NW1/4SW1/4, SW1/4NE1/4NW1/4 SW1/4; all in the G&SRB&M, Coconino County, Arizona.
31. Three Bar Wildlife Area: The Three Bar Wildlife Area shall be that area described as follows: beginning at Roosevelt Dam, northwesterly on 188 to milepost 252 (Bumble Bee Wash); westerly along the boundary fence for approximately 7 1/2 miles to the boundary of Gila and Maricopa counties; southerly along this boundary through Four Peaks to a fence line south of Buckhorn Mountain; southerly along the barbed wire drift fence at Ash Creek to Apache Lake; northeasterly along Apache Lake to Roosevelt Dam.
  32. Tucson Mountain Wildlife Area: The Tucson Mountain Wildlife Area shall be that area described as follows: beginning at the northwest corner of Section 33; T13S, R11E on the Saguaro National Monument boundary; due south approximately one mile to the El Paso Natural Gas Pipeline; southeast along this pipeline to Sandario Rd.; south on Sandario Rd. approximately two miles to the southwest corner of Section 15; T14S, R11E, east along the section line to the El Paso Natural Gas Pipeline; southeast along this pipeline to its junction with State Route 86, also known as the Ajo Highway; easterly along this highway to the Tucson city limits; north along the city limits to Silverbell Rd.; northwest along this road to Twin Peaks Rd.; west along this road to Sandario Rd.; south along this road to the Saguaro National Monument boundary; west and south along the monument boundary to the point of beginning, all in G&SRB&M, Pima County, Arizona.
  33. Upper Verde River Wildlife Area: The Upper Verde River Wildlife Area consists of eight parcels totaling 1102.54 acres located eight miles north of Chino Valley in Yavapai County, Arizona, along the upper Verde River and lower Granite Creek described as follows:  
Sullivan Lake: located immediately downstream of Sullivan Lake, the headwaters of the Verde River: the NE1/4NE1/4 lying east of the California, Arizona, and Santa Fe Railway Company right-of-way in Section 15, T17N, R2W; and also the NW1/4NE1/4 of Section 15 consisting of approximately 80 acres. Granite Creek Parcel: includes one mile of Granite Creek to its confluence with the Verde River: The SE1/4SE1/4 of Section 11; the NW1/4SW1/4 and SW1/4NW1/4 of Section 13; the E1/2NE1/4 of Section 14; all in T17N, R1W consisting of approximately 239 acres. E1/2SW1/4SW1/4, SE1/4SW1/4, NE1/4SW1/4 and NW1/4SE1/4 of Section 12, NW1/4NW1/4 of Section 13, T17N, R2W consisting of approximately 182.26 acres. Campbell Place Parcel: NE1/4NW1/4, NW1/4NE1/4, NE1/4NE1/4, SE1/4NW1/4, SW1/4NE1/4, SE1/4NE1/4, NE1/4SW1/4, NW1/4SE1/4, NE1/4SE1/4, NW1/4SW1/4, NE1/4SW1/4, and NW1/4SE1/4 in Section 7, T17N, R1W and SE1/4SE1/4 Section 12, T17N, R2W consisting of 315 acres. Tract 39 Parcel: the E1/2 of Tract 39 within the Prescott National Forest boundary, SE1/2SW1/4 and SW1/4SE1/4 of Section 5, T18N, R1W; and the W1/2 of Tract 39 outside the Forest boundary, SW1/4SW1/4, and SW1/4SW1/4 of Section 5 and NW1/4NW1/4 of Section 8, T18N, R1W consisting of approximately 163 acres. Wells Parcels: Parcel 1 and Parcel 2: all that portion of Government Lots 9 and 10, Section 7, along with Lot 3 and the SW1/4NW1/4, Section 8, located in T17N, R1W, of G&SRB&M, Yavapai County, Arizona, also known as APN 306-39-004L and 306-39-004M. Parcel 3 and Parcel 4: all that portion of the NE1/4SW1/4, NW1/4SE1/4, SW1/4SW1/4, and E1/2SW1/4SW1/4 of Section 12 and the NW1/4NW1/4 of Section 13, T17N, R2W, of G&SRB&M, Yavapai County, Arizona.
  34. Wenima Wildlife Area: The Wenima Wildlife Area shall be those areas described as follows:  
T9N, R29E; Section 5, SE1/4 SW1/4, and SW1/4 SE1/4 except E1/2 E1/2 SW1/4 SE1/4, Section 8, NE1/4 NW1/4, and NW1/4 NE1/4; Sections 8, 17 and 18, within the following boundary: From the 1/4 corner of Sections 17 and 18, the True Point of Beginning; thence N 00°12'56" E a distance of 1302.64 feet along the Section line between Sections 17 and 18 to the N1/16 corner; thence N 89°24'24" W a distance of 1331.22 feet to the NE1/16 corner of Section 18; thence N 00°18'02" E a distance of 1310.57 feet to the E1/16 corner of Sections 7 and 18; thence S 89°03'51" E a distance of 1329.25 feet to the northeast Section corner of said Section 18; thence N 01°49'10" E a distance of 1520.28 feet to a point on the Section line between Sections 7 and 8; thence N 38°21'18" E a distance of 370.87 feet; thence N 22°04'51" E a distance of 590.96 feet; thence N 57°24'55" E a distance of 468.86 feet to a point on the east-west midsection line of said Section 8; thence N 89°38'03" E a distance of 525.43 feet along said midsection line to the center W1/16 corner; thence S 02°01'25" W a distance of 55.04 feet; thence S 87°27'17" E a distance of 231.65 feet; thence S 70°21'28" E a distance of 81.59 feet; thence N 89°28'36" E a distance of 111.27 feet; thence N 37°32'54" E a distance of 310.00 feet; thence N 43°58'37" W a distance of 550.00 feet; thence N 27°25'53" W a distance of 416.98 feet to the NS1/16 line of said Section 8; thence N 02°01'25" E a distance of 380.04 feet along said 1/16 line to the NW1/16 corner of said Section 8; thence N 89°45'28" E a distance of 1315.07 feet along the east-west middle 1/16 line; thence S 45°14'41" E a distance of 67.69 feet; thence S 49°28'18" E a distance of 1099.72 feet; thence S 08°04'43" W a distance of 810.00 feet; thence S 58°54'47" W a distance of 341.78 feet; thence 50°14'53" W a distance of 680.93 feet to a point in the center of that cul-de-sac at the end of Jeremy's Point Rd.; thence N 80°02'20" W a distance of 724.76 feet, said point lying N 42°15'10" W a distance of 220.12 feet from the northwest corner of Lot 72; thence N 34°19'23" E a distance of 80.64 feet; thence N 15°54'25" E a distance of 51.54 feet; thence N 29°09'53" E a distance of 45.37 feet; thence N 40°09'33" E a distance of 69.21 feet; thence N 25°48'58" E a distance of 43.28 feet; thence N 13°24'51" E a distance of 63.12 feet; thence N 16°03'10" W a distance of 30.98 feet; thence N 57°55'25" W a distance of 35.50 feet; thence N 80°47'38" W a distance of 48.08 feet; thence S 87°28'53" W a distance of 82.84 feet; thence S 72°07'06" W a distance of 131.85 feet; thence S 43°32'45" W a distance of 118.71 feet; thence S 02°37'48" E a distance of 59.34 feet; thence S 23°03'29" E a distance of 57.28 feet; thence S 28°30'39" E a distance of 54.75 feet; thence S 36°39'47" E a distance of 105.08 feet; thence S 24°55'07" West a distance of 394.78 feet; thence S 61°32'16" W a distance of 642.77 feet to the northwest corner of Lot 23; thence N 04°35'23" W a distance of 90.62 feet; thence S 85°24'37" W a distance of 26.00 feet; thence N 64°21'36" W a distance of 120.76 feet; thence S 61°07'57" W a distance of 44.52 feet; thence S 39°55'58" W a distance of 80.59 feet; thence S 11°33'07" W a distance of 47.21 feet; thence S 19°53'19" E a distance of 27.06 feet; thence S 54°26'36" E a distance of 62.82 feet; thence S 24°56'25" W a distance of

23.92 feet; thence S 48°10'38" W a distance of 542.79 feet; thence S 17°13'48" W a distance of 427.83 feet to the northwest corner of Lot 130; thence S 29°10'58" W a distance of 104.45 feet to the southwest corner of Lot 130; thence southwesterly along a curve having a radius of 931.52 feet, and arc length of 417.52 feet to the southwest corner of Lot 134; thence S 15°04'25" W a distance of 91.10 feet; thence S 04°29'15" W a distance of 109.17 feet; thence S 01°41'24" W a distance of 60.45 feet; thence S 29°16'05" W a distance of 187.12 feet; thence S 14°44'00" W a distance of 252.94 feet; thence S 15°42'24" E a distance of 290.09 feet; thence S 89°13'25" E a distance of 162.59 feet; thence S 37°19'54" E a distance of 123.03 feet to the southeast corner of Lot 169; thence S 20°36'30" E a distance of 706.78 feet to the northwest corner of Lot 189; thence S 04°07'31" W a distance of 147.32 feet; thence S 29°11'19" E a distance of 445.64 feet; thence S 00°31'40" E a distance of 169.24 feet to the east-west midsection line of Section 17 and the southwest corner of Lot 194; thence S 89°28'20" W a distance of 891.84 feet along said east-west midsection line to the True Point of Beginning; all in G&SRB&M, Apache County, Arizona.

35. White Mountain Grasslands Wildlife Area: The White Mountain Grasslands Wildlife Area shall be those areas described as follows:

Parcel 1 (CL1): the S1/2 of Section 24; the N1/2NW1/4 of Section 25; the NE1/4 and N1/2SE1/4 of Section 26; all in T9N, R27E of G&SRB&M, Apache County, Arizona; except all coal and other minerals as reserved to the U.S. in the Patent of said land. Parcel 2 (CL2): the SE1/4 and the SE1/4SW1/4 of Section 31, T9N, R28E of G&SRB&M, Apache County, Arizona. Parcel 3 (CL3): the NW1/4SW1/4 of Section 28; and the SW1/4S1/2SE1/4 and NE1/4SE1/4 of T9N, R28E of G&SRB&M, Apache County, Arizona. Parcel 4 (CL4): the SW1/4SW1/4 of Section 5; the SE1/4SE1/4 of Section 6; the NE1/4NE1/4 of Section 7; the NW1/4NW1/4, E1/2SW1/4NW1/4, W1/2NE1/4, SE1/4NW1/4, and that portion of the S1/2 which lies North of Highway 260, except the W1/2SW1/4 of Section 8; all in T8N, R28E of G&SRB&M, Apache County, Arizona. Parcel 1 (O1): the S1/2N1/2 of Section 10, T8N, R28E, of G&SRB&M, Apache County, Arizona; except that Parcel of land lying within the S1/2NE1/4 of Section 10, T8N, R28E, of G&SRB&M, Apache County, Arizona, more particularly described as follows: From the N1/16 corner of Sections 10 and 11, monumented with a 5/8-inch rebar with a cap marked LS 13014, said point being the True Point of Beginning; thence N 89°44'54" W a distance of 1874.70 feet along the east-west 1/16 line to a point monumented with a 1/2-inch rebar with a tag marked LS 13014; thence S 02°26'17" W a distance of 932.00 feet to a point monumented with a 1/2-inch rebar with a tag marked LS 13014; thence S 89°44'54" E a distance of 1873.69 feet to a point monumented with a 1/2-inch rebar with a tag marked LS 13014, said point being on the east line of Section 10; thence N 02°30'00" E a distance of 932.00 feet along said Section line to the True Point of Beginning. Parcel 2 (O2): the N1/2S1/2 of Section 10, T8N, R28E, of G&SRB&M, Apache County, Arizona. Except for that portion lying South of State Highway 260. Parcel 3 (O3): the SE1/4 of Section 25, T9N, R27E, of G&SRB&M, Apache County, Arizona. Parcel 4 (O4): lots 3 and 4; the E1/2SW1/4; W1/2SE1/4; and NE1/4SE1/4 of Section 30, T9N, R28E, of G&SRB&M,

Apache County, Arizona. Parcel 5 (O5): lots 1, 2 and 3; the S1/2NE1/4; NW1/4NE1/4; E1/2NW1/4; and NE1/4SW1/4 of Section 31, T9N, R28E, of G&SRB&M, Apache County, Arizona. Parcel 6 (O6): beginning at the northwest corner of the SE1/4 of Section 27, T9N, R28E, of G&SRB&M, Apache County, Arizona; thence east a distance of 1320.00 feet; thence south a distance of 925.00 feet; thence west a distance of 320.00 feet to the center of a stock watering tub; thence N 83° W a distance of 1000.00 feet; thence north a distance of 740.00 feet to the point of beginning. State Land Special Use Permit: SE1/4SW1/4 of Section 5; E1/2NE1/4 of Section 08; NE1/4NW1/4 of Section 8; M&B in N1/2NW1/4 north of Hwy 260 of Section 17, all in T8N, R28E of the G&SRB&M, Apache County, Arizona. S1/2NW1/4 and SW1/4 of Section 26; all of Section 36, all in T9N, R27E of the G&SRB&M, Apache County, Arizona. SE1/4 lying easterly of Carnero Creek in Section 18; Lots 3 and 4, E1/2SW1/4, SE1/4, NE1/4, and SE1/4NW1/4, lying southeasterly of Carnero Creek in Section 19; NW1/4SE1/4 of Section 29, Lots 1 and 2 and NE1/4 and E1/2NW1/4 and SE1/4SE1/4 of Section 30; and Lot 4, and the NE1/4NE1/4 of Section 31; all in T9N, R28E of the G&SRB&M, Apache County, Arizona. State Grazing Lease: Legal Description of the White Mountain Grassland State Land Grazing Lease. Lots 1 thru 4, and S1/2N1/2, SW1/4, N1/2N1/2SE1/4, S SW1/4NW1/4SE1/4, and W1/2SW1/4SE1/4 of Section 3; Lots 1 thru 4, and the S1/2N1/2 and S1/2 of Section 4; SE1/4SW1/4 of Section 5; E1/2NE1/4, NE1/4NW1/4 of Section 8; SE1/4NE1/4 and N1/2N1/2 of Section 9; S1/2NE1/4NE1/4, SE1/4NW1/4NE1/4, W1/2NW1/4NE1/4, N1/2NW1/4, all in Section 10; NE1/4NW1/4 lying north of the centerline of State Highway 260, in Section 17, T8N, R28E of the G&SRB&M, Apache County; NE1/4, S1/2NW1/4, and the SW1/4 of Section 25, and all of Section 36; in T9N, R27E of the G&SRB&M, Apache County; a portion of the SE1/4 of Section 18 lying southeasterly of Carnero Creek, Lots 3 and 4, E1/2SW1/4, SE1/4, NE1/4, and SE1/4NW1/4 lying southeast of Carnero Creek in Section 19; all of Section 20 and Section 21; SW1/4NE1/4, S1/2NW1/4, and M&B in N1/2SW1/4, of Section 27; N1/2E1/2SW1/4, SW1/4SW1/4 and SE1/4 of Section 28; Lots 1 and 2, and NE1/4, E1/2NW1/4, and SE1/4SE1/4 of Section 30; Lot 4 and NE1/4NE1/4 of Section 31; all of Section 32 and Section 33, in T9N, R28E, in the G&SRB&M, Apache County. SE1/4NE1/4SE1/4 of Section 31; T09N, R28E, G&SRB&M, Apache County, Arizona.

36. White Water Draw Wildlife Area: The White Water Draw Wildlife Area shall be those areas described as follows: T21S, R26E; Section 19, S1/2 SE1/4; Section 29, W1/2 NE1/4, and E1/2 NE1/4; Section 30, N1/2 NE1/4; Section 32; T22S, R26E; Section 4, Lots 3 and 4; T22S, R26E; Section 5, Lots 1 to 4, except an undivided 1/2 interest in all minerals, oil, and/or gas as reserved in Deed recorded in Docket 209, page 117, records of Cochise County, Arizona.
37. Willcox Playa Wildlife Area: The Willcox Playa Wildlife Area shall be that area within the posted Arizona Game and Fish Department fences enclosing the following described area: beginning at the Section corner common to Sections 2, 3, 10 and 11, T15S, R25E, G&SRB&M, Cochise County, Arizona; thence S 0°15'57" W a distance of 2645.53 feet to the east 1/4 corner of Section 10; thence S 89°47'15" W a distance of 2578.59 feet to the

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center 1/4 corner of Section 10; thence N 1°45'24" E a distance of 2647.85 feet to the center 1/4 corner of Section 3; thence N 1°02'42" W a distance of 2647.58 feet to the center 1/4 corner of said Section 3; thence N 89°41'37" E to the common 1/4 corner of Section 2 and Section 3; thence S 0°00'03" W a distance of 1323.68 feet to the south 1/16 corner of said Sections 2 and 3; thence S 44°46'30" E a distance of 1867.80 feet to a point on the common Section line of Section 2 and Section 11; thence S 44°41'13" E a distance of 1862.94 feet; thence S 44°42'35" E a distance of 1863.13 feet; thence N 0°13'23" E a distance of 1322.06 feet; thence S 89°54'40" E a distance of 1276.24 feet to a point on the west right-of-way fence line of Kansas Settlement Rd.; thence S 0°12'32" W a distance of 2643.71 feet along said fence line; thence N 89°55'43" W a distance of 2591.30 feet; thence N 0°14'14" E a distance of 661.13 feet; thence N 89°55'27" W a distance of 658.20 feet; thence N 0°14'39" E a distance of 1322.36 feet; thence N 44°41'19" West a distance of 931.44 feet; thence N 44°40'31" W a distance of 1862.85 feet to the point of beginning. Said wildlife area contains 543.10 acres approximately.

- C. Department Controlled Properties are described as follows: Hirsch Conservation Education Area and Biscuit Tank: The Hirsch Conservation Education Area and Biscuit Tank shall be that area lying in Section 3 T5N R2E, beginning at the northeast corner of Section 3, T5N, R2E, G&SRB&M, Maricopa County, Arizona; thence S 35°33'23.43" W a distance of 2938.12 feet; to the point of true beginning; thence S 81°31'35.45" W a distance of 147.25 feet; thence S 45°46'21.90" W a distance of 552.25 feet; thence S 21°28'21.59" W a distance of 56.77 feet; thence S 16°19'49.19" E a distance of 384.44 feet; thence S 5°27'54.02" W a distance of 73.43 feet; thence S 89°50'44.45" E a distance of 431.99 feet; thence N 4°53'57.68" W a distance of 81.99 feet; thence N 46°49'53.27" W a distance of 47.22 feet; thence N 43°33'3.68" E a distance of 83.74 feet; thence S 47°30'40.79" E a distance of 47.71 feet; thence N 76°2'59.67" E a distance of 105.91 feet; thence N 15°45'0.24" W a distance of 95.87 feet; thence N 68°48'27.79" E a distance of 69.79 feet; thence N 8°31'53.39" W a distance of 69.79 feet; thence N 30°5'32.34" E a distance of 39.8 feet; thence N 46°17'32.32" E a distance of 63.77 feet; thence N 22°17'26.17" W a distance of 517.05 feet to the point of true beginning.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1731, effective May 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 9 A.A.R. 3141, effective August 23, 2003 (Supp. 03-2). Amended by exempt rulemaking at 11 A.A.R. 1927, effective May 20, 2005 (Supp. 05-2). Amended by exempt rulemaking at 16 A.A.R. 397, effective March 5, 2010 (Supp. 10-1). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Amended by exempt rulemaking at 18 A.A.R. 1070, effective June 15, 2012 (Supp. 12-2). Amended by exempt rulemaking at 19 A.A.R. 931, effective June 17, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 841, effective June 17, 2014 (Supp. 14-1). Amended by exempt rulemaking at 22 A.A.R. 951, effective June 7, 2016 (Supp. 16-2). Amended by exempt rulemaking at 22 A.A.R. 2209, effective October 4, 2016 (Supp. 16-4).

**R12-4-804. Renumbered****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R.

1424, effective June 14, 2003 (Supp. 03-2). Amended by exempt rulemaking at 17 A.A.R. 800, effective June 20, 2011 (Supp. 11-2). Section R12-4-804 renumbered to R12-4-125, by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4).

**ARTICLE 9. EXPIRED****R12-4-901. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-901 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2).

**R12-4-902. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-902 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2).

**R12-4-903. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). R12-4-903 renumbered to R12-4-904; new Section R12-4-903 renumbered from R12-4-904 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-903 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2).

**R12-4-904. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). R12-4-904 renumbered to R12-4-903; new Section R12-4-904 renumbered from R12-4-903 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-904 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2).

**R12-4-905. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-905 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2).

**R12-4-906. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1109, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2). Section R12-4-906 expired under A.R.S. § 41-1056(J) at 21 A.A.R. 757, effective March 31, 2015 (Supp. 15-2).

**ARTICLE 10. RESERVED****ARTICLE 11. AQUATIC INVASIVE SPECIES****R12-4-1101. Definitions**

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

“Aquatic invasive species” means those species listed in Director’s Order 1.

“Certified agent” means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

“Conveyance” means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

“Equipment” means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

“Operator” means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

“Owner” means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” has the same meaning as defined under A.R.S. § 1-215.

“Release” means to place, plant, or cause to be placed or planted in waters.

“Transporter” means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

**R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols**

- A.** A person shall not, unless authorized under Article 4:
1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
  2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
  3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

- B.** Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and before leaving that location, a person shall:
1. Remove all clinging materials such as plants, animals, and mud.
  2. Remove any plug or other barrier that prevents water drainage or, where none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.
- C.** Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations where aquatic invasive species are suspected or known to be present, as listed in Director’s Order 2, a person shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
- D.** Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E.** If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the mandatory protocols described in Director’s Order 3.
- F.** The following Director’s Orders are available at any Department office and online at azgfd.gov:
1. Director’s Order 1 – Listing of Aquatic Invasive Species for Arizona;
  2. Director’s Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present; and
  3. Director’s Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
- G.** This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

**R12-4-1103. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 17 A.A.R. 1218, effective June 2, 2011 for 180 days (Supp. 11-2). Section renewed by emergency rulemaking at 17 A.A.R. 2376, effective November 3, 2011 (Supp. 11-4). Emergency expired (Supp. 14-1).

**R12-4-1104. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 17 A.A.R. 1218, effective June 2, 2011 for 180 days (Supp. 11-2). Section renewed by emergency rulemaking at 17 A.A.R. 2376, effective November 3, 2011 (Supp. 11-4). Emergency expired (Supp. 14-1).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 12. Natural Resources**

### **Chapter 15. Department of Water Resources**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R12-15-107

REMOVE Supp. 14-3  
Pages: 1 - 83

REPLACE with Supp. 16-4  
Pages: 1 - 83

*The agency's contact person who can answer questions about expired rules in Supp. 16-4:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 12. NATURAL RESOURCES****CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

(Authority: A.R.S. § 45-101 et seq.)

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*Article 12, consisting of Sections R12-15-1201 through R12-15-1206, repealed; new Article 12, consisting of Sections R12-15-1201 through R12-15-1226 et seq., adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).*

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*Article 13, consisting of Sections R12-15-1301 through R12-15-1308, made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).*

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**ARTICLE 1. FEES****R12-15-101. Definitions**

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. "Application" means a written request submitted by an applicant to the Department for the purpose of obtaining a permit, license or other legal authorization issued by the Department.
2. "Fiscal year" means the year beginning July 1 and ending June 30.
3. "Mileage expenses" means the Department's mileage expenses for travelling to and from a site inspection calculated at the rate set by the Arizona Department of Administration for state travel by motor vehicle.
4. "Municipality" means an incorporated city or town.
5. "Pre-decision administrative hearing" means an administrative hearing held on an application before the Department makes any decision on the application.
6. "Population" means the population according to the most recent United States decennial census.
7. "Review hours" means the hours or portions of hours spent by Department employees in reviewing an application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Only time spent by the program staff members and technical review team members responsible for processing the application shall be included as review hours. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent traveling to and from a site inspection, any time spent on a pre-decision administrative hearing and any time spent on the application after a party appeals the Director's decision on the application pursuant to A.R.S. § 41-1092.03(B).
8. "Site inspection" means an inspection conducted by the Department before issuing a decision on an application or before issuing a decision on whether water may be stored at an underground storage facility.
9. "Site inspection time" means time spent on a site inspection. Site inspection time includes the time spent conducting the inspection and the time spent preparing an inspection report following the inspection, but does not include the time spent traveling to and from the inspection.
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1).

**R12-15-102. Fees for Applications and Filings**

- A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

- B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee**

- A. The Department shall calculate the fee for an application listed in subsection (B) of this Section by multiplying the number of review hours for the application by an hourly rate of \$118.00, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.
- B. A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:
  1. Wells:

Type of Application	Maximum Fee
Variance from well construction requirements that has not been pre-approved by the Department	\$10,000.00

2. Groundwater:

Type of Application	Maximum Fee
a.Issuance, renewal or modification of groundwater withdrawal permit	\$10,000.00
b.Issuance of notice of authority to irrigate in an irrigation non-expansion area	\$10,000.00
c.Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	\$10,000.00
d.Notice of intent to establish new service area right by a city, town or private water company	\$10,000.00
e.Final petition to establish new service area right by a city, town or private water company	\$10,000.00
f.Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	\$10,000.00
g.Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	\$10,000.00
h.Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	\$10,000.00

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i.Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	\$10,000.00
j.Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	\$10,000.00
k.Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	\$10,000.00
l.Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	\$10,000.00
m.Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	\$10,000.00

## 3. Grandfathered Rights:

Type of Application	Maximum Fee
a.Type 1 non-irrigation grandfathered right for land retired from irrigation after date of designation of active management area pursuant to A.R.S. § 45-469 or 45-472	\$10,000.00
b.Restoration of retired irrigation grandfathered right pursuant to A.R.S. § 45-469(O)	\$10,000.00

## 4. Substitution of Acres:

Type of Application	Maximum Fee
a.Substitution of flood damaged acres in an active management area or an irrigation non-expansion area	\$10,000.00
b.Substitution of acres to eliminate limiting condition impeding efficient irrigation in an active management area or an irrigation non-expansion area	\$10,000.00
c.Substitution of acres to allow irrigation with Central Arizona Project water in an active management area	\$10,000.00

## 5. Lakes:

Type of Application	Maximum Fee
a.Permit to fill body of water with poor quality water pursuant to A.R.S. § 45-132(C)	\$10,000.00
b.Permit for interim water use in a body of water	\$10,000.00
c.Temporary emergency permit for use of surface water or groundwater in a body of water	\$10,000.00

## 6. Water Exchange:

Type of Application	Maximum Fee

a. Issuance, renewal or modification of water exchange permit	\$10,000.00
b. Notice of water exchange for which approval is required pursuant to A.R.S. § 45-1052(6)(b)	\$10,000.00

## 7. Water Exportation:

Type of Application	Maximum Fee
Permit to transport water from this state	\$25,000.00

## 8. Underground Water Storage, Savings and Replenishment:

Type of Application	Maximum Fee
a.Issuance, renewal or modification of an underground storage facility permit	\$25,000.00
b.Issuance, renewal or modification of a groundwater savings facility permit	\$10,000.00
c.Issuance, renewal or modification of a water storage permit	\$10,000.00
d.Recovery well permit, including an emergency temporary recovery well permit	\$10,000.00

## 9. Assured and Adequate Water Supply:

Type of Application	Maximum Fee
a.Physical availability determination	\$10,000.00
b.Analysis of assured or adequate water supply	\$10,000.00
c.Renewal of analysis of assured or adequate water supply	\$10,000.00
d.Certificate of assured water supply	\$10,000.00
e.Issuance or modification of designation of assured water supply	\$35,000.00
f.Issuance or modification of designation of adequate water supply	\$25,000.00
g. Water report (outside an AMA)	\$10,000.00
h.Assignment of Type A certificate of assured water supply	\$5,000.00
i.Assignment of Type B certificate of assured water supply	\$5,000.00
j.Classification of Type A certificate of assured water supply pursuant to R12-15-707	\$10,000.00
k.Review of revised plat to determine whether changes are material	\$10,000.00
l.New certificate of assured water supply pursuant to R12-15-704(G)	\$10,000.00
m.Letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M)	\$10,000.00

## 10. Surface Water:

Type of Application	Maximum Fee
a.Permit to appropriate public water	\$10,000.00
b.Certificate of water right	\$10,000.00

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c.Primary reservoir permit or secondary reservoir permit	\$10,000.00
d.Change in use of water	\$10,000.00
e.Severance and transfer of water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in water source, use or ownership	\$25,000.00
f.Severance and transfer of water right to land that is within the same parcel or farm unit as the current use and that does not include a change in water source, use or ownership	\$2,500.00
g.Request for extension of time to complete construction	\$10,000.00

- C. A person filing an application that is subject to an hourly fee shall submit an initial fee at the time the application is submitted to the Department. The initial fee for applications described in subsections (B)(7), (B)(8)(a), (B)(9)(e), (f) and (B)(10)(e) of this Section shall be \$2,000.00. The initial fee for all other applications shall be \$1,000.00. If requested by the applicant, the Department may set a lower initial fee if the Department estimates that the total application fee will be less than the initial fee specified in this subsection. The Department shall not accept an application for which an initial fee is required under this subsection unless the initial fee is included with the application.
- D. The Department shall bill the applicant for processing the application no more than monthly, but at least quarterly. Each bill shall contain the following information for the billing period:
1. The number of review hours accrued by activity and sub-activity code during the billing period, the date of each activity, a description of each activity and the effective hourly rate for all activities;
  2. A description and amount of any mileage expenses charged for the application;
  3. A description and amount of the cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application; and
  4. The total fees paid to date, the total fees due for the billing period, the date when the fees are payable, which shall be at least 60 days after the date of the bill, and the maximum fee for the application.
- E. A bill for hourly fees becomes past due if the applicant does not pay the bill in full by the due date specified in the bill, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. If the applicant submits a timely request for reconsideration of the bill, the bill becomes past due if the applicant does not pay the amount due under the Director's decision on the request by the date specified in the decision. If a bill for hourly fees becomes past due, the following shall apply:
1. The applicable review time-frame shall be suspended from the date the bill became past due until the applicant pays the bill in full or the application is denied under subsection (E)(2) of this Section, whichever applies.
  2. The Department shall suspend its review of the application and send a written notice to the applicant that the bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which shall be at least 35 days from the date of the notice, the application shall be denied.
- F. After the Department makes a determination whether to grant or deny the application, or when an applicant withdraws the application, the Department shall prepare and send to the applicant a final itemized billing statement for the application fee.
1. If the total fee exceeds the amount of the initial fee paid plus all other payments made to date, the applicant shall pay the balance, up to the maximum fee for the application, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application, by the date specified in the statement, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. The statement shall specify a date, at least 60 days from the date of the statement, by which the applicant must pay the bill. If the applicant submits a timely request for reconsideration of the bill, the applicant shall pay the amount due under the Director's decision on the request by the date specified in the decision. The Department shall not release the final permit or approval until the final bill is paid in full.
  2. If the total fee is less than the initial fee plus all other payments made to date, the Department shall refund the difference to the applicant within 35 days of the date of the statement.
- G. An applicant may seek reconsideration of a bill for hourly fees by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 business days after the date the Director receives the written request. The decision shall specify a date, at least 35 days from the date of the decision, by which the applicant must pay the bill. The Director may reduce the amount of any fees billed under this Section if the Director determines that the number of review hours or mileage expenses billed to the applicant was incorrect or that time spent by the Department to review the application and make a decision thereon was not necessary or advisable.
- H. If a person receives a bill under this Section and the bill becomes past due under subsection (E) or (F) of this Section, the Department shall not accept for filing any other application by that person until the person pays the past due amount in full.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices**

- A. The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:
1. Wells:

Type of Application or Filing	Fee
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a.Late registration of well	\$60.00
b.Well driller's license	\$50.00
c.Re-issuance, renewal, or amendment of well driller's license	\$50.00
d.Re-activation of expired well driller's license	\$50.00
e.Well assignment	\$30.00 per well
f.Notice of intention to abandon a well	\$150.00
g.Notice of intention to drill a well other than a well described in subsection (A)(1)(h) of this Section	\$150.00
h.Notice of intention to drill a well that will not be located in an active management area or irrigation non-expansion area, that will be used solely for domestic purposes and that will have a pump with a maximum capacity of not more than 35 gallons per minute	\$100.00
i.Re-issuance of drill card	\$120.00
j.Permit to drill non-exempt well in an active management area	\$150.00 application fee plus \$30.00 permit fee

## 2. Groundwater:

Type of Application or Filing	Fee
a.Conveyance of farm's flexibility account balance	\$250.00
b.Conveyance of notice of authority to irrigate in an irrigation non-expansion area	\$500.00
c.Conveyance of groundwater withdrawal permit	\$500.00

## 3. Grandfathered rights:

Type of Application	Fee
a.Late application for certificate of grandfathered right	\$100.00
b.Conveyance of certificate of grandfathered right	\$500.00
c.Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	\$120.00
d.Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal or the deletion of a point of withdrawal	\$250.00
e.Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	\$500.00
f.Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	\$120.00

## 4. Underground water storage, savings and replenishment:

Type of Application or Filing	Fee
a.Conveyance of storage facility permit	\$500.00
b.Conveyance of water storage permit	\$500.00
c.Assignment of long-term storage credits	\$250.00

## 5. Assured water supply:

Type of Application or Filing	Fee
a.Extinguishment of grandfathered right for extinguishment credits	\$250.00
b.Conveyance of extinguishment credits	\$250.00

## 6. Surface water:

Type of Application or Filing	Fee
a.Re-issuance of a surface water permit or certificate (not associated with an assignment of the permit or certificate)	\$120.00
b.Claim of water right for a stockpond pursuant to A.R.S. § 45-273	\$10.00
c.Statement of claim for a water right pursuant to A.R.S. § 45-183	\$5.00
d.Assignment of application, permit, certificate or statement of claim	\$75.00
e.Certification of water right for a stockpond pursuant to A.R.S. § 45-275	\$120.00

## 7. Dams:

Type of Application	Fee
Approval of plans for construction, enlargement, repair, alteration or removal of dam	2 percent of the total project cost

## 8. Water Exchange:

Type of Filing	Fee
Notice of water exchange that does not require approval pursuant to A.R.S. § 45-1052(6)(b)	\$500.00

## 9. Weather modification:

Type of Application	Fee
a.License for weather control or cloud modification	\$100.00
b.Equipment license for weather control or cloud modification	\$10.00

- B.** In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report**

- A. The owner of a high or significant hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be based on the total crest length of the dam plus appurtenant embankments and saddle dikes, as follows:

Length (feet)	Fee
0 up to and including 500	\$2,000.00
More than 500 up to and including 1,000	\$2,200.00
More than 1,000 up to and including 2,000	\$2,400.00
More than 2,000 up to and including 4,000	\$2,600.00
More than 4,000 up to and including 8,000	\$3,000.00
More than 8,000 up to and including 16,000	\$3,400.00
More than 16,000 up to and including 32,000	\$3,800.00
More than 32,000	\$4,200.00

- B. The owner of a low or very low hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be \$1,000.00.
- C. After conducting a dam safety inspection pursuant to R12-15-1219(A), the Director shall send to the dam owner a bill for the fee required by subsection (A) or (B) of this Section. The dam owner shall pay the fee by the date specified in the bill, which shall be at least 35 days from the date of the bill. Failure by a dam owner to pay a fee required by subsection (A) or (B) of this Section shall be considered a violation of R12-15-1219.
- D. The owner of a dam who submits a dam safety inspection report pursuant to R12-15-1219(E) shall pay a fee of \$750.00. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-106. Fee for Well Capping

The owner of a well that is capped by the Department pursuant to A.R.S. § 45-594(C) shall pay to the Department a fee of \$300.00, plus actual expenses over \$300.00. After capping an open well, the Department shall send the owner of the well a bill for the fee under this Section. The owner of the well shall pay the fee by the date specified in the bill, which shall be at least 35 days after the date of the bill.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-107. Expired

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3).

ber 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011 (Supp. 11-2). New Section made by exempt rulemaking at 17 A.A.R. 1769, effective August 10, 2011 with an automatic repeal date effective July 1, 2012 (Supp. 11-3). New Section made by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).

#### R12-15-108. Reserved

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#### R12-15-150. Reserved

#### R12-15-151. Repealed

#### Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective June 29, 1994 (Supp. 94-2). Amended effective March 3, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-152. Expired

#### Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1647, effective May 31, 2006 (Supp. 07-2).

### ARTICLE 2. PROCEDURAL RULES

#### R12-15-201. Expired

#### Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). The reference to R12-14-223 in subsection (C) corrected to read R12-15-223 (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

#### R12-15-202. Expired

#### Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

#### R12-15-203. Expired

#### Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

#### R12-15-204. Expired

#### Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

#### R12-15-205. Expired

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-206. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-207. Correction of Clerical Mistakes**

Upon a motion or on the initiative of the Director, the Director may correct clerical mistakes in decisions, orders, rulings, any process issued by the Department, or other parts of the record, and errors in the record arising from oversight or omission. The Director shall give all parties and the Chief Counsel notice of any corrections made pursuant to this Section.

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-208. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-209. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-210. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-211. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-212. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-213. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-214. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-215. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section number corrected (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-216. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-217. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-218. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-219. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-220. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-221. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-222. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-223. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-224. Ex Parte Communications**

- A. During the course of a contested case or appealable agency action, a party shall not make an ex parte communication or knowingly cause an ex parte communication to be made to the Director or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested case or appealable agency action.
- B. During the course of a contested case or appealable agency action, the Department personnel listed in subsection (A) shall not make an ex parte communication or knowingly cause an ex parte communication to be made to a party or a person who

will be materially and directly affected by the outcome of the contested case or appealable agency action.

- C. Any of the Department personnel listed in subsection (A) of this Section who receives a written communication prohibited by this Section shall file a copy of the communication in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action. Any of the Department personnel listed in subsection (A) of this Section who receives an oral communication prohibited by this Section shall file a summary, stating the substance of the communication, in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action.
- D. Upon receipt of an ex parte communication or a copy or summary of an ex parte communication made or knowingly caused to be made by a party in violation of this Section, the Director, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why the party's claim or interest in the contested case or appealable agency action should not be dismissed, denied or disregarded because of the violation.
- E. For purposes of this Section, "ex parte communication" means any written or oral communication relating to the merits of a contested case or appealable agency action, except:
  1. Communications made in the course of official proceedings in the contested case or appealable agency action;
  2. Communications made in writing, if a copy of the communication is promptly served on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action;
  3. Oral communications made after adequate notice, stating the substance of each communication, to all parties and the Chief Counsel;
  4. Communications relating solely to procedural matters; and
  5. As otherwise authorized by law.

#### Historical Note

Adopted effective June, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

### ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

#### R12-15-301. Expired

#### Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective April 3, 1987 (Supp. 87-2). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

#### R12-15-302. Expired

#### Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

#### R12-15-303. Multiple Applications for Water Rights

- A. If two or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water, the Director shall consolidate the applications. If the applicant is otherwise entitled to both a permit to appropriate and a certificate of stockpond water right, the Director shall issue to the applicant either the permit to appropriate or the certificate of stockpond

water right, whichever would give the applicant the higher priority.

- B. If one or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water for which the applicant holds a permit to appropriate, a certificate of water right or a certificate of stockpond water right, the Director shall deny the application or applications unless the applicant relinquishes every permit to appropriate, certificate of water right and certificate of stockpond water right which the applicant holds for that same water. The applicant may relinquish every permit to appropriate, certificate of water right and certificate of stockpond water right on the condition that the Director issues a permit to appropriate or certificate of stockpond water right to the applicant for the same water. In that case, the relinquishment shall be effective when the Director issues the permit to appropriate or certificate of stockpond water right.
- C. For purposes of this rule, "same water" means the same quantity of water from the same source for use at the same place for the same purpose. Water for which a right is applied or held pursuant to an application or permit to appropriate, certificate of water right or certificate of stockpond water right may be the same water in whole or in part as water for which a right is applied or held pursuant to a separate application or permit to appropriate, certificate of water right or certificate of stockpond water right.

#### Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 and amended effective May 7, 1990 (Supp. 90-2).

**R12-15-304. Reserved**

**R12-15-305. Reserved**

**R12-15-306. Reserved**

**R12-15-307. Reserved**

**R12-15-308. Reserved**

**R12-15-309. Reserved**

**R12-15-310. Renumbered**

#### Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 effective May 7, 1990 (Supp. 90-2)

### ARTICLE 4. LICENSING TIME-FRAMES

#### R12-15-401. Licensing Time-frames

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. Within the administrative completeness review time-frames set forth in subsection (7), the Department shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the notice shall specify what information or component is required to make the application complete.
2. An applicant with an incomplete application shall supply the missing information within 60 days from the date of the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Director



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may deny the application. Denial of an application under this provision does not preclude the applicant from filing a new application.

3. Within the overall time-frames set forth in subsection (7), unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.
4. In computing any period of time prescribed by this rule, the day of the filing, notice or event from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the prescribed administrative completeness review time-frame or substantive review time-frame is less than 11

days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. The overall time-frame is the sum of the administrative completeness review time-frame and the substantive review time-frame calculated as prescribed by this Section.

5. Except as otherwise noted, the licensing time-frames do not include time for hearings. Time-frames in cases where a hearing is held are increased by 120 days.
6. The licensing time-frame rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-1073(A), and apply to all applications filed after that date.
7. The licensing time-frames are set forth in Table A.

**Historical Note**

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**Table A. Licensing Time-frames**

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151 and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90
13	Severance and transfer	A.R.S. § 45-172 (excluding 172.6)	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120
18	Substitution of acres in an irrigation non-expansion area/ flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G)	30	90	120
21	Type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980	A.R.S. §§ 45-463, 45-476.01, and 45-476	30	90	120
22	Type 2 non-irrigation grandfathered right	A.R.S. §§ 45-464, 45-476.01, and 45-476	30	90	120
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45-476	30	90	120
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120
25	Substitution of acres in an active management area/ impediments to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	135	180
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100
40	Issuance/extension/modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water withdrawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	30	60
44	Change of location of use	A.R.S. §§ 45-520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long-term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	35	50
54	Well driller license	A.R.S. § 45-595(C)	25	105	130
55	Single well license	A.R.S. § 45-595(D)	25	105	130
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45-1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45-1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply	A.A.C. R12-15-702, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply	A.A.C. R12-15-702 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply/unplatted development plan	A.A.C. R12-15-712, A.R.S. § 45-576(H)	150	30	180
73	Assured Water Supply for State lands	A.A.C. R12-15-713, A.R.S. § 37-334(F)	30	60	90
74	Water adequacy report	A.A.C. R12-15-716, A.R.S. § 45-108	60	60	120
75	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-716, A.A.C. R12-15-725 A.R.S. § 45-108	150	60	210
76	Analysis of water adequacy/unplatted	A.R.S. § 45-108 A.A.C. R12-15-723	60	60	120
77	Adequate Water Supply for State lands	A.R.S. § 45-108 A.A.C. R12-15-724	30	60	90

\* The computation of days is prescribed by subsection (4).

\*\* Hearing is required.

#### Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3).

#### ARTICLE 5. RESERVED

#### ARTICLE 6. RESERVED

#### ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

##### R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
  - a. The land has been developed for another use; or
  - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:
  - a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
  - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and

- c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
5. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
6. "AMA" means an active management area as defined in A.R.S. § 45-402.
7. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
8. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
9. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
10. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.

11. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
  - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
  - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
12. "Annual estimated water demand" means the estimated water demand divided by 100.
13. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
14. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
15. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
16. "CAP water" means:
  - a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
  - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
17. "Central Arizona Groundwater Replenishment District" or "CAGRDR" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
18. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
19. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
20. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
21. "Certificate holder" means any person included on a certificate, except the following:
  - a. Any person who no longer owns any portion of the property included in the certificate, and
  - b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
22. "Certificate of convenience and necessity" means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
23. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.
24. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
25. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
26. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
27. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
28. "Designated provider" means:
  - a. A municipal provider that has obtained a designation of assured or adequate water supply; or
  - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
29. "Designation" means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
30. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
31. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
32. "Development" means either a subdivision or an unplatted development plan.
33. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.
34. "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
  - a. An identification of priority water uses consistent with applicable public policies.
  - b. A description of sources of emergency water supplies.
  - c. An analysis of the potential use of water pressure reduction.
  - d. Plans for public education and voluntary water use reduction.
  - e. Plans for water use bans, restrictions, and rationing.
  - f. Plans for water pricing and penalties for excess water use.
  - g. Plans for coordination with other cities, towns, and private water companies.
35. "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
36. "Dry lot development" means a development or subdivision without a central water distribution system.
37. "EPA" means the United States Environmental Protection Agency.
38. "Estimated water demand" means:
  - a. For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
  - b. For a designation, the sum of the following:

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- i. The Director's determination of the current demand;
    - ii. The Director's determination of the committed demand; and
    - iii. The Director's determination of the projected demand during the term of the designation; or
  - c. For an analysis, the Director's determination of the water demand for all uses included in the development.
39. "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.
  40. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
  41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
  42. "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
  43. "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
  44. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
  45. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
  46. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
  47. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
  48. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
  49. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
  50. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
  51. "Owner" means:
    - a. For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
    - b. For a designation applicant, the person who will be providing water service pursuant to the designation.
  52. "Perennial" means a stream that flows continuously.
  53. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
  54. "Physical availability determination" means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
  55. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
  56. "Potential purchaser" means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
  57. "Projected demand" means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider's service area and reasonably anticipated expansions of the designated provider's service area.
  58. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
  59. "Purchase agreement" means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
  60. "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
  61. "Service area" means:
    - a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use;
    - b. For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
    - c. For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
  62. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.
  63. "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.
  64. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
  65. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
  66. "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

**Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1).  
 Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.  
 Amended by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-702. Physical Availability Determination**

- A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and providing the following information with the application:
  1. The proposed source of water for which the applicant is seeking a determination of physical availability,
  2. Evidence that the applicant has complied with subsection (C) of this Section, and
  3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.

- B. Each applicant shall sign an application for a physical availability determination. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the determination, the authorized representative may sign the application on the applicant's behalf.
- C. An applicant for a physical availability determination shall demonstrate the following:
  - 1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.
  - 2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.
- E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.
- F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.
- 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the analysis, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
  - 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
  - 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
  - 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718.
  - 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
  - 5. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721.
  - 6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.
- F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
  - 1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
  - 2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.
- G. The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.
- H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-703. Analysis of Assured Water Supply

- A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
  - 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted, demonstrating the ownership of the land that is the subject of the application;
  - 2. A description of the development, including:
    - a. A map of the land uses included in the development,
    - b. A list of water supplies proposed to be used by the development,
    - c. A summary of land use types included in the development, and
    - d. An estimate of the water demand for the land uses included in the development; and



Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

- I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-703.01. Repealed

#### Historical Note

New Section made by final rulemaking at 7 A.A.R. 3038, effective June 18, 2001 (Supp. 01-2). Section repealed by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-704. Certificate of Assured Water Supply

- A. An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.
- B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
  1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
    - a. For an applicant that is the current owner, one of the following:
      - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
      - ii. Evidence that the CAGRD has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;
    - b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
    - c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
  2. A plat of the subdivision;
  3. An estimate of the 100-year water demand for the subdivision;
  4. A list of all proposed sources of water that will be used by the subdivision;
  5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
  6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C. Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- D. The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.
- E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
  1. The estimated water demand of the subdivision;
  2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
  3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
  1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
  4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
  6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
  7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.
- G. If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant

if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:

1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
  2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
  3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
  4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
  5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
  6. The applicant demonstrates that the requirements in subsections (F)(3) through (6) of this Section are met.
- H.** Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. Type A certificate. The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
    - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
    - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
    - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
    - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
    - e. Effluent owned and served by a proposed municipal provider; or
    - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
  2. Type B certificate. The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
    - a. A plat was recorded before 1980; or
    - b. A certificate was issued before February 7, 1995;
  2. No changes were made to the plat since February 7, 1995; and
  3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
  2. Water service is currently available to each lot; and
  3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
1. A plat for the subdivision was recorded before October 1, 2007;
  2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
  3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
  4. Water service is currently available to each lot.
- M.** A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:
1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
  2. Determine whether the criteria of subsection (J), (K), or (L) of this Section are met.
  3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.
  4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-705. Assignment of Type A Certificate of Assured Water Supply

- A.** The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
1. One of the following forms of proof of ownership for each assignee:
    - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or

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- b. If the assignee is a potential purchaser, evidence of a purchase agreement;
  - 2. A current plat of the subdivision;
  - 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
  - 4. Certification by each applicant that:
    - a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and
    - b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.
  - B.** Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land included in the certificate, the authorized representative may sign the application on behalf of the applicant.
  - C.** Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).
  - D.** If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
    - 1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
    - 2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
    - 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
    - 4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
    - 5. The applicant makes the certifications required in subsection (A)(4) of this Section.
  - E.** In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.
  - F.** The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.
- Historical Note**
- Adopted effective February 7, 1995 (Supp. 95-1).  
 Amended by final rulemaking at 8 A.A.R. 4390, effective November 22, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).
- R12-15-706. Assignment of Type B Certificate of Assured Water Supply**
- A.** The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
    - 1. One of the following forms of proof of ownership for each assignee:
      - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
      - b. If the assignee is a potential purchaser, evidence of a purchase agreement;
    - 2. A current plat of the subdivision;
    - 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
    - 4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
    - 5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
    - 6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
    - 7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
    - 8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
    - 9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.
  - B.** Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated

within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.

- C. Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).
- D. Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
  1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
  2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
  3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
  4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
  5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
  6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
  7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
  8. The proposed municipal provider has agreed to serve the subdivision after the assignment.
- E. The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.
- F. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.
- G. The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section

repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-707. Application for Classification of a Type A Certificate

- A. A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C), and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).
- B. At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C. If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as a Type A certificate and issue a Type A certificate to each certificate holder.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-708. Material Plat Change; Application for Review

- A. A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D) of this Section.
- B. If a plat is revised after the Director issues a certificate or a water report and the changes to the plat are material according to subsection (C) or (D) of this Section, the holder may:
  1. Apply for a new certificate or water report for the revised plat,
  2. Use the original plat for which the certificate or water report was issued, or
  3. Revise the plat so that any changes are not material according to subsections (C) and (D) of this Section.
- C. Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:
  1. The number of lots on the plat has increased by more than:
    - a. For subdivisions of six to 10 lots: one lot;
    - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
    - c. For subdivisions of 500 lots or more: 50 lots.
  2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate, unless all of the following apply:

- a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
- b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
- c. For a certificate, one of the following applies:
  - i. The subdivision is enrolled as a member land in the CAGR;D;
  - ii. Groundwater is not included as a source of supply; or
  - iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
3. For a certificate, additional land is included in the plat, unless all of the following apply:
  - a. The land included in the original plat for which the certificate was issued is located in a master-planned community;
  - b. The outer boundaries of the master-planned community have not expanded;
  - c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGR;D, the additional land has also been enrolled in the CAGR;D; and
  - d. A certificate has been issued for the additional land.
- D. Changes to a portion of a plat are not material if one of the following applies:
  1. The changes to the portion of the plat being reviewed are not material according to subsection (C) of this Section when compared to the equivalent portion of the plat for which the certificate was issued;
  2. The changes to the entire revised plat are not material according to subsection (C) of this Section when compared to the entire plat for which the certificate was issued; or
  3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C) of this Section. For purposes of this subsection, the Director may require the applicant to submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.
- E. A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
  1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and shall attach the revised plat.
  2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued

to determine whether any changes are material according to the criteria in subsections (C) and (D) of this Section.

3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-709. Certificate of Assured Water Supply; Revocation

- A. The Director may revoke a certificate if an assured water supply does not exist.
- B. The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.
- C. If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-710. Designation of Assured Water Supply

- A. A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
  1. The applicant's current demand;
  2. The applicant's committed demand;
  3. The applicant's projected demand for the proposed term of the designation;
  4. The proposed term of the designation, which shall not be less than two years;
  5. Evidence that the criteria in subsection (E) of this Section are met; and
  6. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B. An application for a designation shall be signed by:
  1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
  2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- C. The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The annual volume of water physically, continuously, and legally available for at least 100 years;
  2. The term of the designation, which shall not be less than two years;
  3. The applicant's estimated water demand;
  4. The applicant's groundwater allowance; and
  5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E.** The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
  4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
  6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
  7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.
- F.** The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation**

- A.** A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:
1. The designated provider's committed demand;
  2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
  3. A report regarding the designated provider's compliance with water quality requirements;
  4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
  5. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.
- B.** If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C.** The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine

whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.

- D.** The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider.
- E.** A designated provider may request a modification of the designation at any time pursuant to R12-15-710.
- F.** The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
    - a. Current demand,
    - b. Committed demand, and
    - c. Projected demand during the next two calendar years;
  2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
  3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
  4. The designated provider has violated its management plan requirements for two or more consecutive calendar years, and one of the following applies:
    - a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or
    - b. The provider fails to sign a stipulated agreement to remedy the violation.
- G.** If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- H.** If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- I.** Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### **R12-15-712. Analysis of Adequate Water Supply**

- A.** A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.
- B.** An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrat-

- ing the ownership of the land that is the subject of the application;
2. A description of the development, including:
    - a. A map of the land uses included in the development,
    - b. A list of water supplies proposed to be used by the development,
    - c. A summary of land use types included in the development, and
    - d. An estimate of the water demand for the land uses included in the development; and
  3. Evidence that the applicant has complied with subsection (E) of this Section.
- C.** An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.
- D.** After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E.** The Director shall issue an analysis if an applicant demonstrates one or more of the following:
1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
  4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
  2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.
- G.** The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
  2. The analysis holder has made material progress in developing the land included in the analysis.
  3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-713. Water Report

- A.** An application for a water report shall be filed by the current owner of the land that is the subject of the application.
- B.** An applicant for a water report shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
  2. A plat of the subdivision;
  3. An estimate of the 100-year water demand for the subdivision;
  4. A list of all proposed sources of water that will be used by the subdivision;
  5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
  6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.
- C.** Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions

for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.

- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
  1. The estimated water demand of the subdivision;
  2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.
- E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:
  1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
  4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.
- G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
  1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
  2. Notify the Arizona Department of Real Estate.
- I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- J. A water report is subject to the provisions of R12-15-708.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-714. Designation of Adequate Water Supply

- A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed

by the Director with the initial fee required by R12-15-103(C), and the following:

1. The applicant's current demand;
  2. The applicant's committed demand;
  3. The applicant's projected demand for the proposed term of the designation;
  4. The proposed term of the designation, which shall not be less than two years;
  5. Evidence that the criteria in subsection (E) of this Section are met; and
  6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.
- B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the initial fee required in R12-15-103(C), and provide the following:
    1. The current demand of the applicant's service area;
    2. The committed demand of the applicant's service area;
    3. The projected demand of the applicant's service area for the proposed term of the designation;
    4. The proposed term of the designation, which shall not be less than two years; and
    5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
  - C. An application for a designation shall be signed by:
    1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
    2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
  - D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
    1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
    2. The term of the designation, which shall not be less than two years;
    3. The estimated water demand for the applicant's service area for 100 years; and
    4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
  - E. The Director shall designate the applicant has having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:
    1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
    2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
    3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
    4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and
    5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.
  - F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.



- G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:
1. The designated provider's committed demand;
  2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
  3. A report regarding the designated provider's compliance with water quality requirements;
  4. The depth-to static water level of all wells from which the designated provider withdrew water;
  5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
  6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.
- B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E. The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
    - a. Current demand,
    - b. Committed demand, and
    - c. Projected demand for the next two calendar years;
  2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
  3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.
- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an

administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.

- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

#### Historical Head

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-716. Physical Availability

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through (L) of this Section.
- B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
1. The groundwater will be withdrawn as follows:
    - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
    - b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
  2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot developments	1200 feet below land surface
d. Dry lot developments	400 feet below land surface

3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:

- a. The depth-to-static water level on the date of application.
  - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
  - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
    - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
    - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
    - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
  - d. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.
- C. The Director shall lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:
1. Groundwater is available at the lower depth; and
  2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.
- D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
  2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- E. Subject to subsection (L) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:
1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
  2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.
- F. Subject to subsection (L) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.
  2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
  3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
    - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
      - i. A drought response plan;
      - ii. Long-term storage credits;
      - iii. A contract for water with a multi-county water conservation district; or
      - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
    - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.
- G. Subject to subsection (L) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.

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2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
  - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
    - i. A drought response plan;
    - ii. Long-term storage credits;
    - iii. A contract for water with a multi-county water conservation district; or
    - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
  - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.
- H. Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:
  1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
  2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.
- I. If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:
  1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
  2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
    - a. The terms of a contract to obtain water to store in a storage facility;
    - b. The physical, continuous, and legal availability of the water proposed to be stored;
    - c. The presence of an existing storage facility that will be available for use for the proposed storage;
    - d. The existence of all required permits of an adequate duration; and
    - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
  3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
    - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
    - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- J. If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.
- K. In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.
- L. For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:
  1. The land that is the subject of the application is a member land of the CAGRD.
  2. The applicant has independently obtained the surface water supply.
  3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

**Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-717. Continuous Availability**

- A. The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.
- B. If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.
- C. If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:
  1. The projected volume to be diverted from the source is perennial at the point of diversion;
  2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
  3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;

4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or
  5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.
- D.** If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:
1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
  2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
  3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.
- E.** If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.
- F.** If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.
- G.** If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will use will be continuously available in accordance with the terms of this Section.
- Historical Note**
- Adopted effective February 7, 1995 (Supp. 95-1).  
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.  
Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-718. Legal Availability**
- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.
- B.** If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:
1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;
  2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or
  3. If the proposed municipal provider is a private water company, one of the following:
    - a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;
    - b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
    - c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.
- C.** If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.
- D.** If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:
1. A service area right;
  2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
  3. A pending notice of intent to establish a new service area and all of the following apply:
    - a. The notice of intent to establish a new service area identifies the proposed subdivision,
    - b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right,
    - c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
    - d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.
- E.** If a proposed source of water is surface water other than CAP water or Colorado River water:
1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
  2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
    - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;

- b. Evidence that a court has determined that the right has not been abandoned; or
  - c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
- 3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.
- F. Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.
- G. Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:
  - 1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
  - 2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
    - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
    - b. The entity provides Colorado River water to the proposed municipal provider;
    - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
    - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.
- H. If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.
- I. If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.
- J. If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.
- K. If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.
- L. If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.
- M. If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:
  - 1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
  - 2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
    - a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to recover water pursuant to the long-term storage credits; or
    - b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
- N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:
  - 1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
  - 2. One of the following applies:
    - a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
    - b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with

the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;

- c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
- d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
  - i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
  - ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and
  - iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-719. Water Quality

- A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:
  - 1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
  - 2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives

any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director shall not require the applicant to meet the waived requirements.

- B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WQARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-720. Financial Capability

- A. The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:
  - 1. The applicant will submit its final plat to a qualified platting authority;
  - 2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or
  - 3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.
- B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.
- C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
  - 1. The applicant has constructed adequate delivery, storage, and treatment works;
  - 2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
  - 3. If the applicant is a city or town, the applicant has:
    - a. Adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan; or
    - b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or
  - 4. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section

repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### **R12-15-721. Consistency with Management Plan**

- A.** The Director shall determine whether a designation applicant's projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:
1. If the applicant is providing water to customers as of the date of application, the applicant's projected water use is consistent with the management plan if either of the following apply:
    - a. The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available before the date of application; or
    - b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
  2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.
  3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.
- B.** The Director shall determine that a certificate applicant's projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:
1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
  2. All information required to calculate the water requirements for each proposed water use.
- C.** A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

#### **Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### **R12-15-722. Consistency with Management Goal**

- A.** For the Phoenix, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:
1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-726(A), or R12-15-727(A).
  2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-726(B), or R12-15-727(B).
  3. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

- B.** The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the management goal of the AMA if the volume calculated in subsection (A) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- C.** For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:
1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
  2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007, according to R12-15-725(B).
  3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
  4. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- D.** For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- E.** For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis by adding the following:
1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
  2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007, according to R12-15-725(B), divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 may be used in any year.
  3. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
    - a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
    - b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.

- lated under this subsection for the following calendar year.
4. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- F.** For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the annual volume calculated in subsection (E) of this Section is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.
- G.** Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:
1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E) of this Section, withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
  2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
  3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.
- H.** An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.
- Historical Note**
- Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2).
- R12-15-723. Extinguishment Credits**
- A.** Except as provided in subsection (D), the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:
1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
  2. The grandfathered right number;
  3. If the right being extinguished is a Type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
  4. If the grandfathered right is located in the Prescott AMA, evidence that all of the following conditions are met:
    - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and
    - b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
  5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and
  6. Any additional information the Director may reasonably require to process the extinguishment.
- B.** The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.
- C.** A Type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A Type 2 non-irrigation grandfathered right may be extinguished only in whole.
- D.** The following rights may not be extinguished in exchange for extinguishment credits:
1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
  2. A Type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
  3. A Type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
  4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
  5. Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4).
  6. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).
- E.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.
- F.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.
- G.** Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
  2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider



or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.

- H.** The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.
- I.** A person may apply to the Director on or before December 31, 2015 for the restoration of all or a portion of an irrigation grandfathered right extinguished under this Section during calendar year 2005, 2006 or 2007 if all of the following conditions are met:
1. The person owns the land to which the right or portion of the right was appurtenant;
  2. The land to which the right or portion of the right was appurtenant is physically capable of being irrigated and the infrastructure for delivering water to the land for irrigation purposes remains intact and is operable;
  3. The person holds extinguishment credits that were issued for the extinguishment of a grandfathered right in the AMA in which the land is located and that have not been pledged to a certificate or designation under subsection (E) or (F) in the following amount, as applicable:
    - a. If the person seeks to restore the entire irrigation grandfathered right, an amount of extinguishment credits equal to the amount of extinguishment credits issued by the Director in exchange for extinguishment of the irrigation grandfathered right; or
    - b. If the person seeks to restore a portion of the irrigation grandfathered right, an amount of extinguishment credits equal to the result obtained by multiplying the percentage of the right sought to be restored by the amount of extinguishment credits issued by the Director in exchange for the extinguishment of the right.
- J.** An application to restore all or a portion of an irrigation grandfathered right under subsection (I) shall be on a form provided by the Director and include all of the following:
1. A fee of \$250.00;
  2. The irrigation grandfathered right number of the right sought to be restored;
  3. If a certificate of extinguishment credits was issued by the Director for the extinguishment credits described in subsection (I)(3), the original certificate or an affidavit stating that the certificate is lost;
  4. A copy of a deed showing that the applicant owns the land to which the right or portion of the right sought to be restored was appurtenant and, if the application seeks to restore only a portion of the right, the legal description of the land to which that portion of the right was appurtenant;
  5. A certification by the applicant that the conditions described in subsection (I) are met; and
  6. An agreement in writing that if the right or portion of the right is restored, the flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and that any credits registered to the flexibility

account after the right is restored may not be conveyed or sold to any person, including the applicant.

- K.** The Director shall approve an application to restore all or a portion of an irrigation grandfathered right submitted under subsection (I) if the application includes the fee and the information required under subsection (J) and the Director determines that the information is correct. If the Director approves an application to restore all or a portion of an irrigation grandfathered right, all of the following apply:
1. The irrigation water duty for the land to which the right or portion of the right is restored shall be the same as it was when the right was extinguished, unless the irrigation water duty is changed in a management plan adopted after the right was extinguished or is modified pursuant to A.R.S. § 45-575;
  2. The flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.
  3. The applicant shall forfeit the extinguishment credits described in subsection (I)(3); and
  4. The restored irrigation grandfathered right may be extinguished in exchange for extinguishment credits under this Section. For purposes of calculating the amount of extinguishment credits under R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B), the calendar year of extinguishment is the calendar year in which the restored irrigation grandfathered right is extinguished.
- L.** The Director shall review an application to restore an irrigation grandfathered right under subsection (I) pursuant to the licensing time-frame provisions in R12-15-401. The application shall have an administrative completeness review time-frame of 30 days, a substantive review time-frame of 90 days, and an overall time-frame of 120 days.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 17 A.A.R. 1989, effective September 13, 2011 (Supp. 11-3).

#### R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A.** The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the

applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

**B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

**Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-725. Pinal AMA – Groundwater Allowance**

The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

1. If the application is for a certificate, multiply the applicable allocation factor in the table below for the management period in effect on the date of application by the

annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD/ DATE OF APPLICATION	ALLOCATION FACTOR
Third	10
Fourth	10
Fifth	5
After Fifth	0

2. If the application is for a designation:
  - a. If the applicant was designated as having an assured water supply as of October 1, 2007:
    - i. Multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
    - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
    - iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
    - iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) of this Section by 0.35 acre-foot per lot.
    - v. Add the volume from subsection (A)(2)(a)(ii) of this Section and the volume from subsection (A)(2)(a)(iv) of this Section.
  - b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation is filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
  - c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation is filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet.
  - d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant's groundwater allowance is zero acre-feet.
3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor by submitting a hydrologic

study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated provider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1979, effective January 2, 2010 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013 (Supp. 13-4).

#### R12-15-725.01.Pinal AMA – Extinguishment Credits Calculation

The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
3. Except as provided in subsection (A)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

Year	Allocation Factor
2010	100

2011	100
2012	100
2013	100
2014	100
2015	100
2016	100
2017	100
2018	100
2019	94
2020	88
2021	82
2022	76
2023	74
2024	72
2025	70
2026	68
2027	66
2028	64
2029	62
2030	60
2031	58
2032	56
2033	54
2034	52
2035	50
2036	48
2037	46
2038	44
2039	42
2040	40
2041	38
2042	36
2043	34
2044	32
2045	30
2046	28
2047	26
2048	24
2049	22
2050	20
2051	18
2052	16
2053	14
2054	12
2055	10
2056	8
2057	6
2058	4
2059	2
After 2059	0

4. If, before January 1, 2060, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use an allocation factor determined as follows:
  - a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (A)(3) of this Section.

- b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (A)(3) of this Section. The Director shall determine the year as follows:
  - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
  - ii. Subtract the difference in subsection (A)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

#### Historical Note

New Section made by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013; with automatic repeal date of September 15, 2014 (Supp. 13-4). Section amended with automatic repeal, removed by final rulemaking at 20 A.A.R. 2673; effective September 12, 2014 (Supp. 14-3).

#### R12-15-725.02.Repealed

#### Historical Note

New Section made by final rulemaking at 19 A.A.R. 4174, effective September 15, 2014 (Supp. 13-4). Repealed by final rulemaking at 20 A.A.R. 2673, effective September 12, 2014 (Supp. 14-3).

#### R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:

1. If the application is for a certificate of assured water supply, the Director shall:
  - a. Subtract the year of application from 2025,
  - b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and
  - c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.
2. If the application is for a designation of assured water supply:
  - a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
    - i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
    - ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
    - iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the

- management plan in effect on the date of application;
- iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;
- v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;
- vi. If any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;
- vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;
- viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;
- ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and
- x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).
- b. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater by the number of housing units receiving the service and multiplying that product by 100.
3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):
  - a. To compute this amount of groundwater, the Director shall:
    - i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of groundwater, calculated by multiplying 150 gallons per capita per day by 365 days; and
    - ii. Multiply the product in subsection (A)(3)(a)(i) by the number of residential lots described in

- subsection (A)(4), and then multiply that product by 100.
- b. The Director shall not include the amount computed in subsection (A)(3)(a) within the amount of groundwater that the applicant may use under subsection (A)(2)(a) until a final plat for the lots has been recorded.
4. The Director shall include residential lots that will be served by the applicant in the calculation made under subsection (A)(3) if the lots meet all of the following criteria:
    - a. A preliminary plat for the lots was submitted to the city, town, or county on or before August 21, 1998, and the final plat is subsequently recorded;
    - b. The lots were not being served water on or before August 21, 1998; and
    - c. Any one of the following applies:
      - i. The lots were included within an application for certificate of assured water supply that was filed before August 21, 1998, the Director determined that the application was complete and correct as of August 21, 1998, and the Director subsequently issued a certificate of assured water supply for the lots.
      - ii. A preliminary plat for the lots was approved by a city, town, or county on or before August 21, 1998. At the time the preliminary plat was approved, the subdivider of the lots obtained a written commitment of water service from a municipal provider that was designated as having an assured water supply and the provider demonstrated to the satisfaction of the Director that sufficient water is physically available to serve the lots under the criteria in R12-15-716.
  5. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), if the applicant makes the request described in subsection (A)(3), the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(viii) with an amount of groundwater calculated as follows. The Director shall:
    - a. Determine the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application and multiply that number of years by the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott active management area for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
    - b. Determine the average dwelling occupancy within the applicant's service area and multiply that average dwelling occupancy by an amount of groundwater calculated by multiplying 150 gallons per capita per day by 365 days;
    - c. For each year in the period beginning with 1999 and ending with the calendar year before the date of application, determine the number of the residential lots that meet the criteria in subsection (A)(4) and were served water by the applicant as of July 1 of the relevant year and add the number of these residential lots determined for each year;
      - d. Multiply the volume of groundwater calculated in subsection (A)(5)(b) by the number of residential lots in subsection (A)(5)(c); and
      - e. Add the volumes of groundwater from subsections (A)(5)(a) and (A)(5)(d).
  - B. The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Prescott AMA as follows:
    1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
    2. For the extinguishment of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right:
      - a. Through December 31, 2010:
        - i. If the irrigation acres associated with the extinguished right were irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply that product by 25.
        - ii. If the irrigation acres associated with the extinguished right were not irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.
      - b. After December 31, 2010, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Tucson AMA as follows:
  1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	8
Fourth	4
Fifth	2
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers before February 7, 1995, multiply 15 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation

requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
  4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.
- B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
  2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
    - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
    - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-728. Reserved

#### R12-15-729. Remedial Groundwater; Consistency with Management Goal

- A.** Use of remedial groundwater by a municipal provider before January 1, 2025, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:

1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
  2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** A municipal provider that is using remedial groundwater or that has agreed in a consent decree or other document approved by ADEQ or the EPA to use remedial groundwater may apply to the Director for a determination that the municipal provider's use of the remedial groundwater is consistent with the management goal of the active management area by submitting an application on a form provided by the Director with the information required in subsection (D) of this Section before January 1, 2010.
- C.** A municipal provider filing an application under subsection (B) of this Section for remedial groundwater use associated with a treatment plant in operation before June 15, 1999, may request an increase in the project's annual authorized volume at the time the application is filed. The Director shall grant the request and increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if the municipal provider submits evidence that an increase in the annual authorized volume is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the remedial action project.
- D.** An applicant shall provide the following with an application submitted under subsection (B) of this Section:
1. A document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
  2. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
  3. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
  4. A reference to the annual authorized volume provided in the document submitted pursuant to subsection (D)(1) of this Section or, if the document submitted pursuant to subsection (D)(1) does not specify the annual authorized volume for the project, the annual authorized volume claimed by the municipal provider and a written justification for that volume;
  5. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
  6. The designated provider or certificate to which the remedial groundwater will be pledged;
  7. If the municipal provider is requesting an increase in the annual authorized volume of the project pursuant to subsection (C) of this Section, evidence that the increase is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project;
  8. The name and telephone number of a person the Department may contact regarding the application; and
  9. Any other information reasonably required to assist the Director in making the determination under subsection (F) of this Section.

- E. After receiving an application under subsection (B) of this Section, the Director shall determine that the application is complete and correct if it contains all the information required in subsection (D) of this Section and the Director verifies that the information is accurate. If the Director determines that the application is complete and correct, the Director shall assign a priority date to the application according to the following:
1. If the Director determines that the application was complete and correct when filed, the priority date of the application is the date the application was filed.
  2. If the Director determines that the application was not complete or correct when filed because of minor deficiencies, the Director shall notify the applicant of the deficiencies in writing and give the applicant 30 days to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within 30 days after the date of the notice, the priority date of the application is the date the application was filed.
  3. If the Director determines that the application was not complete or correct when filed and that the deficiencies are not minor, the Director shall notify the applicant of the deficiencies and give the applicant at least 60 days to submit the necessary information to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within the time allowed by the Director, the priority date of the application is the date the applicant submits the necessary information to correct the deficiencies.
- F. The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, 2025. If the Director approves a municipal provider's application, the Director shall calculate the annual amount of remedial groundwater use that is deemed consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
  2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
  3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G. If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, 2025.
- H. If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:
1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
  2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, 2025.
- I. A municipal provider that is using remedial groundwater that has been determined by the Director to be consistent with the management goal under subsection (F) or (H) of this Section may apply to the Director for an increase in the annual authorized volume of the approved remedial action project as follows:
1. The applicant shall submit an application on a form provided by the Director.
  2. The Director shall determine that the application is complete and correct if it contains all of the required information and the Director verifies that the information is accurate.
  3. If the Director determines that an application filed under this subsection is complete and correct, the Director shall assign a priority date to the application using the criteria in subsection (E) of this Section.
  4. The Director shall approve the application if the municipal provider submits information that demonstrates one of the following:
    - a. The annual authorized volume of the approved remedial action project has been increased in a consent decree or other document approved by ADEQ or the EPA; or
    - b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is

not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.

5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
- J.** Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
  2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
    - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
    - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
    - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
    - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
    - e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
    - f. The name and telephone number of a person the Department may contact regarding the exemption.
- K.** A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal

under this Section and the purposes for which the remedial groundwater was used.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-730. Repealed

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

### ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

#### R12-15-801. Definitions

In addition to the definitions set forth in A.R.S. §§ 45-101, 45-402, and 45-591 and in R12-15-202, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Annular space" means the space between the outer well casing and the borehole wall. An annular space also means the space between an inner well casing and outer well casing.
2. "Aquifer" means an underground formation capable of yielding or transmitting usable quantities of water.
3. "Artesian aquifer" means an aquifer which is overlain by a confining formation and which contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.
4. "Artesian well" means a well that penetrates an artesian aquifer.
5. "Bentonite" means a colloidal clay composed mainly of sodium montmorillonite, a hydrated aluminum silicate.
6. "Cap" means a tamper-resistant, watertight steel plate of at least one-quarter inch thickness on the top of all inside and outside casings of a well.
7. "Casing" means the tubing or pipe installed in the borehole during or after drilling to support the sides of the well and prevent caving.
8. "Confining formation" means the relatively impermeable geologic unit immediately overlying an artesian aquifer.
9. "Consolidated formation" means a naturally occurring geologic unit through or into which a well is drilled, having a composition, density, and thickness which will provide a natural hydrologic barrier.
10. "Department" means the Arizona Department of Water Resources.
11. "Director" means the Director of the Arizona Department of Water Resources.
12. "Drilling card" means a card which is issued by the Director to the well drilling contractor or single well licensee designated in the notice of intent or permit, authorizing the well drilling contractor or licensee to drill the specific well or wells in the specific location as noticed or permitted.
13. "Exploration well" means a well drilled in search of geophysical, mineralogical or geotechnical data.
14. "Flowing artesian well" means an artesian well in which the pressure is sufficient to cause the water to rise above the land surface.



15. "Grout" or "cement grout" means cement mixed with no more than 50% sand by volume, and containing no more than six gallons of water per 94 pound sack of cement.
16. "Mineralized water" means any groundwater containing over 3000 milligrams per liter (mg/l) of total dissolved solids or containing any of the following chemical constituents above the indicated concentrations:
 

Constituent	Concentration (mg/l)
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium (total)	0.05
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.0
Selenium	0.01
Silver	0.05
17. "Monitor well" means a well designed and drilled for the purpose of monitoring water quality within a specific depth interval.
18. "Open well" means a well which is not equipped with either a cap or a pump.
19. "Perforations" means a series of openings in a casing, made either before or after installation of the casing, to permit the entrance of water into the well.
20. "Piezometer well" means a well that is designed and drilled for the purpose of monitoring water levels within a specific depth interval.
21. "Pitless adaptor" means a commercially manufactured watertight unit or device designed for attachment to a steel well casing which permits discharge from the well below the land surface and allows access into the well casing while preventing contaminants from entering the well.
22. "Polluted water" means water whose chemical, physical, biological, or radiological integrity has been degraded through the artificial or natural infusion of chemicals, radionuclides, heat, biological organisms, or mineralogical or other extraneous matter.
23. "Pressure grouting" means a process by which a grout is confined within the borehole or casing of a well by the use of retaining plugs, packers, or a displacing fluid by which sufficient pressure is applied to drive the grout into and within the annular space or interval to be grouted.
24. "Qualifying party" means a partner, officer, or employee of a well drilling contractor, who has significant supervisory responsibilities and who has been designated to take the licensing examination for that well drilling contractor.
25. "Single well license" means a license issued to a person which allows the drilling or modification of a single exempt well on land owned by that person.
26. "Vadose zone well" means a well constructed in the interval between the land surface and the top of the static water level.
27. "Vault" means a tamper-resistant watertight structure used to complete a well below the land surface.
28. "Well abandonment" means the modification of the structure of a well by filling or sealing the borehole so that water may not be withdrawn or obtained from the well.
29. "Well drilling" means the construction or repair of a well, or the modification, except for abandonment, of a well, regardless of whether compensation is involved, including any deepening or additional perforating, any addition of casing or change to existing casing construction, and any other change in well construction not normally asso-

ciated with well maintenance, pump replacement, or pump repair.

30. "Well drilling contractor" means an individual, public or private corporation, partnership, firm, association, or any other public or private organization or enterprise that holds a well driller's license pursuant to A.R.S. § 45-595(B).

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-802. Scope of Article

This Article shall apply to man-made openings in the earth through which water may be withdrawn or obtained from beneath the surface of the earth, including all water wells, monitor wells and piezometer wells. It shall also apply to geothermal wells to the extent provided by A.R.S. § 45-591.01, and all exploration wells and grounding or cathodic protection holes greater than 100 feet in depth. However, this Article shall not apply to the following:

1. Man-made openings in the earth not commonly considered to be wells, such as construction and mining blast holes, underground mines and mine shafts, open pit mines, tunnels, septic tank systems, caissons, basements, and natural gas storage cavities.
2. Injection wells and vadose zone wells which are subject to regulation by the Arizona Department of Environmental Quality.
3. Oil, gas, and helium wells drilled pursuant to the provisions of A.R.S. Title 27.
4. Drilled boreholes in the earth less than 100 feet in depth which are made for purposes other than withdrawing or encountering groundwater, such as exploration wells and grounding or cathodic protection holes; except that in the event that groundwater is encountered in the drilling of a borehole, this Article shall apply.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements

- A. A person shall not drill or abandon a well, or cause a well to be drilled or abandoned, in a manner which is not in compliance with A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder.
- B. A person, other than a single well licensee or a bona fide employee of a well drilling contractor, shall not engage in well drilling or abandonment without first securing a well drilling license in accordance with R12-15-804, R12-15-805 and R12-15-806.
- C. A qualifying party of a well drilling contractor shall provide direct and personal supervision of the contractor's employees to ensure that all wells are constructed and abandoned in accordance with this Article.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section 12-15-803 amended and the text of former Section R12-15-804 renumbered to subsections (B) and (C) and amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-804. Application for well drilling license

- A. An applicant for a well drilling license shall submit a verified application of a form prescribed and furnished by the Director which contains the following information:
  1. A designation of the classification of license sought by the applicant.

2. If the applicant is an individual, the individual's name, address and telephone number.
  3. If the applicant is a partnership, the names, addresses, and telephone numbers of all partners, with a designation of any limited partners.
  4. If the applicant is a corporation, association or other organization, the names, addresses and telephone numbers of the directors and of the president, vice president, secretary and treasurer, or the names, addresses and telephone numbers of the functional equivalent of such officers.
  5. The address or location of the applicant's place of business, the mailing address if it is different from the applicant's place of business, and if applicant is a corporation, the state in which it is incorporated.
  6. The name, address and telephone number of each qualifying party, the qualifying party's relationship to the applicant, and a detailed history of each qualifying party's supervisory responsibilities and well drilling experience, including previous employers, job descriptions, duties and types of equipment utilized.
  7. The names, addresses and telephone numbers of three persons not members of each qualifying party's immediate family, who can attest to each qualifying party's good character and reputation, experience in well drilling, and qualifications for licensing.
  8. Such additional information relevant to the applicant's or qualifying party's experience and qualifications in well drilling as the Director may require.
- B.** An applicant shall notify the Director in writing of any change in the information contained in the application within 30 days after such change.
- C.** The Director shall not issue a license under this Article if the applicant or a qualifying party lacks good character and reputation.
- D.** Prior to the issuance of a license, a qualifying party shall demonstrate three years of experience, dealing specifically with the type of drilling for which the applicant is applying for a license. This experience requirement may be reduced if the Director finds that the qualifying party has clearly and convincingly demonstrated a high degree of understanding and knowledge of well drilling techniques for the type of drilling for which the applicant is applying for a license. In no case, however, shall the practical experience requirement be less than two years.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Former Section R12-15-804 renumbered to R12-15-803(B) and (C), new Section R12-15-804 adopted effective June 18, 1990 (Supp. 90-2).

#### R12-15-805. Examination for Well Drilling License

- A.** The Director shall offer an examination for a well drilling license no less than six times yearly. The examination shall be administered to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination. The examination shall consist of a section on legal requirements, a section on general knowledge and one or more of six specialized sections. The section on legal requirements shall test the qualifying party's knowledge of A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder. The section on general knowledge shall test the qualifying party's knowledge of general hydrologic concepts, principles, and practices in the well construction industry, and shall test knowledge of groundwater protection, pollution, water quality and public health effects. The specialized sections shall test the qualifying party's knowledge in the following classifications:
1. Cable tool drilling in rock and unconsolidated material.
  2. Air rotary drilling in rock and unconsolidated material.
  3. Mud rotary drilling in rock and unconsolidated material.
  4. Reverse rotary drilling in rock and unconsolidated material.
  5. Jetting and driving wells in unconsolidated material.
  6. Boring and augering in unconsolidated material.
- B.** Only the qualifying party, department personnel, and persons having the express permission of the Director shall be permitted in the examination room while the examination is in progress. The qualifying party shall not bring books or notes into the examination room, or communicate by any means whatsoever while the examination is in progress without the express permission of the presiding examiner. The qualifying party shall not leave the examination room while the examination is in progress without first obtaining the permission of the presiding examiner. The Director may disqualify an applicant for violation of this subsection.
- C.** To obtain a well drilling license, a qualifying party of the applicant shall pass the section on legal requirements, the section on general knowledge, and one or more specialized sections. Each section of the examination shall be graded separately. The passing grade on each section shall be 70 percent.
- D.** No person may take the examination more than twice during any 12 months.
- E.** The Director may exempt a qualifying party from taking the section on general knowledge, and one or more of the specialized sections, if the qualifying party provides proof of passing an equivalent examination given by the National Ground Water Association.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section repealed, new Section adopted effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

#### R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License

- A.** The fee for a well driller's license shall be \$50.00.
- B.** Upon submittal of the license fee and satisfactory completion of an examination, the Director shall issue the applicant a well drilling license. The license shall be numbered and shall state the specialized classifications of drilling activities for which the applicant is qualified and licensed. The applicant shall be licensed in only those classifications for which the qualifying party has passed the specialized sections of the examination. If the qualifying party subsequently passes other specialized sections, the applicant's license shall be amended. The applicant shall pay a fee of \$50.00 for the amendment of a well driller's license.
- C.** A well drilling contractor shall notify the Director in writing within 30 days of the date on which the well drilling contractor no longer has a qualifying party for one or more of its specialized drilling classifications. Upon such notification, the Director may revoke or suspend part or all of the well drilling license of the well drilling contractor and require a new qualifying party to take and pass the examination.
- D.** A well drilling license shall expire each year on June 30th, unless renewed pursuant to subsection (E).
- E.** A person may renew a well drilling license by submitting an application for renewal on forms prescribed and furnished by the Director and a fee of \$50.00. If the application and renewal fee are postmarked on or before June 30, the well drilling contractor may operate as a licensee until actual issuance of the renewal license. A license which has expired may be reactivated.

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vated and renewed within one year of its expiration by filing the required application and a reactivation fee of \$50.00. If a license has been expired for one or more years for failure to renew, the well drilling contractor shall apply for a new license and repeat the examination.

- F. A well drilling contractor shall prominently display the well drilling license number on all well drilling rigs owned or operated by the contractor in this state. Good quality paint or commercial decal numbers shall be used in placing each identification number on the drilling rig. The license number shall not be inscribed in crayon, chalk, pencil, or other temporary markings.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-807. Single Well License**

- A. An applicant for a single well license pursuant to A.R.S. § 45-595(D) shall submit a verified application on forms prescribed and furnished by the Director, which shall include:
1. The name and address of the applicant.
  2. The location of the well and whether the applicant owns the land.
  3. The type of drill rig to be used and the owner of the rig.
  4. The proposed design of the well or method of abandonment.
  5. The names of any people who will be assisting the applicant in the drilling or abandonment of the well, and whether the applicant will compensate them for their efforts.
  6. The applicant's experience, if any, in well drilling or abandonment.
  7. Such other information as the Director may require relevant to the applicant's experience and qualifications in well drilling or abandonment.
- B. The Director shall offer the single well examination no less than six times yearly and shall administer the examination to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination.
- C. The single well examination shall be of a form prescribed and furnished by the Director and shall test the applicant's knowledge of abandonment techniques, or those minimum well construction requirements and drilling techniques applicable to the proposed design of the well. The passing grade on the sections of the examination dealing with construction requirements and drilling techniques, respectively, shall be 70 percent.
- D. Rule R12-15-805 relating to testing procedures shall be fully applicable.
- E. Applicants who twice fail the examination shall wait a minimum of 90 days before re-testing.
- F. Upon passing the examination, the applicant shall be issued a single well license, authorizing the applicant to drill or abandon one exempt well at the location specified in the application. The license shall be valid for a period of one year from issuance.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-808. Revocation of License**

The Director may revoke, suspend, or place on probationary status a well drilling license issued pursuant to R12-15-806, or a single well license, for good cause, including:

1. Intentionally making a misstatement of fact on any filing with the Department.
2. Violating any provision of A.R.S. Title 45, Chapter 2, Article 10, and the rules promulgated thereunder, or aiding and abetting in such a violation.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Section number corrected (Supp. 93-1).

**R12-15-809. Notice of Intention to Drill**

A notice of intention to drill required to be filed pursuant to A.R.S. § 45-596 shall be signed by the owner or lessee of the property upon which the well is to be drilled.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2).

**R12-15-810. Authorization to Drill**

- A. A well drilling contractor or single well licensee may commence drilling a well only if the well drilling contractor or licensee has possession of a drilling card at the well site issued by the Director in the name of the well drilling contractor or licensee, authorizing the drilling of the specific well in the specific location.
- B. In extraordinary situations not requiring a permit but only a notice of intention to drill, the Director may grant a request by telephone for emergency authorization of commencement of drilling prior to the actual receipt by the well driller of the drilling card. Within seventy-two hours after such a request is granted, the well driller shall file a written statement indicating the nature and reasons for the request, and the date, time and Department employee granting the request, and the well owner shall file a notice of intent to drill if such a notice has not previously been filed.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-811. Minimum Well Construction Requirements**

- A. Well casing
1. Casing shall be of a sufficient strength and wall thickness to hold the borehole open and survive any necessary grouting. A person shall use only steel or thermoplastic casing in the construction of a well, unless the person has received a variance from the Director pursuant to R12-15-820. The well casing or an extension of the casing shall extend a minimum of one foot above ground level. When installing a pitless adaptor, the casing may be terminated below ground level for aesthetic reasons or freeze protection purposes. Casing made of, or which has been exposed to, hazardous or potentially harmful materials, such as asbestos, shall not be used.
  2. All well casing joints or overlaps shall be made watertight to prevent the degradation of the water supply by the migration of inferior quality water. Except as provided in subsection (H) of this rule, any openings in the casing that will be above the water level in the well, such as bar holes, cracks or perforations, shall be completely plugged or sealed.

3. Thermoplastic casing shall be installed only in an over sized drillhole without driving. Thermoplastic casing shall conform with American Society for Testing and Materials Standard Specification F480-89 (1989), which is incorporated herein by reference and is on file with the Office of the Secretary of State. Rivets or screws used in the casing joints shall not penetrate the inside of the casing.
  4. Steel casing shall be new or in like-new condition, free from pits or breaks, and shall conform with American Society for Testing and Materials Standard Specification A53-89a (1989), A139-89b (1989) or A312/A312M-89a (1989), whichever is applicable, all of which are incorporated herein by reference and are on file with the Office of the Secretary of State.
  5. Copies of The American Society for Testing and Materials standard specifications referred to in subsections (3) and (4) above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007; from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012; and from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. This rule does not include any later amendments or editions of those standard specifications.
- B. Surface seal**
1. Except as provided in subsections (2) and (4) of this subsection, and R12-15-817(B)(1), all wells shall be constructed with a surface seal as herein provided. The seal shall consist of steel casing, one foot of which shall extend above ground level, and cement grout placed in one continuous application from the bottom of the zone to be grouted to the land surface. If a pitless adaptor is utilized, the cement grout may terminate at the bottom of the pitless adaptor. The minimum length of the steel casing shall be 20 feet. The minimum annular space between the casing and the borehole for placement of grout shall be one and one-half inches. Curing additives, such as calcium chloride, shall not exceed ten percent of the total volume of grout. Bentonite as an additive shall not exceed five percent of the total volume. The minimum length of the surface seal shall be 20 feet. Any annular space between the outer casing and an inner casing shall be completely sealed to prevent contamination of the well.
  2. All hand-dug wells shall be constructed with a watertight curbing extending, at a minimum, from one foot above the natural ground level to the static water level, or into the confining formation if the aquifer is artesian. The curbing shall consist of poured cement grout or casing surrounded by cement grout. Concrete block with cement grout and rock with cement grout may also be used. The poured cement grout shall not be less than six inches thick. If casing is to be used, the minimum annular space between the casing and the borehole shall be three inches. Hand-dug wells shall be sealed at the surface with a watertight, tamper-resistant cover to prevent contaminants from entering the well.
  3. All wells constructed by jetting or driving shall have cement grout placed in the annular space to a minimum depth of six feet. The minimum annular space between the casing and the borehole for placement of the grout shall be one and one-half inches.
  4. All horizontal wells, to prevent leakage, shall be constructed with a surface seal consisting of steel casing and cement grout extending a minimum of ten feet into the land surface.
- C. Access port.** Every well with casing four inches in diameter or larger shall be equipped with a functional watertight access port with a minimum diameter of one-half inch so that the water level or pressure head in the well can be monitored at all times.
- D. Gravel packed wells**
1. If a gravel pack has been installed, the annular space between the outer casing and the inner casing shall be sealed, either by welding a cap at the top or by filling with cement grout from the bottom of the outer casing to the surface.
  2. If a gravel tube is installed, it shall be sealed with a cap.
- E. Vents.** All vents installed in the well casing shall open downward and be screened to prevent the entrance of foreign material.
- F. Removal of drilling materials**
1. In constructing a water well, the well driller shall take all reasonable precautions to protect the producing aquifer from contamination by drilling materials. Upon completion of the well, the well driller shall remove all foreign substances and materials introduced into the aquifer or aquifers during well construction. For purposes of this subsection, "substances and materials" means all drilling fluids, filter cake, lost circulation materials, and any other organic or inorganic substances.
  2. Materials known to present a health hazard, such as chrome-based mud thinners, asbestos products, and petroleum-based fluids, shall not be used as construction, seal or fill materials or drilling fluids.
  3. Drilling fluids and cuttings shall be contained in a manner which prevents discharge into any surface water.
- G. Repair of existing wells**
1. If, in the repair of a well, the old casing is withdrawn, the well shall be recased in conformance with these rules.
  2. If an inner casing is installed to prevent leakage of undesirable water into a well, the annular space between the casings shall be completely sealed by packers, casing swedging, pressure grouting or other methods which will prevent the movement of water between the casings.
- H. Monitor wells**
1. A monitor well may be screened up to ten feet above the highest seasonal static water level of record for the purpose of monitoring contaminants.
  2. A monitor well shall be identified as such on the vault cover or at the top of the steel casing. Identification information shall include the well registration number.
- I. Completion at the surface.** In areas of traffic or public rights-of-way, wells may be constructed below the land surface in a vault. All other requirements in this Article shall apply.
- Historical Note**
- Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). The reference to R12-14-817(B)(1) in subsection (B)(1) corrected to read R12-15-817(B)(1) (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).
- R12-15-812. Special Aquifer Conditions**
- A. Artesian wells**
1. The well casing shall extend into the confining formation immediately overlying the artesian aquifer and shall be grouted from a minimum of ten feet into the confining formation to the land surface to prevent surface leakage into and subsurface leakage from the artesian aquifer.

2. If leaks occur adjacent to the well or around the well casing, within 30 days the well shall be completed with the seals, packers, or casing and grouting necessary to eliminate such leakage or the well shall be abandoned according to R12-15-816.
  3. If the well flows at land surface, the well shall be equipped with a control valve, or suitable alternative means of completely controlling the flow, which must be available for inspection at the well site at all times.
- B.** Mineralized or polluted water. In all water-bearing geologic units containing mineralized or polluted water as indicated by available data, the borehole shall be cased and grouted so that contamination of the overlying or underlying groundwater zones will not occur.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-813. Unattended Wells

All wells, when unattended during well drilling, shall be securely covered for safety purposes and to prevent the introduction of foreign substances into the well.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section number corrected (Supp. 93-1).

#### R12-15-814. Disinfection of Wells

A well drilling contractor shall disinfect any well from which the water to be withdrawn is intended to be utilized for human consumption or culinary purposes without prior treatment before removing the drill rig from the well site in accordance with the requirements contained in Engineering Bulletin No. 8, "Disinfection of Water Systems", issued by the Arizona Department of Health Services in August 1978, and Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems", issued by the Arizona Department of Health Services in May 1978, both of which are incorporated by reference and are on file with the Office of the Secretary of State. Copies of the Engineering Bulletins referred to above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007, and from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012. This rule does not include any later amendments or editions of those Bulletins.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-815. Removal of Drill Rig from Well Site

The drilling rig shall not be removed from the well site unless the well is in one of the following conditions:

1. Constructed in full conformance with R12-15-811 and R12-15-812 and either sealed with a cap or equipped with a pump.
2. Abandoned in accordance with R12-15-816.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-816. Abandonment

- A.** Well abandonment shall be performed only by a licensed well drilling contractor or single well licensee.
- B.** Except as provided in subsection (F) of this Section, the owner of a well shall file a notice of intent to abandon the well prior

to abandonment, on a form prescribed and furnished by the Director, which shall include:

1. The name and mailing address of the person filing the notice.
  2. The legal description of the land upon which the well proposed to be abandoned is located and the name and mailing address of the owner of the land.
  3. The legal description of the location of the well on the land.
  4. The depth, diameter and type of casing of the well.
  5. The well registration number.
  6. The materials and methods to be used to abandon the well.
  7. When abandonment is to begin.
  8. The name and well drilling license number of the well drilling contractor or single well licensee who is to abandon the well.
  9. The reason for the abandonment.
  10. Such other information as the Director may require.
- C.** The Director shall, upon receipt of a proper notice of intent to abandon, mail a well abandonment authorization card to the designated well drilling contractor or single well licensee.
- D.** Except as described in subsection (F) of this Section, a well drilling contractor or single well licensee may commence abandoning a well only if the driller has possession of an abandonment card at the well site, issued by the Director in the name of the driller, authorizing the abandonment of that specific well or wells in that specific location.
- E.** Within 30 days after a well is abandoned pursuant to this Section, the well drilling contractor or single well licensee shall file with the Director a Well Abandonment Completion Report on a form prescribed and furnished by the Director which shall include the date the abandonment of the well was completed and such other information as the Director may require.
- F.** In the course of drilling a new well, the well may be abandoned without first filing a notice of intent to abandon and without an abandonment card. If the well is abandoned pursuant to this subsection without first filing a notice of intent to abandon and without an abandonment card, the well drilling contractor or single well licensee shall provide the following information in the Well Abandonment Completion Report:
1. The legal description of the land upon which the well was abandoned and the name and mailing address of the owner of the land.
  2. The legal description of the location of the well on the land.
  3. The depth, diameter and type of casing of the well prior to abandonment.
  4. The well registration number.
  5. The materials and methods used to abandon the well.
  6. The name and well drilling license number of the well drilling contractor or single well licensee who abandoned the well.
  7. The date of completion of the abandonment of the well.
  8. The reason for the abandonment.
  9. Such other information as the Director may require.
- G.** The abandonment of a well shall be accomplished through filling or sealing the well so as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.
- H.** A well drilling contractor or single well licensee shall construct a surface seal for a well that does not penetrate an aquifer, as follows:
1. If the casing is removed from the top 20 feet of the well, a cement grout plug shall be set extending from two feet below the land surface to a minimum of 20 feet below the

land surface, and the well shall be backfilled above the top of the cement grout plug to the original land surface.

2. If the casing is not removed from the top 20 feet of the well, a cement grout plug shall be set extending from the top of the casing to a minimum of 20 feet below the land surface and the annular space outside the casing shall be filled with cement from the land surface to a minimum of 20 feet below the land surface.

**I.** In addition to the surface seal required in subsection (H):

1. A well penetrating a single aquifer system with no vertical flow components shall be filled with cement grout, concrete, bentonite drilling muds, clean sand with bentonite, or cuttings from the well.
2. A well penetrating a single or multiple aquifer system with vertical flow components shall be sealed with cement grout or a column of bentonite drilling mud of sufficient volume, density, and viscosity to prevent fluid communication between aquifers.

**J.** Materials containing organic or toxic matter shall not be used in the abandonment of a well.

**K.** The owner or operator of the well shall notify the Director in writing no later than 30 days after abandonment has been completed. The notification shall include the well owner's name, the location of the well, and the method of abandonment.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-817. Exploration Wells**

**A.** Notification. Prior to drilling one or more exploration wells, the well owner, lessee, or exploration firm shall file a notice of intention to drill on forms provided by the Director. If the notice of intention to drill is filed for the project as a whole, the drilling card shall be issued for the project as a whole.

**B.** Construction and abandonment.

1. If an exploration well which is to be left open for re-entry at a later date encounters groundwater, it shall be cased and capped in accordance with R12-15-811, R12-15-812, and R12-15-822. The minimal length of surface seal shall be either 20 feet, or five feet into the first encountered consolidated formation, whichever is less. If no groundwater is encountered, the well shall be cased, grouted and capped in such a manner so as to prevent contamination of the well bore from the surface.
2. Exploration wells not left open for re-entry shall be abandoned in accordance with R12-15-816.

**C.** Completion report. Within 30 days of project completion, the well owner, lessee, or exploration firm shall submit a project completion report on forms provided by the Director. The report shall include:

1. The exact number of wells drilled.
2. The depth to water encountered or detected, with reference to specific wells.
3. The abandonment method utilized, or construction details if completed for re-entry.
4. Any other information which the Director may require.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-818. Well Location**

Except for monitor wells and piezometer wells, no well shall be drilled within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, storage area of hazardous

materials or petroleum storage areas and tanks, unless authorized in writing by the Director.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-819. Use of Well as Disposal Site**

No well may be used as a storage or disposal site for sewage, toxic industrial waste, or other materials that may pollute the groundwater, except as authorized by the Arizona Department of Environmental Quality.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-820. Request for Variance**

- A.** If extraordinary or unusual conditions exist, a well drilling contractor or owner may request a variance from the provisions of this Article.
- B.** The request for variance shall be in writing and shall set forth the location of the well site, the reasons for the request, and the recommended requirements to be applied. The Director may approve the request only if the well drilling contractor or owner has clearly demonstrated that the variance will not adversely affect other water users or the local aquifers.
- C.** A variance shall not be effective until the well drilling contractor or owner receives from the Director a written approval of the variance and a new drilling card stamped "variance issued."

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-821. Special Requirements**

If the Director determines that the literal application of the minimum well construction requirements contained in this Article would not adequately protect the aquifer or other water users, the Director may require that further additional measures be taken, such as increasing the length of the surface seal or increasing the well's minimum distance from a potential source of contamination.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-822. Capping of Open Wells**

- A.** The owner of an open well shall either install a cap on the well or abandon the well in accordance with R12-15-816. Within five days after capping the well, the owner of the well shall file with the Department a notice of well capping on a form approved by the Director which shall include the following information:
  1. The name and address of the well owner.
  2. The name and address of the person installing the cap.
  3. The well registration number.
  4. The legal description of the location of the well.
  5. The date the well was capped.
  6. The method of capping.
  7. The type and diameter of casing.
- B.** If no casing exists in an open well, or if the integrity of the existing casing is insufficient to allow installation of a cap, the well owner shall install a surface seal in accordance with R12-15-811(B) prior to capping.
- C.** The owner of a well on which a cap is installed shall make the cap tamper resistant by welding the cap to the top of the casing by the electric arc method of welding, except that the owner of a well may make the cap tamper resistant by securing the cap

to the top of the casing with a lock during temporary periods of well maintenance, modification or repair, not to exceed 30 days, or at any time if the well is a monitor well or piezometer well.

#### Historical Note

Adopted as an emergency effective March 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective September 5, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Readopted without change as an emergency effective December 1, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted without change as an emergency effective March 23, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Permanent rule adopted with changes effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

#### R12-15-823. Reserved

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#### R12-15-849. Reserved

#### R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation

- A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or sub-basin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.
- B. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the requirements of R12-15-811 are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R.

469, effective January 3, 2000 (Supp. 00-1).

#### R12-15-851. Notification of Well Drilling Commencement

A well owner who has been issued a drilling card for a notice of intent to drill authorizing the drilling of a well located within a site listed on the registry established under A.R.S. § 49-287.01, shall provide written notice to the Director indicating the date drilling will commence. The well owner shall coordinate with the contracted well driller to ensure that the Department receives proper notification under this Section. This notification shall consist of a letter or facsimile transmission received by the Department at least 2 business days before drilling commences at the well site. The Department shall use notification letters required by R12-15-850(A) to inform well owners whether they are subject to the requirements of this Section.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

#### R12-15-852. Notice of Well Inspection; Opportunity to Comment

- A. At least 30 days before the beginning of a well inspection under A.R.S. § 45-605(A), the Director shall notify in writing all potentially affected well owners of record within a community involvement area established under A.R.S. § 49-289.02 or within other areas that the Director has selected for inspection of wells that may be contributing to vertical cross-contamination. The notices shall include a map of the community involvement area, remedial site, or a subsection of either, that the Department intends to inspect, indicating the location of affected wells of record. The notice shall indicate the approximate date the inspection will start, the approximate duration of the inspection, an access agreement defining what specific activities will occur during a well inspection, and the name, address, and telephone number of a Department contact person.
- B. Once the Director has given notice of a well inspection under A.R.S. § 45-605(A), potentially affected well owners have 30 days from the date the letter is postmarked to comment on the proposed inspection. The Director, upon receiving a written request, may extend the comment period for a maximum of 30 additional days.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

### ARTICLE 9. WATER MEASUREMENT

#### R12-15-901. Definitions

In addition to the definitions set forth in A.R.S. §§ 45-101 and 45-402, the following words and phrases shall have the following meanings, unless the context otherwise requires:

1. "Approved measuring device" means an instrument, approved by the Director pursuant to R12-15-903 or R12-15-909(A) which measures the volume or flow rate of water withdrawn, delivered, received, transported, recharged, stored, recovered, or used, and which measurements, when used with an approved measuring method, allow for accurate computation of a volume of water.
2. "Approved measuring method" means a procedure, approved by the Director in R12-15-903 or R12-15-909(A), which, when used with an approved measuring device, will accurately calculate a volume of water.
3. "Flow rate" or "discharge" means the volume of water, including any sediment or other solids that may be dis-

solved or mixed with it, which passes through a particular reference section in a unit of time.

4. "Measured system" means a system through which water passes for the purpose of withdrawal, delivery, receipt, transportation, recharge, storage, replenishment, recovery or use.
5. "Responsible party" means an irrigation district or a person required by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45, to use a measuring device or method approved by the Director.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).  
Amended effective June 15, 1995 (Supp. 95-2). Amended  
to correct typographical error under A.A.C. R1-1-109  
(Supp. 01-2).

#### R12-15-902. Installation of Approved Measuring Devices

- A. A responsible party shall install an approved measuring device to monitor the volume of water withdrawn, delivered, transported, recharged, stored, replenished, recovered, and used.
- B. A responsible party shall install and use a sufficient number of approved measuring devices to allow for the separate monitoring and reporting of the volume of water passing through the measured system pursuant to the following categories of rights:
  1. Irrigation grandfathered rights,
  2. Non-irrigation grandfathered rights,
  3. Service area rights,
  4. Groundwater withdrawal permits, and
  5. Recovery well permits or water storage permits.

This subsection does not require separate measuring devices for rights within each category unless otherwise required by A.R.S. Title 45, a permit, rule, or order pursuant to that Title.
- C. An approved measuring device which measures groundwater withdrawals shall be installed as close to the wellhead as is practical, consistent with the manufacturer's instructions. An approved measuring device which measures another point in the measured system shall be installed as close as is practical to the point of delivery, receipt, transportation, recharge, storage, replenishment, recovery, or use which the device is intended to measure, consistent with the manufacturer's instructions.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).  
Amended effective June 15, 1995 (Supp. 95-2). Amended  
to correct typographical error under A.A.C. R1-1-109  
(Supp. 01-2).

#### R12-15-903. Approved Water Measuring Devices and Methods

- A. Any measuring device is approved by the Director if it is installed, maintained, and used in accordance with the manufacturer's recommendations, and if it meets the accuracy requirements set forth in R12-15-905(A).
- B. An approved measuring device shall be used with an approved measuring method set forth in R12-15-903(C) or an alternative measuring method approved by the Director as provided in R12-15-909(A).
- C. The following water measuring methods are approved by the Director:
  1. Totalizing measuring method: This method requires an approved measuring device which continuously records the volume of water passing through the measured system;
  2. Electrical consumption measuring method: This method requires measurements of either pipeflow rates or open-

channel flow rates used in combination with electrical energy records;

3. Natural gas consumption measuring method: This method requires measurements of either pipe flow rates or open channel flow rates used in combination with natural gas energy records;
4. Hour meter measuring method: This method requires measurements of either pipe flow rates or open-channel flow rates used in combination with hour meter readings;
5. Elapsed time of flow method: This method requires measurements of flow rates used in combination with elapsed time of the flow. This method may be used only by a responsible party who receives water from an open channel or by a person or entity who delivers water in an open channel to one or more grandfathered rightholders or permit holders, if it is not possible to use the electrical or gas consumption measurement methods or hour meter measuring method.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).  
Amended effective June 15, 1995 (Supp. 95-2).

#### R12-15-904. Water Measuring Method Reporting Requirements

- A. A responsible party using one of the water measuring methods described in R12-15-903 shall file, with the annual report required by A.R.S. Title 45 and on a form prescribed by the Director, the following information, unless that information has not changed from that submitted in the annual report filed in the previous calendar year.
  1. The approved measuring method used;
  2. The type of approved measuring device used;
  3. The make, model, and size of the approved measuring device used.
- B. Except as provided in R12-15-904(B)(5) and R12-15-909(B) and (D), a responsible party shall file with the annual report the information required in subsection (A) of this Section and the following information on a form prescribed by the Director:
  1. Totalizing measuring method:
    - a. The initial totalizing meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
    - b. The end totalizing meter reading for the year taken subsequently to the last use of the measured system during the reporting year;
    - c. The units in which the water is measured;
    - d. Whether the power meter serves uses other than the pump motor or engine;
    - e. An estimate of the amount of any water passing through the measured system during measuring device malfunctions;
    - f. If the well is in operation for more than a 30-day period, the results of a minimum of two flow-rate measurements per reporting year taken under normal system operating conditions. The responsible party shall not submit the results of the flow-rate measurements with the annual report unless a meter malfunction continues longer than 72 hours during the reporting year;
    - g. The installation or overhaul date of the totalizing meter; and
    - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy



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- consumption for the year, and the type of energy unit.
2. Electrical consumption measuring method:
    - a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
    - b. The dates of the measurements;
    - c. The discharges in gallons per minute;
    - d. The time, in seconds, of ten cycles of the electric meter disk, power indicator pulse, or an alternative measurement, provided that the alternative means of measurement is approved in advance by the Director;
    - e. The inside diameter of the discharge pipe;
    - f. The multiplier ( $K_T$ ) and disk constant ( $K_h$ ) of the electric meter; and
    - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
  3. Natural gas consumption measuring method:
    - a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
    - b. The dates of the measurements;
    - c. The discharges in gallons per minute;
    - d. The amounts of gas per second in cubic feet indicated by the gas meter;
    - e. The billing factors (F);
    - f. The inside diameter of the discharge pipe; and
    - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
  4. Hour meter measuring method:
    - a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
    - b. The dates of the measurements;
    - c. The discharges in gallons per minute;
    - d. The initial hour meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
    - e. The end hour meter reading taken subsequently to the last use of the measured system during the reporting year;
    - f. Whether the energy meter serves uses other than the pump motor or engine;
    - g. The installation or overhaul date of the hour meter; and
    - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
  5. Elapsed time of flow measuring method: A responsible party using this measuring method shall not be required to submit the following information with the annual report but instead shall record and retain it for three years after the reporting year.
    - a. The responsible party or agent shall measure and record an initial flow rate taken at the start of flow for each delivery of water;
    - b. If the flow rate continues for more than eight hours, a subsequent measured flow-rate measurement shall be taken. If any subsequently measured flow-rate differs by more than 10% from the initial flow rate, and the delivery is not adjusted to conform with the initial flow rate, the responsible party or agent shall record the subsequent flow rate;
    - c. The time the flow begins and the time the flow ends for each delivery of water; and
    - d. The dates of the measurements.
  - C. A responsible party or person or entity who uses an approved measuring method or an approved alternative water measurement method shall save the records required by subsections (A) and (B) of this Section for three years after the reporting year.

**Historical Note**

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-904 renumbered to R12-15-905, new Section adopted effective June 15, 1995 (Supp. 95-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-905. Accuracy of Approved Measuring Devices**

- A. A responsible party shall install, maintain, and use an approved measuring device and method in a manner which will ensure that its measurement error does not exceed 10% of the actual flow rate.
- B. All measured systems shall be installed or constructed and thereafter maintained so as to allow the Director, using another measuring device, to check readily the accuracy of the measuring device utilized by the responsible party.

**Historical Note**

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-905 renumbered to R15-15-906, new Section R12-15-905 renumbered from R12-15-904 and amended effective June 15, 1995 (Supp. 95-2).

**R12-15-906. Repair and Replacement of Approved Measuring Devices**

If an approved measuring device fails to perform its designated function for more than 72 hours, the responsible party shall notify the Director of the failure, in writing, within seven calendar days after the discovery of the failure of the device. The reason for such failure shall be stated, as well as the estimated date of return to service of the device. If the malfunction is discovered by the Director and the malfunction does not appear to be the result of an attempt to render the device inaccurate, the Director shall notify the responsible party of the malfunction. The responsible party shall return the measuring device to full service within 30 days of either original notice by the responsible party to the Director or by the Director to the responsible party, unless repair or replacement service or parts

are not available. In such case, the responsible party shall notify the Director of the delay within seven days and the reasons for it. The responsible party shall take corrective action in such cases as soon as practical. In all cases, the responsible party shall notify the Director within seven days when the measuring device is returned to full service and shall submit on a form prescribed by the Director estimates of the volume of water, if any, passing through the measured system during the period the measuring device was out of service and a description of the method used to calculate the estimates.

#### Historical Note

Section R12-15-906 renumbered from R12-15-905 and amended effective June 15, 1995 (Supp. 95-2).

#### R12-15-907. Calculation of Irrigation Water Deliveries

If one or more irrigation grandfathered rights receive water by a common distribution system where water is measured with an approved device or method at the point of delivery to the common distribution system, but not at a point of delivery to each irrigation grandfathered right, each irrigation grandfathered rightholder or agent shall report the water used by either of the following methods:

1. Estimate the amount of water used based on a pro rata share of the acres irrigated, or
2. Estimate the amount of water used based on a combination of the pro rata share of the acres irrigated and the consumptive use of each crop grown.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R12-15-908. Measurement of Water by One Person on Behalf of Another

A responsible party shall be liable for any fines, penalties, or other sanctions resulting from the installation, monitoring, use, or accuracy of any measuring device, method, or recordkeeping, notwithstanding that the installation, monitoring, use, or recordkeeping may have been done by an agent of the responsible party.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R12-15-909. Alternative Water Measuring Devices, Methods, and Reporting

- A. A responsible party may use an alternative water measuring device or method that differs from those described in R12-15-903 provided the device or method is approved in advance by the Director. The Director shall approve an alternative water measuring device or method if the device meets the requirements of R12-15-905. The Director may require from the responsible party such information as may be necessary to demonstrate that the alternative device or method meets the requirements of R12-15-905.
- B. Responsible parties may substitute equivalent information for the information required on the annual report form or use reporting formats that differ from that required in R12-15-904, provided the substituted information or format is approved in advance by the Director.
- C. Responsible parties may use estimation methods that differ from those described in R12-15-907 provided they are approved in advance by the Director.
- D. A municipal provider is exempted from the reporting requirements under R12-15-904 and the provisions under R12-15-906 pertaining to notification to the Director of measuring device malfunctions regarding metered service connections, unless required to report by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45.
- E. Municipal providers and irrigation districts may notify the Director of measuring device malfunctions at the time of filing

the annual report and in a manner that differs from the requirements of R12-15-906, provided the municipal provider or irrigation district implements a schedule of regular maintenance of measuring devices, repairs or replaces malfunctioning measuring devices within seven days of discovery of the malfunction, and the alternative notification is approved in advance by the Director.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

### ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS

#### R12-15-1001. Definitions

In addition to the definitions in A.R.S. §§ 45-101 and 45-402, the following words and phrases in this Article have the following meanings, unless the context otherwise requires:

1. "Annual account" means an accounting of water required to be filed pursuant to A.R.S. § 45-468.
2. "Annual report" means an annual report of water withdrawn, delivered, received, transported, recharged, stored, recovered, replenished or used as required by A.R.S. §§ 45-437, 45-467, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004.
3. "Central Arizona project water" means Colorado River water delivered through the facilities of the central Arizona project, and surface water from any other source conserved and developed by dams and reservoirs in the central Arizona project and lawfully delivered by the United States or a multi-county conservation district.
4. "Decreed or appropriative surface water" means surface water which is delivered or used pursuant to a decreed or appropriative water right, except any such water which is included in central Arizona project water.
5. "Farm" means an area of irrigated land under the same ownership as defined in A.R.S. § 45-402, including the area of land described in a certificate of irrigation grandfathered right, as well as contiguous land that the owner is legally entitled to irrigate only with decreed or appropriative surface water.
6. "Maximum annual groundwater allotment" means the quantity of water in acre-feet obtained by multiplying the number of water duty acres for a farm by the current irrigation water duty for the farm unit.
7. "Normal flow" means water delivered or used pursuant to a right to appropriate an unstored, natural flow of surface water.
8. "Operating flexibility account" means an accounting of water use pursuant to an irrigation grandfathered right as provided in A.R.S. § 45-467.
9. "Responsible party" means a person required by law to file an annual account or annual report.
10. "Spillwater" means surface water, other than Colorado River water, released for beneficial use from storage, diversion, or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity and to which one of the following applies:
  - a. The water is released from the facility under written criteria for releasing water to avoid spilling that have been approved in writing by the Director.
  - b. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded within the next 30 days because the facility is near capacity and either the

inflow to the facility or the forecast runoff into the facility is equal to or greater than the quantity of water ordered from the facility.

- c. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded more than 30 days in the future because the forecast runoff into the facility exceeds current unused storage capacity and projected water demand during the forecast period, provided that the Director has made a written finding before the release that the forecast is reasonable.
- 11. "Surface water right acre" means land to which the owner is legally entitled to apply decreed or appropriative surface water.
- 12. "Tailwater" means water which, after having been applied to a farm for irrigation purposes,
  - a. Is subsequently used for the irrigation of a different farm, without having entered the distribution system of a city, town, private water company or irrigation district, or
  - b. Is delivered to an irrigation district in accordance with R12-15-1010. Such water, once having entered the distribution system of the irrigation district, loses its characterization as tailwater.
- 13. "Water deliverer" means a city, town, private water company or irrigation district delivering a combination of groundwater and any other type of water for irrigation purposes.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Section R12-15-1001 renumbered to R12-15-1003, new Section R12-15-1001 adopted effective December 12, 1990 (Supp. 90-4). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-1002. Form of Annual Account or Annual Report

- A. A person filing an annual account or an annual report shall do so on a form prescribed by the Director, unless the person has requested and received the Director's prior written approval to use an alternative form.
- B. A person may file both an annual account and an annual report in one document. A person required to file an annual account shall designate in the annual account whether the annual account is being filed also as an annual report.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

#### R12-15-1003. Accuracy of Annual Reports

The quantity of water a responsible party reports in an annual report as having been withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used during a year shall not deviate from the quantity of water actually withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used by the responsible party during the year unless both of the following apply:

- 1. The deviation is 10 percent or less.
- 2. The deviation is not the result of an intentional act of misrepresentation by the responsible party.

#### Historical Note

Section R12-15-1003 renumbered from R12-15-1001 effective December 12, 1990 (Supp. 90-4). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4,

2006 (Supp. 05-4).

#### R12-15-1004. Annual Reports Filed on Behalf of a Responsible Party

- A. A responsible party is liable for any fines, penalties, or other sanctions resulting from or attributable to the filing or content of an annual report filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director.
- B. If a responsible party has not filed an annual report for a calendar year, and the Department receives an annual report for that calendar year purportedly filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director, there is a rebuttable presumption that the annual report was filed with the responsible party's knowledge, consent, and authorization.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

Amended to correct typographical error under A.A.C.

R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-1005. Management Plan Monitoring and Reporting Requirements

A responsible party who is required by a provision of a management plan to comply with monitoring and reporting requirements shall comply with such requirements and shall include all such information in an annual account or annual report.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

#### R12-15-1006. Reporting Requirements for Holders of Recovery Well Permits

A responsible party recovering water during a year pursuant to a recovery well permit shall include in the annual report required by A.R.S. § 45-875.01 the names of any persons, other than non-irrigation customers of cities, towns, private water companies and irrigation districts, to whom the responsible party delivered the recovered water during the year, the quantity of recovered water delivered to each person named, and the uses to which the recovered water was applied. If the recovered water included commingled groundwater, decreed or appropriative surface water other than spillwater, central Arizona project water, effluent or spillwater, the responsible party shall include in the annual report an estimate of the quantity of each type of water delivered to each person named in the annual report or put to a specific use by the responsible party.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-1007. Reporting Requirements for Annual Account

A person required to file an annual account pursuant to A.R.S. § 45-468 shall account for water provided to the following classes of users:

- 1. Cities and towns,
- 2. Private water companies,
- 3. Irrigation districts,
- 4. Dairies,
- 5. Metal mining facilities,
- 6. Cattle feed lots,
- 7. Turf-related facilities,
- 8. Sand and gravel facilities,
- 9. Electrical power generation facilities,
- 10. Other industrial users.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1008. Information Required to Maintain an Operating Flexibility Account**

- A.** A responsible party who withdraws, receives, or uses groundwater during a calendar year pursuant to an irrigation grandfathered right, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01, shall include the following information for the calendar year in an annual report filed pursuant to A.R.S. § 45-467 or 45-632:
1. The quantity of groundwater withdrawn from each well.
  2. The quantity of groundwater withdrawn and delivered to another person for irrigation purposes.
  3. The quantity of groundwater received from a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
  4. The quantity of groundwater received from a person other than a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
  5. The quantity of effluent received.
  6. The quantity of decreed or appropriative surface water received, other than normal flow and spillwater.
  7. The quantity of normal flow received.
  8. The quantity of spillwater received.
  9. The quantity of tailwater used.
  10. The quantity of tailwater delivered in accordance with the provisions of R12-15-1010(A), and the farm or irrigation district to which the tailwater was delivered.
  11. The quantity of central Arizona project water received.
  12. The quantity of any surface water received and not accounted for pursuant to subsections (6) through (11) of this subsection.
  13. The number of surface water right acres in the farm to which the irrigation grandfathered right is appurtenant.
  14. The quantity of water used for the legal irrigation of acres in the farm to which irrigation grandfathered rights are not appurtenant. If the responsible party omits this information, the Director shall presume that the total amount of water received or used for the irrigation of the farm was applied to acres to which irrigation grandfathered rights are appurtenant.
  15. Any other information the Director may reasonably require to accomplish the management goals of the applicable active management area.
- B.** A water deliverer shall include the following information for an accounting period in an annual account filed pursuant to A.R.S. § 45-468:
1. The quantity of groundwater delivered to each farm, including any in lieu water delivered pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
  2. The quantity of normal flow delivered to each farm.
  3. The quantity of spillwater delivered to each farm.
  4. The quantity of decreed or appropriative surface water, other than normal flow and spillwater, delivered to each farm.
  5. The quantity of central Arizona project water delivered to each farm.
  6. The quantity of decreed or appropriative surface water, other than normal flow and spillwater, delivered for use

within the service area of the water deliverer, including all farm and non-farm deliveries.

7. The number of surface water right acres within the service area of the water deliverer.
8. The quantity of effluent delivered to each farm.
9. Any other information the Director may reasonably require to accomplish the purposes of A.R.S. § 45-468.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1009. Credits to Operating Flexibility Account**

- A.** Except as provided in subsection (B) of this Section and in R12-15-1010, if the total amount of water from all sources other than spillwater used by a farm for irrigation purposes in a calendar year is less than the farm's maximum annual groundwater allotment for the year, the Director shall register the difference as a credit to the farm's operating flexibility account.
- B.** If a farm is within the service area of a water deliverer, the Director shall reduce the credit as calculated pursuant to subsection (A) of this Section by an amount equal to the difference between the farm's pro rata share of the total quantity of decreed or appropriative surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area, and the quantity of water actually received by the farm during the year. The Director shall determine the farm's pro rata share by dividing the number of surface water right acres in the farm that are within the service area of the water deliverer by the total number of surface water right acres within the service area of the water deliverer, and multiplying the quotient by the total quantity of decreed or appropriative surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1010. Operating Flexibility Account; Tailwater**

- A.** When calculating credits or debits to a farm's operating flexibility account for a year, the Director shall exclude from the total amount of water used on the farm during that year the amount of any tailwater that originated on the farm and that was delivered from the farm to another farm or to an irrigation district for irrigation purposes during the year if all of the following apply:
1. Prior to January 1 of the year in which the deliveries of tailwater take place, the Director approves a written plan to measure and record the tailwater deliveries. The plan shall include:
    - a. The installation and use of a totalizing water measuring device that will record tailwater deliveries with no greater than a 10 percent margin of error.
    - b. Procedures for keeping accurate records of the tailwater deliveries.
    - c. A description of how the tailwater will be delivered.
    - d. An identification of the farm or irrigation district to which the tailwater will be delivered.
  2. The person has measured, recorded, and delivered the tailwater in accordance with the plan approved under subsection (A)(1) of this Section.
  3. The tailwater was delivered directly from the farm on which it originated to:

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- a. A specified farm that used the tailwater for the legal irrigation of irrigation acres or surface water right acres on that farm, or
  - b. A specified irrigation district that delivered the tailwater for the legal irrigation of irrigation acres or surface water right acres within that district.
- B. A person who delivers tailwater in accordance with subsection (A) of this Section, and a person who directly receives and uses the tailwater pursuant to subsection (A)(3)(a) of this Section, shall account for and report the tailwater as if it were comprised of a mixture of groundwater, decreed and appropriative surface water other than normal flow, central Arizona project water, spillwater, other surface water, and effluent, as applicable, in the same proportions as those types of water comprise the total amount of water other than normal flow received or withdrawn for irrigation use during the calendar year on the farm on which the tailwater originated.
- C. A person who uses tailwater that has not been delivered and accounted for as provided in subsections (A) and (B) of this Section may credit against the person's use of groundwater in a calendar year the amount of the tailwater used during the calendar year if the use of such tailwater would cause a debit to be incurred. The credit shall be applied only against the person's operating flexibility account debits that otherwise would have been incurred that year and shall not be used to discharge debits from prior years or accumulate credits for future years. For purposes of calculating credits to the person's operating flexibility account, the Director shall treat tailwater as groundwater, unless reported otherwise according to its source.
- D. An irrigation district that receives tailwater pursuant to subsection (A)(3)(b) shall account for the water in the same manner as other water in the district's distribution system.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).  
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1011. Statement of Operating Flexibility Account**

- A. The Director shall annually issue to each owner or user of an irrigation grandfathered right for which a current annual report has been filed a statement of the operating flexibility account setting forth the status of the operating flexibility account for the farm, based on the information submitted in the annual report filed for the right.
- B. Upon a motion or on the initiative of the Director, the Director may amend a statement of operating flexibility account at any time to correct clerical mistakes or to adjust the balance of the account based on information submitted in an amended or late annual report. The Director shall give written notice of any amendments made pursuant to this subsection to the person to whom the statement of operating flexibility account was issued.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).  
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1012. Rule of Construction**

Nothing in A.A.C. R12-15-1001 through R12-15-1011 shall be construed to determine the legality of any water use for which an accounting is required under these rules.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1013. Retention of Records for Annual Accounts and Annual Reports**

The responsible party shall keep and maintain, for at least three calendar years following the filing of an annual account or an annual report, all records which may be necessary to verify the information and data contained therein.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1014. Late Filing or Payment of Fees; Extension Penalties**

- A. An annual account, an annual report, or a request for extension pursuant to subsection (E) of this rule shall be deemed to be filed at the time a complete annual account, a complete annual report or a request for extension is hand-delivered to any Department office, or at the time the envelope in which it is mailed is postmarked.
- B. Except as provided in subsection (C) of this Section, groundwater withdrawal fees and long-term storage credit recovery fees are deemed paid at the time the fees are hand-delivered to any Department office, or at the time the envelope in which they are mailed is postmarked.
- C. If any groundwater withdrawal fees or long-term storage credit recovery fees are paid with a negotiable instrument that is not honored and paid upon the Department's initial demand, the fees are deemed paid at the time the Department actually receives the fees in cash or when the negotiable instrument is honored and paid to the Department.
- D. If an annual account or an annual report filed on or before the date required by the applicable statute is found by the Director to be incomplete, the Director shall notify the responsible party of the inadequacies and allow the responsible party 30 days from the date of the notice to provide the missing information in a form prescribed by the Director. If the responsible party does not provide the missing information within 30 days from the date of the notice, late penalties under A.R.S. §§ 45-437, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 shall begin to accrue on the 31st day following the date of the notice. The Director shall not recommend to a court, pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063, that civil penalties be imposed through the first 30 days following the date of the notice. However, if the inadequacy included the failure to pay all groundwater withdrawal fees due or all long-term storage credit recovery fees due, late penalties under A.R.S. §§ 45-614 or 45-874.01 shall begin to accrue on April 1, except as provided in subsection (E) of this Section.
- E. A responsible party required to file an annual account or annual report for a year may request a 30-day extension of the first day of accrual of the late penalties under A.R.S. §§ 45-437, 45-614, 45-632, 45-874.01, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 and of the civil penalties that the Director may recommend that a court impose pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063. The request shall be filed no later than the date the annual account or annual report is required to be filed under the applicable statute. The Director shall grant a request for a 30-day extension if good cause is shown. If the Director grants the request, the late penalties and civil penalties shall begin to accrue on the first day after the 30-day extension period, except that if the Director finds that the person making the request presented false or misleading information to the Director and the Director relied on that information in granting the request, the late penalties and civil penalties shall begin to accrue as if the request was not granted. The Director shall not grant an extension to a responsible party who was granted an extension in the preceding calendar year and who subsequently failed to file a complete annual account or annual

report and pay all groundwater withdrawal fees and all long-term storage credit recovery fees due within the 30-day extension period.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).  
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### **R12-15-1015. Reporting Requirements for Conveyances of Grandfathered Rights and Groundwater Withdrawal Permits**

- A. A person who is required by A.R.S. § 45-482 to notify the Director of a conveyance of a grandfathered right shall file a notice of conveyance, on a form prescribed by the Director, within 30 days of the conveyance. All parties to the conveyance may use a single form for the required notice. Except provided in subsection (B) of this rule, the notice of conveyance shall include an accounting of the amount of water withdrawn or received pursuant to that grandfathered right from January 1 to the date of conveyance for that calendar year.
- B. If the person to whom a grandfathered right is conveyed is unable, because of extraordinary circumstances and good cause shown, to perform the accounting otherwise required by subsection (A) of this rule, the Director may waive the requirement for that person.
- C. If a person, including a person who is granted a waiver pursuant to subsection (B) of this rule, fails to include the required accounting in a timely filed notice of conveyance pursuant to subsection (A) of this rule, the Director shall determine the amount of groundwater withdrawn or received pursuant to the grandfathered right from January 1 to the date of conveyance for that calendar year. Such a person shall bear the burden, in any subsequent administrative or judicial proceeding, of establishing by clear and convincing evidence that the Director's determination was incorrect.
- D. A person requesting the Director's approval of a proposed conveyance of a groundwater withdrawal permit pursuant to A.R.S. § 45-520(B) shall include with such request the quantity of groundwater withdrawn pursuant to the groundwater withdrawal permit for that calendar year and all other information required to be submitted pursuant to A.R.S. § 45-632.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

#### **R12-15-1016. Spillwater Reporting by Water Deliverers**

A water deliverer that delivers spillwater during a year shall include the following information in the annual account or annual report submitted by the water deliverer for that year:

- 1. The total quantity of spillwater delivered for non-irrigation uses during the year.
- 2. The total quantity of spillwater delivered for irrigation uses during the year.
- 3. Any other information the Director may reasonably require to determine whether the water qualifies as spillwater under R12-15-1001(10).

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### **R12-15-1017. Maintenance and Filing of Annual Reports Required by A.R.S. § 45-343**

A community water system required to file an annual report under A.R.S. § 45-343 shall maintain the report on a calendar year basis and shall file the report with the Director no later than June 1 of each year for the preceding calendar year.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

### **ARTICLE 11. INSPECTIONS AND AUDITS**

#### **R12-15-1101. Inspections**

- A. For the purpose of this rule, "inspection" means an entry by the Director at reasonable times onto private or public property for any of the following purposes:
  - 1. To obtain factual data or access to records required to be kept under A.R.S. §§ 45-632, 45-879.01, or 45-1004.
  - 2. To inspect a well or another facility for the withdrawal, transportation, use, measurement, or recharge of groundwater under A.R.S. § 45-633.
  - 3. To inspect a facility that is used for the purpose of water storage, stored water recovery, or stored water use under A.R.S. § 45-880.01(A).
  - 4. To inspect a body of water under A.R.S. § 45-135 or to ascertain compliance with A.R.S. Title 45, Chapter 1, Article 3.
  - 5. To inspect or to obtain factual data or access to records pursuant to any Section of A.R.S. Title 45 that requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
  - 6. To inspect facilities used for the withdrawal, diversion, or use of water pursuant to a water exchange under A.R.S. § 45-1061.
- B. Not less than seven days prior to an inspection, the Director shall mail notice of the inspection by first class letter to the owner, manager or occupant of the property. The notice shall include the statutory authorization and purpose for the inspection. The notice shall specify a date and time certain or a seven-day period within which the inspection may take place. If a request is made before the seven-day period, the Director shall schedule the inspection for a time certain within the seven-day period to allow an opportunity for a representative of the property to be present at the inspection. The notice shall include the name and telephone number of a Department employee who may be contacted to arrange such an appointment.
- C. Whenever practical, Department employees shall minimize disruptions to on-going operations caused by an inspection.
- D. If the property is controlled or secured against entry at the time specified in the notice of inspection but consent to the inspection was not denied, the Director shall give a second notice in the manner prescribed in subsection (B) before seeking a search warrant or its equivalent. The second notice shall request that a representative of the property be present at the inspection to accompany Department personnel.
- E. If the Director gives notice of an inspection and is not permitted to conduct an inspection, the Director may apply for and obtain a search warrant or its equivalent.
- F. Notice of inspection shall not be required under subsections (B) and (D) of this rule if the Director reasonably believes that notice would frustrate the enforcement of A.R.S. Title 45, or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to A.R.S. § 45-604.
- G. The Director shall mail a copy of the report of the inspection either to the person to whom the notice of inspection was directed, or to the owner, manager or occupant of the property if no notice of inspection was given. The report shall include the date of the inspection and a short summary of the findings. If no notice was given, the report shall include an explanation of the reason for determining that notice would not be given, unless providing the explanation would frustrate enforcement of A.R.S. Title 45. An aggrieved person may file with the

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Director written comments on the report within 30 days after the report is mailed.

- H. The owner, manager or occupant of the property may waive the provisions for notice contained in this rule.
- I. The Director shall comply with the requirements of A.R.S. § 41-1009 when conducting inspections under this Section.

**Historical Note**

Adopted effective August 31, 1992 (Supp. 92-3).  
Amended effective July 22, 1994 (Supp. 94-3). Amended  
by final rulemaking at 11 A.A.R. 5395, effective  
February 4, 2006 (Supp. 05-4).

**R12-15-1102. Audits**

- A. For the purpose of this rule, “representative” means
  - 1. An officer or director of a corporation subject to the audit,
  - 2. A general partner of a partnership subject to the audit, or
  - 3. A person who appears at an audit and produces a signed authorization to act on behalf of the person subject to the audit.
- B. This rule applies to audits conducted pursuant to A.R.S. §§ 45-633(C), 45-880.01, and any other Section of A.R.S. Title 45 that authorizes the Director to require a person to appear at the Director’s office and produce records and information and that also requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
- C. No less than 20 days prior to an audit, the Director shall mail notice of the audit by first class letter to the person that is the subject of the audit. The notice shall state the date, time and place of the audit. The notice shall specify the records or information which the person must produce. The notice shall also include the statutory authorization and purpose for the audit and the name and telephone number of a Department employee who may be contacted for further information. The audit shall be held at the Department’s offices, unless the Director grants a request to have the audit conducted at a different location.
- D. The person subject to the audit or a representative shall appear at the scheduled time and shall produce the records and information specified in the notice. The person subject to the audit or a representative may make one request to reschedule the audit, which the Department shall grant if practicable.
- E. The Director shall mail a copy of the report of the audit to the person subject to the audit. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- F. The person subject to the audit may waive the provisions for notice contained in this rule.

**Historical Note**

Adopted effective August 31, 1992 (Supp. 92-3).  
Amended effective July 22, 1994 (Supp. 94-3).

**ARTICLE 12. DAM SAFETY PROCEDURES****R12-15-1201. Applicability**

- A. This Article applies to any artificial barrier meeting the specifications of A.R.S. § 45-1201(1) as interpreted by R12-15-1204. This Article applies to an application for the construction of a dam and reservoir; an application to reconstruct, repair, alter, enlarge, breach, or remove an existing dam and reservoir, including a breached or damaged dam; operation and maintenance of an existing dam and reservoir; and enforcement. A structure identified in R12-15-1203 is exempt from this Article.
- B. This Article is applicable to any dam regardless of hazard potential classification, with the following exceptions:

1. R12-15-1208, R12-15-1209, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226 apply only to a dam classified as a high or significant hazard potential dam.
2. R12-15-1210 applies only to a dam classified as a low hazard potential dam. A low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1211, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226.
3. R12-15-1211 applies only to a dam classified as a very low hazard potential dam. A very low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, R12-15-1221, R12-15-1225, and R12-15-1226.
4. R12-15-1216(B) applies only to an embankment dam.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-01 renumbered without change as Section R12-15-1201 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1202. Definitions**

In addition to the definitions provided in A.R.S. § 45-1201, the following definitions are applicable to this Article:

1. “Alteration or repair of an existing dam or appurtenant structure” means to make different from the originally approved construction drawings and specifications or current condition without changing the height or storage capacity of the dam or reservoir, except for ordinary repairs and general maintenance as prescribed in R12-15-1217.
2. “Appurtenant structure” means any structure that is contiguous and essential to the safe operation of the dam including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a dam.
3. “Classification of dams” means the placement of dams into categories based upon an evaluation of the size and hazard potential, regardless of the condition of the dam.
4. “Concrete dam” means any dam constructed of concrete, including arch, gravity, arch-gravity, slab and buttress, and multiple arch dams. A dam that only has a concrete facing is not a concrete dam.
5. “Construction” means any activity performed by the owner or someone employed by the owner that is related to the construction, reconstruction, repair, enlargement, removal, or alteration of any dam, unless the context indicates otherwise. Construction is performed after approval of an application and before issuance of a license.
6. “Dam failure inundation map” means a map depicting the maximum area downstream from a dam that would be flooded in the event of the worst condition failure of the dam.
7. “Department” means the Arizona Department of Water Resources.
8. “Director” means the Director of the Arizona Department of Water Resources or the Director’s designee.
9. “Embankment dam” means a dam that is constructed of earth or rock material.
10. “Emergency spillway” means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.

11. "Engineer" means a Professional Engineer registered and licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology.
12. "Enlargement to an existing dam or appurtenant structure" means any alteration, modification, or repair that increases the vertical height of a dam or the storage capacity of the reservoir.
13. "Flashboards" mean timber, concrete, or steel sections placed on the crest of a spillway to raise the retention water level that may be quickly removed at time of flood either by a tripping device or by designed failure of the flashboards or their supports.
14. "Flood control dam" means a dam that uses all of its reservoir storage capacity for temporary impoundment of flood waters and collection of sediment or debris.
15. "Hazard potential" means the probable incremental adverse consequences that result from the release of water or stored contents due to failure or improper operation of a dam or appurtenances.
16. "Hazard potential classification" means a system that categorizes dams according to the degree of probable incremental adverse consequences of failure or improper operation of a dam or appurtenances. The hazard potential classification does not reflect the current condition of the dam with regard to safety, structural integrity, or flood routing capacity.
17. "Height" means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation. For the purpose of determining jurisdictional status, the lowest elevation of the outside limit of the barrier may be the outlet pipe invert elevation if the outlet is constructed below natural ground.
18. "Impound" means to cause water or a liquid to be confined within a reservoir and held with no discharge.
19. "Incremental adverse consequences" means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the dam over those that would have occurred without failure or improper operation of the dam.
20. "Inflow design flood" or "IDF" means the reservoir flood inflow magnitude selected on the basis of size and hazard potential classification for emergency spillway design requirements of a dam.
21. "Intangible losses" means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat identified and evaluated by a public natural resource management or protection agency.
22. "Jurisdictional dam" means a barrier that meets the definition of a dam prescribed in A.R.S. § 45-1201 that is not exempted by R12-15-1203 over which the Department of Water Resources exercises jurisdiction.
23. "Levee" means an embankment of earth, concrete, or other material used to prevent a watercourse from spreading laterally or overflowing its banks. A levee is not used to impound water.
24. "License" means license of final approval issued by the Director upon completion or enlargement of a dam under A.R.S. § 45-1209.
25. "Lifeline losses" mean disruption of essential services such as water, power, gas, telephone, or emergency medical services.
26. "Liquid-borne material" means mine tailings or other milled ore products transported in a slurry to a storage impoundment.
27. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.
28. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.
29. "Natural ground surface" means the undisturbed ground surface before excavation or filling, or the undisturbed bed of the stream or river.
30. "Outlet works" means a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.
31. "Probable" means likely to occur, reasonably expected, and realistic.
32. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region, including rain and snow where applicable. 1/2 PMF is that flood represented by the flood hydrograph with ordinates equal to 1/2 the corresponding ordinates of the PMF hydrograph.
33. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.
34. "Reservoir" means any basin that contains or is capable of containing water or other liquids impounded by a dam.
35. "Residual freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the dam.
36. "Restricted storage" means a condition placed on a license by the Director to reduce the storage level of a reservoir because of a safety deficiency.
37. "Saddle dike or saddle dam" means any dam constructed in a topographically low area on the perimeter of a reservoir, required to contain the reservoir at the highest water surface elevation.
38. "Safe" means that a dam has sufficient structural integrity and flood routing capacity to make failure of the dam unlikely.
39. "Safe storage level" means the maximum reservoir water surface elevation at which the Director determines it is safe to impound water or other liquids in the reservoir.
40. "Safety deficiency" means a condition at a dam that impairs or adversely affects the safe operation of the dam.
41. "Safety inspection" means an investigation by an engineer or a person under the direction of an engineer to assess the safety of a dam and determine the safe storage level for a reservoir, which includes review of design reports, construction documents, and previous safety inspection reports of the dam, spillways, outlet facilities, seepage control and measurement systems, and permanent monument or monitoring installations.
42. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.



43. "Storage capacity" means the maximum volume of water, sediment, or debris that can be impounded in the reservoir with no discharge of water, including the situation where an uncontrolled outlet becomes plugged. The storage capacity is reached when the water level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.
44. "Surcharge storage" means the additional water storage volume between the emergency spillway crest or closed gates, and the top of the dam.
45. "Total freeboard" means the vertical distance between the emergency spillway crest and the top of the dam.
46. "Unsafe" means that safety deficiencies in a dam or spillway could result in failure of the dam with subsequent loss of human life or significant property damage.

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-02 renumbered without change as Section R12-15-1202 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

#### R12-15-1203. Exempt Structures

The following structures are exempt from regulation by the Department:

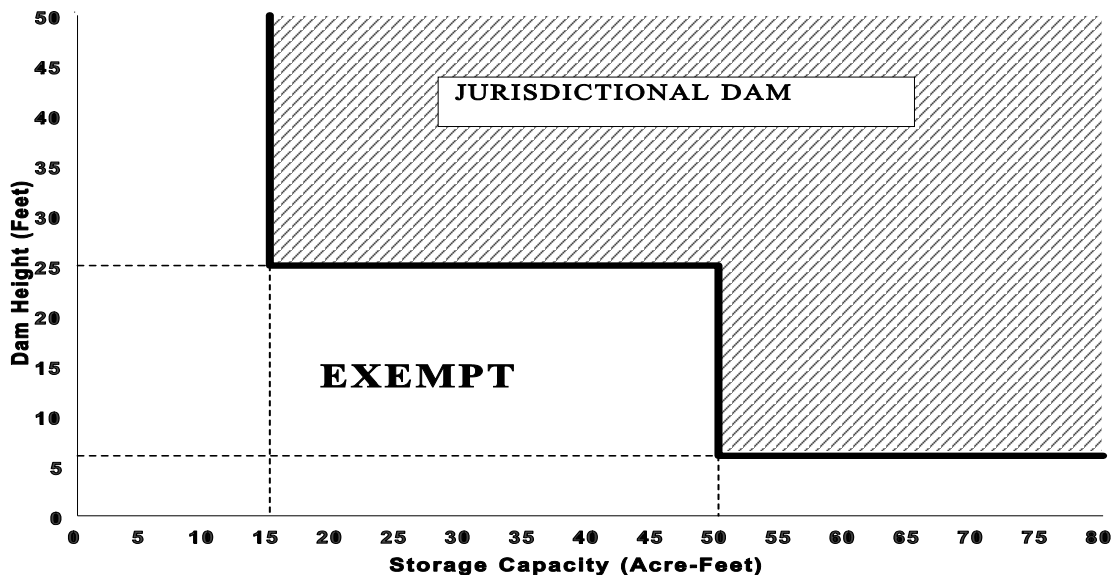
1. Any artificial barrier identified as exempt on Table 1 and defined as follows:
  - a. Less than 6 feet in height, regardless of storage capacity.

- b. Between 6 and 25 feet in height with a storage capacity of less than 50 acre-feet.
- c. Greater than 25 feet in height with 15 acre-feet or less of storage capacity.
2. A dam owned by the federal government. A dam designed by the federal government for any non-federal entity or person that will subsequently be owned or operated by a person or entity defined as an owner in A.R.S. § 45-1201 is subject to jurisdiction, beginning with design and construction of the dam.
3. A dam owned or operated by an agency or instrumentality of the federal government, if a dam safety program at least as stringent as this Article is applicable to and enforced against the agency or instrumentality.
4. A transportation structure such as a highway, road, or railroad fill that exists solely for transportation purposes. A transportation structure designed, constructed, or modified with the intention of impounding water on an intermittent or permanent basis and meeting the definition of dam in A.R.S. § 45-1201 is subject to jurisdiction.
5. A levee constructed adjacent to or along a watercourse, primarily to control floodwater.
6. A self-supporting concrete or steel water storage tank.
7. An impoundment for the purpose of storing liquid-borne material.
8. A release-contained barrier as defined by A.R.S. § 45-1201(5).

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-03 renumbered without change as Section R12-15-1203 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Table 1. Exempt Structures



#### Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1204. Provision for Guidelines

The Department may develop and adopt substantive policy statements that serve as dam safety guidelines to aid a dam owner or engineer in complying with this Article. The Department recom-

mends that dam owners and engineers consult design guidelines published by agencies of the federal government, including the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, and the Federal Energy

Regulatory Commission, for the design of concrete, roller compacted concrete, stone masonry, timber, inflatable rubber, and mechanically-stabilized earth dams. The Director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety. An owner shall obtain advance approval by the Director of design criteria.

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-04 renumbered without change as Section R12-15-1204 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1205. General Responsibilities

- A. Each owner is responsible for the safe design, operation, and maintenance of a dam. The owner shall operate, maintain, and regularly inspect a dam so that it does not constitute a danger to human life or property. The owner of a high or significant hazard potential dam shall provide timely warning to the Department and all other persons listed in the emergency action plan of problems at the dam. The owner shall develop and maintain effective emergency action plans and coordinate those plans with local officials as prescribed in R12-15-1221.
- B. The owner shall conduct frequent observation of the dam, as prescribed in the emergency action plan and as follows:
  1. The owner shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
  2. The owner shall report to the Director any condition that threatens the safety of the dam as prescribed in R12-15-1224(A). The owner shall make the report as soon as possible, but not later than 12 hours after discovery of the conditions.
  3. If dam failure appears imminent, the owner shall notify the county sheriff or other emergency official immediately.
  4. The owner is responsible for the safety of the dam and shall take action to lower the reservoir if it appears that the dam has weakened or is in danger of failing.
- C. The owner of a dam shall install, maintain, and monitor instrumentation to evaluate the performance of the dam. The Director shall require site-specific instrumentation that the Director deems necessary for monitoring the safety of the dam when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.
- D. The owner shall perform timely maintenance and ordinary repair of a dam. The owner shall implement an annual plan to inspect the dam and accomplish the maintenance and ordinary repairs necessary to protect human life and property.
- E. If a change of ownership of a dam occurs, the new owner shall notify the Department within 15 days after the date of the transaction and provide the mailing address and telephone number where the new owner can be contacted. Within 90 days after the date of the transaction, the new owner shall provide the name and telephone number of the individual or individuals who are responsible for operating and maintaining the dam.

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-05 renumbered without change as Section R12-15-1205 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000

(Supp. 00-2).

#### R12-15-1206. Classification of Dams

- A. Size Classification. Dams are classified by size as small, intermediate, or large. Size is determined with reference to Table 2. An owner or engineer shall determine size by storage capacity or height, whichever results in the larger size.
- B. Hazard Potential Classification
  1. The Department shall base hazard potential classification on an evaluation of the probable present and future incremental adverse consequences that would result from the release of water or stored contents due to failure or improper operation of the dam or appurtenances, regardless of the condition of the dam. The evaluation shall include land use zoning and development projected for the affected area over the 10 year period following classification of the dam. The Department considers all of the following factors in hazard potential classification: probable loss of human life, economic and lifeline losses, and intangible losses identified and evaluated by a public resource management or protection agency.
    - a. The Department bases the probable incremental loss of human life determination primarily on the number of permanent structures for human habitation that would be impacted in the event of failure or improper operation of a dam. The Department considers loss of human life unlikely if:
      - i. Persons are only temporarily in the potential inundation area;
      - ii. There are no residences or overnight campsites; and
      - iii. The owner has control of access to the potential inundation area and provides an emergency action plan with a process for warning in the event of a dam failure or improper operation of a dam.
    - b. The Department bases the probable economic, lifeline, and intangible loss determinations on the property losses, interruptions of services, and intangible losses that would be likely to result from failure or improper operation of a dam.
  2. The 4 hazard potential classification levels are very low, low, significant, and high, listed in order of increasing probable adverse incremental consequences, as prescribed in Table 3. The Director shall classify intangible losses by considering the common or unique nature of features or habitats and temporary or permanent nature of changes.
    - a. Very Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life and would produce no lifeline losses and very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease. The Department considers loss of life unlikely because there are no residences or overnight camp sites.
    - b. Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life, but would produce low economic and intangible losses, and result in no disruption of lifeline services that require more than cosmetic repair. Property losses would be limited to rural or agricultural property, including equipment, and isolated buildings.
    - c. Significant Hazard Potential. Failure or improper operation of a dam would be unlikely to result in

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loss of human life but may cause significant or high economic loss, intangible damage requiring major mitigation, and disruption or impact on lifeline facilities. Property losses would occur in a predominantly rural or agricultural area with a transient population but significant infrastructure.

- d. High Hazard Potential. Failure or improper operation of a dam would be likely to cause loss of human life because of residential, commercial, or industrial development. Intangible losses may be major and potentially impossible to mitigate, critical lifeline services may be significantly disrupted, and property losses may be extensive.
3. An applicant shall demonstrate the hazard potential classification of a dam before filing an application to construct. The Department shall review the applicant's demonstration early in the design process at pre-application meetings prescribed in R12-15-1207(D).
4. The Department shall review the hazard potential classification of each dam during each subsequent dam safety inspection and revise the classification in accordance with current conditions.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-06 renumbered without change as Section R12-15-1206 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Exhibit A. Repealed****Historical Note**

Exhibit repealed by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000; a Historical Note for Exhibit A did not exist before this date (Supp. 00-2).

**Table 2. Size Classification**

Category	Storage Capacity (acre-feet)	Height (feet)
Small	50 to 1,000	25 to 40
Intermediate	greater than 1,000 and not exceeding 50,000	higher than 40 and not exceeding 100
Large	greater than 50,000	higher than 100

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 3. Downstream Hazard Potential Classification**

Hazard Potential Classification	Probable Loss of Human Life	Probable Economic, Lifeline, and Intangible Losses
Very Low	None expected	Economic and lifeline losses limited to owner's property or 100-year floodplain. Very low intangible losses identified.
Low	None expected	Low

Significant	None expected	Low to high
High	Probable - One or more expected	Low to high (not necessary for this classification)

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1207. Application Process**

- A. An applicant shall obtain written approval from the Director before constructing, reconstructing, repairing, enlarging, removing, altering, or breaching a dam. Application requirements differ according to the hazard potential of the dam.
  1. To construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam, the applicant shall comply with R12-15-1208.
  2. To breach or remove a high or significant hazard potential dam, the applicant shall comply with R12-15-1209.
  3. To construct, reconstruct, repair, enlarge, alter, breach, or remove a low hazard potential dam, the applicant shall comply with R12-15-1210.
  4. To construct, reconstruct, repair, enlarge, alter, breach, or remove a very low hazard potential dam, the applicant shall comply with R12-15-1211.
- B. An application shall not be filed with the Director under the following circumstances:
  1. The dam is exempt under R12-15-1203;
  2. A dam owner starts repairs to an existing dam that are necessary to safeguard human life or property and the Director is notified without delay;
  3. The owner performs general maintenance or ordinary repairs as prescribed in R12-15-1217(A) or (B); or
  4. Breach, removal, or reduction of a very low hazard dam as prescribed in R12-15-1211(C).
- C. An applicant is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to a proposed dam. The Director shall state in writing the reason or reasons the applicant is not required to comply with a requirement.
- D. An applicant shall schedule pre-application conferences with the Department to discuss the requirements of this Article and to resolve issues essential to the design of a dam while the design is in preliminary stages. The Director shall view the dam site during the pre-application process. The following are examples of issues for pre-application conferences: the hazard potential classification, the approximate inflow design flood, the basic design concepts, and any requirements that may be found by the Director to be unduly burdensome or expensive and not necessary to protect human life or safety. In addition, the applicant may submit preliminary design calculations to the Department for review and comment. The Department shall comment as soon as practicable, depending on the size of the submittal and the current workload.
- E. The Department shall review applications as follows:
  1. Applications will be received by appointment. During this meeting the Department shall make a brief review of the application to determine that the application contains each of the items required by R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211.

2. Following receipt of an application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211, the Director shall complete an administrative review as prescribed in R12-15-401(1) and notify the applicant in writing whether the application is administratively complete. If the application is not administratively complete, the notification shall include a list of additional information that is required to complete the application.
3. After finding the application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211 administratively complete, the Director shall complete a substantive review as prescribed in R12-15-401(3) and notify the applicant in writing of the Director's approval or disapproval. If during this review period, the Director determines that there are defects in the application that would impact human life and property, a written notice of the defects shall be sent to the applicant.
4. An applicant may request in writing that the Director expedite the review of an application by employing an expert consultant on a contract basis under A.R.S. § 45-104(D). The Director shall establish on-call contracts with expert consultants to facilitate the process of expediting review. The Director may retain a consultant to review all or a portion of the application as necessary to expedite the process in response to an owner's request or to comply with time-frame rules. Before conducting the review, the consultant shall provide the Director and the applicant with a proposed time schedule and cost estimate. If the applicant agrees to the consultant's proposal for an expedited review of an application and the Director employs the consultant, the applicant shall pay to the Department the cost of the consultant's services in addition to the application fees. The Director retains the authority to review and approve, disapprove, or modify the findings and recommendations of the consultant.
5. The Director shall not approve an application in less than 10 days from the date of receipt.
6. If the Director disapproves the application, the Director shall provide the applicant with a statement of the Director's objections.
7. If the Director approves an application, the applicant shall submit in triplicate revised drawings and specifications that incorporate any required changes.
  - a. The Director shall return to the applicant 1 set of final construction drawings and specifications with the Department's approval stamp to be retained onsite during construction;
  - b. The Director shall retain for permanent state record 1 set of final construction drawings and specifications with the Department's approval stamp; and
  - c. The Director shall retain for use by the Department during construction the 3rd set of final construction drawings and specifications with the Department's approval stamp.
8. The Director shall impose conditions and limitations that the Director deems necessary to safeguard human life and property. Examples of the conditions of approval include but are not limited to:
  - a. The applicant shall not cover the foundation or abutment with the material of the dam until the Department has been given notice and a reasonable time to inspect and approve them.
  - b. The applicant shall start construction within 1 year from the date of approval.
  - c. The applicant shall maintain a safe storage level for an existing dam being reconstructed, repaired, enlarged, altered, or breached.
- F. An approval to construct a new dam or repair, enlarge, alter, breach, or remove an existing dam is valid for 1 year.
  1. If construction does not begin within 1 year, the approval is void.
  2. Upon written request and good cause shown by the owner, the time for commencing construction may be extended. An applicant shall not start construction before the Director reviews the application for changes and grants approval.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### **R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam**

- A. An application package to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
  1. A completed application filed in duplicate on forms provided by the Director.
  2. A design information summary or checklist of items prepared in duplicate on forms provided by the Director.
  3. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  4. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  5. Two complete sets of construction drawings as prescribed in R12-15-1215(1).
  6. Two complete sets of construction specifications as prescribed in R12-15-1215(2).
  7. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3). The engineering design report shall recommend a safe storage level for existing dams being reconstructed, repaired, enlarged, or altered.
  8. A construction quality assurance plan describing all aspects of construction supervision.
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  10. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
- B. The following may be submitted with the application or during construction.
  1. An emergency action plan as prescribed in R12-15-1221.
  2. An operation and maintenance plan to accomplish the annual maintenance.
  3. An instrumentation plan regarding instruments that evaluate the performance of the dam.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam**

- A.** An applicant shall excavate the dam down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the dam regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:
1. The 100 year flood at a depth of less than 5 feet, or
  2. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam.
- B.** The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
- C.** Each breach shall be designed to prevent silt that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.
- D.** Before breaching the dam, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.
- E.** An application package to breach or remove a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
1. The construction drawing or drawings for the breach or removal of a dam, including the location, dimensions, and lowest elevation of each breach.
  2. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to breach or remove the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to breach or remove the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
  3. A construction quality assurance plan describing all aspects of construction supervision.
- F.** Reduction of a high or significant downstream hazard potential dam to nonjurisdictional size may be approved by letter under the following circumstances:
1. The owner shall submit a completed application form and construction drawings for the reduction and the appropriate specifications, prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
  2. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.
  3. The plans shall comply with all requirements of this Section except that the breach is not required to be to natural ground.
  4. Upon completion of an alteration to nonjurisdictional size, the engineer shall file as constructed drawings and specifications with the Department.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R.

2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam**

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
  2. An initial application fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  3. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  4. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  5. A statement by the responsible engineer that classifies the dam as low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation of the dam would be unlikely to result in:
    - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
    - b. Significant incremental adverse consequences; or
    - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management or protection agency.
  6. Two complete sets of construction drawings as prescribed by R12-15-1215(1).
  7. Two complete sets of construction specifications as prescribed by R12-15-1215(2).
  8. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3).
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  10. A construction quality assurance plan clearly describing all aspects of construction supervision.
  11. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
- B.** An application package for the breach or removal of a low hazard potential dam shall include the following:
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
    - a. The name and address of the owner of the dam or the agent of the owner.
    - b. A description of the proposed removal.

- c. The proposed time for beginning and completing the removal.
  - 2. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  - 3. A statement by the responsible engineer demonstrating both of the following:
    - a. That the dam will be excavated to the level of natural ground at the maximum section; and
    - b. That the breach or breaches will be of sufficient width to pass the greater of:
      - i. The 100 year flood at a depth of less than 5 feet, or
      - ii. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam,
      - iii. Subsection (B)(3)(b) shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
    - c. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
  - 4. A detailed estimate of project costs. Project costs are all costs associated with the removal of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs.
- C.** An applicant intending to reduce a low hazard potential dam to nonjurisdictional size shall submit a written notice to the Director at least no less than 60 days before the date that construction begins.
- D.** Within 45 days after receipt of a complete application package as prescribed by subsection (A) or (B), the Director shall either:
- 1. Determine that the dam falls within the low hazard potential classification, or
  - 2. Issue a written notice that the dam does not fall within the low hazard potential classification.
- E.** The Director's determination that the proposed dam does not fall within the low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam or reservoir before issuance of a license unless the Director issues written approval.
- G.** Within 90 days after completing construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the owner shall file the following:
- 1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  - 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
  - 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall indicate:
    - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
    - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
    - c. That the as constructed drawings and the report accurately represent the construction of the dam.
  - 4. As constructed drawings prepared and sealed by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as low hazard or were not built according to the submitted design. The license shall include conditions of operation, including:
- 1. The safe storage level of the reservoir,
  - 2. A requirement that the dam be operated and maintained so that it does not constitute a danger to human life and property,
  - 3. A requirement that the conditions resulting in the low hazard classification be maintained throughout the life of the dam, and
  - 4. A requirement that the owner demonstrate in writing the low hazard classification in the manner prescribed by subsection (A)(5) every five years.
- I.** Within 90 days after completing removal of a low hazard potential dam, the owner shall file the following. The Director shall remove the dam from jurisdiction upon approval of the submittal.
- 1. An affidavit showing the actual cost of removal of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  - 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7), based on the actual cost of removal.
  - 3. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the dam.
  - 4. As-removed drawings prepared and sealed by the engineer who supervised the removal. The owner and the engineer shall maintain a record of the drawings.
- J.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of a low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam**

## Department of Water Resources

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following prepared by an engineer or a person under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
    - a. The name and address of the owner of the dam or the agent of the owner.
    - b. The location, type, size, and height of the proposed dam and appurtenant works.
    - c. The storage capacity of the reservoir associated with the proposed dam.
    - d. The proposed time for beginning and completing construction.
    - e. A description of the use for the impounded or diverted water and proof of a right to impound that water.
  2. The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction.
  3. Maps, drawings, and specifications of the proposed dam.
  4. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  5. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  6. A statement by the responsible engineer that classifies the dam as very low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation would be unlikely to result in:
    - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
    - b. Significant incremental adverse consequences; or
    - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management protection agency, because the dam has a size classification of either small or intermediate under R12-15-1206(A) and any release would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease.
  7. The seal and signature of the responsible engineer in accordance with A.R.S. Title 32, Chapter 1.
  8. The drawings required by subsection (A)(3) shall include a plan view and maximum section of the dam; the outlet works; and the spillway plan, profile, and cross section.
  9. The specifications required by subsection (A)(3) shall include the construction materials, testing criteria, and installation techniques.
- B.** The Director may make other requirements for drawings and specifications for the proposed repair or alteration of a very low hazard potential dam. In determining other requirements, the Director shall consider the size and extent of the repair or alteration, the portions of the dam that will be repaired or altered, and whether the requirements elicit a description of the proposed construction work that is adequate to allow the Director to evaluate the repair or alteration.
- C.** An owner intending to breach, remove, or reduce a very low hazard potential dam to nonjurisdictional size shall submit written notice to the Director at least 60 days before the date that construction begins.
- D.** After receipt of a complete application package as prescribed by subsection (A), the Director shall either:
1. Determine that the dam falls within the very low hazard classification and approve the application in writing; or
  2. Issue a written notice that the dam does not fall within the very low hazard classification.
- E.** The Director's determination that the proposed dam does not fall within the very low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam and reservoir before receipt of a license unless the Director issues written approval.
- G.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a very low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
  3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction in accordance with A.R.S. Title 32, Chapter 1. The report shall include:
    - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
    - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
    - c. That the as constructed drawings and the report accurately represent the construction of the dam.
  4. As constructed drawings prepared by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as very low hazard or were not built according to the submitted design. Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. The license shall include conditions of operation, including:
1. The safe storage level of the reservoir,
  2. A requirement that the conditions resulting in the very low hazard classification be maintained throughout the life of the dam, and
  3. A requirement that the owner demonstrate in writing the very low hazard classification in the manner prescribed by subsection (A)(6) every five years.
- I.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure or improper operation of a very low hazard potential dam. The owner shall notify the Department as soon as reasonably possi-

ble and in all cases within 10 days of commencing the required repairs.

- J. The Department may periodically inspect construction to confirm that it is proceeding according to the approved design and that proper construction quality assurance is being exercised by the owner's engineer. The owner, or the owner's engineer under the direction of the owner, shall remedy any unsatisfactory condition using the contractor.
- K. The owner shall provide the Department access to the dam site for purposes of inspecting all phases of construction, including the foundation, embankment and concrete placement, inspection and test records, and mechanical installations.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam

- A. Before commencement of construction activities, the owner shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or the owner's engineer shall provide notice to the Department.
- B. The owner and the owner's engineer shall oversee construction of a new dam or reconstruction, repair, enlargement, alteration, breach, or removal of an existing dam. Failure to perform the work in accordance with the construction drawings and specifications approved by the Director renders the approval revocable. The owner's engineer shall exercise professional judgment independent of the contractor.
- C. A professional engineer with proficiency in engineering and knowledge of dam technology shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
- D. The owner's engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
- E. The owner shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
- F. The owner shall promptly submit a written request for approval of any necessary change and sufficient information to justify the proposed change. The owner shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a change that complies with the requirements of this Article and provides equal or better safety performance.
- G. Upon completion of construction, the owner shall notify the Department in writing. The Department shall make a final inspection. The owner shall correct any deficiencies noted during the inspection.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam

Within 90 days after completion of the construction or removal work for a significant or high hazard potential dam and final inspection by the Department, the owner shall file the following:

1. An affidavit showing the actual cost of the construction. The owner shall submit a detailed accounting of the costs, including all engineering costs.
2. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7).
3. One set of full sized as constructed drawings prepared and sealed by the engineer who supervised the construction. If changes were made during construction, the owner shall file supplemental drawings showing the dam and appurtenances as actually constructed.
4. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
5. Photographs of construction from exposure of the foundation to completion of construction.
6. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
7. A schedule for filling the reservoir, specifying fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam. The owner shall monitor the dam monthly during the first filling.
8. An operating manual for the dam and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R12-15-1219. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
  - a. The frequency of monitoring,
  - b. The data recording format,
  - c. A graphical presentation of data, and
  - d. The person who will perform the work.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-1214. Licensing

- A. Upon review and approval of the documents filed under R12-15-1213 and finding that the construction of the dam has been completed in accordance with the approved plans and specifications and finding that the dam is safe, the Director shall issue a license. The license shall specify the safe storage level for the reservoir and shall specify conditions for the safe operation of the dam. The dam and reservoir shall not be used before issuance of a license unless the Director issues written approval. Procedures for issuance of a license for low and very low hazard potential dams are prescribed in R12-15-1210(H) and R12-15-1211(H), respectively.
- B. A new license shall be issued in the following instances:
  1. Upon change of ownership of a dam.
  2. Upon change of the safe storage level.
  3. Upon expiration of time to appeal a notice issued under R12-15-1223(B).



4. Upon expiration of time to appeal an order issued by the Director under R12-15-1223(D).
5. Upon expiration of time to appeal an order of a court.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam

The owner and engineer are responsible for complete and adequate design of a dam and for including in the application all aspects of the design pertaining to the safety of the dam.

1. Construction Drawing Requirements. The construction drawings required by R12-15-1208(5), R12-15-1209(E)(1), and R12-15-1210(A)(6) shall include the following:
  - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. One or more topographic maps of the dam, spillway, outlet works, and reservoir on a scale large enough to accurately locate the dam and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the dam and its appurtenances and shall show design and construction details.
  - c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of water and elevation in the reservoir. The construction drawings shall show the spillway invert and top of dam elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner's use.
  - d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.
  - e. A location map showing the dam footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.
  - f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the dam site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.
  - g. One or more plans of the dam to delineate design and construction details.
  - h. Foundation profile along the dam centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.
  - i. Profile and a sufficient number of cross sections of the dam to delineate design and construction details. The drawings shall illustrate and show dimensions

of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the dam may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the dam shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.

- j. One or more dam foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.
- k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.
- l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.
- m. Hydrologic data, drainage area and flood routing, and diversion criteria.
2. Construction Specification Requirements. The construction specifications required by R12-15-1208(6) and R12-15-1210(A)(7) shall include the following:
  - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.
  - c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.
  - d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.
  - e. The statement that the owner's engineer shall control the quality of construction.
  - f. The following construction information:
    - i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the dam and related structures.
    - ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the dam and related structures.
    - iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to avoid disturbance from grouting.
    - iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested suc-

- cessfully and constructed in-place in accordance with specifications.
- v. A plan for control or diversion of surface water during construction. The design engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.
  - vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the dam and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.
  - vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced speciality subcontractors.
3. Engineering Design Report Requirements. The engineering design report required by R12-15-1208(7) and R12-15-1210(A)(8) shall include the following:
    - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
    - b. The classification under R12-15-1206 of the proposed dam, or for the proposed enlargement of an existing dam or reservoir.
    - c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings on both hard copy and computer diskette.
    - d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings on both hard copy and computer diskette.
    - e. Geotechnical investigation and testing of the dam site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.
    - f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.
    - g. Details of the plan for control or diversion of surface water during construction.
    - h. Details of the dewatering plan for subsurface water during construction.
    - i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.
    - j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.
    - k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings on both hard copy and computer diskette.
    - l. A discussion and stability analysis of the dam including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings on both hard copy and computer diskette.
    - m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.
    - n. Discussion and design of the cutoff trench based on seepage and other considerations.
    - o. Permeability characteristics of foundation and dam embankment materials, including calculations for seepage quantities through the dam, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings on both hard copy and computer diskette. The design report shall include copies of any flow nets used.
    - p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.
    - q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.
    - r. Discussion and design of foundation treatment to compensate for geological weakness in the dam foundation and abutment areas and in the spillway foundation area.
    - s. Post-construction vertical and horizontal movement systems.
    - t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam

##### A. General Requirements.

1. Emergency Spillway Requirements. An applicant shall:
  - a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner of a dam shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a dam would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel.
  - b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways excavated in soils or soft rock. In the alternative, the design may provide evidence acceptable to the Director that erosion during the inflow design flood will not result in a sudden release of the reservoir.
  - c. Provide each spillway and channel with a minimum width of 10 feet and suitable armor to prevent erosion during the discharge resulting from the inflow design flood.

- d. Ensure that downstream spillway channel flows do not encroach on the dam unless suitable erosion protection is constructed.
  - e. Ensure that each spillway, in combination with outlets, is able to safely pass the peak discharge flow rate, as calculated on the basis of the inflow design flood.
  - f. Not construct bridges or fences across a spillway unless the construction is approved in writing by the Director. The Director's approval may include conditions regarding the design and operation of the spillway and fencing, based on safety concerns.
  - g. Not use a pipe or culvert as an emergency spillway unless the Director approves the use following review of the dam design and site characteristics.
2. Inflow Design Flood Requirements
- a. Unless directed otherwise in writing by the Director, the inflow design flood requirements for determining the spillway minimum capacity are stated in Table 4.
  - b. As an alternative to the requirements prescribed in Table 4, the Director may accept an inflow design flood determined by an incremental damage assessment study, based on the relative safety of the alternatives.
  - c. The Director may accept site-specific probable maximum precipitation studies in determination of the inflow design flood.
  - d. An applicant shall ensure that the total freeboard is the largest of the following:
    - i. The sum of the inflow design flood maximum water depth above the spillway crest plus wave run up.
    - ii. The sum of the inflow design flood maximum water depth above the spillway crest plus 3 feet.
    - iii. A minimum of 5 feet.
3. Outlet Works Requirements. An applicant shall ensure that a dam has a low level outlet works that:
- a. Is capable of draining the reservoir to the sediment pool level. A low level outlet works for a high or significant hazard potential dam shall be a minimum of 36 inches in diameter. A low level outlet works for a low hazard potential dam shall be a minimum of 18 inches in diameter.
  - b. For a high or significant hazard potential dam, has the capacity to evacuate 90% of the storage capacity of the reservoir within 30 days, excluding reservoir inflows.
  - c. Has a filter diaphragm or other current practice measures to reduce the potential for piping along the conduit.
  - d. Has accessible outlet controls when the spillway is in use.
  - e. Has an emergency manual override system or can be operated manually.
  - f. Is constructed of materials appropriate for loading condition, seismic forces, thermal expansion, cavitation, corrosion, and potential abrasion. The applicant shall not use corrugated metal pipes or other thin-walled pipes except as a form for a cast-in-place concrete conduit. The applicant shall construct outlet conduits of cast-in-place reinforced concrete. The applicant shall design each outlet to maintain water tightness. The applicant shall construct each outlet to prevent the occurrence of piping adjacent to the outlet.
  - g. Has an operating or guard gate on the upstream end of any gated outlet.
  - h. Has an outlet conduit near the base of 1 of the abutments on native bedrock or other competent material. The applicant shall support the entire length of the conduit on foundation materials of uniform density and consistency to prevent adverse differential settlement.
  - i. Has an upstream valve or gate capable of controlling the discharge through all ranges of flow on any gated outlet conduit.
  - j. Has a trashrack designed for a minimum of 25% of the reservoir head to which it would be subjected if completely clogged at the upstream end of the outlet.
  - k. Has an air vent pipe just downstream of the control gate. The applicant shall include a blow-off valve at or near the downstream toe of the dam for an outlet conduit that is connected directly to a distribution system.
  - l. Has an outlet conduit designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately.
4. Dam Site And Reservoir Area Requirements
- a. An applicant shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences and that the design will not result in the inundation or wave damage of properties within the reservoir, except marina-type structures, during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and reservoir. Permanent habitations are not allowed within the reservoir below the spillway elevation.
  - b. The applicant shall clear the reservoir storage area of logs and debris.
  - c. The applicant shall place borrow areas a safe distance from the upstream toe and the downstream toe of the dam to prevent a piping failure of the dam.
  - d. The applicant shall keep the top of the dam and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.
5. Geotechnical Requirements
- a. The applicant shall provide an evaluation of the static stability of the foundation, dam, and slopes of the reservoir rim and demonstrate that sufficient material is available to construct the dam as designed.
  - b. The applicant shall not construct a dam on active faults, collapsible soils, dispersive soils, sink holes, or fissures, unless the applicant demonstrates that the dam can safely withstand the anticipated offset or other unsafe effects on the dam.
6. Seismic Requirements
- a. The applicant shall submit a review of the seismic or earthquake history of the area around the dam within

a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the earthquakes.

- b. The applicant shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.
- c. For a high or significant hazard potential dam, the applicant shall design the dam to withstand the maximum credible earthquake.
- d. For a low hazard potential dam, the applicant shall use probabilistic or deterministic methods to determine the design earthquake. The magnitude of the design earthquake shall vary with the size of the dam, site condition, and specific location.

**B. Embankment Dam Requirements.**

1. Geotechnical Requirements. Table 5 states minimum factors of safety for embankment stability under various loading conditions. For an embankment dam an applicant shall provide a written analysis of minimum factors of safety for stability.

- a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.
- b. The applicant shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.
- c. The applicant shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.
- d. A stability analysis is not required for low hazard potential dams if the owner or the owner's engineer demonstrates that conservative slopes and competent materials are included in the design.

2. Seismic Requirements

- a. The applicant shall determine the seismic characteristics of the site as prescribed in subsection (A)(6).
- b. The applicant shall determine the liquefaction susceptibility of the embankment, foundation, and abutments. The applicant shall use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The applicant shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.
- c. The applicant shall determine the safety of the dam under seismic loading using a pseudo static stability analysis, computing the minimum factor of safety if the embankment, foundation or abutment is not subject to liquefaction and has a maximum peak acceleration of 0.2g or less, or a maximum peak acceleration of 0.35g or less, and consists of clay on a clay or bedrock foundation. The applicant shall use in the pseudo static stability analysis a pseudo static

coefficient that is at least 60% of the maximum peak bedrock acceleration at the site.

- d. The applicant shall compute a minimum factor of safety against overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The applicant shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.
    - i. The minimum factor of safety in a pseudo static analysis is less than 1.0;
    - ii. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or
    - iii. The embankment, foundation or abutment is subject to liquefaction.
  - e. The applicant shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The applicant shall perform an analysis of the potential for flow liquefaction.
  - f. Other, more sophisticated analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.
3. Miscellaneous Design Requirements
    - a. The design of any significant or high hazard potential dam shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.
    - b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.
      - i. The minimum thickness of an internal drain is 3 feet.
      - ii. The minimum width of a chimney drain is 6 feet.
      - iii. The applicant shall filter match an internal drain to its adjacent material.
      - iv. The applicant shall design internal drains with sufficient capacity for the expected drainage without the use of drainpipes using only natural granular materials.
    - c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against dam failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe condition at the dam. A geosynthetic liner is allowed under special conditions and in specific situations if it is subject to monitoring and redundant safety controls. The Director may impose conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs, each performed every 5 years.
    - d. The applicant shall use armoring on any upstream slope of an embankment dam that impounds water

for more than 30 days at a time. If the applicant uses rock riprap, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.

- e. The applicant shall protect the downstream slopes and groins of an embankment dam from erosion.
- f. The minimum width of the top of an embankment dam is equal to the structural height of the dam divided by 5 plus an additional 5 feet. The required minimum width for any embankment dam is 12 feet. The maximum width for any embankment dam is 25 feet.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 4. Inflow Design Flood**

Dam Hazard Class	Dam Size Classification	IDF Magnitude
Very Low	All Sizes	100-year
Low	All Sizes	0.25 PMF
Significant	Small Intermediate Large	0.25 PMF 0.5 PMF 0.5 PMF
High*	All Sizes	*

\* For a high hazard potential dam, the applicant shall design the dam to withstand an inflow design flood that varies from .5 PMF to the full PMF, with size increasing based on persons at risk and potential for downstream damage. The applicant shall consider foreseeable future conditions.

#### Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 5. Minimum Factors of Safety for Stability<sup>1</sup>**

Embankment Loading Condition	Minimum Factor of Safety
End of construction case – upstream and downstream slopes	1.3
End of construction case for embankments greater than 50 feet in height on weak foundations	1.4
Steady state seepage - upstream (critical partial pool) and downstream slope (full pool)	1.5
Instantaneous drawdown - upstream slope	1.2

<sup>1</sup> Not applicable to an embankment on a clay shale foundation.

#### Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1217. Maintenance and Repair; Emergency Actions

- A. An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the dam. General maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:
  1. Removing brush or tall weeds.

2. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.
  3. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.
  4. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.
  5. Grading the surface on the top of the dam embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.
  6. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the dam.
  7. Painting, caulking, or lubricating metal structures.
  8. Patching or caulking spalled or cracked concrete to prevent deterioration.
  9. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.
  10. Patching to prevent deterioration within outlet works.
  11. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.
  12. Repairing or replacing fences intended to keep traffic or livestock off the dam or spillway.
- B. General maintenance and ordinary repair that may impair or adversely effect safety, such as excavation into or near the toe of the dam, construction of new appurtenant structures for the dam, and repair of damage that has already significantly weakened the dam shall be performed in accordance with this Article. The Director may approve maintenance performed according to a standard detail or method of repair on file with the Department upon submittal of a letter. The Director shall determine whether general maintenance and ordinary repair activities not listed in subsection (A) will impair safety.
  - C. Emergency actions not impairing the safety of the dam may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:
    1. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
    2. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
    3. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material.
    4. Plugging leakage entrances on the upstream slope.
    5. Increasing freeboard by placing sandbags or temporary earth fill on the dam.
    6. Diverting flood waters to prevent them from entering the reservoir basin.
    7. Constructing training berms to control flood waters.
    8. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.
    9. Removing obstructions from outlet or spillway flow areas.
  - D. Emergency actions impairing the safety of the dam require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.

- E. For all high and significant hazard potential dams, the emergency action plan shall be implemented with any emergency actions taken at the dam.
- F. The owner shall notify the Director immediately of any emergency condition that exists and any emergency action taken.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1218. Safe Storage Level**

The Director has the authority to determine the safe storage level for the reservoir behind each dam, including the storage level of an existing dam while it is being repaired, enlarged, altered, breached, or removed. The elevation of the safe storage level is stated on the license. The owner shall not store water in excess of the level determined by the Director to be safe. The owner shall not place flashboards or other devices in the emergency spillway without approval of an alteration of the dam in accordance with this Article.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1219. Safety Inspections; Fees**

- A. Except as provided in subsection (E), the Director shall conduct a dam safety inspection annually or more frequently for each high hazard potential dam, triennially for each significant hazard potential dam, and once every five years for each low and very low hazard potential dam. An owner of a dam shall pay the inspection fee required by R12-15-105 for each inspection of the dam pursuant to this subsection.
- B. An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:
  - 1. Meets the criteria in R12-15-1202(11),
  - 2. Has three years of experience in the field of dam safety, and
  - 3. Has actual experience in conducting dam safety inspections.
- C. A dam safety inspection includes:
  - 1. Review of previous inspections, reports, and drawings;
  - 2. Inspection of the dam, spillways, outlet facilities, seepage control, and measurement systems;
  - 3. Inspection of any permanent monument or monitoring installations;
  - 4. Assessment of all parts of the dam that are related to the dam's safety; and
  - 5. A recommendation regarding the safe storage level of the reservoir.
- D. The engineer shall submit a safety inspection report that describes the findings and lists actions that will improve the safety of the dam. The report shall include the engineer's recommendation of the safe storage level. The engineer shall use a report form approved by the Director.
- E. Inspections by the Owner
  - 1. An owner may provide to the Director, at the owner's expense, a safety inspection report that complies with the requirements of subsections (B), (C), and (D) in place of an inspection by the Department. The owner's engineer shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled safety inspection.
  - 2. The Director may refuse to accept an inspection that does not conform to this Article.
  - 3. A safety inspection report submitted pursuant to this subsection shall include the fee required by R12-15-105(D).
- F. Inspections by the Department

- 1. The Director may enter at reasonable times upon private or public property and the owner shall permit such entry, where a dam is located, including a dam under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:
  - a. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.
  - b. To inspect a dam that is subject to this Article.
  - c. To investigate or assemble data to aid review and study of the design and construction of dams, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of A.R.S. § 45-1214.
  - d. To ascertain compliance with this Article and A.R.S. Title 45, Chapter 6.
- 2. Upon receipt of a complaint that a dam is endangering people or property:
  - a. The Director shall inspect the dam unless there is substantial cause to believe the complaint is without merit.
  - b. If the complainant files a complaint in writing and deposits with the Director sufficient funds to cover the costs of the inspection, the Director shall make an inspection.
  - c. The Director shall provide a written report of the inspection to the complainant and the dam owner.
  - d. If an unsafe condition is found, the Director shall cause it to be corrected and return the deposit to the complainant. If the complaint was without merit the deposit shall be paid into the general fund.
- 3. The Director may employ qualified on-call consultants to conduct inspections.
- 4. Inspections under subsection (A) shall comply with the requirements of A.R.S. § 41-1009.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1220. Existing Dams**

- A. The requirements of this Article apply to existing dams, except as provided in subsections (B) and (C).
- B. If the Director has determined that an existing dam is in a safe condition, the owner is not required to comply with R12-15-1216 unless the Director determines that it is cost effective to upgrade the dam to comply with the requirements of R12-15-1216 at the time a major alteration or major repair is planned. In determining whether it is cost effective to upgrade a dam, the Director shall consider:
  - 1. The hazard potential classification of the dam;
  - 2. Whether the cost of the upgrade would exceed 25% of the total cost of the major alteration or major repair; and
  - 3. Whether there is a more cost effective alternative that would provide an equivalent increase in safety.
- C. If the Director has determined that a dam is in an unsafe condition, the owner shall comply with the requirements in R12-15-1216. The owner is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to pro-

tect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to the dam. The Director shall state in writing the reason or reasons the owner is not required to comply with a requirement.

- D. The owner shall ensure that installation of utilities beneath or through an existing dam is accomplished by open cuts or jacking and boring methods.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1221. Emergency Action Plans

- A. Each owner of a high or significant hazard potential dam shall prepare, maintain, and exercise a written emergency action plan for immediate defensive action to prevent failure of the dam and minimize any threat to downstream development. The emergency action plan shall contain a:
1. Notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
  2. Description of the demand reservoir and scope of the emergency action plan;
  3. Delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation;
  4. Delineation of areas of responsibility of the owner and other parties. The emergency action plan shall clearly identify individuals responsible for notifications and declaring an emergency;
  5. Specific notification procedure for each emergency situation anticipated;
  6. Description of emergency supplies and resources, equipment access to the site, and alternative means of communication. The emergency action plan shall also identify specific preparedness activities required, such as annual full or partial mock exercises and updates of the emergency action plan; and
  7. Map showing the area that would be subject to flooding due to spillway flows and dam failures.
- B. The owner shall use the Director's model emergency action plan, which is available at no cost, or an equivalent model, for guidance in preparing the emergency action plan.
- C. The owner shall submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.
- D. The owner shall review and update the emergency action plan annually or more frequently to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the dam, and information learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1222. Right of Review

- A. An applicant or owner aggrieved by a decision of the Director regarding the determination of hazard classification, jurisdictional status, or the Director's application of this Article may seek review of an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.
- B. An applicant or owner aggrieved by a decision of the Director that requires the exercise of professional engineering judgment or discretion or the assessment of risk to human life or property, such as the adequacy of an applicant's project documentation, dam design, safe storage level, requirements for existing dams, or maintenance, may seek review by a board of review under A.R.S. §§ 45-1210 and 45-1211.
- C. The following actions are not subject to review:
1. Emergency measures taken under A.R.S. §§ 45-1212 or 45-1221.
  2. Agency decisions made under A.R.S. §§ 41-1009(E) or (F).
  3. Agency actions made exempt from review by law.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1223. Enforcement Authority

- A. The Department may exercise its discretion to take action necessary to prevent danger to human life or property. The Director may take any legal action that is proper and necessary for the enforcement of this Chapter.
- B. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may issue a notice directing the owner to remedy the safety deficiency or correct the violation. The owner may appeal a notice issued under this subsection as an appealable agency action in accordance with A.R.S. Title 41, Chapter 6, Article 10. If the owner does not appeal within 30 days after the date on the notice, the notice becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- C. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may proceed under A.R.S. § 45-1221 to initiate a contested case under A.R.S. Title 41, Chapter 6, Article 10 by requesting an administrative hearing.
- D. Following a written decision by an administrative law judge, the Director shall issue a decision and order accepting, rejecting, or modifying the administrative law judge's decision. Upon expiration of time to appeal, the decision and order becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- E. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1 the Director may commence an action in a court of appropriate jurisdiction if:
1. The violation is an emergency requiring appropriate steps to be taken without delay; or
  2. The Director has cause to believe that use of the administrative procedure would be ineffective or that delay would ensue and a deterioration in the safety of the dam would occur.
- F. If the Director commences an action it shall be brought in a court of appropriate jurisdiction in which:
1. The cause or some part of the cause arose; or
  2. The owner or person complained of has his or her place of business; or
  3. The owner or person complained of resides.

- G. A person determined to be in violation of this Article; A.R.S. Title 45, Chapter 6; a license; or order may be assessed a civil penalty not exceeding \$1,000 per day of violation. The Director may offer evidence relating to the amount of the penalty in accordance with A.R.S. § 45-1222.
- H. A violation of A.R.S. Title 45, Chapter 6, Article 1 regarding Supervision of Dams, Reservoirs, and Projects is a class 2 misdemeanor, in accordance with A.R.S. § 45-1216.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1224. Emergency Procedures

- A. The owner of a dam shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the dam. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article.
  1. A condition that may threaten the safety of a dam includes:
    - a. Sliding of upstream or downstream slopes or abutments contiguous to the dam;
    - b. Sudden subsidence of the top of the dam;
    - c. Longitudinal or transverse cracking of the top of the dam;
    - d. Unusual release of water from the downstream slope or face of the dam;
    - e. Other unusual conditions at the downstream slope of the dam;
    - f. Significant landslides in the reservoir area;
    - g. Increasing volume of seepage;
    - h. Cloudy seepage or recent deposits of soil at seepage exit points;
    - i. Sudden cracking or displacement of concrete in a concrete or masonry dam spillway or outlet works;
    - j. Loss of freeboard or dam cross section due to storm wave erosion;
    - k. Flood waters overtopping an embankment dam; or
    - l. Spillway backcutting that threatens evacuation of the reservoir.
  2. In case of an emergency, the owner shall telephone the Arizona Department of Public Safety's emergency numbers at (800) 411-2336 or (602) 223-2000.
- B. The Director shall issue an emergency approval to repair, alter, or remove an existing dam if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.
  1. The emergency approval shall be provided in writing on a form developed for this purpose.
  2. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.
  3. The emergency approval is effective immediately for 30 days after notice is issued unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the dam is located, all municipalities within 5 miles downstream of the dam, and any additional persons identified in the emergency action plan.
  4. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1225. Emergency Repairs

- A. The Director shall use monies from the dam repair fund, established under A.R.S. § 45-1212.01 to employ any remedial measure necessary to protect human life and property resulting from a condition that threatens the safety of a dam if the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order.
- B. The deputy director may authorize an expenditure not to exceed \$10,000 from the dam repair fund for remedial measures under A.R.S. § 45-1212. The expenditure of any additional funds shall be approved by the Director.
- C. The Director shall hold a lien against all property of the owner in accordance with A.R.S. § 45-1212.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1226. Non-Emergency Repairs; Loans and Grants

- A. If the Director determines that a dam represents a threat to human life and property but is not in an emergency condition, the Director may use the dam repair fund, established under A.R.S. § 45-1212.01, as prescribed in this Article to defray the costs of repair.
- B. Monies from the dam repair fund may be used for loans and grants to owners as provided in A.R.S. §§ 45-1218 and 45-1219.
- C. To qualify for a loan or grant from the dam repair fund, a dam shall be classified as unsafe by the Director.
- D. The Director may authorize grant funds for all or part of the cost of engineering studies or construction needed to mitigate the threat to human life and property created by a dam.
  1. The Director and the grantee shall execute a financial assistance agreement that includes terms of financial assistance, the work progress, and payment schedule.
  2. The Director shall disburse grant funds in accordance with the financial assistance agreement.
  3. The Director shall establish a priority ranking for grants based on factors including the potential for failure of a dam, the number of lives at risk, and the capability of the owner to pay a portion of the costs.
- E. The Director may loan funds for engineering studies or for all or part of construction as prescribed in A.R.S. § 45-1218.
  1. The Director and the dam owner shall execute a loan repayment agreement. The loan repayment agreement shall be delivered to and held by the Department.
  2. The Director shall establish a priority ranking for loans based on factors including the potential for failure of a dam, the number of human lives at risk, and the capability of the owner to pay a portion of the costs.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

### ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION

#### R12-15-1301. Definitions

In addition to the definitions in A.R.S. §§ 45-101, 45-402, and 45-591, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned well" means a well for which a well abandonment completion report has been filed pursuant to



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- R12-15-816(E) or for which a notification of abandonment has been filed pursuant to R12-15-816(K).
2. "Additional drawdown" means a lowering in the water levels surrounding a well that is the result of the operation of the well and that is not attributable to existing regional rates of decline or existing impacts from other wells.
  3. "Applicant" means any of the following:
    - a. A person who has filed an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599;
    - b. A person who has filed an application for a recovery well permit under A.R.S. § 45-834.01 for a new well as defined in A.R.S. § 45-591 or, except as provided in A.R.S. § 45-834.01(B)(2) or (3), an existing well as defined in A.R.S. § 45-591;
    - c. A person who has filed an application for approval to use a well to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559; or
    - d. A person, other than a city, town, private water company, or irrigation district, who has filed an application for a water exchange permit under A.R.S. § 45-1041.
  4. "ADEQ" means the Arizona Department of Environmental Quality.
  5. "Contaminated groundwater" means groundwater that has been contaminated by a release of a hazardous substance, as defined in A.R.S. § 49-201, or a pollutant, as defined in A.R.S. § 49-201.
  6. "DOD" means the United States Department of Defense.
  7. "EPA" means the United States Environmental Protection Agency.
  8. "LCR plateau groundwater transporter" means a person transporting groundwater from the Little Colorado River plateau groundwater basin to another groundwater basin pursuant to A.R.S. § 45-544(B)(1).
  9. "Notice of water exchange participant" means a person, other than a city, town, private water company, or irrigation district, named as a participant in a water exchange in a notice of water exchange filed under A.R.S. § 45-1051.
  10. "Original well" means the well replaced by a replacement well in approximately the same location, except that if the replacement well is the latest in a succession of two or more wells drilled as replacement wells in approximately the same location under R12-15-1308 or temporary rule R12-15-840 adopted by the director on March 11, 1983, "original well" means the well replaced by the first replacement well in approximately the same location.
  11. "Remedial action site" means any of the following:
    - a. The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act ("CERCLA") of 1980, as amended, 42 U.S.C. 9601, et seq., commonly known as a "superfund" site;
    - b. The site of a corrective action undertaken pursuant to A.R.S. Title 49, Chapter 6, commonly known as a leaking underground storage tank ("LUST") site;
    - c. The site of a voluntary remediation action undertaken pursuant to A.R.S. Title 49, Chapter 1, Article 5;
    - d. The site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5, commonly known as a water quality assurance revolving fund ("WQARF") site;
    - e. The site of a remedial action undertaken pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; or
    - f. The site of remedial action undertaken pursuant to the Department of Defense Environmental Restoration Program, 10 U.S.C. 2701, et seq., commonly known as a "Department of Defense site" or a "DOD site."
  12. "Replacement well" means a well drilled for the purpose of replacing another well.
  13. "Replacement well in a new location" means a replacement well that does not qualify as a replacement well in approximately the same location under R12-15-1308.
  14. "Replacement well in approximately the same location" means a replacement well that qualifies as a replacement well in approximately the same location under R12-15-1308.
  15. "Well" has the meaning prescribed in A.R.S. § 45-402. An abandoned well is not a well.
  16. "Well of record" means, with respect to an applicant, an LCR plateau groundwater transporter, or a notice of water exchange participant, any well or proposed well not owned by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, or proposed to be drilled by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, to which any of the following apply:
    - a. The well is an existing well as defined in A.R.S. § 45-591 and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the following:
      - i. Cathodic protection;
      - ii. Use as a sump pump or heat pump;
      - iii. Air sparging;
      - iv. Injection of liquids or gasses into the aquifer or vadose zone, including injection wells that are part of an underground storage facility permitted under A.R.S. Title 45, Chapter 3.1;
      - v. Monitoring water levels or water quality, including a piezometer well;
      - vi. Obtaining geophysical, mineralogical, or geotechnical data;
      - vii. Grounding;
      - viii. Soil vapor extraction;
      - ix. Electrical energy generation pursuant to a temporary permit for electrical energy generation issued under A.R.S. § 45-517;
      - x. Dewatering pursuant to a dewatering permit issued under A.R.S. § 45-513 or a temporary dewatering permit issued under A.R.S. § 45-518;
      - xi. Drainage pursuant to a drainage water withdrawal permit issued under A.R.S. § 45-519; or
      - xii. Hydrologic testing pursuant to a hydrologic testing permit issued under A.R.S. § 45-519.01.
    - b. The well is a new well as defined in A.R.S. § 45-591 for which a notice of intention to drill was not filed pursuant to A.R.S. § 45-596 and for which a permit was not issued pursuant to A.R.S. §§ 45-599 or 45-834.01, and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or

- more of the purposes in subsection (16)(a)(i) through (xii) of this Section;
- c. A filing has been made for the well pursuant to A.R.S. § 45-596(A) or (B), unless any of the following apply:
    - i. The filing has expired pursuant to A.R.S. § 45-596(E);
    - ii. The filing identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section; or
    - iii. The well is an exempt well and the director is prohibited by A.R.S. § 45-454(D)(4) from considering impacts on the well when determining whether to approve or reject a permit application filed under A.R.S. § 45-599.
  - d. An application for a permit to drill the well has been received by the Department pursuant to A.R.S. § 45-599, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-599(G);
  - e. An application for a permit pursuant to A.R.S. §§ 45-514 or 45-516 has been received by the Department pursuant to A.R.S. § 45-521, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well before expiration of the drilling authority; or
  - f. An application for a permit to drill a recovery well has been received by the Department pursuant to A.R.S. § 45-834.01, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-834.01(F).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1302. Well Spacing Requirements - Applications to Construct New Wells or Replacement Wells in New Locations Under A.R.S. § 45-599**

- A. The director shall not approve an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599 if the director determines that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
  1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. To assist the director in making a determination under

this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;

2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the withdrawals from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals from the proposed well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that withdrawals from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of the receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the withdrawals from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if the proposed well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed withdrawals from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
  - D. If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals from the proposed well or wells on one or more wells of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director,

the applicant submits one of the following for each well of record identified in the notice:

1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that withdrawals from the proposed well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
  2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the well permit that compliance with the agreement is a condition of the well permit.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1303. Well Spacing Requirements - Applications for Recovery Well Permits Under A.R.S. § 45-834.01**

- A. The director shall not approve an application for a recovery well permit under A.R.S. § 45-834.01 that is filed for a new well as defined in A.R.S. § 45-591 or, except as provided in A.R.S. § 45-834.01(B)(2) or (3), for an existing well as defined in A.R.S. § 45-591, if the director determines that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
  1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the recovery of stored water from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells. To assist the director in making a determination under this subsection, the applicant shall submit with the application a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells;
  2. The director determines that the proposed recovery well or wells will be located in an area of known land subsidence and the recovery of stored water from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the recovery of stored water from the proposed recovery well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the recovery of stored water from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the recovery of stored water from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section:
  1. If the proposed recovery well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed recovery of stored water from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
  2. If the proposed recovery well will be located within the area of impact, as defined in A.R.S. § 45-802.01, of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well

if the applicant submits a hydrological study demonstrating those effects to the satisfaction of the director.

- D.** If the director determines under subsection (B)(1) of this Section that the probable impact of the recovery of stored water from the proposed recovery well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E.** If the director determines that the recovery of stored water from the proposed recovery well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F.** At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed recovery well or wells or the amount of stored water to be recovered from the proposed recovery well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
  2. Agree to construct or operate the proposed recovery well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the recovery well permit that compliance with the agreement is a condition of the recovery well permit.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1304. Well Spacing Requirements - Wells Withdrawing Groundwater From the Little Colorado River Plateau Groundwater Basin for Transportation to Another Groundwater Basin Under A.R.S. § 45-544(B)(1)**

- A.** An LCR plateau groundwater transporter may not withdraw groundwater from a well or wells drilled in the Little Colorado river plateau groundwater basin after January 1, 1991, except a replacement well in approximately the same location or a well drilled after that date pursuant to a notice of intention to drill filed on or before that date, for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1) if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B.** The director shall determine that the withdrawals of groundwater from the well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study delineating those areas surrounding the LCR plateau groundwater transporter's well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the well or wells from which the groundwater is withdrawn are located in an area of known land subsidence and the withdrawals of groundwater will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals on regional land subsidence. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the withdrawals of groundwater from the well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the groundwater withdrawals commenced or are proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated

through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study demonstrating whether the withdrawals of groundwater will have the effect described in this subsection. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.

- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if a well from which the groundwater is withdrawn is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the withdrawals from the replacement well if the LCR plateau groundwater transporter submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that the withdrawals of groundwater from the well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the groundwater withdrawals commenced or are proposed to commence, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the LCR plateau groundwater transporter may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well or wells to withdraw groundwater for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1305. Well Spacing Requirements - Applications to Use a Well to Withdraw Groundwater for Transportation to an Active Management Area Under A.R.S. § 45-559**

- A. The director shall not approve an application to use a well or wells constructed after September 21, 1991, to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559 if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals of groundwater will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
  1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the groundwater withdrawals on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the groundwater withdrawals will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the groundwater withdrawals on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the groundwater withdrawals will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the

water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the groundwater withdrawals will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.

- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
  - 1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
  - 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the groundwater withdrawals will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
  - 1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
  - 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the applicant may:
  - 1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the

degree of impact on wells of record or regional land subsidence; or

- 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the permit that compliance with the agreement is a condition of the permit to use the well or wells to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### R12-15-1306. Well Spacing Requirements - Applications for Water Exchange Permits Under A.R.S. § 45-1041

- A. The director shall not approve an application for a water exchange permit filed under A.R.S. § 45-1041 by a person other than a city, town, private water company or irrigation district if the director determines that any new or increased pumping by the applicant from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B. The director shall determine that new or increased pumping by the applicant from a well or wells within an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
  - 1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  - 2. The director determines that the new or increased pumping will occur in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the new or increased pumping on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  - 3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the imple-

mentation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit with the application a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. If the applicant does not submit such a hydrological study with the application, the director may require the applicant to submit the study if the director determines that the study will assist the director in making a determination under this subsection.

- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the applicant may:
  1. Amend the application to change the location of the proposed well or wells or the amount of the new or increase pumping to lessen the degree of impact on wells of record or regional land subsidence; or
  2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall

indicate in the water exchange permit that compliance with the agreement is a condition of the water exchange permit.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### R12-15-1307. Well Spacing Requirements - Notices of Water Exchange Under A.R.S. § 45-1051

- A. A notice of water exchange participant may not participate in a water exchange for which a notice is filed under A.R.S. § 45-1051 if the director determines that any new or increased pumping by the person from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B. The director shall determine that new or increased pumping from the well or wells in an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
  1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study delineating those areas surrounding the notice of water exchange participant's well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the new or increased pumping is in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the pumping on regional land subsidence. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the pumping commenced or is proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director

a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. The director may require the notice of water exchange participant to submit such a study if the director determines that the study will assist the director in making a determination under this subsection.

- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the pumping commenced or is proposed to commence, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the notice of water exchange participant may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well to pump water for the water exchange.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R.

2193, effective August 7, 2006 (Supp. 06-2).

#### R12-15-1308. Replacement Wells in Approximately the Same Location

- A. For purposes of A.R.S. §§ 45-544, 45-596, and 45-597, a replacement well in approximately the same location is a proposed well to which all of the following apply:
1. The proposed well will be located no greater than 660 feet from the original well, and the location of the original well can be determined at the time the notice of intention to drill the proposed well is filed;
  2. Except as provided in subsections (A)(3) and (A)(4) of this Section, the proposed well will not annually withdraw an amount of water in excess of the maximum annual capacity of the original well. The director shall determine the maximum annual capacity of the original well by multiplying the maximum pump capacity of the original well in gallons per minute by 525,600, and then converting the result into acre-feet by dividing the result by 325,851 gallons. The director shall presume that the maximum pump capacity of the original well is the maximum pump capacity of the well in gallons per minute as shown in the Department's well registry records, except that:
    - a. If the director has reason to believe that the maximum pump capacity as shown in the Department's well registry records is inaccurate, or if the applicant submits evidence demonstrating that the maximum pump capacity as shown in the Department's well registry records is inaccurate, the director shall determine the maximum pump capacity by considering all available evidence, including the depth and diameter of the well and any evidence submitted by the applicant; or
    - b. If the Department's well registry records do not show the maximum pump capacity of the original well, the director shall not approve the proposed well as a replacement well in approximately the same location unless the applicant demonstrates to the director's satisfaction the maximum pump capacity of the original well;
  3. If a well permit was issued for the original well under A.R.S. § 45-599, the proposed well will not annually withdraw an amount of groundwater in excess of the maximum annual volume set forth in the well permit;
  4. If a recovery well permit was issued for the well to be replaced pursuant to A.R.S. § 45-834.01(B) and the permit sets forth a maximum annual volume of stored water that may be recovered from the well, the proposed well will not annually recover an amount of stored water in excess of the maximum annual volume set forth in the recovery well permit;
  5. If the well to be replaced has been physically abandoned in accordance with R12-15-816, a notice of intention to drill the proposed well is filed no later than 90 days after the well to be replaced was physically abandoned; and
  6. If the proposed well will be used to withdraw groundwater from the Little Colorado river plateau groundwater basin for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1), one of the following applies:
    - a. The original well was drilled on or before January 1, 1991, or was drilled after that date pursuant to a notice of intention to drill that was on file with the Department on that date; or
    - b. The director previously determined that the withdrawal of groundwater from the original well for transportation away from the Little Colorado river



plateau groundwater basin complies with R12-15-1304.

- B. After a replacement well in approximately the same location is drilled, the replacement well may be operated in conjunction with the original well and any other wells that replaced the original well if the total annual withdrawals from all wells do not exceed the maximum amount allowed under subsection (A)(2), (A)(3), or (A)(4) of this Section, whichever applies.
- C. A proposed well may be drilled as a replacement well in approximately the same location for more than one original well if the criteria in subsections (A)(1), (A)(5), and (A)(6) of this Section are met with respect to each original well and if the total annual withdrawals from the proposed well will not

exceed the combined maximum annual amounts allowed for each original well under subsections (A)(2), (A)(3), or (A)(4) of this Section, whichever apply.

- D. The director may include conditions in the approval of the notice of intention to drill the replacement well to ensure that the drilling and operation of the replacement well meets the requirements of this Section.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R.  
2193, effective August 7, 2006 (Supp. 06-2).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 14. Public Service Corporations; Corporations and Associations; Securities Regulation**

### **Chapter 5. Arizona Corporation Commission - Transportation Supplement 16-4**

**Sections, Parts, Exhibits, Tables or Appendices modified**  
R14-5-202 through R14-5-205, R14-5-207

REMOVE Supp. 16-2  
Pages: 1 - 40

REPLACE with Supp. 16-4  
Pages: 1 - 34

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

Agency: Arizona Corporation Commission  
Name: Charles Hains, Commission Counsel, Legal Division  
Address: 1200 W. Washington St., Phoenix, AZ 85007  
Telephone: (602) 542-3402  
Fax: (602) 542-4870  
E-mail: [Chains@azcc.gov](mailto:Chains@azcc.gov)  
Web site: [www.azcc.gov](http://www.azcc.gov)

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

## TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

### CHAPTER 5. CORPORATION COMMISSION - TRANSPORTATION

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-2).*

*Editor's Note: The Corporation Commission has determined that rules in this Chapter are exempt from the Attorney General certification provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-1041) by a court order (State ex. rel. Corbin v. Arizona Corporation Commission, 174 Ariz. 216 848 P.2d 301 (App. 1992)). This exemption means that the rule was not certified by the Attorney General. Because this Chapter was filed under a rulemaking exemption, as determined by the Corporation Commission, other than a statutory exemption, the Chapter is printed on green paper.*

*New Article 2 consisting of Sections R14-5-201 through R14-5-205 adopted effective October 23, 1987.*

*Former Article 1 consisting of Sections R14-5-01 through R14-5-103, Article 2 consisting of Sections R14-5-201 through R14-5-203, Article 3 consisting of Sections R14-5-301 through R14-5-324 repealed effective September 30, 1982.*

*Former Article 4 consisting of Sections R14-5-401 through R14-5-403, R14-5-405 through R14-5-407 renumbered as Article 1, Sections R14-5-101 through R14-5-106 effective September 30, 1982.*

*Former Section R14-5-408 repealed effective September 30, 1982.*

*New Section R14-5-107 adopted effective September 30, 1982.*

*Former Section R14-5-409 renumbered as R14-5-108 effective September 30, 1982.*

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**ARTICLE 1. RAILROADS**

*Editor's Note: The Arizona Corporation Commission has determined that the following Section is exempt from the Attorney General certification provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-1041) by a court order (State ex. rel. Corbin v. Arizona Corporation Commission, 174 Ariz. 216 848 P.2d 301 (App. 1992)).*

**R14-5-101. Definitions**

As used in this Article:

1. "Car stop" means a device installed or constructed at the end of a spur track to prevent railroad cars from going off the rails.
2. "Commission" means the Corporation Commission.
3. "Configuration of a public railroad-highway grade crossing" means the physical characteristics of the crossing, including, but not limited to, size and type of warning devices, path of the roadway over the railroad track or tracks, warning signs, pavement markings, and roadway crossing surface.
4. "Constructive placement" means cars cannot be delivered to the designated private siding because of the inability of the consignee to receive them. The cars are placed in a sliding, another private track, or interchange track near the consignee's facility until such time as they can be delivered to the consignee.
5. "Event recorder" means a device located in the locomotive that records information reflecting the operation of the train, including on speed, elapsed time, direction of travel, load (amps), automatic brakes, dynamic brakes, and throttle settings.
6. "Hazardous materials" means any hazardous substance as defined by A.R.S. § 49-201(16)(a), (b), (c), (e), and (f).
7. "Highway authority" means the county, municipal, or other local board or body exercising jurisdiction over highways under the laws of this state.
8. "House track" means a track adjacent to or entering a freight house, used for the primary purpose of receiving or delivering freight.
9. "Industrial track" means a track or portion of track over which a railroad operates but which the railroad does not own or maintain either the rails, ties, or roadbed; or a track or portion of track which is devoted to the purpose of the user, either by lease or written agreement, in which case the lease or written agreement shall be considered as equivalent to ownership.
10. "Ladder track" means a track connecting successively the body of tracks of a train yard.
11. "Locomotive" means a self-propelled vehicle running on rails and generating or converting energy into motion for the primary purpose of hauling rail cars.
12. "Overhead clearance" means the vertical distance from the level of the top of the highest rail to a structure or obstruction above.
13. "Person" means any individual, firm, joint venture, partnership, corporation, association, municipality, governmental unit, department, or agency and shall include any trustee, receiver, assignee, or personal representative thereof.
14. "Private grade crossing" means any crossing where a legal agreement exists between a private property owner and a railroad company for the exclusive use of the landowner and the landowner's invitee.
15. "Public grade crossing" means any crossing, used by the general public, for which a legal agreement between a

private property owner and a railroad company does not exist.

16. "Rail gage" means the distance between the heads of the rails, measured at right angles to the rails in a plane 5/8 of an inch below the top of the railhead. Standard gage is 4 feet, 8 1/2 inches.
17. "Railroad" means every railway, other than a street railway, operated for public transportation of persons or property.
18. "Reconstruction" means the use of more than 50% of the material necessary to replace an entire structure or facility, or more than 50% of the current value of an entire installation.
19. "Side clearance" means the shortest distance from the centerline of track to a structure or obstruction at the side of the track.
20. "Spur track" means a stub track of indefinite length diverging from a main track or other track.
21. "Team track" means a track subject to general use by the public for the loading or unloading of freight cars.
22. "Unauthorized grade crossing" means any grade crossing that is not a public grade crossing or a private grade crossing or has not been issued an AAR/DOT crossing inventory.

**Historical Note**

Former General Order R-1; Former Section R14-5-401 renumbered as Section R14-5-101 effective September 30, 1982 (Supp. 82-5). Former Section R14-5-101 renumbered to R14-5-104, new Section R14-5-101 adopted effective May 28, 1992 (Supp. 92-2). Amended effective May 31, 1996 under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-2).

**R14-5-102. Adoption of Federal Regulations**

- A. In the furtherance of its constitutional and statutory duty to promulgate and enforce safety regulations for public service corporations, the Commission adopts and approves as its own, subject to changes noted in subsection (E) below, 49 CFR 210, 213, 215, 216, 217, 218, 219, 220, 221, 223, 225, 228, 229, 230, 231, 232, 233, and 236, as amended and revised through October 1, 1989, which are incorporated by reference, are on file in the Office of the Secretary of State, and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975, all being regulations of the Federal Railroad Administration, United States Department of Transportation, Railroad Safety regulations.
- B. The Commission also adopts and approves as its own, 49 CFR 171 through 174, as amended and revised through November 1, 1989, incorporated herein by reference and on file with the Office of Secretary of State; 49 CFR 178 and 179, as amended and revised through November 1, 1989, incorporated herein by reference, on file with the Office of Secretary of State, and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975, all being part of the Research and Special Programs Administration, United States Department of Transportation, Hazardous Materials regulations as they apply to the shipment of hazardous materials by rail.
- C. The regulations adopted in subsections (A) and (B) of this Section shall apply to all standard gage rail operations within Arizona. All terms defined in the adopted regulations shall apply unless redefined in R14-5-101.
- D. A copy of the Federal Safety Standards is attached to the Article and is hereby made a part thereof as if set forth in full.

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(This copy is not printed in this volume but is available in the offices of the Arizona Corporation Commission and the Secretary of State.)

- E. The above-mentioned Parts of 49 CFR are changed, amended, or revised as follows:
1. Substitute “Arizona Corporation Commission” (ACC) where “United States Department of Transportation” (DOT), “Federal Railroad Administration” (FRA), “Federal Railroad Administrator”, “Administrator” or “Research and Special Programs Administration” appear.
  2. Substitute “Railroad Safety Section, Arizona Corporation Commission, at its office in Phoenix, Arizona” where addresses for the United States Department of Transportation, Federal Railroad Administration, Federal Railroad Administrator, Office of Chief Counsel, or Research and Special Programs Administration appear.
  3. Copies of all reports and forms required to be filed with the Federal Railroad Administration by Parts referred to in subsection (A) and the Research and Special Programs Administration by Parts referred to in subsection (B) of this Section shall be filed with the Railroad Safety Section, Arizona Corporation Commission, at its office in Phoenix, Arizona, within the same time limits required by the Federal Railroad Administration, and the Research and Special Programs Administration. Information pertaining only to that portion of the railroad’s operations within the State of Arizona need be submitted.
- F. If the Commission finds that a waiver of compliance or an exemption from any Section of the aforementioned Parts is in the public interest and is consistent with railroad safety, the Commission may grant the waiver or exemption subject to any conditions it deems necessary.

**Historical Note**

Former General Order R-2; Former Section R14-5-402 renumbered as Section R14-5-102 effective September 30, 1982 (Supp. 82-5). Former Section R14-5-102 repealed, new R14-5-102 renumbered from R14-5-107 and amended effective May 28, 1992 (Supp. 92-2).

**R14-5-103. Unauthorized Passengers**

Railroads operating within this State shall prohibit and prevent unauthorized persons from traveling in or upon the cars and equipment of their trains.

**Historical Note**

Former General Order R-3; Former Section R14-5-403 renumbered as Section R14-5-103 effective September 30, 1982 (Supp. 82-5).

*Editor’s Note: The Arizona Corporation Commission has determined that the following Section is exempt from the Attorney General certification provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-1041) by a court order (State ex. rel. Corbin v. Arizona Corporation Commission, 174 Ariz. 216 848 P.2d 301 (App. 1992)).*

**R14-5-104. Railroad-highway Crossings**

- A. The following rules shall apply in the construction, reconstruction, improvement, and maintenance of all public railroad-highway grade crossings within the state of Arizona. This Section is intended to be consistent with the provisions of the Manual on Uniform Traffic Control Devices, as adopted by the Department of Transportation.
1. No construction project taking place at or near a public railroad-highway grade crossing shall diminish the safety normally provided to a motorist approaching the crossing by the existing warning devices.

2. No temporary change in the configuration of a public railroad-highway grade crossing, for the purpose of facilitating a construction project at or near the crossing, may be made by any person without first notifying the owner of the railroad track and the owner of the trains or other track equipment operating over such track in writing. The letter notifying the track owner and train/track equipment owner shall describe the date, place, and type of changes to be made. Such letter shall be written and signed by the responsible person for the project and shall constitute an affirmation that all temporary traffic control measures to be implemented due to the project shall be made in accordance with this rule and the Manual on Uniform Traffic Control Devices (MUTCD) Parts VI and 8A-5. Notice shall be sent by registered mail, return receipt requested, to the business address of the owner of the railroad track and the owner of trains or the track equipment operating over such track, or to the statutory agent at its known place of business, not less than 10 days prior to the commencement of the construction project.

**B. Warning signals.**

1. Railroad crossbucks.
  - a. A railroad crossbuck shall be installed on the right-hand side of the public roadway on each approach to every crossing to warn motorists approaching from each direction, except at crossings where automatic control devices are in use in conformance with Appendix 8.
  - b. If there are two or more tracks, the number of tracks shall be indicated on an auxiliary sign of inverted “T” shape mounted below the crossbuck, (See in conformance with Appendix 8).
  - c. Crossbucks shall be located at not less than 15 feet from the centerline of the nearest track, and shall be in a position to be visible to motorists.
  - d. Crossbucks shall be a reflectorized white “X” (48” X 9” panels drilled for a 90-degree mounting) with the words “RAILROAD CROSSING” in black letters.
  - e. The distance that shall be assumed to separate tracks before additional crossbucks are considered necessary is 100 feet.
2. Automatically controlled crossing signals.
  - a. At railroad-highway grade crossings where studies indicate the need for warning beyond that provided by crossbucks, the Commission may order that automatically controlled crossing signals be installed.
  - b. Emergency stand-by power shall be provided for the operation of all automatically controlled crossing signals.
  - c. Automatically controlled crossing signals shall be arranged to provide not less than 20 seconds warning for motorists.
  - d. Signals shall operate until the rear of the last train using the crossing has cleared the crossing.
  - e. Traffic signals located within 200 feet of railroad crossing signals shall be preempted by the railroad crossing signals.
  - f. Where means are provided for cutting-out the automatically controlled warning devices during intervals when trains are making regular operating stops or performing switching operations on approach circuits, controls shall be arranged as follows:
    - i. Controls shall be so designed as to provide operation of warning devices before a train reaches the crossing.

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- ii. Automatic control of warning devices actuated by approaching trains (other than the train that has stopped or is performing switching operations) shall take precedence over any cut-out feature.
- g. Where manual supervisory control of warning devices is provided in addition to automatically controlled signals, the following shall govern:
  - i. Automatic control, when actuated by approaching trains other than the train for which manual control has been made effective, shall take precedence over manual control;
  - ii. Means shall be provided to restore the controls to automatic operation;
  - iii. Means shall be provided to prevent manual operation by unauthorized persons.
- 3. Flashing light signals.
  - a. Lamp units (center of lens), shall be located at not less than 8 feet, 4 inches, nor more than 10 feet, 4 inches above the crown of the roadway.
  - b. Signal lights shall shine in both directions along the roadway, and shall be mounted horizontally, 2 feet, 6 inches to centers.
  - c. Lamp units shall be arranged in pairs, back to back, except on one-way streets or other roadways where highway traffic approaches from one direction only.
  - d. Lamp units shall be equipped with mountings to provide ready adjustments in all directions with positive locking for such adjustments.
  - e. Lamp units shall be provided with hoods of not less than 12 inches in length and with backgrounds 20 inches in diameter. Hoods and backgrounds shall be in black, except that when backlights are omitted, the back of the lamp unit and background shall be aluminum-colored so that the signal will not be mistaken for a dark signal.
  - f. Lamp units installed after the effective date of this Section shall have lenses or roundels, red in color, not less than 12 inches in diameter for both front and rear indications. Lamp units in use prior to the adoption of this Section shall be made to meet this requirement when the automatic warning devices are upgraded, improved, or reconstructed.
  - g. The beam spread shall be not less than 3 degrees each side of the axial beam under normal conditions. Throughout the beam spread, the intensity of the beam shall not be less than 50% of the intensity at the axis.
  - h. Lights shall flash alternately at a minimum rate of 45 flashes per minute and a maximum rate of 65 flashes per minute.
  - i. The effective range of flashing lights equipped with 10 volt, 10 watt lamps, or equivalent, burning at rated voltages, shall be not less than 1,000 feet under bright sunlight conditions with the sun at or near its zenith.
- 4. Highway traffic control signals shall not be used on main-line railroad crossings in lieu of flashing light signals. However, at industrial track crossings and other places where train movements are 10 miles per hour or less, highway traffic control signals may be used in lieu of conventional flashing light signals.
- 5. Bell warning signals. At least one automatic gong-type bell shall be used with each flashing light signal except on median strip installations.
- 6. Automatic gate arm signals.
  - a. Signals consisting of a combination of flashing lights, bells, and automatic gate shall, when indicating the approach or presence of trains, present towards the highway the appearance of horizontally flashing red lights and of a horizontal arm or arms extending over the traveled roadway a sufficient distance to cover the lane or lanes used by highway traffic approaching the crossing.
  - b. Automatic gate arms, when not indicating the approach or presence of trains, shall not obstruct or interfere with highway traffic, except as provided in subsection (B)(6)(d).
  - c. Automatic gate arms shall be mounted on posts or housing containing the arm-operating mechanism.
  - d. The design of the gate-opening mechanism shall be such as to ensure proper operation during unfavorable weather conditions. In case of power failure, the gate arm shall assume the horizontal position across the roadway.
  - e. The mechanism shall be so designed that if the arms, while being raised or lowered, strike or foul an object they will readily stop, and on removal of the obstruction shall assume the position corresponding to the control mechanism.
  - f. Each gate arm extending over the roadway shall have three red lights, with lenses not less than 7 inches in diameter, shining in both directions along the roadway, so positioned as to ensure as far as possible, that no vehicle or vehicles standing in the limits of the traffic lane or lanes approaching the crossing can obscure all three lights from the view of the drivers of the following vehicles. The light nearest the tip of each arm shall burn steadily, and the other two lights on each arm shall flash alternately in unison with the flashing lights on the roadside signal mast.
  - g. The gate arm shall, on new installations, be striped with 16 inch alternate diagonal reflectorized or fluorescent stripes of red and white.
  - h. Circuits for operation of signals shall be so arranged that the flashing lights, gate arm lights, and bell will start to operate at not less than 20 seconds before the arrival of the fastest train at the crossing. All lights shall operate at all times when the gate arm is in a position to obstruct highway traffic. The bell shall sound a warning from the time the signal lights start to operate at least until the gate arm has descended to within 10 degrees of the horizontal position.
  - i. Gate arms shall start their downward motion at not less than three seconds after the signal lights start to operate. Gate arms shall reach the full horizontal position before the arrival of the fastest train operated over the crossing and shall remain in that position until the rear of the train has cleared the crossing.
  - j. The bottom of the gate arms when in the horizontal position shall be not less than 3 feet nor more than 4 feet above the crown of the roadway.
  - k. Gate arms shall operate uniformly, smoothly, and complete all movement without slap or rebound, and be securely held when in the raised position.
- 7. Maintenance.
  - a. Metal parts shall be aluminum or painted aluminum, except as provided in subsection (B)(3)(e).
  - b. All materials and workmanship shall meet or exceed current industry standards in every respect, and



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every warning signal and sign in all details shall be constructed, installed, and maintained in a satisfactory manner.

- c. The railroad shall provide for the maintenance of all grade crossing warning signs and signals. To this end, the railroad shall:

- i. Provide for alternate operations of automatically controlled warning signals during periods of failure, either manually or otherwise, as soon as possible after the failure has occurred;
- ii. Have skilled maintenance personnel available without undue delay for all emergency calls, including lamp failures;
- iii. Provide proper maintenance for all components;
- iv. Maintain the appearance of the installation in a satisfactory manner, with particular emphasis on painting and cleaning of optical systems;
- v. Inspect warning signals at a frequency of not less than once every 45 days. A written record of inspection shall be retained at the railroad's office within Arizona.
- vi. Provide standby equipment at a central location to minimize the interruption of signal operations due to equipment failure or damage.

8. Whistle posts.

- a. Whistle posts bearing the letter "X" or "W" shall be located in advance of each public crossing at grade to warn locomotive engineers of the presence of the highway grade crossing, and allow them sufficient time to sound the warning whistle.
- b. A person in charge of a railroad locomotive shall, before crossing any traveled public way, cause the bell to ring or a whistle, siren, or other sounding device to sound at a distance of at least 1/4 mile from a crossing and until it is reached.

C. Additional requirements.

1. When necessary to shove a railroad car or cars over a public grade crossing not having automatically controlled crossing signals, employees shall flag the crossing.
2. When, during normal train operations at night, it becomes necessary to block a public grade crossing with standing railroad cars, and the crossing does not have automatically controlled crossing signals, flares, or fusees, shall immediately be placed in the center of the roadway on both sides of the track at not less than 10 feet from the railroad car or cars to warn motorists that the crossing is occupied.
3. Detached railroad cars containing explosive or hazardous materials shall not be left standing on any grade crossing at any time.
4. Before moving onto any public railroad-highway grade crossing, operators of any on-track equipment, including high-rail vehicles, shall ensure that the automatic warning devices are activated or the crossing protected by a flagman. Public grade crossings without automatic warning devices shall be flagged by a flagman.
5. It shall be unlawful for railroad employees to "drop" or "kick" any railroad car or cars containing hazardous materials across a grade crossing in any circumstances or any other railroad car or cars across a grade crossing unless the crossing is flagged by a flagman or traffic is restricted by automatic gate arms.
6. Grade crossing maintenance and repair shall be conducted as follows:

- a. Whenever a highway intersects a railroad track at common grade, the appropriate highway authority shall maintain and keep in repair the roadway approaches to within 2 feet of the outside of either rail, and the railroad shall maintain the planking or other materials between the rails and for 2 feet on the outside thereof.
  - b. At crossing involving more than one track, maintenance by the railroad shall include that portion of the crossing:
    - i. Between the tracks not exceeding 20 feet from the center of the tracks, and
    - ii. Two feet on the outside of each of the two outside (field site) rails.
  - c. Unless the Commission otherwise authorizes, public grade crossings hereafter constructed shall be not less than 24 feet in effective roadway width measured at right angles with the centerline of the roadway.
  - d. Turnouts, switches, and frogs or bolted rail joints shall be so placed or relocated as to avoid placement in the paved area of a crossing.
  - e. Materials for permanent repairs on any component of a railroad-highway grade crossing surface shall be of the same type and quality or of equal quality to those which are being repaired or replaced.
  - f. Temporary repairs shall be made until the arrival of materials necessary for permanent repairs. Temporary repair shall be made within five working days of the date that the railroad is notified of the defect by the Commission. Permanent repairs shall be completed within 90 days from the date of notification.
  - g. The railroad shall coordinate with the highway authority any road closures and reopenings caused by the maintenance and repair of grade crossing.
  - h. The railroad shall stencil the AAR/DOT inventory number on all railroad-highway crossings.
7. Blockage of public grade crossing shall be limited as follows:
- a. Except as provided in subsections (C)(7)(c) and (d), no railroad shall cause a public grade crossing to be blocked by railroad equipment in excess of 10 continuous minutes.
  - b. Each period of crossing blockage shall be followed by an interval of time sufficient to allow the passage of waiting traffic.
  - c. The limitations set forth in subsection (C)(7)(a) do not apply to:
    - i. Any train continuously moving in the same direction during the entire time it occupies the crossing; and
    - ii. Blockage caused by wrecks, derailments, acts of nature, mechanical failure, or other emergency conditions.
  - d. The Commission, after hearing, may grant variances from the limitations set forth in subsection (C)(7)(a), upon proper application by the railroad or appropriate highway authority.
8. A crew member of a train blocking a public crossing shall immediately take all reasonable steps, consistent with the safe operation of such train, to clear the crossing upon receiving information from a peace officer, as defined in A.R.S. Title 13, member of any fire department or operator of an emergency vehicle, as defined in A.R.S. § 28-101.1, that emergency circumstances require the clearing of the crossing.

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9. The railroad shall coordinate road closures and reopenings during emergency blockages with the appropriate highway authority.
10. When authorization for preliminary engineering and estimate or any federal-aid funding crossing improvement projects is submitted to the railroad, it shall be completed by the railroad and returned to the Department of Transportation within 60 days.
11. The railroad shall notify the Commission, in writing, within 10 days of both the commencement and completion of the project. The railroad shall tender a statement to the Commission reflecting the Commission's portion of such charges pursuant to A.R.S. § 40-337.02, within 60 days of completion of the project.
12. Federal-aid crossing improvement projects shall be completed within 15 months from the date of the Commission Order.
13. The Commission may approve an exception to any of the requirements of this Section. Such exceptions may be made upon the Commission's own initiative or upon written request from an interested party. Written requests shall contain a statement of the circumstances involved, the nature of the exception desired, and the reasons justifying such an exception. An exception shall be limited to the particular situation described in the written requests.

**Historical Note**

Former General Order R-5; Former Section R14-5-405 renumbered as Section R14-5-104 effective September 30, 1982 (Supp. 82-5). Amended subsection (H) effective April 16, 1986 (Supp. 86-2). Former Section R14-5-104 repealed, new Section R14-5-104 renumbered from R14-5-101 and amended effective May 28, 1992 (Supp. 92-2). Amended effective May 31, 1996 under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-2).

**R14-5-105. Railroad Accident/Incident Reports; Investigation****A. Reports by telephone.**

1. Railroads shall give the Commission immediate telephone notification of the following classes of accidents/incidents:
  - a. Accidents resulting in death;
  - b. Accidents resulting in injury requiring immediate hospitalization;
  - c. Accidents resulting in damage to railroad property in excess of the amount for which the Federal Railroad Administration requires an accident report to be filed;
  - d. Accidents or incidents in which any hazardous materials are involved;
  - e. All public railroad-highway grade crossing accidents;
  - f. All accidents/incidents involving rail passenger operations.
2. The immediate telephone notification shall include but not be limited to the following:
  - a. Name of person making the telephonic report;
  - b. Name of railroad or railroads involved;
  - c. Location of accident/incident;
  - d. Number of fatalities;
  - e. Number of injuries;
  - f. Number of derailed cars;
  - g. Generic name or names of the hazardous materials involved, including the name, address, and the telephone number of the shipper.

- B. Federal reports of accidents/incidents -- Railroads shall submit to the Commission copies of all accident/incident reports and supplements filed with the Federal Railroad Administration and the Hazardous Materials Regulation Board for accidents/incidents occurring in Arizona. Said reports shall be submitted to the Commission within the time specified for submitting to the Federal Railroad Administration. Said reports shall include:
  1. FRA F 6180.54 -- Rail Equipment Accident/Incident Report;
  2. FRA F 6180.55 -- Railroad Injury and Illness Summary;
  3. FRA F 6180.55a -- Railroad Injury and Illness (Continuation Sheet);
  4. FRA F 6180.56 -- Annual Railroad Report of Man-Hours by State;
  5. FRA F 6180.57 -- Rail-Highway Grade Crossing Accident/Incident Report;
  6. FRA F 6180.45 -- Annual Summary Report of Railroad Injury and Illness;
  7. DOT F 5800.1 -- Hazardous Materials Incident Report.

- C. Investigations by the Commission.
  1. Commission investigators shall investigate accidents, may inspect railroad records, accounts, books, memoranda, correspondence, and other documents, and may examine all lands, buildings, and equipment of railroads. Commission investigators may obtain all relevant information concerning accidents under investigation, make inquiries of persons having knowledge of the facts, conduct interviews, and attend, as observers, hearings or formal investigations by railroads into the causes of accidents. When necessary to carry out an investigation, the Commission may authorize the issuance of subpoenas to require the production of records and the giving of testimony.
  2. Whenever necessary, the Commission will schedule a public hearing on an accident.
  3. Incomplete or inaccurate reports will be investigated by the Commission. Incomplete or inaccurate reporting practices may be grounds for a public hearing into the matter.
  4. Late reports shall be accompanied by a letter of explanation. Late reports may be grounds for a public hearing into the matter.
- D. All railroads operating wholly or partially within the state of Arizona shall give the Commission immediate telephone notification of accidents/incidents as prescribed herein. All accidents/incidents not reported in accordance with the provisions of this Section shall be investigated by the Commission.

**Historical Note**

Former General Order R-6; Former Section R14-5-406 renumbered as Section R14-5-105 effective September 30, 1982 (Supp. 82-5). Amended subsections (A), (B), (D), and (F) effective April 16, 1986 (Supp. 86-2). Amended effective May 28, 1992 (Supp. 92-2).

**R14-5-106. Minimum Standards for Cabooses**

- A. Each railroad operating wholly or partially within the state of Arizona shall hereafter install and maintain minimum standards on cabooses in accordance with this Section.
- B. No caboose shall be used in service unless it complies with subsections (C) through (R) of this Section.
- C. Construction: Cabooses shall be of either the cupola or bay window type. Cabooses of metal construction shall have wooden or insulated metal floors. A cupola shall not extend inward toward the centerline of the car more than 3 inches from either side of the caboose.

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- D. Trucks: Trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptic or additional coil springs or other means of equal or greater efficiency and shall be equipped with steel wheels.
- E. Draft gears: Draft gears shall have a minimum travel of 2 1/2 inches and a minimum capacity of 18,000 foot pounds. Draft gears shall be of rubber or a combination of friction and rubber types, or shall have other means of providing equal shock control.
- F. Lighting: An adjustable, shielded electric light, or lights, shall be provided for the direct illumination of the caboose desk. A ceiling or wall light, or lights, operable from separate switches shall be provided to otherwise illuminate the caboose interior. The area of the drinking water and lavatory facilities shall be illuminated. The caboose marker, or markers, shall be electrically lighted.
- G. Heating: A heating facility shall be maintained and shall be capable of providing a temperature of at least 70 degrees Fahrenheit in a standard caboose.
- H. Seats and cushions: Seats and cushions shall be provided with a shock absorbent material initially at least 3 inches in thickness, and backrests shall be of sufficient height to protect the neck and head from injuries. Seats in cupolas shall be of the pullman type and those in bays shall be of the passenger reversible type. The top of said seats shall not be lower than 11 inches nor higher than 9 inches beneath the cupola or bay window sills and no more than 18 inches above the floor or footrest. The backrests shall incline backward to not less than 3 inches nor more than 5 inches from the perpendicular. Subject to the approval of the Commission, seats of different design or materials may be used when such design or materials provide equal or better protection or comfort than those enumerated in this Section.
- I. Bunks: Each caboose shall have at least one bunk of not less than 2 feet in width and not less than 6 feet in length which shall be provided with a cushion of the same dimensions made of shock absorbent material initially of at least 3 inches in thickness.
- J. Wind deflector: Each cupola side window shall be equipped with a wind deflector.
- K. Weatherstripping: Weatherstripping or weatherproof sash shall be installed and maintained at all windows and doors to protect against weather and the seepage of dirt or dust.
- L. Window shades: With the exception of windows in bays and cupolas, windows shall be equipped with shades.
- M. Stanchions: Stanchions, grab handles, or bars shall be installed at entrances and exits and at other locations within convenient reach of employees moving about the caboose while a train is in motion.
- N. Drinking water: Caboose drinking water facilities shall be installed and maintained so as to provide fresh and pure drinking water. Such water facilities shall include individual bottled water containers placed in an ice chest. When ice is used for water cooling purposes, the containers shall be so arranged that the drinking water will not come in contact with the ice. Containers used for storing or dispensing potable water shall be kept clean at all times and shall be subjected to effective bactericidal treatment as often as may be necessary to prevent the contamination of the water so stored and dispensed.
- O. Lavatory facilities: Caboose lavatory facilities for washing shall be provided at a location where the use thereof will not result in contamination of the drinking water dispensing system. All cabooses shall have operative toilets which are illuminated, are kept clean and free of noxious odors at all times, and are subjected to effective bactericidal treatment as often as may be necessary.
- P. Fire extinguisher: Cabooses used in road service shall be equipped with an effective means of extinguishing minor fires. Such extinguishing agents shall be placed in a readily accessible location and shall be effectively maintained.
- Q. First-aid kit: Each caboose shall carry, in a visible and readily accessible place, a plainly marked first-aid kit which shall be so constructed that it and its entire contents are readily removable. The kit shall consist of materials, approved by the railroad's consulting physician, in a weatherproof container with individually sealed packages for each type item. The contents shall be inspected weekly to ensure that expended items are replaced.
- R. Maintenance and supplies: Cabooses shall be supplied with fresh water, paper towels, toilet tissue, sanitary drinking cups, fuel, ice as needed, hand soap or other cleaning agents in appropriate dispensers and such other equipment as may be required for service.
- S. Conditions arising after departure from terminal: In the event of a failure of required equipment or standards of maintenance occurs in a caboose after it has commenced a move in service, the railroad operating that caboose shall not be deemed in violation of this Section if said failure of equipment or standards of maintenance is corrected at the first point at which maintenance supplies are available, or, in the case of repairs, the first point at which materials and repair facilities are available and repairs can reasonably be made.
- T. Exemption: If, in any particular case, an exemption from any of the requirements of this Section is deemed necessary by a carrier concerned, the Commission will consider the application of such carrier for such exemption when accompanied by a full statement of the conditions existing and the reason why such exemption is needed. Any exemption so granted will be limited to the particular case covered by the application.

**Historical Note**

Former General Order R-7; Former Section R14-5-407 renumbered as Section R14-5-106 effective September 30, 1982 (Supp. 82-5). Correction in heading effective April 16, 1986 (Supp. 86-2). Amended effective May 28, 1992 (Supp. 92-2).

**R14-5-107. Minimum Standards for Locomotives**

- A. Each railroad operating wholly or partially within the state of Arizona shall hereafter install and maintain minimum standards on locomotives in accordance with this Section.
- B. All of the following requirements shall be met:
  1. Locomotives used in or through the state of Arizona shall be equipped with an effective means of extinguishing minor fires. Such extinguishing agents shall be placed in a readily accessible location and shall be effectively maintained.
  2. Each locomotive shall carry, in a visible and readily accessible place, a plainly marked first-aid kit which shall be so constructed that it and its entire contents are readily removable. The kit shall consist of materials, approved by the railroad's consulting physician, in a weatherproof container with individually sealed packages for each type item. The contents shall be inspected weekly to ensure that expended items are replaced.
  3. Each train operated in or through the state of Arizona at a speed in excess of 30 miles per hour shall have at least one locomotive equipped with an operating event recorder. Such event recorders shall be inspected at least once every 90 days and maintained in a fully operative condition.
  4. All locomotives shall have operative toilets which are illuminated, are kept clean and free of noxious odors at

all times, and are subjected to effective bactericidal treatment as often as may be necessary.

5. Drinking water facilities shall be installed and maintained so as to provide fresh and pure drinking water. Such water facilities shall include individual bottled water containers placed in an ice chest. When ice is used for water cooling purposes, the containers shall be so arranged that the drinking water shall not come in contact with the ice. Containers used for storing or dispensing drinking water shall be kept clean at all times and shall be subjected to effective bactericidal treatment as often as may be necessary to prevent the contamination of the water so stored and dispensed.
  6. Locomotives shall be supplied with fresh water, paper towels, toilet tissue, sanitary drinking cups, ice as needed, and such other equipment as may be required for service.
- C. A locomotive operating in a controlling position shall have an operating two-way radio that is on a frequency for the railroad being operated on and is capable of contacting the train dispatcher or other responsible railroad personnel.
- D. If, in any particular case, an exemption from any of the requirements of this Section is deemed necessary by a carrier, the Commission shall consider the application for such exemption as needed. Any exemption so granted shall be limited to the particular case covered by the application.

#### Historical Note

Adopted effective September 30, 1982 (Supp. 82-5).  
Amended subsections (A) and (B) effective April 16, 1986 (Supp. 86-2). Former Section R14-5-107 renumbered to R14-5-102, new Section R14-5-107 adopted effective May 28, 1992 (Supp. 92-2).

#### R14-5-108. Inspection of property

For the purpose of insuring compliance with safety rules and regulations, the Commission, or any authorized inspector or agent thereof, may, at any time, stop, board, ride, investigate, or inspect any train, locomotive, car, caboose, or any other rolling stock or equipment used by a railroad in the operation of their business.

#### Historical Note

Former General Order R-9; Former Section R14-5-409 renumbered as Section R14-5-108 effective September 30, 1982 (Supp. 82-5).

#### R14-5-109. Industrial Track Standards

- A. This Section shall be applicable to all industrial track construction, reconstruction, and repair commencing after the effective date of this Section.
1. The industry and the railroad contractor shall be responsible for notifying the Commission in writing prior to the construction, reconstruction, or alteration of industrial track, structures, or facilities adjacent thereto.
  2. The proposed design plans of any construction, reconstruction, or alteration of industrial track shall be submitted to the Commission, Railroad Safety Section, Phoenix, Arizona, prior to any construction, reconstruction, or alteration of industrial track.
- B. The following construction standards shall apply for all industrial track:
1. Profile:
    - a. Maximum grade of any proposed track, as shown on any plan, shall be 2% and shall not be exceeded. At all locations, excessive grades and frequent changes of grade shall be avoided. Where grade line changes, appropriate vertical curves shall be installed.
    - b. In cut sections, grade line shall be uniform throughout the cut to facilitate proper drainage. Grades in

cuts shall not be less than 3/10% and not more than 1%.

2. Subgrade:
  - a. Where soil condition, drainage conditions or amount of traffic justify, the upper portion of the subgrade shall be designed to provide adequate support. Methods of increasing support shall be to provide select material to an adequate supporting depth over the existing subgrade or subgrade stabilization.
  - b. The depth of any proposed material shall be specified by the design plans.
  - c. The upper portion of any subgrade to be stabilized shall be stabilized by thoroughly mixing suitable chemical additives such as cement, fly ash, or lime with the soil before compaction.
  - d. Each layer shall be fully compacted by approved mechanical compacting equipment before the next layer is placed. A fully compacted layer shall have a dry density of at least 95% of the maximum dry density.
  - e. Type of soil and soil conditions shall be indicated on any proposed plans along with typical sections showing rail, tie ballast, subballast, and any other appurtenances.
3. Drainage:
  - a. Each drainage or other water-carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction to accommodate expected water flow for the area concerned.
  - b. Every effort shall be made to keep the tracks, roadbed, and walkways properly drained at all times.
4. Ballast:
  - a. Ballast material shall conform to the recommended specifications contained in the American Railroad Engineering Association "Manual for Railway Engineering" (AREA Manual), as amended and revised through July 31, 1990, incorporated herein by reference, on file with the office of the Secretary of State, and copies available from the American Railroad Engineering Association, 50 F Street NW, Washington, D.C. 20001. The gradation of a ballast material shall be a prime consideration in track performance of ballast materials. Ballast material used in industrial tracks shall be not less than 3/4 of an inch to 1 1/2 inches, pursuant to AREA No. 4 gradation in the AREA Manual.
  - b. Ballast material may be crushed rock, slag, or equally stable material that will provide uniform support to the ties, will drain properly, and is not chemically reactive. The material used for ballast shall not short track signals. Quarried stone or slag produced in a crushing-screening plant shall be preferred when it satisfies all of the following specifications:
    - i. A shrinkage factor of 12% to 15% in volume differential from loose to compacted state.
    - ii. Processed ballast shall be composed of hard, strong, and durable particles free from excessive amounts of deleterious substances.
    - iii. Deleterious substances shall not be present in processed ballast in excess of the following amounts:
      - (1) Soft and friable pieces--5%;
      - (2) Material finer than No. 200 sieve--1%;
      - (3) Clay lumps--1/2%.

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- iv. Percentage of wear of processed ballast, tested in the Los Angeles machine, shall not be greater than 40%.
- v. Soundness of processed ballast for use in regions where freezing temperatures are expected shall be such that when tested in the sodium sulfate soundness test, the weighted average loss shall be not in excess of 7% after five cycles.
- vi. Compacted weight of ballast shall be not less than 70 pounds per cubic foot for blast furnace-slag and 90 pounds per cubic foot for all other slags and crushed rock products.
- vii. Flat or elongated particles, particles with length three times greater than average thickness, shall not exceed 5% by weight in the ballast.
- c. Prior to installation, the supplier shall provide the railroad or industrial track owner with certified test results of ballast quality and grading.
- d. Care shall be used to ensure even distribution of ballast in the track. A minimum ballast depth of 8 inches below the ties shall be acceptable as a subballast base. Ballast shall be inserted under ties in convenient lifts but under not less than two lifts. Proper cross level, line and grade shall be attained on the final lift in accordance with currently accepted practice.
- e. Top of track ballast shall be dressed parallel with top of rails to a depth of 1 inch below top of tie extending 6 inches beyond end of tie. Ballast shall be thoroughly tamped for each tie end to 15 inches inside of rail. Centers shall be filled but not tamped. All work of track laying and surfacing shall be of the highest quality in accordance with currently accepted practice.
- f. Each owner of the track to which the ballast standards apply shall maintain proper track cross level, surface, and alignment prescribed as follows:
  - i. The runoff in any 31 feet of rail at the end of a rise may be not more than 3 1/2 inches.
  - ii. The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may be not more than 3 inches.
  - iii. Deviation from designated elevation on spirals may be not more than 1 3/4 inches.
  - iv. Variation in cross level on spirals in any 31 feet may be not more than 2 inches.
  - v. Deviation from zero cross level at any point on tangent or from designated elevation on curves between spirals may be not more than 3 inches.
  - vi. The difference in cross level between any two points less than 62 feet apart on tangents and curves between spirals may be not more than 3 inches.
  - vii. Alignment may not deviate from mid-ordinate of a 62-foot chord more than 3 inches.
- 5. The material, preservative treatment, quality control, inspection, and miscellaneous requirements for timber crossties and switch ties shall conform with the recommendations of Chapter 3, "Ties and Wood Preservation" of the AREA Manual and all of the following:
  - a. Crossties shall be either hardwood or softwood in accordance with the requirements of this Section.
  - b. Wooden crossties shall be new and manufactured from the following kinds of wood: Douglas fir, red oak, white oak, cypress, southern and western pine, elm, hickory, gum, or hemlock.
  - c. All wooden ties shall be made from sound, straight live timber and shall be free from any defects that may impair their strength and durability, such as bark, decay, splits, shakes, large or numerous holes or knots, pitch seams, pitch rings, grain with slant greater than 1 in 15, or other imperfections.
  - d. All crossties shall be a minimum of 8 feet in length. Ties shall measure 6 inches thick by 8 inches wide on top, AREA No. 6 grade. If a 6-inch wide base rail is used, 7-inch by 9-inch ties shall be required. All crossties shall be branded with the seller's symbol to indicate line end.
  - e. Crossties shall be spaced a maximum of 24 inches center to center. Each 39 feet of track shall be supported by a minimum of 19 crossties. The center of the ties shall coincide with the centerline of the track and the ties shall be laid at right angles to the rail with the wide-face up.
  - f. Hardwood ties shall be used on all curves of 2 degrees and over. Softwood ties shall be permitted on other curves and tangents.
  - g. Ties shall be inspected at suitable and convenient places satisfactory to the railroad or industry owner. Inspection shall include a reasonably close examination of the top, bottom, sides, and ends of each tie. All ties shall be judged independently using the following standards:
    - i. Decay shall be the disintegration of the wood substance due to the actions of wood destroying fungi. "Blue Stain" is decay and shall be permissible in all wood.
    - ii. A large hole shall be more than 1/2 inch in diameter and 3 inches deep within, or more than 1/4 the width of the surface on which it appears and 3 inches deep outside, the sections of the tie between 20 inches and 40 inches from its middle. Numerous holes shall be any number equaling a large hole in damaging effect. Such holes may be caused in manufacture or otherwise.
    - iii. Within the rail bearing areas, a large knot shall be one having an average diameter more than 1/3 the width of the surface on which it appears; but such a knot shall be allowed if it is located outside the rail-bearing areas. Numerous knots shall be any number equaling a large knot in damaging effect.
    - iv. A shake shall be a separation along the grain, most of which occurs between the rings of annual growth.
    - v. A split shall be a separation of the wood extending from one surface to an opposite or adjacent surface. In unseasoned crossties, a split no more than 1/8 of an inch wide or 4 inches long shall be acceptable. In a seasoned crosstie, a split no more than 1/4 of an inch wide or longer than the width of the face across which it occurs shall be acceptable. In seasoned crossties, a split exceeding the limit shall be acceptable provided split limitations and anti-splitting devices are approved by the buyer and properly applied.

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- vi. Except in woods with interlocking grain, a slant in grain in excess of 1 inch in 15 inches shall be rejected.
  - vii. In manufacture:
    - (1) A tie shall be considered straight:
      - (a) When a straight line along the top from the middle of one end to the middle of the other end is entirely within the tie; and
      - (b) When a straight line along a side from the middle of one end to the middle of the other end is anywhere more than 2 inches from the top and the bottom of the tie.
    - (2) The top and bottom of a tie shall be considered parallel if any difference in the thicknesses at the sides or ends does not exceed 1/8 of an inch.
  - viii. The lengths, thicknesses, and widths specified shall be minimum for the standard sizes. Ties over 1 inch longer, thicker, or wider than the standard size ordered shall be rejected.
  - ix. A bark seam or pocket shall be a patch of bark partially or wholly enclosed in the wood. Bark seams shall be allowed provided they are not more than 2 inches below the surface or 10 inches long.
  - x. Ties with continuous checks appearing on one face only, whose depth in a fully seasoned tie is greater than 1/4 the thickness and longer than 1/2 the length shall be rejected.
  - h. The maximum distance between non-defective timber crossties shall be 70 inches, center of tie to center of tie.
  - i. A timber crosstie shall be considered defective when it is all of the following:
    - i. Broken through;
    - ii. Split or otherwise impaired to the extent that it will not hold spikes or will allow ballast to work through;
    - iii. So deteriorated that the tie-plate can move laterally more than 1/2 of an inch relative to the crossties;
    - iv. Cut by the tie-plate through more than 40% of its thickness; and
    - v. Not spiked as required by this Section.
  - j. Industry track shall have at least one non-defective crosstie whose centerline is within 18 inches of the rail joint location.
  - k. Used crossties, although not recommended, may be used subject to prior approval from the Commission.
  - l. Treated tie plugs of proper size shall be used to fill holes tightly and driven into old spike holes of used ties. Approved granular tie plug material may be used in lieu of treated tie plugs.
6. Switch ties:
- a. Switch ties shall be new and shall be hardwood in accordance with the requirements of this Section. Switch ties shall be located as shown on the turnout plans.
  - b. All switch ties shall be 7 inches thick by 9 inches wide in cross section. Switch tie length shall be as indicated on the turnout plans in 1 foot increments.
  - c. All switch ties shall be sawed top, bottom and sides, cut square at the ends, have top and bottom parallel, and have bark entirely removed.
7. Tie plates:
- a. Tie plates shall be placed under each rail at every tie. The tie plates shall be placed with the shoulder squarely against the rail.
  - b. No crooked tie plates shall be permitted. Each tie plate shall be of proper design to fit the rail section being used.
8. Rail:
- a. All rail used in industrial track construction shall weigh a minimum of 90 pounds per yard. The majority of rails used shall be a minimum of 30 feet in length, with no more than 20% of varying lengths down to 24 feet, except as required in switches.
  - b. Rail shall be laid with joints staggered so that joints on one side will not be more than 4 feet from center of the opposite rail. The best running side of the relay railhead shall form the gage side of the rail as laid.
  - c. Rails shall be new or equal to No. 2 relay rail or No. 3 relay rail as per the AREA Manual recommendations for rail grading classifications. Overflow on one or both sides shall be less than 1/4 of an inch. Base shall be solid and free of visual defects with only minor pitting. Relay rail shall be considered to be used material.
  - d. The bottom of rail, tie plate, and top surface of tie shall be clean and smooth to provide for full bearing for rails and tie plates.
  - e. The use of a torch for cutting track rail, except for field welds or for burning bolt holes shall be prohibited. A rail saw or rail chisel properly and expertly used for cutting and a hand or power rail drill for boring holes shall be employed. All chips and burrs shall be removed and all drilled holes shall be peened. The bolt hole shall conform to the standard plans.
  - f. Angle bars of approved design shall be properly fitted against the rail and properly bolted. Each joint shall be bolted with at least two bolts through each rail end. Joint bars cracked or broken through between the middle two bolts shall be replaced. Compromise and insulated joint bars of proper design shall be used where rail size and conditions dictate. Track bolts, of proper size, fitted with approved spring washers, shall be fully tightened to proper tension.
9. Spiking:
- a. Each rail will be spiked with two spikes per tie plate on tangent track, staggered with inside spikes to the east or north, outside spikes to the west or south.
  - b. Spikes shall be 5/8 of an inch wide by 6 inches long.
  - c. Track spikes shall be started and driven vertically with face shank in contact with the rail so that the face of the spike shall have full hold on rail base. Damage to tie timber fiber shall be minimized.
  - d. Spikes shall not be struck after head is down to snug contact with the railbase. Care shall be taken not to overdrive spikes and rail shall not be gouged or struck with spike maul or other tool.
  - e. In the construction of road crossings and turnouts, line spikes and hold down or anchor spikes shall also be used throughout the crossing and turnout closure rails. Hold down or anchor spikes shall be used on curves of 5 degrees or more.
10. Gage:

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- a. Gage is measured between the heads of the rails at right angles to the rails in a plane 5/8 of an inch below the top of the railhead.
  - b. In new industrial construction the rails shall be gaged to 4 feet 8 1/2 inches.
  - c. Rail gage shall be maintained at not less than 4 feet 8 inches, nor more than 4 feet 9 3/4 inches for both curved and tangent track.
11. Rail anchors:
- a. 16 anchors per 39 feet of track shall be used, and 4 nonconsecutive ties shall be box-anchored per rail.
  - b. Anchors shall be used throughout the turnout area. The same tie shall be box-anchored across.
  - c. Anchors shall not be placed on joint ties or ties adjacent to joint ties.
  - d. Additional anchors shall be applied where longitudinal rail movement needs to be effectively controlled.
12. Gage rods:
- a. Gage rods may be used on curves where it is difficult to maintain gage.
  - b. On curves between 7 degrees and 10 degrees, 4 gage rods per 39-foot panel shall be installed and on curves between 10 degrees and 12 degrees, 5 gage rods per 39-foot panels shall be installed.
13. Switches:
- a. Each stock rail shall be securely seated in switch plates, but care shall be taken to avoid canting the rail by overtightening the rail braces.
  - b. Each switch point shall fit its stock rail properly, with the switch stand in either of its closed positions to allow wheels to pass the switch point. Lateral and vertical movement of a stock rail in the switch plates or of a switch plate on a tie shall not adversely affect the fit of the switch point to the stock rail.
  - c. Each switch shall be maintained so that the outer edge of the wheel tread cannot contact the gage side of the stock rail.
  - d. The heel of each switch rail shall be secure and the bolts in each heel shall be kept tight.
  - e. Each switch stand and connecting rod shall be securely fastened and operable without excessive lost motion.
  - f. Unusually chipped or worn switch points shall be repaired or replaced. Metal flow shall be removed to ensure proper closure.
  - g. The railroad shall be responsible for the installation and maintenance of switches connecting industrial track to railroad track facilities.
  - h. Owners of industrial switches shall be responsible for the installation and maintenance of their switches.
  - i. "Run-through" or damaged switches shall be repaired immediately.
14. Derails:
- a. Derails shall be installed where grade or other conditions indicate the need.
  - b. Derails shall be installed so that derailed cars will not foul or damage adjacent track or railroad structures.
  - c. Derail signs shall be clearly visible.
  - d. When in a locked position, the derail shall be free of lost motion which will allow it to be operated without removing the lock.
15. Car stops or bumping posts:
- a. Car stops or bumping posts shall be installed at the end of all industry spur tracks.
  - b. Car stops or bumping posts may be of any design that will adequately stop a car without damaging the car, such as, "wheelstops", "drawbar stop", or "earth-tie stop".

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

**R14-5-110. Walkway and Clearance Standards**

- A.** The following shall be the standards for all walkways.
- 1. Walkways shall be provided adjacent to tracks in all areas where railroad or industrial employees are required to perform trackside duties.
  - 2. Walkways shall be:
    - a. A uniform regular surface with a gradual slope not to exceed 1 inch rise in 8 inches;
    - b. Kept clean and free of weeds, debris and other materials or equipment that might tend to interfere with the footing of railroad or industrial employees performing trackside duties; and
    - c. Constructed and maintained to ensure proper drainage and prevent pooling of water, oil, or other liquids.
  - 3. In areas where heavy foot traffic exists, such as train yards and manually operated switches, the uniform surface material used shall be no larger than 3/8 inch fines.
  - 4. Applicable walkway measurement and clearance standards contained in Appendices 1 through 6 shall be met.
  - 5. The center of tracks shall be kept clean and free from all foreign materials that tend to build up between rails causing poor footing and a deterioration of track components.
  - 6. Walkway standards shall not apply to any of the following:
    - a. Tracks in streets or tunnels, existing bridges, grade separation structures, railroad-highway crossings, existing trestles, cattle guards, and tracks adjacent to walks, abutments, platforms, pillars, and structures where minimum widths are otherwise provided;
    - b. Tracks within cities, towns, populated or congested areas where there is insufficient width of right-of-way, except that standards shall apply to the full width of right-of-way available; and
    - c. Tracks during periods of damage or obstruction due to heavy rain or snow, derailments, rock and earth slides and other abnormal periods. Walkways shall be brought back into compliance with this Section within 30 days after the damage or obstruction occurred.
- B.** The following shall be the clearance standards:
- 1. Minimum overhead and side clearances as prescribed in this Section may be decreased to the extent defined by the half circumference of a circle having a radius of 8 feet, 6 inches and tangent to a horizontal line 22 feet above the top of rail at a point directly above the centerline of track, except that for tunnels and through bridges, such radius may be 8 feet. The requirements contained in Appendix 7 also shall be met.
  - 2. Minimum overhead clearance above the top of rail shall be 22 feet except as follows:
    - a. Clearance may be reduced to 18 feet if the track terminates inside a building and all cars, locomotives, or other equipment are brought to a stop before entering the building.
    - b. Clearance shall conform to the requirements specified in the National Electrical Safety Code (ANSI C2-1990) pertaining to the installation and maintenance of electrical supply and communication lines,

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- published by the Institute of Electrical and Electronic Engineers, Incorporated (approved on June 26, 1989), incorporated herein by reference, on file with the Office of the Secretary of State, and copies available from 345 East 47th Street, New York, N.Y., 10017.
- c. Overhead clearances authorized in this subsection are applicable to tracks on which rail cars having a height of 15 feet 6 inches or less are transported. If rail cars of a height greater than 15 feet 6 inches are transported or proposed to be transported, minimum overhead clearance shall be increased by the amount of not less than such additional height, provided that such cars are exempt from this subsection when the top running boards have been removed, ladders and hand brakes lowered, car painted, stenciled, and otherwise modified in compliance with provisions of 49 CFR 231, as amended and revised through October 1, 1989, incorporated herein by reference, on file with the Office of the Secretary of State, and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
  - d. Rotary dumpers used in the unloading of open top cars shall be exempt from the provisions of this Section.
3. Minimum side clearance from centerline to tangent standard gage track to obstruction shall be 8 feet 6 inches except as follows:
    - a. For platforms:
      - i. Platforms 8 inches or less above the top of rail shall be 4 feet 8 inches from centerline of track.
      - ii. Platforms 4 feet or less above the top of rail shall be 7 feet 3 inches from centerline of track.
      - iii. Stepped platforms combining two or more of the platform clearances described in subdivisions (i) and (ii) of this subsection shall not be permitted.
      - iv. Existing platforms may be extended at existing clearance, provided that such clearance, unless otherwise permitted by this Section, shall not be less than 6 feet 6 inches from the centerline of track.
    - b. Mail cranes shall be exempt from the provisions of this Section.
    - c. All poles shall be a minimum of 8 feet 6 inches from the centerline of track, except that 10 feet shall be recommended where possible.
    - d. Minimum clearance for through bridges supporting track and tunnels shall be 8 feet from the centerline of track.
    - e. Minimum clearance for handrails on bridges with walkways shall be 7 feet 6 inches from the centerline of track, except that the railroad may require clearances in excess of this minimum when the railroad deems it necessary.
    - f. Water barrels and refuge platforms shall be 4 feet above the top of rail and 8 feet distant laterally from the centerline of track.
    - g. For block signals and switch stands:
      - i. Block signals and switch stands shall be 3 feet or less above the top of rail and located between tracks. Where not practicable to provide clearances otherwise prescribed in this Section, they shall be a minimum of 6 feet from the centerline of track.
      - ii. All other block signals and switch stands shall be a minimum of 8 feet 6 inches from the centerline of track.
    - h. Water columns and oil columns shall be a minimum of 8 feet from the centerline of track.
    - i. Cattle guard fencing shall be a minimum of 6 feet 9 inches from centerline of track; except that existing cattle guards less than 6 feet 9 inches from the centerline of track may be maintained at existing clearance if such clearance does not extend beyond a line extending diagonally upward from a point level with the top of rail and 5 feet 10 inches distant laterally from the centerline of track to a point 4 feet above top of rail and 8 feet distant laterally from the centerline of track.
    - j. Log rollways may be constructed and maintained with impaired clearances when adjacent to tracks operated exclusively for logging purposes.
    - k. Clearances into shops and buildings where freight cars are spotted for repairs shall be a minimum of 7 feet 8 inches from the centerline of track.
    - l. For fences and gates:
      - i. The minimum distance between a fence and the centerline of track shall be not less than 8 feet 6 inches, except that where conditions permit, 10 feet shall be required.
      - ii. Fences topped with barbed wire shall have vertical arms or the arms shall be turned outward away from track, if necessary to maintain minimum clearances as prescribed herein.
      - iii. Gates shall be secure and shall be maintained in a condition that will allow for easy opening by one person. Gates, in the open position, shall be at least 8 feet 6 inches from the centerline of track.
      - iv. Mechanical means shall be provided to prevent gates from swinging closed while switching operations are being performed.
    - m. All minimum side clearances prescribed herein are for tangent track. All structures adjacent to curved track shall have a minimum side clearance 1 foot greater than the equivalent minimum side clearance for tangent track. Where space is limited, the minimum side clearance for structures adjacent to track of not over 12 degrees curvature shall be the same as for tangent track, but if over 12 degrees curvature, 1/4 of an inch shall be added to the equivalent minimum side clearance for tangent track for each degree of the curve. Where track contains superelevation, minimum side clearances shall be increased as necessary to give the equivalent clearances based on tangent track.
    - n. Minimum side clearances authorized in this subsection are applicable to tracks on which freight cars having a maximum overall width not greater than 10 feet 10 inches are transported. On tracks over which freight cars of greater width are transported, such minimum side clearance shall be increased by not less than 1/2 of such additional width.
  4. The minimum distance between the centerlines of parallel standard gage railroad tracks, which are used or proposed to be used for transporting freight cars, shall be 14 feet, except as follows:
    - a. The centerline of any standard gage track, except a main track, parallel and adjacent to a main track,



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- shall be at least 15 feet from the centerline of main track.
- b. The centerline of any standard gage ladder track, constructed parallel to any other track, shall have a clearance of not less than 20 feet from the centerline of other track.
  - c. Minimum clearance between the centerline of parallel house or industry tracks shall be 13 feet, except that railroads may require clearances in excess of this minimum when conditions so warrant.
  - d. Minimum-clearance between centerlines of two parallel team tracks shall be 13 feet, except that railroads may require clearances in excess of this minimum.
  - e. Minimum clearances prescribed herein are applicable only to tracks on which freight cars having a minimum overall width of 10 feet 10 inches are transported. On track over which freight cars of greater width are transported, minimum distance shall be increased by an amount equal to 1/2 such additional width.
  - f. Existing tracks may be maintained, reconstructed, or extended at centers in existence as of the effective date of the Section.
5. For track occupying or adjacent to public roadways:
    - a. Requirements for track occupying a public roadway shall be considered individually by the Commission.
    - b. Track adjacent to a public roadway shall have a minimum clearance of 10 feet from the centerline of track to the face of curb or edge of roadway. Railroad maintenance roads shall be exempt from the provisions of this subsection.
  6. For roadway structures over or under railroad track:
    - a. Overhead roadway structures shall be a minimum of 23 feet above top of rail, except that overhead clearances greater than 23 feet may be approved when justified on the basis of railroad electrification.
    - b. Roadway structures beneath railroad track shall have a minimum clearance of 15 feet above the surface of the roadway or, if additional clearance is required, as determined by the Commission after public hearing.
  7. The general clearance requirements shall be:
    - a. No merchandise, materials, equipment, or other articles shall be placed either on the ground or on a platform adjacent to any track at a distance less than 8 feet 6 inches from the centerline of track. A suitable line or other marker shall be maintained on all platforms at a distance of 8 feet 6 inches from the centerline of track to indicate minimum clearance for the articles.
    - b. Nothing herein shall be considered as preventing the movement of special work equipment or cars, except that such operations shall be conducted in a safe manner.
  8. For impaired clearance signs:
    - a. Impaired clearance signs shall be of sufficient size to accommodate any wording prescribed by the Commission. The letters of said wording shall be at least 2 1/2 inches in height with a 1/2 of an inch black stroke on a fluorescent white background. In the event the Commission does not specify said wording, railroads may use their own wording for such warning signs.
    - b. Impaired clearance signs shall be located at no less than 8 feet 6 inches from the centerline of track,
- shall be in a position to be clearly visible to approaching train crews.
- C. All railroads operating wholly or partially within the state of Arizona shall comply with the requirements of this Section in all construction, reconstruction, or modification of track or railroad facilities performed subsequent to the effective date of this Section.
  - D. Existing track, walkways, or railroad facilities may be maintained at existing clearances, except that such track, walkways, or railroad facilities shall not jeopardize the safety of railroad employees, industrial employees, or the general public.
  - E. Except as provided for in subsection (B)(4)(f) of this Section, all applications for exemption from any of the requirements of this Section shall be approved by the Commission prior to construction, reconstruction, or modification of track or railroad facilities adjacent thereto. An application for exemption shall:
    1. Be submitted to the Railroad Safety Section, Arizona Corporation Commission;
    2. Contain the full name and address of the applicant and the nature of the applicant's business;
    3. Set forth the reason and the extent for which relief is sought;
    4. Include sufficient information to support and justify the exemption; and,
    5. If necessary, include engineering drawings to further clarify the application.

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

**R14-5-111. Crew Requirements**

- A. Railroads operating within Arizona shall maintain a minimum of two operating employees in the control compartment of the lead locomotive unit of a train.
- B. Compliance with subsection (A) of this Section shall not be required during switching operations, while moving cars for inspection purposes, or while performing setouts in conjunction with road service.

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

**R14-5-112. Reserved****R14-5-113. Hazardous Materials**

- A. All railroad operations which engage in the loading of railroad freight cars for the purpose of transporting hazardous materials by rail in and through Arizona shall be governed by all of the following:
  1. The material to be transported shall be authorized for transportation in freight cars. The freight car selected shall be compatible with the lading and be authorized for the commodity by the United States Department of Transportation. All fittings, tank, and safety appurtenances shall be in proper condition for the safe transportation of the product.
  2. Loading operations shall be performed only by persons properly instructed in loading hazardous materials and made responsible for careful compliance with 49 CFR 174.67, as amended and revised through November 1, 1989, incorporated herein by reference, on file with the Office of the Secretary of State and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975.
  3. Hand brakes shall be set and wheels blocked on all cars to be loaded.
  4. Caution signs shall be so placed on the track or cars to give necessary warning to persons approaching the cars from the open end of a siding and shall be left in place

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- until after the cars are unloaded or loaded and disconnected from the loading or unloading connection. The signs shall be of metal or other comparable material, at least 12 inches high by 15 inches wide in size, and bear the words, "STOP--Freight Car Connected", or "STOP--Men at Work", the word "STOP" being in letters at least 4 inches high and other words in letters at least 2 inches high. The letters shall be white on a blue background.
5. Loading connections shall be securely attached to inlet pipes and other fittings before any discharge valves are opened.
  6. Freight cars shall not be allowed to stand with connections attached after loading is completed. Throughout the entire period of loading, and while the car is connected to the loading device, the car shall be attended by the loader.
  7. If necessary to discontinue loading a freight car for any reason, all loading connections shall be disconnected. All valves first shall be tightly closed, and the closures of all other openings securely applied.
  8. As soon as a freight car is completely loaded, all valves shall be made tight, the loading connections shall be removed, and all other closures made tight, except that heater coil inlet and outlet pipes shall be left open for drainage. The manhole cover shall be re-applied by the use of a bar or wrench, the outlet valve reducer and outlet valve cap replaced by the use of a wrench having a handle at least 36 inches long, and the outlet valve cap plug, end plug, and all other closures of openings and of their protective housings shall be closed by the use of a suitable tool.
  9. Railroad defect cards shall not be removed.
  10. If oil or gasoline has been spilled on the ground around connections, it shall be covered with fresh dry sand or dirt.
  11. All tools and implements used in connection with loading shall be kept free of oil, dirt, and grit.
- B. Placarding shall be as follows:**
1. When lading requiring placarding in compliance with provisions of 49 CFR 172.500(c), as amended and revised through November 1, 1989, incorporated herein by reference, on file with the Office of the Secretary of State, and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975, is loaded in a freight car, it shall be the responsibility of the person loading the freight car to affix the prescribed number and type of placards to the freight car.
  2. The freight car shall be equipped with at least 4 metal placard holders which are suitable for service.
  3. Placards affixed to hazardous materials freight cars shall be in a condition so that the format, legibility, color, and visibility are not substantially reduced due to damage, deterioration, or obscurement by dirt or other matter.
- C. The accumulation of static electricity during the loading or unloading of freight cars with flammable liquids or flammable compressed gases shall be prevented by providing a means of grounding the freight car body to a suitable location using a grounding device capable of conducting static electricity away from the freight car and the loading or unloading appliances and appurtenances.**
- D. For rail bonds and insulated joints:**
1. Rail shall be adequately bonded at each joint upon which railroad equipment may stand while flammable liquids or flammable gases are being transferred.
  2. Insulated rail joints shall be installed to electrically separate the loading or unloading track section from all other track rails.
    - a. Insulated rail joints shall be applied only to rail having sawed ends.
    - b. Insulated rail joints shall not be applied to rails covered with scale, dirt, or other foreign matter; to rails with battered ends; or when the opening between rail ends is greater than 3/8 of an inch.
  3. An emergency transfer of flammable liquids or flammable gases that must be performed in conjunction with a hazardous material incident shall be exempt from Rail Bonding and Insulated Joint requirements, provided other means, such as ground rods, are utilized to ground the containers and transfer appliances.
- E. A derail shall be used to prevent the intrusion into an area where freight cars are being loaded or unloaded with a hazardous material. This device shall be kept in "derailing" position and locked with an effective locking device while freight cars are connected for loading or unloading. The key for the lock used to immobilize the derailing device shall be maintained in the care of the person who is in charge of the freight cars being loaded or unloaded.**
- F. Placarded freight cars which contain hazardous materials shall not be left to stand in populated areas for the purpose of constructive placement where the freight car is not under the direct supervision, observation, or control of the railroad carrier.**
- G. Rail carriers shall be prohibited from allowing freight or freight cars carrying hazardous materials to be constructively placed or otherwise withheld from their destination at other than an Environmental Protection Agency-approved transfer facility. For the purposes of this subsection, "transfer facility" shall mean any transportation-related facility including loading docks, parking areas, and other similar areas where shipments of hazardous materials are held during the normal course of transportation.**
- H. All railroad operations that engage in the unloading of railroad freight cars for the purpose of transporting hazardous materials by rail in and through Arizona shall be governed by 49 CFR 174.67, as amended and revised through October 1, 1989, incorporated herein by reference, on file with the Office of the Secretary of State, and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975, all being regulations of the Federal Railroad Administration, United States Department of Transportation, Railroad Safety regulations.**

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

**R14-5-114. End-of-train Device**

Any railroad carrier subject to the provisions of 49 CFR 221, amended and revised through October 1, 1989, incorporated herein by reference, on file with the Office of the Secretary of State, and copies available from the United States Government Printing Office, P.O. Box 371975M, Pittsburgh, Pennsylvania 15250-7975, operating trains outside of yard limits without an occupied caboose at the rear of the train shall have an operable end-of-train device capable of activating the train's emergency air brake system electronically from the control panel of the locomotive controlling the train.

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

**R14-5-115. Train Composition**

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All carriers operating within the state of Arizona shall strictly adhere to their respective instructions relative to “train makeup” or “special car handling instructions” as promulgated in the current timetable or other operating department special instructions.

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

**R14-5-116. Civil Penalty**

- A.** Any person, firm or corporation violating any provision of this Article or Order adopted pursuant to this Article pertaining to railroad safety and the transportation of hazardous materials by rail shall be subject to a civil penalty not to exceed \$2,000 for each violation with each day constituting a separate violation. In no event shall the maximum civil penalty exceed \$200,000 for any related series of violations. The penalties described in this subsection shall not apply to R14-5-102.
- B.** Any civil penalty pertaining to railroad and rail hazardous materials transportation safety may be compromised by the

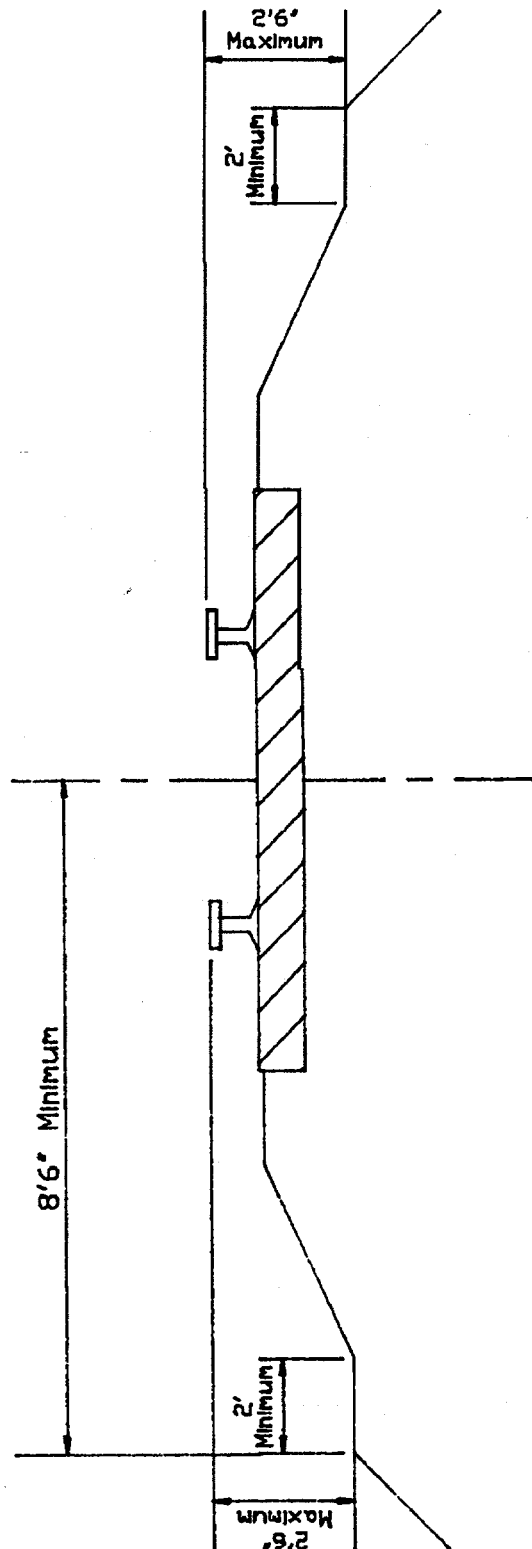
Commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm, or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered by the Commission. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state of Arizona to the person, firm, or corporation charged or may be recovered in a civil action in the Superior Court of the state of Arizona.

- C.** The Commission may avail itself of any other authority or remedies available under the Constitution of Arizona and the Arizona Revised Statutes to effect the purpose of this Article.

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

## Appendix 1. Walkways Along Main Tracks Along Short Line &amp; Branch Line - One Track

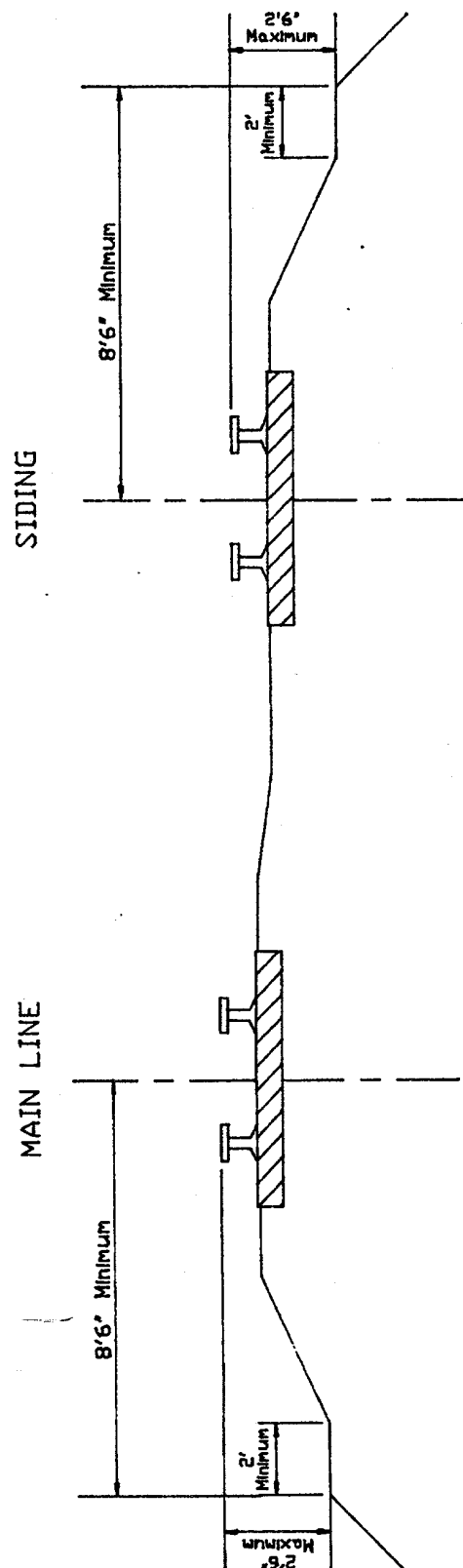


Walkways Along Main Tracks  
Along Short Line & Branch Line

## Historical Note

Adopted effective May 28, 1992 (Supp. 92-2).

## Appendix 2. Walkways Along Main Tracks Along Short Line &amp; Branch Line - Two Tracks

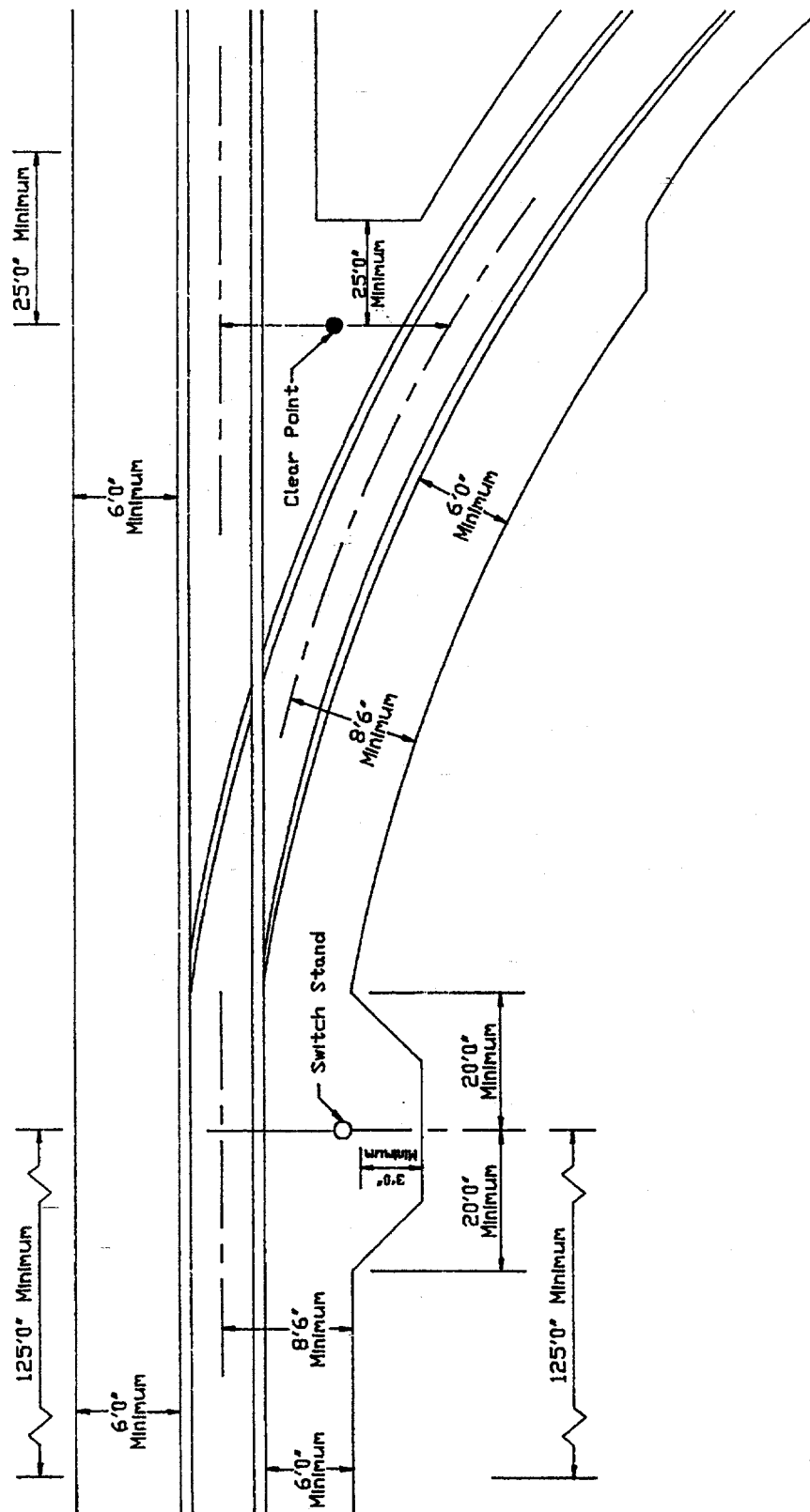


Walkways Along Main Tracks  
Along Short Line & Branch Line

## Historical Note

Adopted effective May 28, 1992 (Supp. 92-2).

**Appendix 3. Walkways at Main Line Switches Entering Yards and Serving Industry Tracks Except as Provided in Standard No. 4 - Walkways to be Level with Ties**

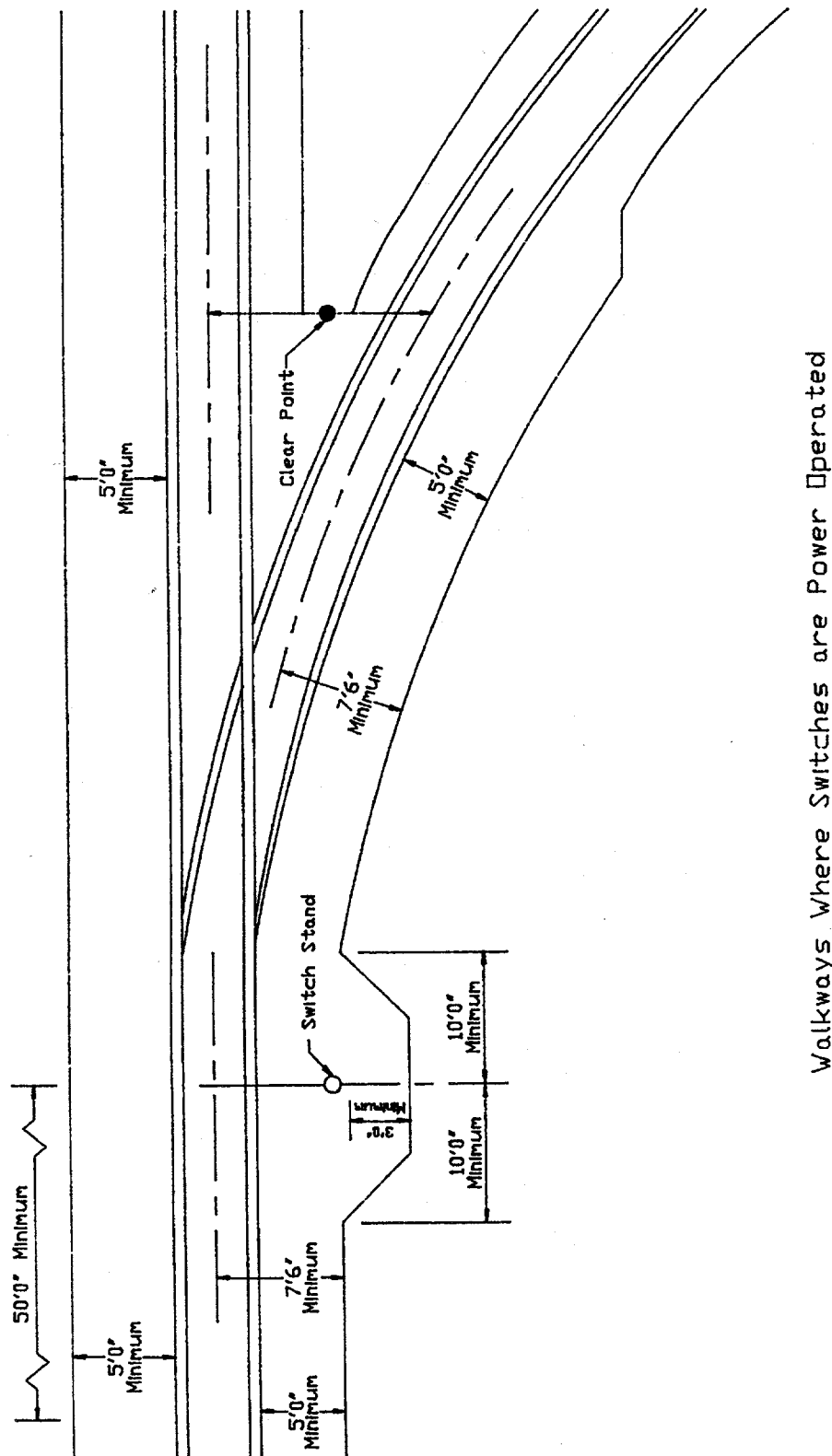


Walkways at Main Line Switches Entering Yards  
and Serving Industry Tracks Except as Provided  
in Standard No. 4 - Walkways to be Level with Ties

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).

#### Appendix 4. Walkways Where Switches are Power Operated

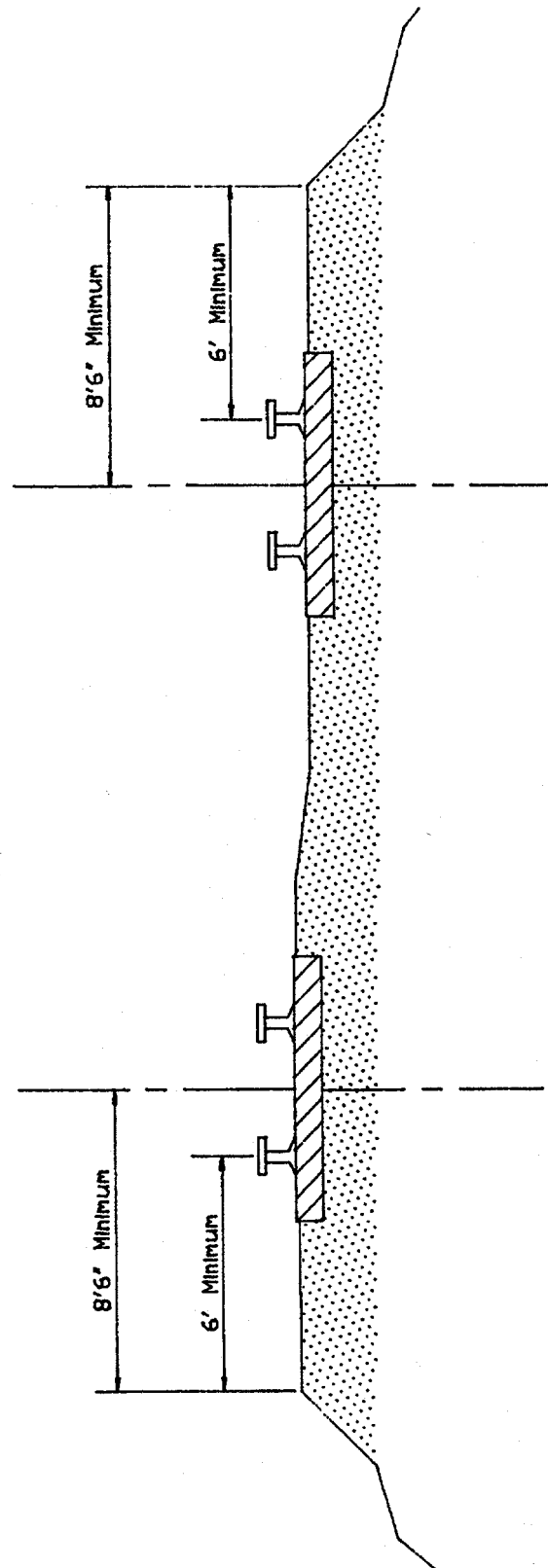


## Walkways Where Switches are Power Operated

### Historical Note

Adopted effective May 28, 1992 (Supp. 92-2).

**Appendix 5. Walkways in Yards and Points Where Industrial Switching is Performed But Not Less Than 50 Feet in Advance of Switch**



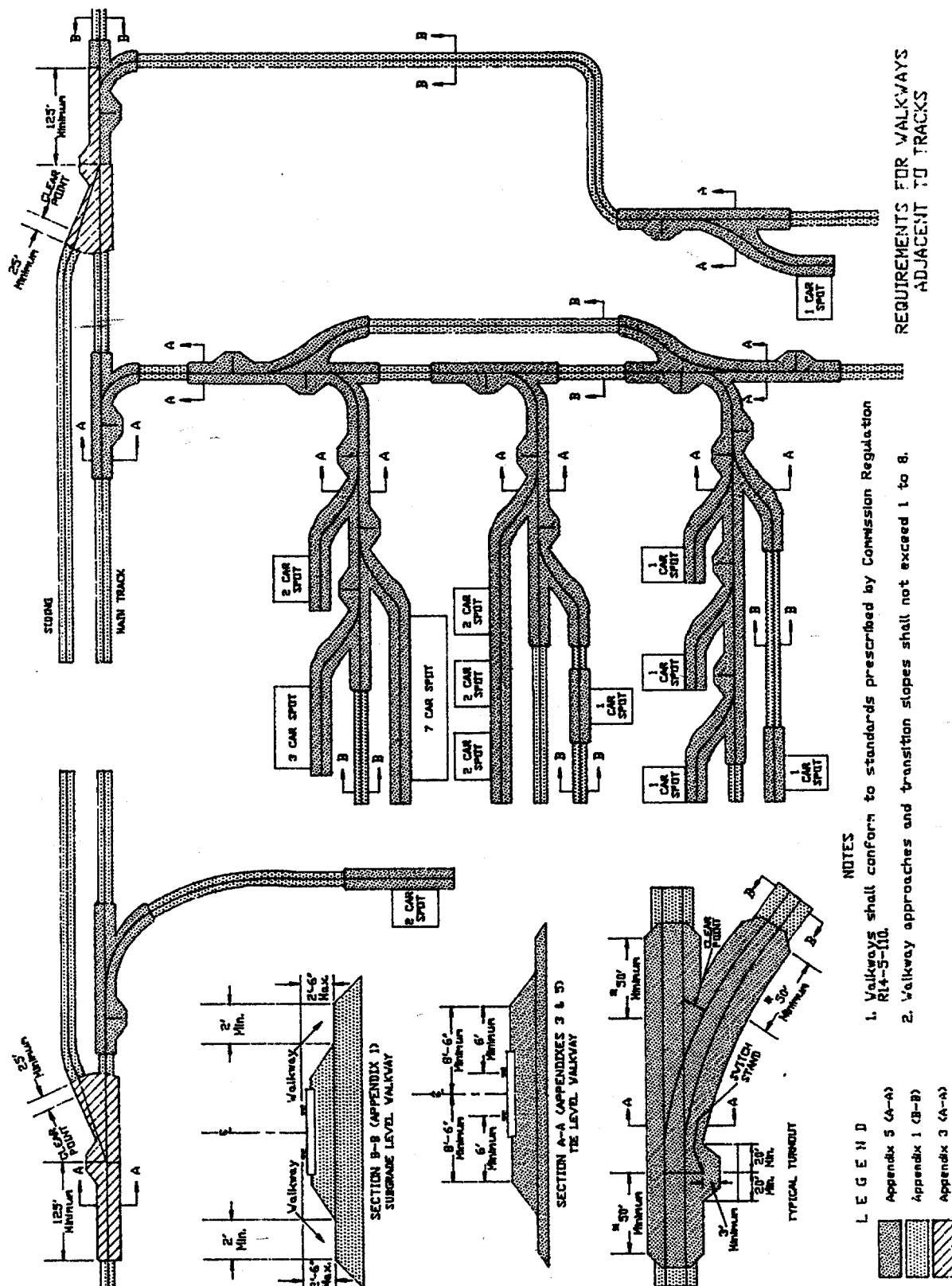
Walkways in Yards and Points Where Industrial  
Switching is Performed, But Not Less Than  
50 Feet in Advance of Switch

**Historical Note**

Adopted effective May 28, 1992 (Supp. 92-2).



## Appendix 6. Requirements for Walkways Adjacent to Tracks

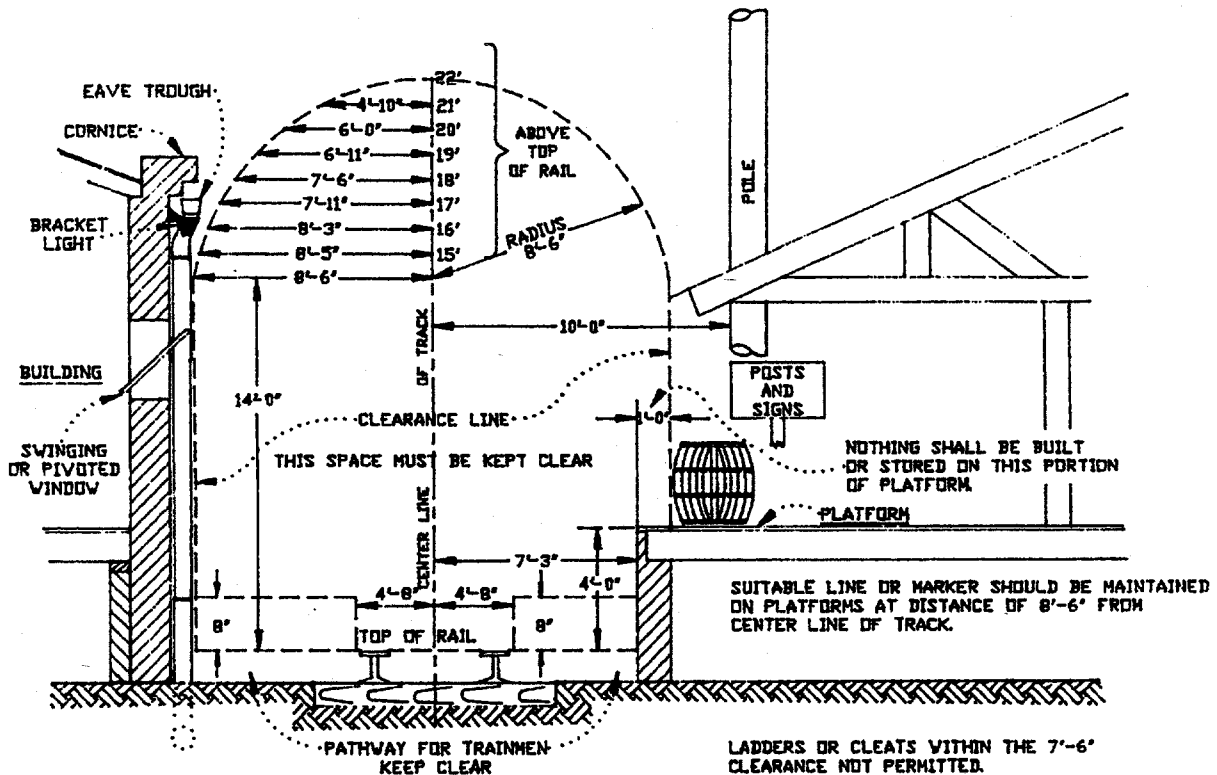


## Historical Note

Adopted effective May 28, 1992 (Supp. 92-2).

## Appendix 7. Typical Clearance of Structures from Railroad Tracks

**TYPICAL  
CLEARANCE OF STRUCTURES FROM RAILROAD TRACKS  
AS PRESCRIBED BY  
ARIZONA CORPORATION COMMISSION  
ADMINISTRATIVE REGULATION R14-5-110  
FOR NEW WORK AND RECONSTRUCTION OF EXISTING FACILITIES ADJACENT  
TO STANDARD GAUGE RAILROAD TRACKS TRANSPORTING FREIGHT CARS.**



## NOTES

OVERHEAD WIRE CLEARANCES SHALL CONFORM TO COMMISSION'S REGULATION R14-5-110.

POSTS, POLES, SIGNS AND SIMILAR FACILITIES MAY HAVE MINIMUM CLEARANCE OF 8'-6" BUT CLEARANCE OF 10'-0" IS RECOMMENDED WHERE PRACTICABLE.

ALL SIDE CLEARANCE DIMENSIONS ARE FOR TANGENT TRACK. IN GENERAL, SIDE CLEARANCE FOR CURVE TRACK TO BE 1'-0" GREATER THAN THAT FOR TANGENT TRACK.

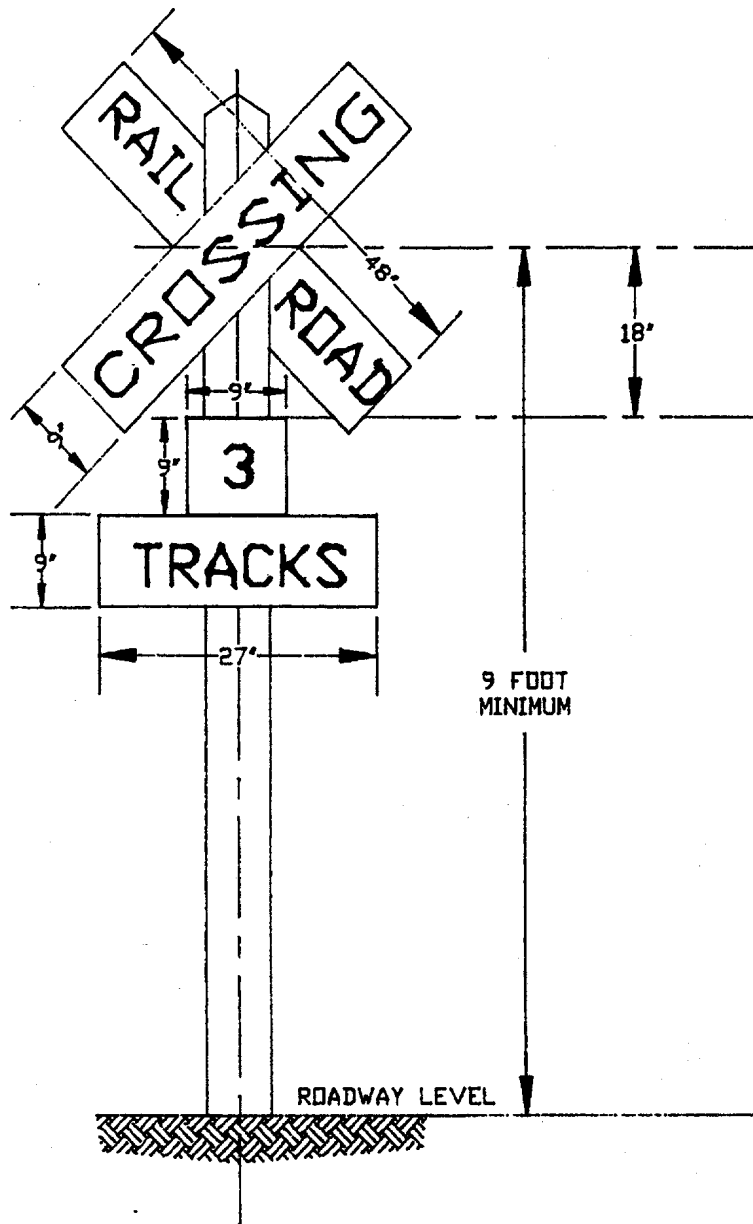
WHEN TRACK IS USED PRINCIPALLY FOR LOADING OR UNLOADING REFRIGERATOR CARS, PLATFORM HEIGHT OF 4'-6" ABOVE TOP OF RAIL MAY BE MAINTAINED PROVIDED THAT MINIMUM SIDE CLEARANCE TO CENTER LINE OF TRACK SHALL BE 8'-0".

PLATFORMS 4'-0" OR LESS IN HEIGHT WITH MINIMUM CLEARANCE OF 7'-3" MAY BE EXTENDED AT EXISTING CLEARANCES IF SUCH EXTENSION IS NOT IN CONNECTION WITH RECONSTRUCTION OF ORIGINAL PLATFORM.

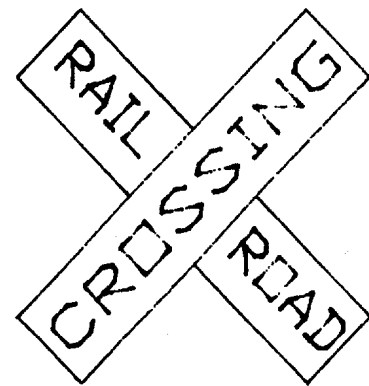
### Historical Note

Adopted effective May 28, 1992 (Supp. 92-2).

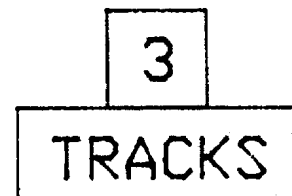
## Appendix 8. Highway Crossing Sign



HIGHWAY CROSSING SIGN



48' x 9'  
(Drilled for 90 Degree Mounting)



9' x 9'  
27' x 9'

## Historical Note

Adopted effective May 28, 1992 (Supp. 92-2).

**ARTICLE 2. PIPELINE SAFETY****R14-5-201. Definitions**

As used in this Article:

1. "Building" means any structure intended for supporting or sheltering any occupancy.
2. "Commission" means the Arizona Corporation Commission.
3. "Discontinuation of service" means an interruption in service expected to exceed four hours, occurring after an operator tests a service line or meter set assembly and determines that additional actions are necessary to restore service because of a leak or hazardous operating condition.
4. "DOT" means the U.S. Department of Transportation.
5. "Evacuation" means denying entry into or the organized clearing of a building or buildings, involving:
  - a. One hundred or more individuals from any number of buildings;
  - b. All of the individuals present from five or more buildings;
  - c. All of the individuals present from five or more businesses within a single building such as a strip mall; or
  - d. A nonresidential building known or discovered to be occupied by individuals who are confined, are of impaired mobility, or would be difficult to evacuate because of their age or physical or mental condition or capabilities, such as a hospital, prison, school, daycare facility, retirement facility, or assisted living facility.
6. "Gas" means natural gas, flammable gas, or toxic or corrosive gas and includes LPG and LNG that is vaporized.
7. "Hazardous liquid" means:
  - a. Petroleum,
  - b. A petroleum product, or
  - c. Anhydrous ammonia.
8. "Independent laboratory" means a laboratory that is not owned or operated by the operator and that has no affiliation with the operator through ownership, familial relationship, or contractual or other relationship that results in the laboratory being controlled by or under common control with the operator.
9. "Intrastate pipeline" means all pipeline facilities included in the definition of "pipeline system" that are used by a provider to transport gas, LNG, or a hazardous liquid within Arizona and that are not used to transport gas, LNG, or a hazardous liquid in interstate or foreign commerce. This includes, without limitation, any equipment, facility, building, or other property used or intended for use in transporting gas, LNG, or a hazardous liquid.
10. "Liquefied natural gas" means natural gas or synthetic gas having as its major constituent methane (CH<sub>4</sub>) that has been changed to a liquid.
11. "LNG" means liquefied natural gas.
12. "LNG facility" means those portions of a pipeline system that are used for transporting or storing LNG or for LNG conversion.
13. "LPG" means liquefied petroleum gas.
14. "MAOP" means maximum allowable operating pressure, the maximum pressure at which a gas or LPG pipeline or segment of pipeline may be operated.
15. "Master meter system" means physical facilities for distributing gas within a definable area where the operator purchases metered gas from a provider to provide gas service to two or more buildings other than at a single family residence.
16. "Office of Pipeline Safety" means the Commission personnel assigned to perform the Commission's day-to-day activities under A.R.S. Title 40, Chapter 2, Article 10, who are headquartered at 2200 N. Central Ave., Suite 300, Phoenix, AZ 85004 and whose contact information is available at <http://www.azcc.gov/Divisions/Safety>.
17. "Operator" means a person that owns or operates a pipeline system or master meter system.
18. "OPS" means "Office of Pipeline Safety," as defined herein.
19. "Outage" means an unplanned and unscheduled discontinuation of service:
  - a. Concurrently to 250 or more residential customer accounts or to 10 or more commercial customer accounts; or
  - b. To a nonresidential building known or discovered to be occupied by individuals who are confined, are of impaired mobility, or would be difficult to evacuate or relocate because of age or physical or mental condition or capabilities, such as a hospital, prison, school, daycare facility, retirement facility, or assisted living facility.
20. "Person" means any individual, firm, joint venture, partnership, corporation, association, cooperative association, joint stock association, trustee, receiver, assignee, or personal representative, or the state or any political subdivision of the state.
21. "PHMSA" means the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration.
22. "Pipeline system" means all parts of the physical facilities of a public service corporation or provider through which gas, LPG, LNG, or a hazardous liquid moves in transportation, including but not limited to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, fabricated assemblies, and other equipment, buildings, and property so used.
23. "Provider" means any intrastate gas pipeline operator, public service corporation, or municipality that provides natural gas or LPG service to a master meter customer.
24. "PSIG" means pounds per square inch gauge.
25. "Public service corporation" has the same meaning as in Article 15, § 2 of the Arizona Constitution.
26. "Sandy type soil" means sand no larger than "coarse" as defined by the American Society for Testing and Materials, ASTM D-2487-83, Standard Practice for Classification of Soils for Engineering Purposes (1983), including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2959.
27. "Sour gas" means natural gas that contains the corrosive sulfur-bearing compound hydrogen sulfide (H<sub>2</sub>S) in a concentration that exceeds a minimum threshold of 0.25 grain of hydrogen sulfide per 100 cubic feet (5.8 milligrams/m<sup>3</sup>) under standard operating conditions (4 parts per million).
28. "Sour oil" means crude oil containing the impurity sulfur in a concentration greater than 0.5 percent.
29. "State" means the state of Arizona and all lands within its boundaries.
30. "Structure" means something that is built or constructed, or any piece of work artificially composed of parts joined together in some definite manner.
31. "Transport" or "transportation" of gas, LNG, or a hazardous liquid means the gathering, transmission, distribu-

tion, or storage of gas, LNG, or a hazardous liquid using a pipeline system within the state.

32. “Unknown failure” means an occurrence in which a portion of a pipeline system fails, and:
  - a. The cause cannot be attributed to any observable corrosion, third-party damage, natural or other outside force, construction or material defect, equipment malfunction, or incorrect operations; or
  - b. The operator and the Office of Pipeline Safety disagree as to the cause.

#### Historical Note

Adopted effective October 23, 1987 (Supp. 87-4).  
 Amended Paragraph (5) effective February 3, 1989 (Supp. 89-1). Amended effective July 25, 1994, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 94-3). Amended by exempt rulemaking at 5 A.A.R. 3693, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2382, effective May 10, 2002 (Supp. 02-2). Amended by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4).

#### R14-5-202. Construction and Safety Standards for Gas, LNG, and Hazardous Liquid Pipeline Systems

- A. Applicability: This Section applies to the construction, reconstruction, repair, operation, and maintenance of each intrastate gas, LNG, or hazardous liquid pipeline system, pursuant to A.R.S. § 40-441.
- B. Subject to the definitional changes in R14-5-201 and the modifications noted in this Section, the Commission adopts, incorporates, and approves as its own 49 CFR 40; 191; 192, except (1)(A)(2) and (3) of Appendix D to Part 192; 193; 195, except 195.1(b)(2), (3), and (4); and 199 (October 1, 2015), including no future editions or amendments, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from the U.S. Government Printing Office, 710 North Capital Street N.W., Washington DC 20401, and at <http://www.gpo.gov/fdsys/>. For purposes of 49 CFR 192, “Business District” means an area where the public congregate for economic, industrial, religious, educational, health, or recreational purposes and two or more buildings used for these purposes are located within 100 yards of each other.
- C. The above mentioned incorporated Parts of 49 CFR, except 49 CFR 191; 49 CFR 192.727(g)(1), 192.913(b)(1)(vii), 192.943(a), 192.949(a)-(b), and 192.951; 49 CFR 193 Subpart A; and 49 CFR 195 Subparts A and B, are revised as follows:
  1. Substitute “Commission” where “Administrator,” “Pipeline and Hazardous Materials Administration,” “Office of Pipeline Safety,” or “OPS” appears; and
  2. Substitute “Office of Pipeline Safety, Arizona Corporation Commission, at its office in Phoenix, Arizona” where the address for the “Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation” appears.
- D. An operator of an intrastate pipeline shall file with the Commission an Operation and Maintenance Plan, including an emergency plan, at least 30 days before placing a pipeline system into operation. Any changes in an existing Operation and Maintenance Plan shall be filed within 30 days after the effective date of the change.
- E. An operator of an intrastate pipeline transporting sour gas or sour oil shall comply with the following industry standards addressing facilities handling hydrogen sulfide (H<sub>2</sub>S), which are incorporated by reference, including no future editions or amendments:
  1. NACE Standard MR0175-99, Standard Materials Requirements-Sulfide Stress Cracking Resistant Metallic Material for Oilfield Equipment (1999 Revision), on file with the Office of Pipeline Safety and published by and available from the NACE International, 1440 S. Creek Dr., Houston, TX 77084-4906; and
  2. API RP55: Recommended Practice for Conducting Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide (2nd Edition 1995), on file with the Office of Pipeline Safety and published by and available from the American Petroleum Institute, 1200 L Street, NW, Washington, DC 20005-4070 and at <http://www.techstreet.com/>.
- F. An operator of an intrastate pipeline transporting LNG, hazardous liquid, or gas shall not construct any part of a hazardous liquid, LNG, or gas pipeline system under a building. If a building encroaches over a pipeline system, the operator may require the property owner to remove the building from over the pipeline or to reimburse the operator the cost associated with relocating the pipeline system. The operator shall determine, within 90 days after discovering the encroachment, whether the encroachment can be resolved within 180 days. If the operator determines that the encroachment cannot be resolved within 180 days, the operator shall, within 90 days of discovery, submit to the Office of Pipeline Safety a written plan to resolve the encroachment within a period longer than 180 days. The Office of Pipeline Safety may then extend the 180-day requirement in order to allow the property owner and the operator to implement the written plan to resolve the encroachment. If the operator does not submit a written plan, and the encroachment is not resolved within 180 days of discovery, the operator shall discontinue service to the pipeline system. This modifies 49 CFR 192.361 and 195.210.
- G. An operator of an intrastate distribution pipeline transporting gas shall not construct any part of a pipeline system less than 8 inches away from any other underground structure. If the 8-inch clearance cannot be maintained, a sleeve, casing, or shielding shall be used. This modifies 49 CFR 192.361.
- H. An operator of an intrastate pipeline transporting gas that has regulators, meters, or regulation meter sets that have been out of service for 36 months shall disconnect the pipeline from all sources and supplies of gas or hazardous liquids, purge the gas or hazardous liquids from the pipeline being disconnected, and cap all ends within six months after the 36 months have passed. This modifies 49 CFR 192.727.
- I. An operator of an intrastate pipeline shall not install or operate a gas regulator that might release gas within 3 feet of a source of ignition, an opening into a building, an air intake into a building, or any electrical source that is not intrinsically safe. The 3 foot clearance from a source of ignition shall be measured from the vent or source of release (discharge port), not from the physical location of the meter set assembly. This subsection does not apply to building permits issued and subdivisions platted before October 1, 2000. If an encroachment into the required 3 foot clearance is caused by an action of the property owner, an occupant, or a provider after the effective date of this rule, the operator may require the property owner to resolve the encroachment or to reimburse the operator the cost associated with relocating the pipeline system. The operator shall determine, within 90 days after discovering the encroachment, whether the encroachment can be resolved within 180 days. If the operator determines that the encroachment cannot be resolved within 180 days, the operator shall, within 90 days of discovery, submit to the Office of Pipeline Safety a written plan to resolve the encroachment within a period longer than 180 days. The Office of Pipeline Safety

may then extend the 180-day requirement in order to allow the property owner and the operator to implement the written plan to resolve the encroachment. If the operator does not submit a written plan, and the encroachment is not resolved within 180 days of discovery, the operator shall discontinue service to the affected pipeline system. This modifies 49 CFR 192.357 and 192.361.

- J. An operator of an intrastate pipeline transporting LNG, gas, or a hazardous liquid shall use a cathodic protection system designed to protect the metallic pipeline in its entirety, in accordance with 49 CFR 192, Subpart I, as incorporated by reference in subsection (B). Sections (I)(A)(2) and (3) of Appendix D to Part 192 shall not be utilized. This modifies 49 CFR 192.463(a), 193.2629, and 195.571.
- K. An operator of an intrastate pipeline transporting hazardous liquid or gas shall not install Acrylonitrile-Butadiene-Styrene (ABS) or aluminum pipe in a pipeline system. This modifies 49 CFR 192.53 and 192.59.
- L. An operator of an intrastate pipeline transporting hazardous liquid or gas shall not install plastic pipe aboveground unless the plastic pipeline is protected by a metal casing, or equivalent, and the installation is approved by the Office of Pipeline Safety. An operator may use a temporary aboveground plastic pipeline bypass for up to 60 days, provided that the plastic pipeline is protected and is under the direct supervision of the operator at all times. This modifies 49 CFR 192.321 and 195.254.
- M. An operator of an intrastate pipeline transporting hazardous liquid or gas that constructs a pipeline system or any portion thereof using plastic pipe shall install, at a minimum, a 14-gauge coated or corrosion resistant, electrically conductive wire as a means of locating the pipe while it is underground. Tracer wire shall not be wrapped around the plastic pipe. Tracer wire may be taped, or attached to the pipe in another manner, provided that the adhesive or attachment is not detrimental to the integrity of the pipe wall. This modifies 49 CFR 192.321 and 195.246.
- N. An operator of an intrastate pipeline transporting gas or hazardous liquid that constructs an underground pipeline system using plastic pipe shall bury the installed pipe with at least 6 inches of sandy type soil, free of any rock or debris, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. Steel pipe shall be installed with at least 6 inches of sandy type soil, free of any debris or materials injurious to the pipe coating, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. This modifies 49 CFR 192.321, 192.361, and 195.246.
- O. An operator of an intrastate pipeline transporting gas that constructs an underground pipeline system using plastic pipe shall install the pipe with sufficient slack to allow for thermal expansion and contraction. In addition, all plastic pipe and fittings for use in an area with service temperatures above 100° F shall be tested and marked CD, CE, CF, or CG as required by ASTM D2513 (1995), including no future editions or amendments, which is incorporated by reference, on file with the Office of Pipeline Safety, and published by and available from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, W. Conshohocken, PA 19428-2959 and through <http://www.astm.org>. This modifies 49 CFR 192.63.
- P. An operator of an intrastate pipeline system transporting hazardous liquid or gas shall qualify welding procedures and shall ensure that welding of steel pipelines is performed in accordance with API Standard 1104, as incorporated by reference in 49 CFR 192.7, by welders qualified pursuant to API Standard 1104, except that welders qualified as delineated in 49 CFR 192, Appendix C may be used for low stress level pipe. This modifies 49 CFR 192.225, 192.227, 195.214, and 195.222.
- Q. An operator of an intrastate pipeline transporting gas shall survey and grade all detected leakage according to the standards provided below, which modify 49 CFR 192.706 and 192.723:
  1. In the case of all gas except LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, Two Park Avenue, New York, NY 10016-5990; and modified by omitting 4.4(c) and by replacing “should” with “shall” each time it appears.
  2. In the case of LPG, leakage surveys and grading shall be performed pursuant to the standards set by ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983, including no future editions or amendments, which is incorporated by reference; on file with the Office of Pipeline Safety; published by and available from ASME, Two Park Avenue, New York, NY 10016-5990; and modified by replacing “should” with “shall” each time it appears.
  3. Leakage survey records shall identify in some manner each pipeline surveyed and shall be maintained to demonstrate that each required leakage survey has been conducted. This modifies 49 CFR 192.706 and 192.723.
- R. An operator of an intrastate transmission pipeline transporting gas shall conduct a leakage survey at least twice each calendar year, at an interval not exceeding 7 1/2 months, independent of class location, and shall repair each underground leak classified as grade two or three either upon discovery or within one year after discovery. This modifies 49 CFR 192.706 and 192.711.
- S. An operator of an intrastate transmission pipeline transporting gas and operating at or above 20 percent of Specified Minimum Yield Strength shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. The nondestructive testing shall be completed before the newly welded area of the pipeline or appurtenance is used for service. This modifies 49 CFR 192.241.
- T. An operator of an LNG facility shall ensure that nondestructive testing is completed for each weld performed on newly installed, replaced, or repaired pipeline or an appurtenance. This modifies 49 CFR 193.2303.
- U. In the event of an unknown failure of a gas, LNG, or hazardous liquid pipeline, resulting in the operator’s being required to provide a telephonic or written report under R14-5-203 (B) or (C) and in the operator’s removing a portion of the failed pipeline, the following shall occur:
  1. The operator shall retain the portion of failed pipeline that was removed;
  2. The operator shall telephonically notify the Office of Pipeline Safety of the removal within two hours after the removal is completed, providing the following information:
    - a. Identity of the failed pipeline,
    - b. Description and location of the failure,
    - c. Date and time of the removal,
    - d. Length or quantity of the removed portion,
    - e. Storage location of the removed portion, and

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- f. Any additional information about the failure or the removal of the portion of the failed pipeline that is requested by the Office of Pipeline Safety;
3. Within 48 hours after receiving telephonic notification pursuant to subsection (U)(2), the Office of Pipeline Safety shall:
  - a. Determine, based on the information provided by the operator and the availability, adequacy, and reliability of any pipeline testing laboratory operated by the operator, whether it is necessary to have the removed portion of pipeline tested at an independent laboratory; and
  - b. Telephonically notify the operator either:
    - i. That the operator must have the removed portion of pipeline tested, in accordance with Office of Pipeline Safety directions, by an independent laboratory selected by the Office of Pipeline Safety as provided in subsection (U)(5), to determine the cause or causes of the failure; or
    - ii. That the operator is not required to have the removed portion of pipeline tested by an independent laboratory and instead must conduct testing in its own pipeline testing laboratory, after which the operator may discard the removed portion of pipeline;
4. After providing telephonic notice as provided in subsection (U)(3)(b), the Office of Pipeline Safety shall confirm its notification in writing;
5. If the Office of Pipeline Safety directs testing by an independent laboratory:
  - a. The Office of Pipeline Safety shall:
    - i. Determine, as provided in subsection (U)(6), the independent laboratory that will do the testing and the period of time within which the testing is to be completed;
    - ii. Determine, based on the available information concerning the failure, the number and types of tests to be performed on the removed pipeline; and
    - iii. Notify the operator of its determinations; and
  - b. The operator shall:
    - i. Contact the selected independent laboratory to arrange the scheduling of the required tests;
    - ii. Notify the Office of Pipeline Safety, at least 20 days before the date of the tests, of the date and time scheduled for the laboratory tests;
    - iii. At the request of the Office of Pipeline Safety, ensure that a representative of the Office of Pipeline Safety is permitted to observe any or all of the tests;
    - iv. Ensure that the original test results are provided to the Office of Pipeline Safety by the independent laboratory within 30 days after the tests are completed; and
    - v. Pay for the independent laboratory testing; and
6. In determining an independent laboratory to perform testing required under subsection (U), the Office of Pipeline Safety shall:
  - a. Submit to at least three different independent laboratories written requests for bids to conduct the testing;
  - b. Consider each responding independent laboratory's qualifications to perform the testing, as demonstrated by:
    - i. Past experience in performing the required test or tests according to ASTM International standards, and
    - ii. Any recognition that a laboratory may have received from a national or international laboratory accreditation body, such as through a certification or accreditation process;
  - c. Wait to select an independent laboratory until one of the following occurs:
    - i. The Office of Pipeline Safety has received written bids from at least three different independent laboratories, or
    - ii. Thirty days have passed since the date of the request for bids; and
  - d. Select the independent laboratory that offers the optimum balance between cost and demonstrated ability to perform the required test or tests. This modifies 49 CFR 192.617, 193.2515, and 195.402.
- V. An operator shall ensure that all repair work performed on an existing intrastate pipeline transporting LNG, hazardous liquid, or gas complies with this Article.
- W. The Commission may waive compliance with any of the requirements of this Section upon a finding that such a waiver is in the interest of public and pipeline safety.
- X. To ensure compliance with the provisions of this Article, the Commission or an authorized representative thereof may enter the premises of an operator of an intrastate pipeline to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the pipeline system operation.

**Historical Note**

Adopted effective October 23, 1987 (Supp. 87-4).  
 Amended subsections (B), (I) and (J) effective February 3, 1989 (Supp. 89-1). Amended effective December 18, 1991 (Supp. 91-4). Amended effective July 25, 1994, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 94-3).  
 Amended effective August 30, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended effective September 26, 1997, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 97-3). Amended by exempt rulemaking at 5 A.A.R. 3693, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2382, effective May 10, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 3496, effective September 15, 2003 (Supp. 03-3). Amended by final rulemaking at 11 A.A.R. 1253, effective March 3, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 4533, effective January 25, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 126, effective December 28, 2011 (Supp. 11-4). Amended by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4). Section R14-5-202 amended by emergency rulemaking at 22 A.A.R. 5, effective December 15, 2015 for 180 days (Supp. 15-4). Emergency renewed at 22 A.A.R. 1637, effective June 7, 2016 for 180 days (Supp. 16-2). Section amended by final rulemaking at 22 A.A.R. 2869, effective September 14, 2016 (Supp. 16-4).

**R14-5-203. Pipeline Incident Reports**

- A. Applicability. This Section applies to all intrastate pipeline systems.
- B. Required incident reports by telephone:

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1. An operator of an intrastate pipeline transporting LNG or gas shall immediately notify by telephone the Office of Pipeline Safety, at 602-262-5601 during normal working hours or at 602-252-4449 at all other times, upon discovering the occurrence of any of the following related to the operator's intrastate pipeline system:
  - a. Release of gas or LNG from a pipeline or LNG facility, when any of the following results:
    - i. Death or personal injury requiring hospitalization;
    - ii. Injury to any individual resulting in loss of consciousness;
    - iii. An explosion or fire not intentionally set by the operator;
    - iv. Property damage estimated in excess of \$5,000, including the value of the gas lost; or
    - v. Unintentional release of gas from a transmission pipeline;
  - b. Emergency transmission pipeline shutdown;
  - c. News media inquiry;
  - d. Overpressure of a pipeline system where a pipeline operating at less than 12 PSIG exceeds MAOP by 50%, where a pipeline operating between 12 PSIG and 60 PSIG exceeds MAOP by 6 PSIG, or where a pipeline operating over 60 PSIG exceeds MAOP plus 10%;
  - e. Permanent or temporary discontinuance of service to a master meter system or when assisting with the isolation of any portion of a master meter system due to failure of a leak test;
  - f. Emergency shutdown of any LNG facility;
  - g. An evacuation; or
  - h. An outage.
2. An operator of an intrastate pipeline transporting hazardous liquid shall immediately notify by telephone the Office of Pipeline Safety, at 602-262-5601 during normal working hours or at 602-252-4449 at all other times, upon discovering a failure in a pipeline system resulting in the occurrence of any of the following:
  - a. Injury to an individual that results in one or more of the following:
    - i. Death or personal injury requiring medical treatment;
    - ii. Loss of consciousness; or
    - iii. Inability of the individual to leave the scene of the incident unassisted;
  - b. An explosion or fire not intentionally set by the operator;
  - c. Property damage estimated in excess of \$5,000;
  - d. Pollution of any land or stream, river, lake, reservoir, or other body of water that violates applicable environmental quality or water quality standards, causes a discoloration of the water surface or adjoining shoreline, or deposits sludge or emulsion beneath the water surface or upon the adjoining shoreline;
  - e. News media inquiry;
  - f. Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:
    - i. Not otherwise reportable under this Section;
    - ii. Not one described in 49 CFR 195.52(a)(4), as incorporated by reference in R14-5-202 and available from the Office of Pipeline Safety;
    - iii. Confined to the operator's property or the pipeline right-of-way; and
    - iv. Cleaned up promptly; or
  - g. Any release of hazardous liquid or carbon dioxide that was significant in the judgment of the operator even though it did not meet any of the criteria in subsections (B)(2)(a)-(f).
3. A telephonic incident report shall include the following information:
  - a. Name of the pipeline system operator,
  - b. Name of the reporting party,
  - c. Job title of the reporting party,
  - d. Telephone number of the reporting party,
  - e. Location of the incident,
  - f. Time of the incident, and
  - g. Description of any fatalities and injuries.
- C. Required written incident reports:
  1. An operator of an intrastate pipeline transporting LNG or gas shall file a written incident report when an incident involving a pipeline occurs resulting in any of the following:
    - a. Release of gas or LNG from a pipeline or LNG facility, when any of the following results:
      - i. Death or personal injury requiring hospitalization;
      - ii. Loss of consciousness;
      - iii. An explosion or fire not intentionally set by the operator;
      - iv. Property damage estimated in excess of \$25,000, including the value of all released gas; or
      - v. Unintentional release of gas from a transmission pipeline;
    - b. An incident involving an evacuation, outage, or property damage and resulting in expenses including the value of any released gas and of restoring service or evacuation estimated in excess of \$25,000;
    - c. Emergency transmission pipeline shutdown;
    - d. Overpressure of a pipeline system where a pipeline operating at less than 12 PSIG exceeds MAOP by 50%, where a pipeline operating between 12 PSIG and 60 PSIG exceeds MAOP by 6 PSIG, or where a pipeline operating over 60 PSIG exceeds MAOP plus 10%; or
    - e. Emergency shutdown of any LNG facility.
  2. A written incident report concerning a gas pipeline system shall be completed using the following, as applicable, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from PHMSA at East Building, Second Floor, 1200 New Jersey Ave., SE, Washington, DC 20590, and at <http://www.phmsa.dot.gov/pipeline/library/forms>:
    - a. Form PHMSA F 7100.1: Incident Report – Gas Distribution System (October 2014), including no future editions or amendments;
    - b. Form PHMSA F 7100.2: Incident Report – Natural and Other Gas Transmission and Gathering Pipeline Systems (October 2014), including no future editions or amendments; or
    - c. Form PHMSA F 7100.3: Incident Report – Liquefied Natural Gas (LNG) Facilities (October 2014), including no future editions or amendments.
  3. An operator of an intrastate pipeline transporting hazardous liquid shall file a written incident report completed using Form PHMSA F 7000-1: Accident Report – Hazardous Liquid Pipeline Systems (July 2014), including no



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future editions or amendments, which is incorporated by reference, on file with the Office of Pipeline Safety, and published by and available from PHMSA as set forth in subsection (C)(2), any time the operator would have been required to make a notification as required under R14-5-203(B)(2).

4. A written incident report required by this Section shall be filed with the Office of Pipeline Safety within the time specified below:
  - a. For an LNG or gas - incident, within 20 days after detection; and
  - b. For a hazardous liquid incident, within 15 days after detection.
5. An operator shall either file a copy of each DOT required written incident report electronically with PHMSA at <https://portal.phmsa.dot.gov/pipeline> or submit a written request for an alternative reporting method to the Information Resource Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590, under 49 CFR 195.58, as incorporated by reference in R14-5-202.
6. After an incident involving shutdown or partial shutdown of a master meter system, an operator of a gas pipeline system shall request and obtain a clearance from the Office of Pipeline Safety before turning on or reinstating service to the master meter system or portion of the master meter system that was shut down.

**Historical Note**

Adopted effective October 23, 1987 (Supp. 87-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective September 26, 1997, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 97-3). Amended by exempt rulemaking at 5 A.A.R. 3693, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2382, effective May 10, 2002 (Supp. 02-2).  
 Amended by final rulemaking at 9 A.A.R. 3496, effective September 15, 2003 (Supp. 03-3). Amended by final rulemaking at 11 A.A.R. 1253, effective March 3, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 4533, effective January 25, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 126, effective December 28, 2011 (Supp. 11-4). Amended by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4). Section R14-5-203 amended by emergency rulemaking at 22 A.A.R. 5, effective December 15, 2015 for 180 days (Supp. 15-4). Emergency renewed at 22 A.A.R. 1637, effective June 7, 2016 for 180 days (Supp. 16-2). Section amended by final rulemaking at 22 A.A.R. 2869, effective September 14, 2016 (Supp. 16-4).

**R14-5-204. Annual Reports**

- A. An operator of an intrastate pipeline shall file with the Office of Pipeline Safety, not later than March 15, for the preceding calendar year, an annual report completed using one of the following, as applicable, which are incorporated by reference; on file with the Office of Pipeline Safety; and published by and available from PHMSA as provided in R14-5-203(C)(2):
  1. Form PHMSA F 7000-1.1: Annual Report for Calendar Year 20\_\_ Hazardous Liquid Pipeline Systems (June 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;

2. Form PHMSA F 7100.1-1: Annual Report for Calendar Year 20\_\_ Gas Distribution System (May 2015), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form;
3. Form PHMSA F 7100.2-1: Annual Report for Calendar Year 20\_\_ Natural and Other Gas Transmission and Gathering Pipeline Systems (October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form; or
4. Form PHMSA F 7100.3-1: Annual Report for Calendar Year 20\_\_ Liquefied Natural Gas (LNG) Facilities (October 2014), including no future editions or amendments, which shall be completed in accordance with the PHMSA instructions for the form.

- B. An operator of an intrastate pipeline shall submit a copy of each required annual report by March 15, for the previous calendar year, to PHMSA at <https://portal.phmsa.dot.gov/pipeline>.

**Historical Note**

Adopted effective October 23, 1987 (Supp. 87-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by exempt rulemaking at 5 A.A.R. 3693, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2382, effective May 10, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 3496, effective September 15, 2003 (Supp. 03-3).  
 Amended by final rulemaking at 11 A.A.R. 1253, effective March 3, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 4533, effective January 25, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 126, effective December 28, 2011 (Supp. 11-4).  
 Amended by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4). Section R14-5-204 amended by emergency rulemaking at 22 A.A.R. 5, effective December 15, 2015 for 180 days (Supp. 15-4). Emergency renewed at 22 A.A.R. 1637, effective June 7, 2016 for 180 days (Supp. 16-2). Section amended by final rulemaking at 22 A.A.R. 2869, effective September 14, 2016 (Supp. 16-4).

**R14-5-205. Commission Investigations**

- A. The Office of Pipeline Safety shall investigate the cause of each reportable incident, accident, or event resulting in a death or an injury requiring hospitalization and may investigate other incidents, accidents, or events.
- B. While investigating an incident, accident, or event, the Commission or an authorized agent of the Commission may:
  1. Inspect all plant and facilities of a pipeline system and all other property of a pipeline system operator;
  2. Inspect the books, papers, business methods, and affairs of a pipeline system operator;
  3. Make inquiries regarding and interview persons having knowledge of facts surrounding an incident or accident;
  4. Attend, as an observer, all hearings and formal investigations concerning a pipeline system operator;
  5. Schedule and conduct a public hearing into the incident or accident; and
  6. Issue subpoenas to compel the production of records and the taking of testimony.

**Historical Note**

Adopted effective October 23, 1987 (Supp. 87-4).  
 Amended subsections (B) and (G) effective February 3, 1989 (Supp. 89-1). Amended effective December 18, 1991 (Supp. 91-4). Amended effective July 25, 1994,

under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 94-3).

Amended effective August 30, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended effective September 26, 1997, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 97-3). Amended by exempt rulemaking at 5 A.A.R. 3693, effective September 17, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2382, effective May 10, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 3496, effective September 15, 2003 (Supp. 03-3). Amended by final rulemaking at 11 A.A.R. 1253, effective March 3, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 4533, effective January 25, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 126, effective December 28, 2011 (Supp. 11-4). Section R14-5-205 renumbered to R14-5-207; new Section R14-5-205 made by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4). Section R14-5-205 amended by emergency rulemaking at 22 A.A.R. 5, effective December 15, 2015 for 180 days (Supp. 15-4). Emergency renewed at 22 A.A.R. 1637, effective June 7, 2016 for 180 days (Supp. 16-2). Section amended by final rulemaking at 22 A.A.R. 2869, effective September 14, 2016 (Supp. 16-4).

#### **R14-5-206. Employee Drug and Alcohol Testing Requirements**

An operator of an intrastate pipeline facility transporting gas or a hazardous liquid or of an intrastate LNG facility shall ensure that drug and alcohol testing of its workers is performed in compliance with 49 CFR 199, as incorporated by reference in R14-5-202.

#### **Historical Note**

Section R14-5-206 made by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4).

#### **R14-5-207. Master Meter System Operators**

- A.** Applicability: This Section applies to the construction, reconstruction, repair, emergency procedures, operation, and maintenance of all master meter systems.
- B.** An operator of a master meter system shall comply with this Section as a condition of receiving service from a provider. Noncompliance with this Section by an operator of a master meter system constitutes grounds for termination of service by the provider when informed in writing by the Office of Pipeline Safety. In case of an emergency, the Office of Pipeline Safety may give the provider oral instructions to terminate service, with written confirmation to be furnished within 24 hours.
- C.** Each operator of a master meter system shall comply with all applicable requirements of 49 CFR 192, as incorporated by reference in R14-5-202.
- D.** An operator of a master meter system shall:
  - 1. Establish an Operation and Maintenance Plan, including an emergency plan; and
  - 2. At all times, maintain a copy of the Operation and Maintenance Plan at the master meter system location.
- E.** An operator of a master meter system shall:
  - 1. Ensure that no part of a gas pipeline system is constructed under a building and that no building is placed over any portion of a gas pipeline system; and
  - 2. Upon discovering that a building is located over a portion of a gas pipeline system, complete one of the following within 180 days:
    - a. Remove the building from over the pipeline,
    - b. Relocate the pipeline, or

- c. Discontinue service to the portion of the pipeline system located under the building.
- F.** An operator of a master meter system shall not install Acrylonitrile-Butadiene-Styrene (ABS) or aluminum pipe in the master meter system.
- G.** An operator of a master meter system that constructs a pipeline or any portion thereof using plastic pipe shall install, at a minimum, a 14-gauge coated or corrosion resistant, electrically conductive wire as a means of locating the pipe while it is underground. Tracer wire shall not be wrapped around the plastic pipe. Tracer wire may be taped or attached to the pipe in another manner, provided that the adhesive or attachment is not detrimental to the integrity of the pipe wall.
- H.** An operator of a master meter system that constructs an underground pipeline using plastic pipe shall bury the installed pipe with at least 6 inches of sandy type soil, free of any rock or debris, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety. Steel pipe shall be installed with at least 6 inches of sandy type soil, free of any debris or materials injurious to the pipe coating, surrounding the pipe for bedding and shading, unless the pipe is otherwise protected as approved by the Office of Pipeline Safety.
- I.** An operator of a master meter system that constructs an underground pipeline using plastic pipe shall install the pipe with sufficient slack to allow for thermal expansion and contraction. In addition, all plastic pipe and fittings for use in an area with service temperatures above 100° F shall be marked CD, CE, CF, or CG as required by ASTM D2513 (1995), incorporated by reference in R14-5-202 and available from the Office of Pipeline Safety.
- J.** An operator of a master meter system shall qualify welding procedures and shall ensure that welding of steel pipelines is performed in accordance with API Standard 1104, as incorporated by reference in 49 CFR 192.7 and R14-5-202, by welders qualified pursuant to API Standard 1104.
- K.** An operator of a master meter system shall ensure that all repair work performed on an existing master meter system complies with this Article.
- L.** An operator of a master meter system shall:
  - 1. Ensure that each underground steel pipeline is protected against external corrosion with an external protective coating meeting the requirements of 49 CFR 192.461;
  - 2. When installing a new underground steel pipeline system, before placing the new pipeline system into service, provide a cathodic protection system designed to protect the new pipeline system in its entirety;
  - 3. When repairing, partially replacing, or relocating an existing underground steel pipeline system, within 45 days after completing the repair, replacement, or relocation, provide a cathodic protection system designed to protect the pipeline system; and
  - 4. Ensure that each cathodic protection system has a voltage of at least negative 0.85 volts direct current (-0.85Vdc) as measured using a saturated copper-copper sulfate half cell.
- M.** An operator of a master meter system shall ensure that no portion of an underground gas system is installed less than 8 inches away from any other underground structure.
- N.** At least 30 days before commencing construction of any pipeline, an operator of a master meter system shall file with the Office of Pipeline Safety a Notice of Construction that includes at least the following information:
  - 1. The dates projected for commencing and completing construction,
  - 2. The size and type of pipe to be used,

## Corporation Commission – Transportation

3. The location of construction, and
  4. The MAOP for the new pipeline.
- O.** An operator of a master meter system shall:
1. Perform leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, using leak detection procedures approved by the Office of Pipeline Safety;
  2. Except for LPG, perform each leakage survey in accordance with ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983, other than 4.4(c), as incorporated by reference in R14-5-202(Q);
  3. For LPG, perform each leakage survey in accordance with ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11A-1983, as incorporated by reference in R14-5-202(Q); and
  4. Repair each grade 1 leak immediately upon discovery, each grade 2 leak within 30 days of discovery, and each grade 3 leak within one year of discovery.
- P.** In the event of an unknown failure of a gas pipeline resulting in a master meter system operator's being required to provide a report under subsection (Q) and in the operator's removing a portion of the failed pipeline, the following shall occur:
1. The operator shall retain the portion of failed pipeline that was removed;
  2. The operator shall telephonically notify the Office of Pipeline Safety of the removal within two hours after the removal is completed, providing the following information:
    - a. Identity of the failed pipeline,
    - b. Description and location of the failure,
    - c. Date and time of the removal,
    - d. Length or quantity of the removed portion,
    - e. Storage location of the removed portion, and
    - f. Any additional information about the failure or the removal of the portion of the failed pipeline that is requested by the Office of Pipeline Safety;
  3. Within 48 hours after receiving telephonic notification pursuant to subsection (Q)(2), the Office of Pipeline Safety shall:
    - a. Determine, based on the information provided by the operator and the availability, adequacy, and reliability of any pipeline testing laboratory operated by the operator, whether it is necessary to have the removed portion of pipeline tested at an independent laboratory; and
    - b. Telephonically notify the operator either:
      - i. That the operator must have the removed portion of pipeline tested, in accordance with Office of Pipeline Safety directions, by an independent laboratory selected by the Office of Pipeline Safety as provided in subsection (P)(6), to determine the cause or causes of the failure; or
      - ii. That the operator is not required to have the removed portion of pipeline tested by an independent laboratory and instead must conduct testing in its own pipeline testing laboratory, after which the operator may discard the removed portion of pipeline;
  4. After providing telephonic notice as provided in subsection (P)(3)(b), the Office of Pipeline Safety shall confirm its notification in writing;
  5. If the Office of Pipeline Safety directs testing by an independent laboratory:
    - a. The Office of Pipeline Safety shall:
      - i. Determine, as provided in subsection (P)(6), the independent laboratory that will do the testing and the period of time within which the testing is to be completed;
      - ii. Determine, based on the available information concerning the failure, the number and types of tests to be performed on the removed pipeline; and
      - iii. Notify the operator of its determinations;
    - b. The operator shall:
      - i. Contact the selected independent laboratory to arrange the scheduling of the required tests;
      - ii. Notify the Office of Pipeline Safety, at least 20 days before the date of the tests, of the date and time scheduled for the laboratory tests;
      - iii. At the request of the Office of Pipeline Safety, ensure that a representative of the Office of Pipeline Safety is permitted to observe any or all of the tests;
      - iv. Ensure that the original test results are provided to the Office of Pipeline Safety by the independent laboratory within 30 days after the tests are completed; and
      - v. Pay for the independent laboratory testing; and
- Q.** In determining an independent laboratory to perform testing required under subsection (P), the Office of Pipeline Safety shall:
- a. Submit to at least three different independent laboratories written requests for bids to conduct the testing;
  - b. Consider each responding laboratory's qualifications to perform the testing, as demonstrated by:
    - i. Past experience in performing the required test or tests according to ASTM International standards; and
    - ii. Any recognition that a laboratory may have received from a national or international laboratory accreditation body, such as through a certification or accreditation process;
  - c. Wait to select an independent laboratory until:
    - i. The Office of Pipeline Safety has received written bids from at least three different independent laboratories; or
    - ii. Thirty days have passed since the date of the request for bids, whichever comes sooner; and
  - d. Select the independent laboratory that offers the optimum balance between cost and demonstrated ability to perform the required test or tests.
- Q.** An operator of a master meter system shall:
1. Telephonically notify the Office of Pipeline Safety, at 602-262-5601 during normal working hours or at 602-252-4449 at all other times, at the earliest practicable moment following discovery of any of the following related to the operator's master meter system:
    - a. An event involving a release of gas from a pipeline, along with any of the following:
      - i. A death or personal injury requiring hospitalization;
      - ii. Injury to any individual resulting in the individual's loss of consciousness;
      - iii. Estimated property damage, including the value of all released gas, in excess of \$5,000;
      - iv. Unintentional estimated gas loss of 3 million cubic feet or more;
      - v. An explosion or fire not intentionally set by the operator;

## Corporation Commission – Transportation

- vi. A news media inquiry;
  - vii. An evacuation; or
  - viii. An outage;
  - b. An event involving overpressure of a pipeline system where a pipeline operating at less than 12 PSIG exceeds MAOP by 50%, where a pipeline operating between 12 PSIG and 60 PSIG exceeds MAOP by 6 PSIG, or where a pipeline operating over 60 PSIG exceeds MAOP plus 10%;
  - c. An event involving permanent or temporary discontinuance of service to a master meter system or any portion of a master meter system due to a failure of a leak test or for any purpose other than to perform routine maintenance; or
  - d. An event that is significant, in the judgment of the operator, even though it does not meet any of the criteria listed in subsections (Q)(1)(a) through (c);
2. Include the following information in a telephonic report under subsection (Q)(1):
- a. The names of the operator and the person making the report;
  - b. The job title of the person making the report;
  - c. The telephone numbers of the operator and the person making the report;
  - d. A description of the type and location of the event;
  - e. The time of the event;
  - f. The number of fatalities and personal injuries, if any; and
  - g. All other significant facts that are known by the operator and are relevant to the cause of the event or the extent of the damages; and
3. Not later than April 15 of each year, submit to the Office of Pipeline Safety an annual report for the prior calendar year, completed on Commission Form MM-04: "Annual Report for Calendar Year 20\_\_\_\_, Small Operators of Gas Distribution System," which is included herein as Exhibit A.
- R.** The Commission may waive compliance with any of the requirements of this Section upon a finding that such a waiver is in the interest of public and pipeline safety.
- S.** To ensure compliance with all applicable provisions of this Article, the Commission or an authorized representative thereof may enter the premises of an operator of a master meter system to inspect and investigate the property, books, papers, electronic files, business methods, and affairs that pertain to the operation of the master meter system.

**Historical Note**

New Section R14-5-207 renumbered from Section R14-5-205 and amended by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4). Section R14-5-207 amended by emergency rulemaking at 22 A.A.R. 5, effective December 15, 2015 for 180 days (Supp. 15-4). Emergency renewed at 22 A.A.R. 1637, effective June 7, 2016 for 180 days (Supp. 16-2). Section amended by final rulemaking at 22 A.A.R. 2869, effective September 14, 2016 (Supp. 16-4).

Corporation Commission – Transportation

Exhibit A. Form MM-04

WILL NOT  
BE  
DELIVERED  
WITHOUT  
PROPER  
POSTAGE

ARIZONA CORPORATION COMMISSION  
OFFICE OF PIPELINE SAFETY – GAS SAFETY PROGRAM  
2200 NORTH CENTRAL AVENUE, SUITE #300  
PHOENIX, ARIZONA 85004

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fold here

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## Corporation Commission – Transportation

## Exhibit A. Form MM-04

**ARIZONA CORPORATION COMMISSION PIPELINE SAFETY**  
TO BE FILED FOR EACH CALENDAR YEAR, DUE BETWEEN JANUARY 1 AND APRIL 15 OF THE FOLLOWING CALENDAR YEAR

**ANNUAL REPORT FOR CALENDAR YEAR \_\_\_\_\_**  
**SMALL OPERATORS OF GAS DISTRIBUTION SYSTEM**

<b><u>FACILITY INFORMATION</u></b>		<b><u>OPERATOR/OWNER</u></b>	
NAME OF FACILITY _____		NAME _____	
ADDRESS OF FACILITY _____		ADDRESS _____	
CITY _____	COUNTY _____	CITY _____	
STATE _____	ZIP CODE _____	STATE _____ ZIP CODE _____	
FACILITY E-MAIL ADDRESS _____		OPERATOR E-MAIL ADDRESS _____	
AREA CODE _____	TELEPHONE _____	AREA CODE _____	TELEPHONE _____
<b>FACILITY TYPE:</b> MHP _____ APT/CONDO _____ SCHOOL _____ BUSINESS _____ # OF BLDG _____			
<b>SYSTEM INFORMATION</b>		<b>FEET OF PIPE</b>	
<b>UNDERGROUND STEEL PIPE</b>			
<b>ABOVEGROUND STEEL PIPE</b>			
<b>UNDERGROUND PE PLASTIC PIPE</b>			
<b>UNDERGROUND PVC PLASTIC PIPE</b>			
<b>TOTAL FEET OF PIPE IN SYSTEM</b>			
<b>NOTE:</b> (if you have any comments or concerns, please note in this box)		<b>FOR UNDERGROUND STEEL SYSTEMS</b> <b>DATE OF LAST C/P CHECK IN CAL. YR.</b> _____ / _____ / _____ (If no tests were conducted in _____, please write "None Conducted")	
<b>DATE OF LEAK SURVEY CONDUCTED IN CAL. YR.</b> _____ / _____ / _____ (If no tests were conducted in _____, please write "None Conducted")		<b>TOTAL LEAKS IN SYSTEM DURING LAST CAL. YEAR</b> _____ <b>CAUSE:</b> CORROSION _____ THIRD PARTY DAMAGE _____ CONSTRUCTION DEFECT _____ MATERIAL DEFECT _____ OTHER _____ NUMBER OF KNOWN LEAKS AT END OF YEAR _____	
PREPARED BY (TYPE OR PRINT) _____		AREA CODE _____ TELEPHONE _____	
NAME AND TITLE PERSON SIGNING _____		AUTHORIZED SIGNATURE _____	

MAIL TO: 2200 N. Central Ave., Suite #300, Phoenix, Arizona 85004  
FAX TO: (602) 262-5620 – OR EMAIL TO: [safety@azcc.gov](mailto:safety@azcc.gov)

MM-04

### Historical Note

Exhibit A made by final rulemaking at 20 A.A.R. 75, effective December 16, 2013 (Supp. 13-4).



## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 17. Transportation**

### **Chapter 4. Department of Transportation - Title, Registration, and Driver Licenses**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R17-4-703 and R17-4-711

REMOVE Supp. 16-1  
Pages: 1 - 37

REPLACE with Supp. 16-4  
Pages: 1 - 37

*The agency's contact person who can answer questions about expired rules in Supp. 16-4:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



## TITLE 17. TRANSPORTATION

## CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

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**ARTICLE 1. RESERVED****ARTICLE 2. VEHICLE TITLE****R17-4-201. Definitions**

In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2001, and 28-3001, the following definitions apply to this Article, unless otherwise specified:

“Authorized ELT Participant” means a lending institution or finance company authorized by the Division to electronically release a lien or encumbrance.

“Date of lien” means the date identified by the lienholder as the date the loan was issued to the borrower.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Encumbrance” means a lien recorded, by the Division, on a vehicle or mobile home record and the Arizona Certificate of Title.

“ELT” means Electronic Lien and Title.

“EPA standards” means the emission standards of the Environmental Protection Agency, as prescribed under 40 CFR 86.

“FMVSS” means the Federal Motor Vehicle Safety Standards as prescribed under 49 CFR 571.

“Joint tenancy with right of survivorship” means vehicle ownership by two or more persons and the deceased joint owner’s interest in the vehicle is transferred to the surviving owners.

“Lienholder” means a person or entity retaining legal possession of a vehicle or mobile home until the debtor has satisfactorily repaid the loan for which the vehicle or mobile home is designated as collateral.

“Lienholder Number” means the computer-generated record number assigned by the Division to a lienholder.

“Low-speed vehicle” has the same meaning as prescribed under 49 CFR 571.3.

“MPV” means multipurpose passenger vehicle, which has the same meaning as prescribed under 49 CFR 571.3.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NHTSA” means National Highway Traffic Safety Administration of the United States Department of Transportation.

“Operation of law lien” means a lien resulting from the application of a state or federal statute.

“Primary lien” means the first of any multiple liens recorded on a vehicle or mobile home record.

“Registered importer” means a person registered by the NHTSA Administrator to import vehicles, as prescribed under 49 CFR 30141.

“Tenancy in common” means vehicle ownership by two or more people without the right of survivorship.

“Valid titling document” means one of the following documents showing a vehicle’s compliance with FMVSS and EPA standards:

- A NHTSA Declaration,
- A manufacturer’s letter, or
- A U.S. federal compliance label printed in English.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-202. Certificate of Title Form**

- A.** The Motor Vehicle Division (MVD) shall produce the Certificate of Title form on tamper-resistant and counterfeit-resistant paper.
- B.** MVD shall provide space on the Certificate of Title form for the following information:
  1. Title information:
    - a. Title number;
    - b. Issue date;
    - c. Previous title number; and
    - d. State and date of previous title.
  2. Vehicle information:
    - a. Vehicle identification number (VIN);
    - b. Vehicle make, model, year, and body style;
    - c. Fuel type;
    - d. Odometer information; and
    - e. Vehicle mechanical or structural condition.
  3. Lienholder information:
    - a. Lienholder name and address;
    - b. Lienholder customer or federal identification number; and
    - c. Lien amount and lien date.
  4. Vehicle owner’s or owner’s legal designee information:
    - a. Name; and
    - b. Mailing address.
  5. Ownership change information:
    - a. Sale date;
    - b. Purchaser’s name and address;
    - c. Odometer mileage disclosure statement;
    - d. Seller’s signature; and
    - e. Seller’s signature certification.
  6. Dealer reassignment information.
  7. Other information as required by the Division for internal processing and recordkeeping.

**Historical Note**

New Section recodified from R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-203. Certificate of Title and Registration Application**

- A.** In addition to the requirements of A.R.S. §§ 28-2051 and 28-2157, a person applying for an Arizona motor vehicle title certificate and registration shall complete a form supplied by the Motor Vehicle Division that contains the following information:
  1. Vehicle information:
    - a. Tab number;
    - b. Initial registration month and year;
    - c. Vehicle make, model, year, and body style;
    - d. Mechanical or structural status indicating whether the vehicle is:
      - i. Dismantled,
      - ii. Reconstructed,
      - iii. Salvaged, or
      - iv. Specially constructed;
    - e. Gross vehicle weight;
    - f. Fuel type;
    - g. Odometer information;
    - h. Current title number and titling state.
  2. An owner’s or lessee’s legal ownership status.
  3. Lienholder information:
    - a. Lienholder names and addresses, and

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- b. Lien amount and date incurred.
  - 4. If a mobile home, the physical site.
  - 5. Co-ownership information:
    - a. A statement of whether any survivorship rights in the vehicle exist; and
    - b. A statement providing co-ownership legal status prescribed in R17-4-205(B).
  - 6. Owner certification information verifying:
    - a. Ownership,
    - b. Inclusion of all liens and encumbrances, and
    - c. Seller-verified odometer reading.
  - 7. Applicant signatures.
  - 8. An acknowledgement that:
    - a. The applicant agrees or disagrees to the Division's release of the applicant's name on a commercial mailing list; and
    - b. The applicant has read a printed explanation of odometer reading codes.
  - 9. Other information required by the Division for internal processing and recordkeeping.
- B.** An applicant may voluntarily provide the following information on the form:
- 1. Applicant's birth date;
  - 2. Applicant's driver license number; and
  - 3. Applicant's federal employer identification number, if the applicant is taking title as a sole proprietor, partnership, corporation, or other legal business entity.

**Historical Note**

New Section recodified from R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-204. Seller's Signature Acknowledgement**

A seller shall ensure that a Notary Public or a Motor Vehicle Division (MVD) agent witnesses the seller sign the title transfer. The Notary Public or MVD agent shall sign the title transfer acknowledging witnessing the seller's signature. "Motor Vehicle Division agent" has the meaning prescribed in A.R.S. § 28-370.

**Historical Note**

Adopted effective November 10, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-204 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-202 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-205. Co-ownership and Vehicle Title**

- A.** A title certificate application shall specify the form of co-ownership and names of a vehicle's co-owners as follows.
- 1. If co-ownership is a joint tenancy with right of survivorship in which all owners must sign to transfer or encumber the vehicle, the applicant shall provide the name of each owner separated by "and/or."
  - 2. If co-ownership is a joint tenancy that allows one owner to transfer or encumber the vehicle title, the applicant shall provide:
    - a. The name of each co-owner separated by "or"; and
    - b. A form, signed by each co-owner authorizing title transfer or encumbrance on the signature of any co-owner.
  - 3. If co-ownership is a tenancy in common, the applicant shall provide the name of each owner separated by "and."
- B.** Before a surviving joint tenant under subsection (A)(1) obtains a title certificate as owner or transfers or encumbers the vehicle

title, the surviving joint tenant shall present to the Division a death certificate for each deceased joint tenant.

- C.** After the death of a tenant in common, the Division shall issue a new title certificate only as directed by:
- 1. A certified probate court order, or
  - 2. A successor's affidavit under A.R.S. § 14-3971(B).

**Historical Note**

Adopted effective November 13, 1986 (Supp. 86-6). Former Section R17-4-75 renumbered without change as Section R17-4-205 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-203 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

**R17-4-206. Additional Titling Standards for Vehicles Not Manufactured in Compliance with United States Safety and Emission Standards; "Gray-market Vehicles"****A. Titling standards.**

- 1. The Division shall issue a title to a foreign-manufactured vehicle imported to the United States if an applicant presents the following:
  - a. A valid titling document,
  - b. A completed MVD title and registration application as prescribed under R17-4-203,
  - c. A completed Vehicle Verification Form certifying that the vehicle passed the Division's physical inspection,
  - d. A document stating that the vehicle passed an Arizona emissions inspection under A.R.S. § 49-542, and
  - e. A certificate that the vehicle was converted to meet:
    - i. EPA standards, and
    - ii. FMVSS.
- 2. A foreign-manufactured vehicle imported to the United States is exempt from this subsection if it is older than 25 years from its manufacture date.
- 3. A foreign-manufactured vehicle imported to the United States that is between 21 and 25 years from the manufacture date is exempt from subsection (A)(1)(e)(i).
- 4. Titling standards for vehicles manufactured according to Canadian specifications.
  - a. The Division shall issue a title to a vehicle manufactured according to Canadian specifications if it:
    - i. Is not for resale;
    - ii. Has a GVWR of less than 10,000 pounds; and
    - iii. Is a passenger vehicle, motorcycle, or MPV.
  - b. Before titling a vehicle manufactured according to Canadian specifications, the owner shall submit to the Division manufacturer documentation verifying that the vehicle complies with FMVSS and EPA standards.
    - i. The Division shall waive the FMVSS and EPA labeling location requirements as prescribed in 49 CFR 571 and 40 CFR 86.
    - ii. If manufacturer documentation indicates that a vehicle's speedometer or headlights do not comply with FMVSS and EPA standards, the owner shall file additional documentation with the Division to verify completion of a modification that brings the vehicle into compliance.
  - c. A registered importer shall certify a vehicle manufactured according to Canadian specifications if:

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- i. The vehicle meets FMVSS standards except for occupant crash protection provisions prescribed under 49 CFR 571.208, or
  - ii. The owner did not submit manufacturer documentation as prescribed under subsection (A)(4)(b).
- B. The Division shall require a registered importer's certification of a foreign-manufactured vehicle imported to the United States that:
  - 1. Is not exempt under subsections (A)(2) or (A)(3), or
  - 2. Does not qualify under subsection (A)(4).

**Historical Note**

Former Rule, General Order 55. Former Section R17-4-19 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified to R17-4-204 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-209 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1353, effective June 6, 2003 (Supp. 03-2).

**R17-4-207. Lien Filing**

- A. Lien filing. When filing a lien with the Division, a person shall submit a Title and Registration Application (available online at [www.azdot.gov/mvd/FormsandPub/mvd.asp](http://www.azdot.gov/mvd/FormsandPub/mvd.asp)), the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28.
  - 1. The Division shall record a statement of all liens and encumbrances on the vehicle or mobile home record upon receiving a lien filing that meets all requirements prescribed in this subsection.
  - 2. The Division shall immediately return a lien filing, with a letter stating why the lien filing was returned, when the lien filing does not meet the requirements prescribed in this subsection.
- B. Multiple liens. The Division will record up to three liens on any one vehicle or mobile home record. Additional liens are recorded through the County Recorder's office. Liens are valued in the order that they are filed and recorded on the vehicle or mobile home record. However, the Division considers the primary lien recorded on the vehicle or mobile home record to be above all other subsequent liens or encumbrances. In the absence of an operation of law lien, only the lienholder in the primary position may repossess a vehicle or mobile home.
- C. Lien filing notice. The Division shall notify the lienholder of the recording of a lien.
  - 1. The Division shall issue an Arizona Certificate of Title or, when the lienholder is an Authorized ELT Participant, transmit an electronic lien notification to the primary lienholder.
  - 2. The Division shall issue a computer-generated Lienholder Record to each subsequent lienholder recorded on the vehicle or mobile home record. The Division shall not issue a duplicate Lienholder Record.

**Historical Note**

Former Rule, General Order 62. Former Section R17-4-24 renumbered without change as Section R17-4-206 (Supp. 87-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 2752, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-205 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section recodified from R17-4-230 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new

Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-208. Lien Clearance**

- A. Lien clearance. The Division shall remove the lien from the vehicle or mobile home record indicated on the lien clearance and issue a new Arizona Certificate of Title upon receiving proof that the lien is satisfied and an application furnished by the Division, the most recently issued certificate of title, the fee or fees to be paid as provided by law, and any other documentation required pursuant to A.R.S. Title 28. The Division considers the following instruments satisfactory proof that the lien or encumbrance recorded on a vehicle or mobile home record is satisfied:
  - 1. The transmission of an electronic lien release from an ELT Participant,
  - 2. A certificate of title acknowledged by the lienholder as prescribed under subsection (B)(1),
  - 3. An original lien filing receipt acknowledged by the lienholder as prescribed under subsection (B)(1),
  - 4. An original computer-generated Lienholder Record acknowledged by the lienholder as prescribed under subsection (B)(1),
  - 5. A lender copy of the original lien instrument indicating the lien is paid in full acknowledged by the lienholder as prescribed under subsection (B)(1); or
  - 6. Any document giving a complete description of the vehicle, as recorded on the Arizona Certificate of Title, indicating that the lien is either "paid in full" or "satisfied" acknowledged by the lienholder as prescribed under subsection (B)(1).
- B. Lienholder satisfaction of lien requirements.
  - 1. The Division shall not accept a satisfaction of lien when the authorized signature of the lienholder or authorized agent of the lienholder, appearing on the lien clearance instrument, is not acknowledged before a Notary Public or witnessed by an authorized Division employee.
  - 2. The lienholder shall deliver the Arizona Certificate of Title to the next lienholder or, if there is not another lienholder, to the owner of the vehicle or mobile home within 15 business days after receiving payment in full satisfaction of the lien.
  - 3. A lienholder that fails to deliver the certificate of title within 15 business days may be assessed a civil penalty, as prescribed under A.R.S. § 28-2134.
- C. Lien release received in error. The Division will not reimburse any parties for any monetary damages that may occur when a lienholder issues a lien clearance to the Division in error.
- D. Administrative hearing. A lienholder who is assessed a civil penalty, as prescribed under A.R.S. § 28-2134, may request a hearing in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

Former Rule, General Order 83. Former Section R17-4-35 renumbered without change as Section R17-4-208 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 2468, effective June 8, 2000 (Supp. 00-2). Section recodified from R17-4-231 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3281, effective November 10, 2007 (Supp. 07-3).

**R17-4-209. Recodified****Historical Note**

Adopted as Section R17-4-81 and renumbered as Section R17-4-209 effective May 29, 1987 (Supp. 87-2). Amended

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by final rulemaking at 7 A.A.R. 2755, effective June 8, 2001 (Supp. 01-2). Section recodified to R17-4-206 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-210. Repealed****Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Section R17-4-210 repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore the rule went back into effect November 26, 1998; Section repealed by summary rulemaking with an interim effective date of August 20, 1999, filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

**Appendix A. Repealed****Historical Note**

Adopted effective July 30, 1992 (Supp. 92-3). Appendix A repealed by summary action with an interim effective date of August 28, 1998; filed in the Office of the Secretary of State August 4, 1998 (Supp. 98-3). The Department failed to submit to the Governor's Regulatory Review Council an adopted summary rule pursuant to A.R.S. § 41-1027, and therefore Appendix A went back into effect November 26, 1998; Appendix A repealed by summary rulemaking with an interim effective date of August 20, 1999; filed in the Office of the Secretary of State July 30, 1999 (Supp. 99-3). Interim effective date of August 20, 1999 now the permanent effective date (Supp. 99-4).

**R17-4-211. Reserved****R17-4-212. Reserved****R17-4-213. Reserved****R17-4-214. Reserved****R17-4-215. Reserved****R17-4-216. Recodified****Historical Note**

Adopted effective October 21, 1997 (Supp. 97-4). Section recodified to R17-4-302 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-217. Recodified****Historical Note**

Adopted effective September 12, 1997 (Supp. 97-3). Section recodified to R17-4-303 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-218. Recodified****Historical Note**

Amended effective April 21, 1980 (Supp. 80-2). Former Section R17-4-54 renumbered without change as Section R17-4-218 (Supp. 87-2). R17-4-218 and Appendix A repealed; new Section adopted effective December 8, 1998 (Supp. 98-4). Section recodified to R17-4-304 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-219. Recodified****Historical Note**

Former Rule, General Order 101. Former Section R17-4-

42 renumbered without change as Section R17-4-219 (Supp. 87-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4602, effective November 14, 2000 (Supp. 00-4). Section recodified to R17-4-305 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-220. Repealed****Historical Note**

Former Rule, General Order 103; Former Section R17-4-44 repealed, new Section R17-4-44 adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-44 renumbered without change as Section R17-4-220 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-221. Repealed****Historical Note**

Former Rule, General Order 75. Former Section R17-4-30 renumbered without change as Section R17-4-221 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

**R17-4-222. Recodified****Historical Note**

Adopted effective December 3, 1986 (Supp. 86-6). Former Section R17-4-80 renumbered without change as Section R17-4-222 (Supp. 87-2). Section recodified to R17-4-306 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-223. Repealed****Historical Note**

Emergency rule adopted effective August 8, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Former emergency rule permanently adopted with changes effective December 31, 1991 (Supp. 91-4). Repealed effective July 18, 1994 (Supp. 94-3).

**R17-4-224. Recodified****Historical Note**

Adopted effective September 25, 1991 (Supp. 91-3). Section recodified to R17-4-307 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-225. Reserved****R17-4-226. Recodified****Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted with changes effective February 1, 1993 (Supp. 93-1). Amended effective January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Section repealed effective August 1, 1999 pursuant to subsection (C); new Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-502 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix A. Repealed****Historical Note**

Emergency rule adopted effective January 21, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency expired. Adopted effective February 1, 1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 702, effective February 10, 1999 (Supp. 99-1). Appendix repealed effective August 1, 1999 pursuant to

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R17-4-226(C) (Supp. 00-2).

**R17-4-226.01. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1906, effective May 3, 2000 (Supp. 00-2). Section recodified to R17-5-503 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-227. Recodified****Historical Note**

Adopted effective June 16, 1992 (Supp. 92-2). Section recodified to R17-4-402 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-228. Reserved****R17-4-229. Reserved****R17-4-230. Recodified****Historical Note**

Former Rule, General Order 47. Former Section R17-4-15 renumbered without change as Section R17-4-230 (Supp. 87-2). Section recodified to R17-4-207 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-231. Recodified****Historical Note**

Former Rule, General Order 70. Former Section R17-4-28 renumbered without change as Section R17-4-231 (Supp. 87-2). Section recodified to R17-4-208 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-232. Reserved****R17-4-233. Reserved****R17-4-234. Reserved****R17-4-235. Reserved****R17-4-236. Reserved****R17-4-237. Repealed****Historical Note**

Former Rule, General Order 50. Former Section R17-4-16 renumbered without change as Section R17-4-237 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-238. Repealed****Historical Note**

Former Rule, General Order 51. Former Section R17-4-17 renumbered without change as Section R17-4-238 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-239. Repealed****Historical Note**

Former Rule, General Order 60. Former Section R17-4-22 renumbered without change as Section R17-4-239 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-240. Recodified****Historical Note**

Former Rule, General Order 65; Amended effective January 11, 1982 (Supp. 82-1). Former Section R17-4-25 renumbered without change as Section R17-4-240 (Supp. 87-2). Section recodified to R17-5-402 at 7 A.A.R. 3483,

effective July 20, 2001 (Supp. 01-3).

**R17-4-241. Recodified****Historical Note**

Former Rule, General Order 76. Former Section R17-4-31 renumbered without change as Section R17-4-241 (Supp. 87-2). Section amended by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-404 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-242. Repealed****Historical Note**

Former Rule, General Order 77. Former Section R17-4-32 renumbered without change as Section R17-4-242 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 869, effective January 22, 2001 (Supp. 01-1).

**R17-4-243. Repealed****Historical Note**

Former Rule, General Order 85. Former Section R17-4-36 renumbered without change as Section R17-4-243 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 4830, effective December 7, 2000 (Supp. 00-4).

**R17-4-244. Reserved****R17-4-245. Recodified****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-405 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-246. Recodified****Historical Note**

Adopted effective September 13, 1993 (Supp. 93-3). Section recodified to R17-5-406 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-247. Reserved****R17-4-248. Reserved****R17-4-249. Reserved****R17-4-250. Repealed****Historical Note**

Former Rule, General Order 111. Former Section R17-4-47 renumbered without change as Section R17-4-250 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

**R17-4-251. Repealed****Historical Note**

Former Rule, General Order 112. Former Section R17-4-48 renumbered without change as Section R17-4-251 (Supp. 87-2). Section repealed by final rulemaking at 6 A.A.R. 3839, effective September 13, 2000 (Supp. 00-3).

**R17-4-252. Recodified****Historical Note**

Former Rule, General Order 82. Former Section R17-4-34 renumbered without change as Section R17-4-252 (Supp. 87-2). Section recodified to R17-4-308 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-253. Reserved****R17-4-254. Reserved**



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- R17-4-255. Reserved  
 R17-4-256. Reserved  
 R17-4-257. Reserved  
 R17-4-258. Reserved  
 R17-4-259. Reserved  
 R17-4-260. Recodified

**Historical Note**

Former Rule, General Order 72. Former Section R17-4-29 renumbered without change as Section R17-4-260 (Supp. 87-2). Section recodified to R17-5-407 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

- R17-4-261. Reserved  
 R17-4-262. Reserved  
 R17-4-263. Reserved  
 R17-4-264. Reserved  
 R17-4-265. Repealed

**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 1, 1984 (Supp. 84-5). Former Section R17-4-72 renumbered without change as Section R17-4-265 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 2154, effective May 1, 2001 (Supp. 01-2).

**ARTICLE 3. VEHICLE REGISTRATION****R17-4-301. Definitions**

Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101, 28-2231, and 28-5100, the following definitions apply to this Article, unless otherwise specified:

“Apportioned commercial vehicle” means a commercial vehicle that is subject to the proportional registration provisions prescribed under A.R.S. § 28-2233.

“Biennial” means once every two years.

“Business day” means a day other than a Sunday or holiday.

“Calendar quarter” means the following time periods established by the Division: January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Day” means the 24-hour period from one midnight to the following midnight.

“Disabled person” means a recipient of public monies as a disabled individual under Title 16 of the Social Security Act.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Division Director” means the Assistant Director for the Arizona Department of Transportation’s Motor Vehicle Division or the Assistant Director’s designee.

“Drop box” means a receptacle designated by the Division into which a person places vehicle registration forms and fees, and from which the Division retrieves these items daily.

“Effective date of registration” means the date the vehicle first becomes subject to registration fees in Arizona.

“Electronic delivery” means the transmission of registration and credit card information to the Division, by computer, through an authorized third party electronic service provider.

“Emergency Vehicle Permit” means a document issued by the Division’s Enforcement Services Program to a private fire department for a single fire engine that authorizes the driver of a permitted vehicle to exercise the privileges prescribed under A.R.S. § 28-624.

“Expiration date” means the day, month, and year in which a vehicle registration expires.

“Fire Engine” means a motor vehicle containing fire-fighting equipment capable of extinguishing fires.

“IM147 Test” means the emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Included vehicle” means a vehicle subject to annual or biennial Arizona registration unless otherwise excluded from the staggered registration prescribed under A.R.S. § 28-2159 and R17-4-304.

“Initial registration” means the first registration of an included vehicle in Arizona.

“OBD” means the On-Board Diagnostics emissions test prescribed under A.R.S. § 49-542(F)(2)(a).

“Off-highway vehicle” has the same meaning as prescribed under A.R.S. § 28-1171.

“Operator Requirements” means the requirements given in Chapter 2, Basic Driver/Operator Requirements, of the National Fire Protection Association Standard for Fire Apparatus Driver/Operator Professional Qualification (NFPA 1002), 1998 edition, which is incorporated by reference and on file with the Arizona Department of Transportation and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

“Private fire department” means a fire fighting business equipped to provide emergency fire-fighting devices for a private purpose that is neither a public service corporation nor a municipal entity.

“Private Fire Emergency Vehicle” means a fire engine operated by a private fire department for which an Emergency Vehicle Permit is issued.

“Registration” means the authorization, issued by the Division that allows a vehicle to use state highways.

“Registration fees” means the fees due to the Division at the time of registration and consisting of the general registration fees imposed under A.R.S. § 28-2003, the vehicle license tax imposed under A.R.S. § 28-5801, and the commercial registration and gross weight fees imposed under A.R.S. § 28-5433.

“Registration period” means the time-frame during which a vehicle registration is valid.

“Renewal registration” means the second and subsequent registration of an included vehicle.

**Historical Note**

Transferred to R17-1-301 (Supp. 92-4). New Section made by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4). Amended by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

**R17-4-302. Staggered Registration for Apportioned Commercial Vehicles**

Apportioned commercial vehicle fleet registration periods. The Division shall assign a registration period to a newly registered apportioned commercial vehicle fleet. The fleet owner and the Director shall mutually agree to the registration period and expiration date.

1. The Division shall:
  - a. Establish a registration period that expires on the last day of the calendar quarter selected by the fleet owner, not to exceed 12 months from the initial registration date.
  - b. Apply the original fleet registration fees towards the registration fees required for a replaced vehicle when an owner replaces a vehicle within a fleet.
  - c. Apply the original fleet registration fees towards the registration fees required for a transferred vehicle when an owner transfers a vehicle between fleets.
  - d. Refund any excess credit of registration fees in accordance with the provisions prescribed under A.R.S. § 28-2356.
2. The owner of an apportioned commercial fleet vehicle shall:
  - a. Ensure that all vehicles within a fleet have the same registration period.
  - b. Ensure that the fleet vehicle is not operated with an expired vehicle registration.
  - c. Maintain the assigned or selected registration period for at least three consecutive registration periods.
3. The Division shall not provide a grace period for late registration or late payment of fees.

**Historical Note**

Adopted effective August 1, 1988 (Supp. 88-3). Transferred to R17-1-302 (Supp. 92-4). New Section recodified from R17-4-216 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-303. Biennial Registration**

- A. Biennial registration.
  1. The Division may register any vehicle biennially, unless excluded.
  2. The Division shall register a newly licensed or newly leased vehicle biennially, unless the owner chooses to register the vehicle on an annual basis.
- B. Excluded vehicles. The owner of a vehicle that meets any one of the following criteria is excluded from the biennial registration program:
  1. A vehicle required to have an IM147 or OBD test within 12 months after the date of registration.
  2. A vehicle that requires an annual emissions test.
  3. A vehicle subject to any one of the following types of registration:
    - a. Allocated registration under A.R.S. § 28-2261,
    - b. Apportioned registration under A.R.S. § 28-2261,
    - c. Fleet registration under A.R.S. § 28-2202, or
    - d. Interstate registration under A.R.S. § 28-2052.
  4. A vehicle with an undersized mobile home plate registration.
  5. A vehicle that requires the owner to certify eligibility for a registration fee exemption on an annual basis; such as the registration exemption available to an active duty military member, a widow, widower, or disabled person other than a 100% disabled veteran.

**Historical Note**

Transferred to R17-1-303 (Supp. 92-4). New Section

recodified from R17-4-217 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-304. Staggered Registration for Included Vehicles**

- A. Included vehicles. The Division shall assign one of the following staggered expiration dates when issuing an initial registration to an included vehicle:
  1. If a vehicle has an effective date of registration from the first day through the 15th day of the month:
    - a. Annual registration expires on the 15th day of the month 12 months from the month the vehicle is subject to Arizona registration; or
    - b. Biennial registration expires on the 15th day of the month 24 months from the month the vehicle is subject to Arizona registration.
  2. If a vehicle has an effective date of registration from the 16th day through the last day of the month:
    - a. Annual registration expires on the last day of the month 12 months from the month the vehicle is subject to Arizona registration; or
    - b. Biennial registration expires on the last day of the month 24 months from the month the vehicle is subject to Arizona registration.
- B. Excluded vehicles. The staggered registration prescribed by this Section excludes the following vehicles:
  1. A vehicle exempt from registration;
  2. A vehicle subject to any one of the following types of registration:
    - a. Allocated registration under A.R.S. § 28-2261,
    - b. Apportioned registration under A.R.S. § 28-2261,
    - c. Fleet registration under A.R.S. § 28-2202,
    - d. Interstate registration under A.R.S. § 28-2052, or
    - e. Seasonal agricultural registration under A.R.S. § 28-5436;
  3. A vehicle subject to a one-time registration fee;
  4. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as provided under A.R.S. § 28-2511(A);
  5. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight under A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
  6. A moped;
  7. A motorized electric or gas powered bicycle or tricycle capable of reaching speeds of 20 to 25 miles per hour.
- C. Proration of fees. The Division shall prorate registration fees under A.R.S. §§ 28-2159, 28-5807, and 28-5434.
- D. Expiration dates. The Division shall utilize the following expiration dates, regardless of the effective date of the initial registration:
  1. Annual registration: Expires 12 months from the expiration of the previous registration period; or
  2. Biennial registration: Expires 24 months from the expiration of the previous registration period.
- E. Application for registration. A person applying for an initial registration or renewal registration for an included vehicle shall submit the requirements prescribed under subsection (1) or (2):
  1. If a person submits the registration to the Division or an Authorized Third-party Provider of registration functions in person or by mail:
    - a. The application for registration or registration card, and
    - b. Payment of registration fees.

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2. If a person submits the registration to an Authorized Third-party Electronic Delivery Provider:
  - a. Required registration information, and
  - b. Credit card information.
- F. Timely submission of registration. A person shall submit the renewal registration of an included vehicle not later than the day the prior registration period expires. If the prior registration period expires on a day other than an established business day, a person shall submit the renewal registration of an included vehicle not later than the first business day after the prior registration period expires.
- G. Penalties. The penalties imposed under A.R.S. § 28-2162 for delinquent renewal registration of an included vehicle shall apply when either of the following occurs:
  1. A person does not submit to the Division or an Authorized Third-party Provider of registration functions the items set forth in subsection (E)(1) so that the items are received by the due date; or
  2. A person does not electronically submit to an Authorized Third-party Electronic Delivery Provider the items required under subsection (E)(2) so that the items are received by the due date.
- H. Date of receipt. The date of receipt for the items required under subsection (E)(1) or (E)(2) shall be the following:
  1. The date a person presents the items required under subsection (E)(1) to a Division facility or the facility of an Authorized Third-party Provider of registration functions in person;
  2. The date an Authorized Third-party Electronic Delivery Provider receives by computer or telephone the items set forth in subsection (E)(2);
  3. The date a private express mail carrier receives the package containing the items set forth in subsection (E)(1), as indicated on the shipping package;
  4. The date of the last business day prior to the day the Division retrieves the items set forth at subsection (E)(1) from a designated Division drop box; or
  5. The date of the United States Postal Service postmark stamped on the envelope containing the items set forth in subsection (E)(1), unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.
- I. Evidence of registration. The Division or Authorized Third-party Provider of registration functions shall assign and issue a number plate or plates to an included vehicle as evidence of registration.
  1. The assigned number plate shall be attached and displayed on the rear of the assigned vehicle. When two plates are issued, the second plate may be attached to the front of the assigned vehicle.
  2. Improper number plate display shall subject the owner and operator of the vehicle to the sanctions imposed under A.R.S. §§ 28-2531(B) and 28-2532.
  3. Any registration tabs or stickers issued by the Division or Authorized Third-party Provider of registration functions shall be displayed on the appropriate number plate of the assigned vehicle.

**Historical Note**

Transferred to R17-1-304 (Supp. 92-4). New Section recodified from R17-4-218 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3589, effective December 1, 2007 (Supp. 07-4).

**R17-4-305. Temporary Registration Plate “TRP” Procedure****A. Definitions.**

1. “Charitable Event TRP” means a TRP issued to a motor vehicle dealership or manufacturer for a charitable event as prescribed by A.R.S. § 28-4548.
  2. “Deal Unwound” means the vehicle was returned to the dealership and the sale was not completed.
  3. “Voided TRP” means a TRP that the issuer records as voided after issuing the TRP.
- B. Issuing.**
1. New and used motor vehicle dealers and title service companies that issue TRPs shall send an electronic record of the TRP to the Division before placing the TRP on the vehicle.
  2. The TRP expiration date shall be 45 days from the issue date.
  3. TRPs issued for charitable events are valid for the duration of the event not to exceed 45 days.
  4. An issuer shall not issue more than one TRP per vehicle sale.
  5. An issuer shall attach the TRP to the vehicle rear in the same manner and position as a permanent license plate prescribed under A.R.S. § 28-2354.
- C. Voiding.** An issuer shall void a TRP when:
1. The TRP is lost,
  2. The TRP is damaged,
  3. The dealer reports a deal unwound,
  4. The issuer enters the wrong vehicle identification number, or
  5. The issuer enters the wrong customer identification number.

**Historical Note**

Transferred to R17-1-305 (Supp. 92-4). New Section R17-4-305 recodified from R17-4-219 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5320, effective February 6, 2006 (Supp. 05-4).

**R17-4-306. Nonresident Daily Commuter Fee**

A nonresident daily commuter shall pay a fee of \$8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

**Historical Note**

Former Rule, General Order 14. Former Section R17-4-05 renumbered without change as Section R17-4-306 (Supp. 87-2). Transferred to R17-1-306 (Supp. 92-4). New Section R17-4-306 recodified from R17-4-222 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 571, effective January 14, 2002 (Supp. 02-1).

**R17-4-307. Motor Vehicle Registration and License Plate Reinstatement Fee**

- A.** Under A.R.S. § 28-4151(A), the Division shall assess a \$50 fee for reinstatement of a motor vehicle registration and license plate suspended under A.R.S. §§ 28-4148 and 28-4149.
- B.** Subsection (A) does not apply to a motor carrier subject to the financial responsibility requirements prescribed under A.R.S. Title 28, Chapter 9, Article 2.

**Historical Note**

Former Rule, General Order 5. Former Section R17-4-03 renumbered without change as Section R17-4-307 (Supp. 87-2). Transferred to R17-1-307 (Supp. 92-4). New Section R17-4-307 recodified from R17-4-224 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5439, effective November 14, 2001 (Supp. 01-4).

**R17-4-308. Official Vehicle License Plates**

- A. The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).
- B. A license plate issued under A.R.S. § 28-2511 has no expiration date.
- C. An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.
- D. A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
  - 1. Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
  - 2. Display each license plate as prescribed by A.R.S. § 28-2354; and
  - 3. Maintain a record of each license plate transfer that includes:
    - a. The date of the transfer;
    - b. The year, make, and model of the vehicle, and
    - c. The vehicle identification number (VIN) for each car involved in the transfer.

**Historical Note**

Former Rule, General Order 20. Former Section R17-4-06 renumbered without change as Section R17-4-308 (Supp. 87-2). Transferred to R17-1-308 (Supp. 92-4). New Section R17-4-308 recodified from R17-4-252 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 573, effective January 14, 2002 (Supp. 02-1).

**R17-4-309. Private Fire Emergency Vehicle Permit**

- A. Private Fire Emergency Vehicle Permit. A Private Fire Emergency Vehicle Permit may be issued to a private fire department if all requirements provided under subsections (B) and (C) are met.
  - 1. The Private Fire Emergency Vehicle Permit is valid until revoked or surrendered.
  - 2. The Private Fire Emergency Vehicle Permit shall be carried at all times in the fire engine for which the permit is issued.
  - 3. The Private Fire Emergency Vehicle Permit is not transferable.
  - 4. The Private Fire Emergency Vehicle Permit shall remain the property of the Division and shall be surrendered to the Division when the fire engine is no longer being used to respond to an emergency.
- B. Private Fire Emergency Vehicle Permit application. A person applying for a Private Fire Emergency Vehicle Permit shall submit the required documentation to the Division's Enforcement Services Program, P.O. Box 2100, Mail Drop 513M, Phoenix, Arizona 85007. The following documentation is required at the time of initial application:
  - 1. Private Fire Emergency Vehicle Permit Application. Multiple fire engines may be listed on one application. The Private Fire Emergency Vehicle Permit Application is furnished by the Division and is available upon request from the Division's Enforcement Services Program; and
  - 2. Proof of acceptable financial responsibility to cover any liability that may arise from the use of the Private Fire Emergency Vehicle Permit. Acceptable proof of financial responsibility is an insurance policy that:
    - a. Is issued by an insurance company licensed to conduct business in Arizona by the Arizona Department of Insurance;
    - b. Is written for a combined single-limit coverage of at least \$5 million;

- c. Contains a provision stating that the state of Arizona shall be notified at least 30 days prior to any policy cancellation, nonrenewal, or change in provisions; and
- d. Contains a provision stating that the state of Arizona shall be notified immediately if the insurance company becomes insolvent.

**C. Operational requirements.**

- 1. A fire engine may be operated with the privileges prescribed under A.R.S. § 28-624, but shall be subject to all other applicable provisions prescribed under A.R.S. Title 28, A.A.C. Title 17, and any other applicable statutes or ordinances.
- 2. A fire engine shall only be driven by an operator who meets the Operator Requirements as defined under R17-4-301.
- 3. A fire engine with a Private Fire Emergency Vehicle Permit, shall meet the National Fire Protection Association's (NFPA) fire engine and fire apparatus standards in effect for the manufacture date of the emergency vehicle.
- 4. The private fire department is responsible for ensuring that the fire engine is not operated using the privileges prescribed under A.R.S. § 28-624 with an invalid Private Fire Emergency Vehicle Permit.

**D. Denial.** If an application for a Private Fire Emergency Vehicle Permit is denied, a notice of denial shall be sent to the applicant at the address of record. An applicant is allowed to reapply for a permit following denial, provided all requirements listed under this Section are met.**E. Revocation.** If a Private Fire Emergency Vehicle Permit is revoked, a notice of the revocation shall be sent to the address of the applicant. An applicant is allowed to reapply for a permit following revocation, provided all requirements listed under this Section are met.

- 1. The emergency vehicle permit is immediately revoked upon a determination that:
  - a. The permitted vehicle or the private fire department no longer meets the requirements for the permit; or
  - b. The vehicle was operated in violation of the provisions of this rule, any other applicable rule, or statute.
- 2. The revocation shall be preceded by a notice of intent to revoke.
  - a. The notice of intent to revoke shall be sent by first-class mail to the address of the applicant as shown on the permit application.
  - b. The notice of intent to revoke shall inform the applicant of the right to an administrative hearing and the procedure for requesting a hearing.
- 3. The revocation shall become effective 25 days after the mailing date of the notice of intent to revoke unless a timely request for hearing is submitted.

**F. Administrative hearing.** The administrative hearing is held in accordance with the procedures prescribed under 17 A.A.C. 1, Article 5.**Historical Note**

Former Rule, General Order 31. Former Section R17-4-11 renumbered without change as Section R17-4-309 (Supp. 87-2). Transferred to R17-1-309 (Supp. 92-4). New Section recodified from R17-4-701 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

**Appendix A. Repealed****Historical Note**

Appendix A recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

Appendix A repealed by final rulemaking at 14 A.A.R. 2106, effective July 5, 2008 (Supp. 08-2).

**R17-4-310. Personalized License Plates****A. Definitions.**

1. "Division" means the Motor Vehicle Division of the Arizona Department of Transportation.
2. "Division Director" means the Assistant Division Director for the Motor Vehicle Division of the Arizona Department of Transportation.
3. "Personalized plate" means a license plate with a registration number chosen by a person rather than assigned by the Division.
4. "Plate number" means the combination of letters, numbers, and spaces on a vehicle license plate.

**B. A person who wants to receive a personalized plate shall file an application with the Division on a form provided by the Division.**

1. An applicant shall provide the following information on the form:
  - a. Name of the vehicle's owner or lessee;
  - b. Vehicle owner's or lessee's mailing address;
  - c. Vehicle's make and year;
  - d. Vehicle identification number;
  - e. Vehicle's current plate number;
  - f. Date the vehicle's current registration expires;
  - g. Plate number to appear on the personalized plate;
  - h. Meaning or message of the personalized plate; and
  - i. Other information required by the Division.
2. If an applicant is purchasing the personalized plate as a gift for the vehicle's owner or lessee, the applicant shall also provide the applicant's name and mailing address.

**C. The Division shall reject the application if the requested plate number:**

1. Refers to or connotes breasts, genitalia, pubic area, buttocks, or relates to sexual or eliminatory functions;
2. Refers to or connotes the substance, paraphernalia, sale, use, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant;
3. Expresses contempt for or ridicule or superiority of a class of persons;
4. Duplicates another registration number;
5. Has connotations that are profane or obscene; or
6. Uses linguistics, numbers, phonetics, translations from foreign languages or upside-down or reverse reading to achieve a reference or connotation prohibited in subsection (C)(1) through (C)(3) or (C)(5).

**D. Rejection of application.**

1. If the Division does not issue personalized plates to an applicant, the Division shall inform the applicant by mail.
2. An applicant may make a written appeal by letter for a review of the rejection, within 10 days after the date of the Division's notice, to the following address:  
Motor Vehicle Division  
Special Plates Unit, Mail Drop 801Z  
PO Box 2100  
Phoenix, Arizona 85001-2100.

**E. Revocation of personalized plates; appeal.**

1. If the Division determines that a personalized plate should not have been issued because it contains a plate number prohibited under subsection (C), the Division shall require the plate holder to surrender the plates to the

division within 30 days after the date of the Division's mailed notice, unless the plate holder requests an appeal under subsection (D)(2).

2. A person who has been directed to surrender a personalized plate may submit a written appeal by letter as prescribed under subsection (D)(2).
3. Refund of personalized plate fees on revocation.
  - a. The Division shall refund the amount of the personalized plate fee and the pro rated amount of the special annual renewal fee to the person holding the revoked personalized plate along with any credit or refund calculated by the Division.
  - b. A person whose plate is revoked may request that instead of a refund, the Division issue the person a different personalized plate. The person shall apply for the personalized plate as prescribed under subsection (B).
4. The Division shall cancel the vehicle plate of a vehicle if the person who holds a revoked personalized plate does not surrender the plate within 30 days after the date of the Division's notice or, if the person timely requests an appeal, within 30 days after the Division issues a final decision.

**Historical Note**

Former Rule, General Order 25. Former Section R17-4-09 renumbered without change as Section R17-4-310 (Supp. 87-2). Transferred to R17-1-310 (Supp. 92-4). New Section recodified from R17-4-708 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

**R17-4-311. Special Organization Plate List**

As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:

1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

**Historical Note**

Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

**R17-4-312. Off-highway Vehicle User Indicia**

**A.** For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:

1. The off-highway vehicle user indicia application provided by the Division, and
2. The fee prescribed under subsection (C).

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- B. The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
  2. Primarily off-highway, occasionally on-highway; or
  3. Primarily on-highway, occasionally off-highway.
- C. The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is \$25.
- D. The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.
- E. The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.

**Historical Note**

Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4).  
New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

**R17-4-313. Transferred****Historical Note**

Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4).

**R17-4-314. Transferred****Historical Note**

Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

**R17-4-315. Transferred****Historical Note**

Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

**R17-4-316. Transferred****Historical Note**

Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

**R17-4-317. Transferred****Historical Note**

Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

**R17-4-318. Transferred****Historical Note**

Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

**R17-4-319. Transferred****Historical Note**

Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

**R17-4-320. Transferred****Historical Note**

Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

**R17-4-321. Transferred****Historical Note**

Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

**R17-4-322. Transferred****Historical Note**

Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

**R17-4-323. Transferred****Historical Note**

Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

**R17-4-324. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-325. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-326. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-327. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-328. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-329. Transferred****Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

**R17-4-330. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

**R17-4-331. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

**R17-4-332. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former

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Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

**R17-4-333. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

**R17-4-334. Transferred****Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-70 renumbered without change as Section R17-4-334 (Supp. 87-2). Transferred to R17-1-334 (Supp. 92-4).

**R17-4-335. Transferred****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-401 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-401 renumbered without change as Section R17-4-335 (Supp. 87-2). Transferred to R17-1-335 (Supp. 92-4).

**R17-4-336. Transferred****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-402 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-402 renumbered without change as Section R17-4-336 (Supp. 87-2). Transferred to R17-1-336 (Supp. 92-4).

**R17-4-337. Transferred****Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-403 adopted as an emergency now adopted and amended as a permanent rule effective October 6, 1982 (Supp. 82-5). Amended effective November 13, 1986 (Supp. 86-6). Former Section R17-4-403 renumbered without change as Section R17-4-337 (Supp. 87-2). Transferred to R17-1-337 (Supp. 92-4).

**R17-4-338. Transferred****Historical Note**

Transferred to R17-1-338 (Supp. 92-4).

**R17-4-339. Transferred****Historical Note**

Transferred to R17-1-339 (Supp. 92-4).

**R17-4-340. Transferred****Historical Note**

Transferred to R17-1-340 (Supp. 92-4).

**R17-4-341. Transferred****Historical Note**

Transferred to R17-1-341 (Supp. 92-4).

**R17-4-342. Transferred****Historical Note**

Transferred to R17-1-342 (Supp. 92-4).

**R17-4-343. Transferred****Historical Note**

Transferred to R17-1-343 (Supp. 92-4).

**R17-4-344. Transferred****Historical Note**

Transferred to R17-1-344 (Supp. 92-4).

**R17-4-345. Transferred****Historical Note**

Transferred to R17-1-345 (Supp. 92-4).

**R17-4-346. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-346 (Supp. 92-4).

**R17-4-347. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-347 (Supp. 92-4).

**R17-4-348. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-348 (Supp. 92-4).

**R17-4-349. Transferred****Historical Note**

Adopted effective October 8, 1987 (Supp. 87-4). Transferred to R17-1-349 (Supp. 92-4).

**R17-4-350. Rental Vehicle Surcharge Reimbursement**

**A.** Definitions. In addition to the definitions prescribed under A.R.S. § 28-5810, the following terms apply to this Section, unless otherwise specified:

“Person” means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.

“Previous year” means the prior calendar year, January 1 through December 31.

“Rental revenue” means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related charges, including boxes, packing blankets, straps, and tow bars.

“Surcharge” means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1, A.R.S. Title 48, Chapter 26, Article 2, and selected non-vehicle related items, including boxes, packing blankets, straps, and tow bars.

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“Vehicle License Tax” means the tax imposed by A.R.S. § 28-5801, less any tax credited under A.R.S. § 28-2356.

- B. Reports.** Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the Department and shall contain all of the following:
1. Address where business records are secured;
  2. Name, title, phone number, and signature of the person authorized to sign the form;
  3. Business name;
  4. Business type, including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership;
  5. Name, title, phone number, mailing address, and e-mail address of the contact person;
  6. Federal Employer Identification Number (FEIN);
  7. Mailing address (if different from principal business address);
  8. Principal business address;
  9. Rental vehicle revenue collected, by county;
  10. Total Arizona Vehicle License Tax paid on rental vehicles;
  11. Total rental vehicle revenue collected;
  12. Total surcharge collected;
  13. Total surcharge due to the Department; and
  14. Type of rental business, including passenger vehicle, semitrailer, trailer, truck, motorcycle, moped, and recreational vehicle.
- C. Records.** A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:
1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
    - a. The Vehicle Identification Number,
    - b. The Arizona vehicle license plate number,
    - c. A copy of the Arizona registration,
    - d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
    - e. The date on which the Vehicle License Tax was paid, and
    - f. The dates the rental vehicle was in and out of service.
  2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
    - a. The rental contract for each rental vehicle,
    - b. The amount of surcharge collected,
    - c. Chart of accounts,
    - d. General ledger,
    - e. Financial statements,
    - f. Federal tax returns, and
    - g. Monthly trial balance.
  3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
    - a. All applicable rental contracts; and

- b. The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.
- D. Audits.** The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at <http://www.gao.gov/yellowbook> or can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
  1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
  2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

**ARTICLE 4. DRIVER LICENSES****R17-4-401. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Financial responsibility (accident) suspension” means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

“Gore area” is defined under A.R.S. § 28-644.

“Proof the vehicle was sold” means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;



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The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person's home and workplace,

During the person's work-related activities, or

Between the person's home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person's home and workplace;

During the person's work-related activities; or

Between the person's home and school.

"State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

"Thirty-six-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

"Twelve-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

"Twenty-four-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

"VIN" or "vehicle identification number" is defined under A.R.S. § 13-4701(4).

"Withdrawal action" means a Department action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

#### R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

A. An applicant for a restricted permit shall:

1. Have no withdrawal action other than the financial responsibility (accident) suspension;
2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;

3. Pay the \$10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and

4. Pay the \$25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;

5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and

6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).

B. In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:

1. Apply for an original or renew an Arizona driver license by:

a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and

b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or

2. Obtain a duplicate Arizona driver license by paying the \$12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).

C. At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

#### Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

#### R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

A. An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.

B. The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is \$12 under A.R.S. §§ 28-3002(A) and 28-3165.

#### Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

#### R17-4-404. Driver Point Assessment; Traffic Survival Schools

A. Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

B. Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:

1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
2. Suspend the driver's Arizona driver license or driving privilege.

C. Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.

1. The order of assignment shall:

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- a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and
- b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.
2. The Department shall record that a driver completed traffic survival school if:
  - a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
  - b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
- D. Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
  1. Specify the period within which the driver may submit a hearing request to the Department; and
  2. Specify the effective date of the suspension.
- E. Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
  1. Specify the length of the suspension as follows:
    - a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
    - b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
    - c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
    - d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
  2. Specify the period within which the driver may submit a hearing request to the Department; and
  3. Specify the effective date of the suspension.

**Historical Note**

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

**Table 1. Driver Point Valuation**

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

**Historical Note**

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

**R17-4-405. Emergency Expired****Historical Note**

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

**R17-4-406. Minor's Application for Permit or License**

- A. For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
  1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
  2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
  3. "Parent" means the natural or adoptive father or mother of a child.
- B. Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.
- C. Procedure when only one parent signs:
  1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
  2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be

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stated and it shall be presumed the signing parent has custody of the child.

3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.
- D. Procedure when both parents are deceased:
  1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court judgment, affidavits of close relatives of the child, or school records.
  2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
  3. An employer signing the application shall certify the person employs the minor on the date of application.
  4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.
- E. Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

**R17-4-407. Application for Travel-Compliant Driver License or Nonoperating Identification License; Fee**

- A. For the purposes of this Section:
  1. "Travel-compliant driver license" means a federally compliant driver license issued pursuant to A.R.S. § 28-3175.
  2. "Travel-compliant nonoperating identification license" means a federally compliant nonoperating identification license issued pursuant to A.R.S. § 28-3175.
- B. An applicant shall apply to the Department, on a form provided by the Department, for a travel-compliant driver license or a travel-compliant nonoperating identification license.
- C. An applicant must meet and comply with all lawful requirements for an Arizona driver license or nonoperating identification license.
- D. An applicant shall meet and comply with all application and documentation requirements in the most current edition of 6 CFR 37, including satisfactory proof of identity, date of birth, social security number, principle residency, and evidence of lawful status in the United States. Documents and information must be verified by the Department. An applicant may obtain a listing of acceptable documentation from the Department's website at [www.azdot.gov](http://www.azdot.gov).

- E. An applicant shall pay a \$25 fee for any class of a travel-compliant driver license or travel-compliant nonoperating identification license.
- F. A travel-compliant driver license is valid for a period of eight years after issuance and is renewable for successive periods of eight years up to but not exceed the year of the licensee's 65th birthday, except for when:
  1. The applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.
  2. The applicant is 60 years of age or older and the travel-compliant driver license is valid for a period of five years after issuance and renewable for successive periods of five years.
- G. A travel-compliant nonoperating identification license is valid for a period of eight years after issuance and is renewable for successive periods of eight years, except for when the applicant is authorized for a shorter period of time as provided under A.R.S. § 13-3821, 28-3171(B), or 28-3223, or federal law authorizes the applicant's presence for a shorter period of time.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

**R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order**

- A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).
- B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.
- C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-409. Application for Nonoperating Identification License; Fee**

- A. This Section does not apply to applicants for a travel-compliant nonoperating identification license. Except as provided under R17-4-407, this Section applies to applicants for a nonoperating identification license.
- B. An applicant shall apply to the Department, on a form provided by the Department, for a nonoperating identification license, and shall comply with the requirements under A.R.S. § 28-3165.
- C. An applicant may obtain a listing of satisfactory proof of an applicant's name and date of birth from the Department's web-site at [www.azdot.gov](http://www.azdot.gov).
- D. Except as provided under A.R.S. § 28-3165, an applicant shall pay a \$12 fee for a nonoperating identification license.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1).

**R17-4-410. Voter Registration Through the Motor Vehicle Division**

- A. For purposes of this Section:
  - 1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
  - 2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.
- B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
  - 1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
  - 2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.
- C. Subsection (B) applies to the following license transactions:
  - 1. Initial licensee application;
  - 2. License renewal;
  - 3. Duplicate driver license; or
  - 4. Licensee personal information update.
- D. MVD shall transfer the voter registration forms and the data collected under this Section by:
  - 1. Mailing the completed hardcopy forms to the appropriate county recorder; and
  - 2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.
- E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

**R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee**

- A. In addition to the requirements prescribed in A.R.S. § 28-3158, an person applying for a special ignition interlock restricted driver license shall:
  - 1. If the person is suspended for a first offense of A.R.S. § 28-1321:
    - a. Complete at least 90 consecutive days of the period of the suspension, and
    - b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
  - 2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
    - a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
    - b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
    - c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
  - 3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
    - a. Comply with the restrictions in subsection (C), and
    - b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.
- B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).
- C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:
 

1. Age 50 or older	\$10.00
2. Age 45 – 49	\$15.00
3. Age 40 – 44	\$20.00
4. Age 39 or younger	\$25.00
- D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).
- E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
  - 1. Date installed;
  - 2. Person's full name;
  - 3. Person's date of birth;
  - 4. Person's customer or driver license number;
  - 5. Installer and manufacturer name;

6. Installer fax number;
  7. Date report interpreted;
  8. Report period;
  9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
  10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
  11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
  12. Any other information required by the Director.
- F. A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

#### Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

#### R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions

- A. Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:
1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
  2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
  3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.
- B. Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.
- C. Burden of proof and presumptions.
1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
  2. The person may be rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or

attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

- D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.

#### Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

#### R17-4-413. Lifetime Disqualification Reinstatement

- A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
- "CDL" means Commercial Driver License.
- "Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
- "Permanently disqualified" means the individual will never be able to obtain a commercial driver license.
- B. Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
  2. The individual:
    - a. Is otherwise eligible for licensure.
    - b. Has continuously been eligible for a driver license during the most recent 10-year period.
    - c. Has not previously reinstated CDL privileges for another lifetime disqualification.
    - d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
      - i. Driving while under the influence of alcohol or a controlled substance.
      - ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
      - iii. Refusal to submit to a blood alcohol concentration test.
      - iv. Leaving the scene of an accident.
      - v. Using a vehicle in the commission of a felony.
      - vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or her commercial driving privileges are canceled, disqualified, suspended, or revoked.
      - vii. Causing a fatality through the negligent operation of a commercial motor vehicle.

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- C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.
- D. Permanent disqualification.
1. An individual who reinstated his or her commercial driving privilege in accordance with this Section and who is subsequently given a lifetime disqualification under A.R.S. § 28-3312 is permanently disqualified.
  2. An individual convicted of using any vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance is permanently disqualified.
  3. An individual who more than once refuses a test in violation of A.R.S. § 28-1321 if the refusals involve more than one incident is permanently disqualified.
  4. An individual who more than once is convicted of violating A.R.S. § 28, Chapter 4, Article 3 is permanently disqualified.

**Historical Note**

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

**R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing**

- A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.
- B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
  2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
    - a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
    - b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who currently possesses a valid Arizona commercial driver license.
  3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law

relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.

- C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
  2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
  3. The Department shall send written notification of the action to the person describing the action taken by the Department.
- D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
  2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
  3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
  4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
  5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
    - a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
    - b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
  6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

**Historical Note**

Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

**R17-4-415. Reserved****R17-4-416. Reserved****R17-4-417. Reserved****R17-4-418. Reserved****R17-4-419. Reserved****R17-4-420. Recodified****Historical Note**

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7

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A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-421. Recodified****Historical Note**

Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-422. Recodified****Historical Note**

Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-423. Recodified****Historical Note**

Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-424. Recodified****Historical Note**

Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-425. Recodified****Historical Note**

Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-426. Recodified****Historical Note**

Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-427. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-428. Recodified****Historical Note**

New Section recodified from A.A.C. R17-3-403 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1). Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-429. Reserved**

**R17-4-430. Reserved**

**R17-4-431. Reserved**

**R17-4-432. Reserved**

**R17-4-433. Reserved**

**R17-4-434. Reserved**

**R17-4-435. Recodified**

**Historical Note**

Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.01. Recodified****Historical Note**

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.02. Recodified****Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.03. Recodified****Historical Note**

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.04. Recodified****Historical Note**

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.05. Recodified****Historical Note**

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-435.06. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-436. Recodified****Historical Note**

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-437. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.01. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.02. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.03. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**Appendix A. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-437.04. Emergency Expired****Historical Note**

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

**R17-4-438. Recodified****Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-439. Recodified****Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-440. Recodified****Historical Note**

Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-441. Reserved****R17-4-442. Reserved****R17-4-443. Reserved****R17-4-444. Repealed****Historical Note**

Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emer-



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agency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

**R17-4-445. Recodified****Historical Note**

Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-446. Recodified****Historical Note**

Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-447. Recodified****Historical Note**

Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-448. Recodified****Historical Note**

Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-449. Reserved****R17-4-450. Repealed****Historical Note**

New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-451. Repealed****Historical Note**

New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-452. Repealed****Historical Note**

New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-453. Repealed****Historical Note**

New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-454. Repealed****Historical Note**

New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-455. Repealed****Historical Note**

New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-456. Repealed****Historical Note**

New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-457. Repealed****Historical Note**

New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-458. Repealed****Historical Note**

New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-459. Repealed****Historical Note**

Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-460. Repealed****Historical Note**

New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-461. Repealed****Historical Note**

New Section recodified from R17-4-422 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-462. Repealed****Historical Note**

New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

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repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-463. Repealed****Historical Note**

New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-464. Repealed****Historical Note**

New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-465. Repealed****Historical Note**

New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-466. Repealed****Historical Note**

New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**R17-4-467. Repealed****Historical Note**

New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

**ARTICLE 5. SAFETY****R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Division to complete an examination successfully or to obtain an evaluation.

“Application” means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.

“Arizona Driver License Manual” or “manual” means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial Driver License physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

“Director” means the Division Director or the Division Director’s designee.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist as defined below to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Identification number” means a distinguishing number assigned by the Division to a person for a license or instruction permit.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Division to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license; or

Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

A physician who is a surgeon or a psychiatrist;

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or

A psychologist.

“Substance abuse” means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse counselor” is defined in A.R.S. § 28-3005.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

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“Successful completion of an examination” means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required tests.

#### Historical Note

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1).

#### R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

A. Applicant's or licensee's responsibility. To comply with the Division's screening process for safe operation of a motor vehicle, an applicant or licensee shall:

1. Provide the Division with all requested information about the applicant's or licensee's visual, physical, or psychological condition;
2. Successfully complete all required examinations;
3. Obtain all required evaluations;
4. Ensure timely submission of evaluation reports to the Division; and
5. Appear at all required interviews.

B. Screening process for safe operation of a motor vehicle. This subsection and subsections (C) through subsection (E) state the screening process for safe operation of a motor vehicle.

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
  - a. The Division informs the applicant that the applicant's responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
  - b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).
3. An applicant for license renewal shall successfully complete an examination if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license renewal:
  - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
  - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
4. As soon as an applicant's medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical condition not previously reported to the Division that affects the applicant's functional ability.
5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
  - a. Complete the medical screening questions and certification on the application, and
  - b. Continue with the screening process for safe operation of a motor vehicle.

C. Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.

1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
  - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
  - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
  - c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
  - d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a form provided by the Division.
3. If the evaluation report on the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.
4. If the Division is unable to determine whether a disqualifying medical condition exists after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division's Medical Review Program, on a form provided by the Division.
5. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.

D. Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.

1. The Division shall deny a driver license if an applicant:
  - a. Fails to complete successfully an examination; or
  - b. Fails to:
    - i. Obtain an evaluation;
    - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an evaluation is required; or
    - iii. Appear at an interview; or
  - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
2. The Division shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (D)(1).
3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the licensee that:
  - a. Unless the Division receives the licensee's timely hearing request under subsection (F), the revocation becomes effective:
    - i. Fifteen days after the date the licensee is personally served with the notice; or

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- ii. Twenty days after the date the notice is mailed to the licensee.
  - b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.
- 4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
  - a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation, or
  - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- E. Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.
  - 1. Automatic transmission,
  - 2. Hand dimmer switch,
  - 3. Left-foot gas pedal,
  - 4. Parking-brake extension,
  - 5. Power steering,
  - 6. Power brakes,
  - 7. Six-way power seat,
  - 8. Right-side directional signal,
  - 9. A device that enables an operator to spin the steering wheel,
  - 10. A device that enables full foot control,
  - 11. Dual outside mirrors,
  - 12. Chest restraints,
  - 13. Shoulder restraints,
  - 14. A device that extends pedals,
  - 15. A device that enables full hand control, and
  - 16. Adapted seat.
- F. Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.
  - 1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:
    - a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
    - b. Within 20 days after the date the notice is mailed to the applicant or licensee.
  - 2. A.A.C. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
  - 3. The administrative law judge shall sustain, modify, or void the Division's licensing action.
- G. The Division shall not release information required to be submitted to the Division under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

**Historical Note**

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

**Exhibit A. Repealed****Historical Note**

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

**R17-4-503. Vision standards**

- A. Definitions.
  - 1. "Binocular vision" means the ability to see in both eyes.
  - 2. "Biotopic Telescopic Lens System" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
  - 3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
  - 4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
  - 5. "Diplopia" means double vision.
  - 6. "Field of vision" means the area in which objects may be seen when the eye is fixed.
  - 7. "Impaired night vision" means below normal ability to see in reduced light.
  - 8. "Monocular vision" means the ability to see in one eye only.
  - 9. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
  - 10. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
  - 11. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
  - 12. "Visual acuity" means the clarity of a person's vision.
- B. Standard.
  - 1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
  - 2. Field of vision. Field of vision shall be 70 degrees temporally, and 35 degrees nasally, in at least one eye.
- C. Restrictions.
  - 1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
  - 2. The Division shall restrict a person with diagnosed impaired night vision to daytime driving only.
  - 3. The Division shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
  - 4. The Division shall not license a person with monocular vision and visual acuity of 20/50 or greater.
  - 5. The Division shall not license a person with binocular vision and visual acuity of 20/70 or greater.
- D. Screening process.
  - 1. The Division, a physician, or an optometrist may administer visual acuity and field of vision screening through the use of visual screening equipment to determine if a person's visual acuity and field of vision meets minimum standards.
  - 2. A person may use a bioptic telescopic lens system during vision screening.
    - a. Beginning on the date of a initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Division an

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annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.

- b. The Division shall not license a person using a bioptic telescopic lens system unless the person submits to the Division a written statement from a physician or an optometrist that the individual meets the visual acuity standard as prescribed in subsection (B).
- c. The Division shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.
- 3. The Division shall conduct visual acuity screening through the use of visual screening equipment or the Snellen Chart to determine whether a person's corrected vision is 20/40 in at least one eye.
- E. Reporting requirements.
  - 1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Division.
  - 2. If the Division does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Division shall require the person to submit the results of the person's visual acuity and vision field screening by a physician or an optometrist.
  - 3. The Division shall require a person diagnosed with any of the following conditions to file the results of the person's visual acuity and visual field screening completed by the physician or optometrist:
    - a. Any progressive eye disease,
    - b. Diplopia, or
    - c. Impaired night vision.
- F. Results of visual acuity and visual field screening shall contain the following.
  - 1. An examination date no more than three months before the submission date to the Division;
  - 2. Visual acuity and field of vision;
  - 3. If applicable, specification that the person is monocular;
  - 4. If applicable, diagnosis of any condition described in subsection (E)(3);
  - 5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Division;
  - 6. Suggested restrictions on driving, in addition to those required by the Division; and
  - 7. Any recommendations on the person's ability to safely operate a motor vehicle.
- G. The Division shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.

**Historical Note**

New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1).

**R17-4-504. Medical Alert Conditions**

- A. Definition. In this Section, "license" means any class driver license, commercial driver license, non-operating identification license, or instruction permit.
- B. Medical alert condition displayed on license. The Division will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.

- C. Retention of medical alert condition authorization. The Division will not maintain the medical alert code on the Division computer record unless written authorization is submitted.
- D. A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Division to maintain the medical code in the Division computer.

**Historical Note**

Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1).

**R17-4-505. Repealed****Historical Note**

Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

**R17-4-506. Neurological Standards**

- A. Driver license application.
  - 1. A person who has a seizure in the three months before applying for a driver license shall undergo a medical examination as provided in R17-4-502.
  - 2. After the medical examination under R17-4-502, the person or the person's physician shall submit the medical examination report to the Division.
  - 3. The Division shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.
- B. Driver license revocation.
  - 1. A person with a driver license or non-resident driving privileges who experiences a seizure shall cease driving and:
    - a. Undergo a medical examination as provided in R17-4-502;
    - b. Submit the medical examination report to the Division; and
    - c. Undergo a follow-up medical examination within one year after the seizure or within a shorter time, as recommended by a physician.
  - 2. After each medical examination, the person or the person's physician shall submit the applicable medical examination report to the Division.
  - 3. The Division shall revoke a person's driver license or nonresident driver privileges if any medical examination report shows the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.
- C. Medical examination report. A medical examination report under this Section shall include the following information:
  - 1. Age at onset of seizures, diagnosis, and history;
  - 2. Aftereffects of seizures;
  - 3. EEG findings, if any;
  - 4. Description, cause, frequency, duration, and date of most recent seizure;
  - 5. Current medications, including dosage, side effects, and serum level; and
  - 6. A physician's medical opinion as to whether the neurological disorder will affect the person's ability to operate a motor vehicle safely.

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**D.** Physician's medical opinion. A neurological disorder does not affect a person's ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:

1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

**Historical Note**

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2).

Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June 29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3).

Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1).

Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4).

**R17-4-507. Driver License Identification Number**

- A.** The Division shall assign an identification number to each person who receives a driver license, nonoperating identification license, or instruction permit. The Division shall place a person's identification number on the person's license, nonoperating identification, or instruction permit.
- B.** The Division shall not use a person's Social Security Number as the person's identification number unless:
1. The person's current driver license or nonoperating identification license has a Social Security Number as the identification number, or
  2. The person requests that the person's Social Security Number be used as the identification number.

**Historical Note**

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4).

**R17-4-508. Commercial Driver License Physical Qualifications****A. Requirements.**

1. A Commercial Driver License applicant shall submit to the Division a U.S. Department of Transportation medical examination form completed as prescribed under 49 CFR 391.43:

- a. Except as provided in subsection (A)(1)(c) of this Section, by a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
  - i. Medical Doctor,
  - ii. Doctor of Osteopathy,
  - iii. Doctor of Chiropractic,
  - iv. Nurse Practitioner, or
  - v. Physician Assistant, and
- b. Upon the applicant's initial application and at the time of each 24-month renewal.
- c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.43(b)(10).

2. As prescribed under 49 CFR 391.41(a), a licensee who possesses a Commercial Driver License shall keep an original or photographic copy of the licensee's current medical examination form required under subsection (A)(1) available for law enforcement inspection upon request.

3. A licensee who possesses a Commercial Driver License shall notify the Division of a physical condition that develops or worsens causing noncompliance with the Commercial Driver License physical qualifications as soon as the licensee's medical condition allows.

**B.** Commercial Driver License suspension and revocation notification procedure. To notify a licensee of any Commercial Driver License suspension and revocation under subsection (C), the Division shall simultaneously mail two notices within 15 days after a medical examination form's due or actual submission date to the licensee's address of record that:

1. Suspends the licensee's Commercial Driver License beginning on the notice's date; and
2. Revokes the licensee's Commercial Driver License 15 days after the date of the suspension notice issued under subsection (B)(1).

**C.** Noncompliance actions.

1. Initial application denial. If an applicant's initial medical examination form required under subsection (A)(1) shows that the applicant does not comply with the Commercial Driver License physical qualifications, the Division shall immediately mail the Commercial Driver License denial notification to the applicant's address of record.
2. Twenty-four month renewal suspension and revocation. If a renewing Commercial Driver licensee submits:
  - a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with Commercial Driver License physical qualifications, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
  - b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division's letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
  - c. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pres-

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sure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations:

- i. Made on three different days,
  - ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
  - iii. Returned to the Division within 90 days after the Division's written notification. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under this subsection.
- d. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or 110 diastolic, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).

- D. A Commercial Driver License that remains revoked for longer than 12 months expires. The holder of an expired Commercial Driver License may obtain a new Commercial Driver License by successfully completing all Commercial Driver License original-application written, vision, and demonstration-skill testing and submitting the medical examination form prescribed under subsection (A)(1).
- E. Administrative hearing. A person who is denied a Commercial Driver License or whose Commercial Driver License is suspended or revoked under this Section may request a hearing according to the procedure prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.A.C. R17-1-501 through R17-1-511 and R17-1-513.

**Historical Note**

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1).

**R17-4-509. Repealed****Historical Note**

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

**R17-4-510. Motorcycle noise level limits**

- A. No person shall operate any motorcycle on the streets or highways of the state of Arizona at any time or under any condition of grade, load, acceleration or deceleration in such a manner as to exceed the following noise limits. For the purpose of this

Section, "dBA" shall mean "A" weighted decibel, a sound level measurement unit.

Model year of motorcycle	Speed limit of 35 m.p.h. or less	Speed limit of more than 35 m.p.h. and less than or equal to 45 m.p.h.	Speed limit of more than 45 m.p.h.
Before 1972	84 dBA	88 dBA	88 dBA
1972-1980	79 dBA	82 dBA	86 dBA
After 1980	76 dBA	80 dBA	83 dBA

- B. The noise limits established by this Section shall be based on measurements taken at a distance of 50 feet from the center of the lane of travel within the specified speed limit. Noise measurements can be made at distances other than 50 feet from the center of the lane of travel. In such cases, the measurement shall be corrected to what it would be at the standard distance of 50 feet, for comparison with the standard.
- C. For speed zones of 35 miles per hour or less, notwithstanding the provisions stated above, measurement shall not be made within 200 feet of any intersection controlled by an official traffic device or within 20 feet of the beginning or end of any grade in excess of plus or minus 1%. Measurements shall be made when it is reasonable to assume that the vehicle flow is at a constant rate of speed and measurement shall not be made under congested traffic conditions which require notice able acceleration or deceleration.

**Historical Note**

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-511. Repealed****Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

**R17-4-512. Child-restraint Systems in Motor Vehicles**

The Motor Vehicle Division incorporates 49 CFR 571.213, Federal Motor Vehicle Safety Standard number 213 of the October 1, 2003, edition and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-0001, and is on file with the Division.

**Historical Note**

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1).

**R17-4-513. Emergency Expired****Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to

ant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

**R17-4-514. Emergency Expired**

**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

**R17-4-515. Reserved**

**R17-4-516. Reserved**

**R17-4-517. Reserved**

**R17-4-518. Reserved**

**R17-4-519. Reserved**

**R17-4-520. Recodified**

**Historical Note**

Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-521. Recodified**

**Historical Note**

Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-522. Recodified**

**Historical Note**

Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**ARTICLE 6. SCHOOL BUS STANDARDS**

**R17-4-601. Reserved**

**R17-4-602. Reserved**

**R17-4-603. Reserved**

**R17-4-604. Reserved**

**R17-4-605. Reserved**

**R17-4-606. Repealed**

**Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

**R17-4-607. Repealed**

**Historical Note**

Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September

27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments readopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments re-adopted with changes effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

**R17-4-608. Expired**

**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-609. Expired**

**Historical Note**

Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-610. Expired**

**Historical Note**

Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-611. Expired**

**Historical Note**

Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

**R17-4-612. Expired**

**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).



**ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT****R17-4-701. Definitions**

In addition to the definitions contained in 49 CFR 1572.3, the following words and phrases apply to this Article:

1. “Applicant” means an individual who applies to obtain an original or renewal HME.
2. “CDL” means Commercial Driver License.
3. “HME” means Hazardous Materials Endorsement.
4. “Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.
5. “TSA” means the U.S. Transportation Security Administration.
6. “Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

**Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

**Appendix A. Recodified****Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-702. Scope**

This Article applies to commercial drivers who are applying for an original HME or to renew or transfer an existing HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office’s web page at [www.gpo.gov](http://www.gpo.gov). This incorporation by reference contains no future additions or amendments.

**Historical Note**

Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

**R17-4-703. Expired****Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

**R17-4-704. Requirements for an HME**

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,

5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

**Historical Note**

Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-705. Required Testing**

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay applicable fee under R17-4-706.

**Historical Note**

Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

**R17-4-706. Fees**

All applicable fees shall be paid as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

**Historical Note**

Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-707. 60-Day Notice to Apply**

- A. The Division shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment that a new Security Threat Assessment shall be successfully passed to retain the HME.
- B. Upon expiration of the Division’s 60 Day Notice to Apply, the Division shall cancel the Arizona Driver License privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

**Historical Note**

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-708. Security Threat Assessment**

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
1. Cancellation,
  2. Suspension for a period of one year or more,
  3. Expiration for a period of one year or more, and
  4. Revocation for a period of one year or more.

**Historical Note**

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-709. Determination of Security Threat**

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
  - a. The Division will deny the request for an HME; and
  - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
  - a. The Division shall immediately cancel the HME.
  - b. The Division will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
  - c. The applicant shall visit a designated CDL office for removal of the HME.
  - d. If the applicant fails to comply with the Division's Notice of Action, the Division shall cancel the applicant's Arizona Driver License privilege.
  - e. Upon removal of an HME by the Division under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

**Historical Note**

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-709.01. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.02. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July

20, 2001 (Supp. 01-3).

**R17-4-709.03. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.04. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.05. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.06. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix A. Recodified****Historical Note**

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix B. Recodified****Historical Note**

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Appendix C. Recodified****Historical Note**

Appendix C adopted by an emergency action effective

## Department of Transportation – Title, Registration, and Driver Licenses

December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.07. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.08. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.09. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Exhibit A. Recodified****Historical Note**

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading “Form A” changed to “Exhibit A” to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**Exhibit B. Recodified****Historical Note**

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-709.10. Recodified****Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

**R17-4-710. Requests for Administrative Hearing**

- A.** The Division shall not accept a request for hearing for failure to qualify for an HME. In the event an applicant has failed to successfully complete the Security Threat Assessment, the applicant shall make appeal directly through TSA.
- B.** An applicant whose Arizona driving privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing under 17 A.A.C. 1, Article 5.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

**R17-4-711. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

**R17-4-712. Transfer Applicant**

- A.** Applicability. A transfer applicant shall comply with the provisions of this Article except otherwise required by this Section.
- B.** Existing TSA approval.
  - 1. Upon application by a transfer applicant who has an existing HME and who has successfully passed a STA prior to application in Arizona, the Division shall:
    - a. Issue a five-year Arizona CDL with an HME;
    - b. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required; and
    - c. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require applicant to undergo a new STA and testing requirements under R17-4-705.
  - 2. The Division shall not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules,
  - 3. If the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME, and require that the applicant return to designated CDL office to have HME removed from license.
  - 4. The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.
- C.** No existing TSA approval.
  - 1. Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:
    - a. Require that the transfer applicant successfully undergo a STA; and
    - b. Upon verification of successful completion of STA, issue an Arizona CDL with an HME.
  - 2. If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall deny the application for HME.
  - 3. If the applicant fails to comply with the Division’s Notice of Action, the Division shall cancel the applicant’s Arizona Driver License privilege.
- D.** CDL eligibility. The Division may grant an application for a CDL, if an applicant is otherwise qualified to hold CDL.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3).

**Table A. Recodified****Historical Note**

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

**ARTICLE 8. MOTOR VEHICLE RECORDS****R17-4-801. Definitions**

In addition to the definitions under A.R.S. §§ 28-101 and 28-440, the following definitions apply to this Article, unless otherwise specified:

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division.

“Director” means the Arizona Department of Transportation’s Motor Vehicle Division Director or the Director’s designee.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Driver license number” means the system-generated, or other distinguishing number, assigned by the Division to a person for a driver license, identification card, or instruction permit record.

“Driver record” means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

“Requester” means the person, as defined under A.R.S. § 41-1001, requesting a motor vehicle record.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Title and registration record” means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

**Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4).

**R17-4-802. Motor Vehicle Record Request**

- A.** Identification requirements. The requester of a motor vehicle record shall present valid photo identification at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under A.A.C. R17-1-202, unless exempt under A.R.S. § 28-446.
- C.** Motor vehicle record types. Under this Article, the Division may release any of the following motor vehicle record types:
  1. Title and Registration record, uncertified;
  2. Title and Registration record, certified;
  3. Driver 39-month record, uncertified;
  4. Driver five-year record, certified;
  5. Driver history record, certified; and
  6. Special MVR, uncertified.
- D.** Permissible use record request. A requester who has a permissible use under A.R.S. § 28-455 shall provide at least one of

the items of information listed in this subsection when requesting a motor vehicle record.

1. For a title and registration motor vehicle record:
  - a. Vehicle identification number,
  - b. License plate number, or
  - c. Vehicle owner’s full name.
2. For a driver motor vehicle record:
  - a. The name of the person whose record is requested,
  - b. Driver license number, or
  - c. Customer number.
- E.** Non-permissible use record request. A requester who does not have a permissible use under A.R.S. § 28-455, but who presents either a notarized Consent To Release Motor Vehicle Record - General form #96-0276 or a Consent To Release Motor Vehicle Record - One-Time form #96-0463 from the person whose motor vehicle record is requested shall provide the items of information listed in this subsection when requesting a motor vehicle record. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Third Party Provider offices and online at <http://mvd.azdot.gov/mvd/FormsandPub/mvd.asp>.
  1. For a title and registration motor vehicle record:
    - a. The vehicle identification number and license plate number, and
    - b. The vehicle owner’s full name, or
    - c. The vehicle owner’s residence address.
  2. For a driver motor vehicle record:
    - a. The name and driver license number or customer number of the person whose record is requested, and
    - b. The person’s date of birth, or
    - c. The person’s address, or
    - d. The person’s Arizona driver license expiration date.
- F.** General consent to release information. The Division shall record a person’s general consent to release information on the person’s driver and title and registration records.
  1. The general consent to release information is valid until revoked, in writing, by the person.
  2. A person may submit the written notice of revocation:
    - a. In person, at a Customer Service office or Authorized Third Party Provider; or
    - b. By mail, at Motor Vehicle Division, 1801 W. Jefferson St., P.O. Box 2100, Phoenix, Arizona 85007-2100.
- G.** Insurance companies requesting a driver or title and registration record. The Division shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person’s driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

**Historical Note**

Adopted effective August 16, 1991 (Supp. 91-3). Section repealed, new Section adopted effective April 19, 1994 (Supp. 94-2). Section recodified to R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4).

**R17-4-803. Reserved****R17-4-804. Repealed****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Repealed effective November 21, 1995 (Supp. 95-4).

## Department of Transportation – Title, Registration, and Driver Licenses

**R17-4-805. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-702 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-806. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-703 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-807. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-704 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**R17-4-808. Recodified****Historical Note**

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-705 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

**ARTICLE 9. RESERVED****R17-4-901. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-59 renumbered without change as Section R17-4-901 (Supp. 87-2). Former Section R17-4-901 repealed, new Section R17-4-901 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-501 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-902. Recodified****Historical Note**

Adopted effective March 31, 1978 (Supp. 78-2). Amended subsections (A), (E) and (F) effective April 4, 1984 (Supp. 84-2). Former Section R17-4-60 renumbered without change as Section R17-4-902 (Supp. 87-2). Former Section R17-4-902 repealed, new Section R17-4-902 adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-502 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-903. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-503 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-904. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-504 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-905. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-505 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-906. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-506 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-907. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-507 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-908. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-508 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-909. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-509 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-910. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-513 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-911. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-511 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-912. Recodified****Historical Note**

Adopted effective June 15, 1988 (Supp. 88-2). Section recodified to R17-1-512 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-913. Recodified****Historical Note**

Adopted as an emergency effective December 30, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-4). Readopted as an emergency with a correction in subsection (A), paragraph (A) effective March 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Adopted without change as a permanent rule effective June 15, 1988 (Supp. 88-2). Amended effective July 13, 1989 (Supp. 89-3). Section recodified to R17-1-510 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3).

**R17-4-914. Repealed****Historical Note**

Former General Order 68. Former Section R17-4-26 renumbered without change as Section R17-4-914 (Supp. 87-2). Repealed effective July 29, 1992 (Supp. 92-3).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 18. Environmental Quality**

### **Chapter 2. Department of Environmental Quality - Air Pollution Control**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R18-2-1701, Table 1, R18-2-1702, Table 2, R18-2-1703 through R18-2-1708, Table 3, R18-2-1709

REMOVE Supp. 16-3  
Pages: 1 - 219

REPLACE with Supp. 16-4  
Pages: 1 - 207

*The agency's contact person who can answer questions about expired rules in Supp. 16-4:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



**TITLE 18. ENVIRONMENTAL QUALITY****CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL****ARTICLE 1. GENERAL**

*Article 1 consisting of Section R9-3-101 renumbered as Article 1, Section R18-2-101 (Supp. 87-3).*

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*Article 2, consisting of Sections R18-2-201 through R18-2-290, adopted effective August 8, 1991 (Supp. 91-3).*

*Article 2, consisting of Sections R18-2-201 through R18-2-220, repealed effective August 8, 1991 (Supp. 91-3).*

*Article 2 consisting of Sections R9-3-201, R9-3-202, R9-3-204 through R9-3-207, and R9-3-215 through R9-3-219 renumbered as Article 2, Sections R18-2-201, R18-2-202, R18-2-204 through R18-2-207, and R18-2-215 through R18-2-219 (Supp. 87-3).*

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*Article 3, consisting of Sections R9-3-301 through R9-3-319, and R9-3-321 through R9-3-323 repealed effective November 15, 1993 (Supp. 93-4).*

*Article 3 consisting of Sections R9-3-301 through R9-3-319 and R9-3-321 through R9-3-323 renumbered as Article 3, Sections R18-2-301 through R18-2-319 and R18-2-321 through R18-2-323 (Supp. 87-3).*

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*Article 4, consisting of Sections R18-2-401 through R18-2-411, adopted effective November 15, 1993 (Supp. 93-4).*

*Article 4, consisting of Sections R18-2-401 through R18-2-410, renumbered as Article 6, Sections R18-2-601 through R18-2-610 (Supp. 93-4).*

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*Article 4 consisting of Sections R9-3-401 through R9-3-410 renumbered as Article 4, Sections R18-2-401 through R18-2-410 (Supp. 87-3).*

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*Article 5, consisting of Sections R18-2-501 through R18-2-510, adopted effective November 15, 1993 (Supp. 93-4).*

*Article 5, consisting of Sections R18-2-501 through R18-2-530, renumbered as Article 7, Sections R18-2-701 through R18-2-730 (Supp. 93-4).*

*Article 5 consisting of Sections R9-3-501 through R9-3-529 renumbered as Article 5, Sections R18-2-501 through R18-2-529 (Supp. 87-3).*

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*Article 6, consisting of Sections R18-2-601 through R18-2-605, renumbered to Article 8, Sections R18-2-801 through R18-2-805 (Supp. 93-4).*

*Article 6 consisting of Sections R9-3-601 through R9-3-605 renumbered as Article 6, Sections R18-2-601 through R18-2-605 (Supp. 87-3).*

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*Article 7 consisting of Sections R18-2-701 through R18-2-730 renumbered from Article 5, Sections R18-2-501 through R18-2-530 (Supp. 93-4).*

*Article 7 consisting of Sections R18-2-701 through R18-2-709 repealed effective September 26, 1990 (Supp. 90-3).*

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*Article 7 consisting of Sections R9-3-701 through R9-3-709 renumbered as Article 7, Sections R18-2-701 through R18-2-709 (Supp. 87-3).*

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*Article 8, consisting of Sections R18-2-801 through R18-2-805, renumbered to Article 9, Sections R18-2-901 through R18-2-905 (Supp. 93-4).*

*Article 8 consisting of Sections R18-2-801 through R18-2-805 adopted effective February 26, 1988.*

*Former Article 8 consisting of Sections R9-3-801 through R9-3-829, R9-3-831, R9-3-832, R9-3-835 through R9-3-838, R9-3-840 through R9-3-848, and R9-3-857 through R9-3-859 repealed effective February 26, 1988.*

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*Article 9, consisting of Sections R18-2-901 through R18-2-905, renumbered to Article 11, Sections R18-2-1101 through R18-2-1105 (Supp. 93-4).*

*Article 9 consisting of Sections R18-2-901 and R18-2-902 adopted effective February 26, 1988.*

*Former Article 9 consisting of Sections R9-3-901, R9-3-903 through R9-3-906, R9-3-910, R9-3-913, and R9-3-922 repealed effective February 26, 1988.*

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*Former Article 10 consisting of Sections R9-3-1001, R9-3-1003 through R9-3-1013, R9-3-1016 through R9-3-1019, R9-3-1022, R9-3-1023, R9-3-1025 through R9-3-1031 renumbered as Article 10, Sections R18-2-1001, R18-2-1003 through R18-2-1013, R18-2-1016 through R18-2-1019, R18-2-1022, R18-2-1023, and R18-2-1025 through R18-2-1031 effective August 1, 1988.*

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**ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS**

*Article 11, consisting of Sections R18-2-1101 and R18-2-1102 adopted effective November 15, 1993 (Supp. 93-4).*

*Article 11 consisting of Sections R18-2-1101 and R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3).*

*Article 11 consisting of Sections R9-3-1101, R9-3-1102, and Appendices 1 through 11 renumbered as Article 11, Sections R18-2-1101, R18-2-1102, and Appendices 1 through 11 (Supp. 87-3).*

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**ARTICLE 12. EMISSIONS BANK**

*Article 12, consisting of Sections R18-2-1201 through R18-2-1208, made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).*

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*Article 13, consisting of Sections R18-2-1301 through R18-2-1307, rules expired under A.R.S. § 41-1056(J), effective April 30, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R18-2-1301 through R18-2-1307, made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2).*

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**ARTICLE 17. EXPIRED**

*Article 17, consisting of Sections R18-2-1701 through R18-2-1709, expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).*

*Article 17, consisting of Sections R18-2-1701 through R18-2-1709, made by final rulemaking at 12 A.A.R.1953, effective January 1, 2007 (Supp. 06-2).*

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**ARTICLE 18. REPEALED**

*Article 18, consisting of Sections R18-2-1801 through R18-2-1812 and Appendix 13, repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).*

*Article 18, consisting of Sections R18-2-1801 through R18-2-1812 and Appendix 13, made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2).*

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**ARTICLE 1. GENERAL****R18-2-101. Definitions**

The following definitions apply to this Chapter. Where the same term is defined in this Section and in the definitions Section for an Article of this Chapter, the Article-specific definition shall apply.

1. “Act” means the Clean Air Act of 1963 (P.L. 88-206; 42 U.S.C. 7401 through 7671q) as amended through December 31, 2011 (and no future editions).
2. “Actual emissions” means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in subsections (2)(a) through (e).
  - a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.
  - b. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
  - c. For any emissions unit at a Class I source that has not begun normal operations on the particular date, actual emissions shall equal the unit’s potential to emit on that date.
  - d. For any emissions unit at a Class II source that has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.
  - e. This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
3. “Administrator” means the Administrator of the United States Environmental Protection Agency.
4. “Affected facility” means, with reference to a stationary source, any apparatus to which a standard is applicable.
5. “Affected source” means a source that includes one or more units which are subject to emission reduction requirements or limitations under Title IV of the Act.
6. “Affected state” means any state whose air quality may be affected by a source applying for a permit, permit revision, or permit renewal and that is contiguous to Arizona or that is within 50 miles of the permitted source.
7. “Afterburner” means an incinerator installed in the secondary combustion chamber or stack for the purpose of incinerating smoke, fumes, gases, unburned carbon, and other combustible material not consumed during primary combustion.
8. “Air contaminants” means smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.
9. “Air curtain destructor” means an incineration device designed and used to secure, by means of a fan-generated air curtain, controlled combustion of only wood waste and slash materials in an earthen trench or refractory-lined pit or bin.
10. “Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director. A.R.S. § 49-421(2).
11. “Air pollution control equipment” means equipment used to eliminate, reduce or control the emission of air pollutants into the ambient air.
12. “Air quality control region” (AQCR) means an area so designated by the Administrator pursuant to Section 107 of the Act and includes the following regions in Arizona:
  - a. Maricopa Intrastate Air Quality Control Region which is comprised of the County of Maricopa.
  - b. Pima Intrastate Air Quality Control Region which is comprised of the County of Pima.
  - c. Northern Arizona Intrastate Air Quality Control Region which encompasses the counties of Apache, Coconino, Navajo, and Yavapai.
  - d. Mohave-Yuma Intrastate Air Quality Control Region which encompasses the counties of La Paz, Mohave, and Yuma.
  - e. Central Arizona Intrastate Air Quality Control Region which encompasses the counties of Gila and Pinal.
  - f. Southeast Arizona Intrastate Air Quality Control Region which encompasses the counties of Cochise, Graham, Greenlee, and Santa Cruz.
13. “Allowable emissions” means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:
  - a. The applicable standards as set forth in 40 CFR 60, 61 or 63;
  - b. The applicable existing source performance standard, as approved for the SIP and contained in Article 7 of this Chapter; or,
  - c. The emissions rate specified in any federally promulgated rule or federally enforceable permit conditions applicable to the stationary source.
14. “Ambient air” means that portion of the atmosphere, external to buildings, to which the general public has access.
15. “Applicable implementation plan” means those provisions of the state implementation plan approved by the Administrator or a federal implementation plan promulgated for Arizona or any portion of Arizona in accordance with Title I of the Act.
16. “Applicable requirement” means any of the following:
  - a. Any federal applicable requirement.
  - b. Any other requirement established pursuant to this Chapter or A.R.S. Title 49, Chapter 3.
17. “Arizona Testing Manual” means sections 1 and 7 of the Arizona Testing Manual for Air Pollutant Emissions amended as of March 1992 (and no future editions).
18. “ASTM” means the American Society for Testing and Materials.
19. “Attainment area” means any area in the state that has been identified in regulations promulgated by the Admin-

- istrator as being in compliance with national ambient air quality standards.
20. *“Begin actual construction” means, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. With respect to a change in method of operation this term refers to those onsite activities, other than preparatory activities, which mark the initiation of the change.*
    - a. *For purposes of title I, parts C and D and section 112 of the clean air act, and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures but do not include any of the following, subject to subsection (20)(c):*
      - i. *Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.*
      - ii. *Installation of access roads, driveways and parking lots.*
      - iii. *Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.*
      - iv. *Ordering and onsite storage of materials and equipment.*
    - b. *For purposes other than those identified in subsection (20)(a), these activities do not include any of the following, subject to subsection (20)(c):*
      - i. *Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.*
      - ii. *Installation of access roads, parking lots, driveways and storage areas.*
      - iii. *Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impacts the design of any emissions unit or associated air pollution control equipment.*
      - iv. *Ordering and onsite storage of materials and equipment.*
      - v. *Installation of underground pipework, including water, sewer, electric and telecommunications utilities.*
      - vi. *Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impacts the design of any emissions unit or associated air pollution control equipment.*
    - c. *An applicant’s performance of any activities that are excluded from the definition of “begin actual construction” under subsection (20)(a) or (b) shall be at the applicant’s risk and shall not reduce the applicant’s obligations under this Chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under subsection (20)(a) or (b) had not occurred. A.R.S. § 49-401.01(7).*
  21. *“Best available control technology” (BACT) means an emission limitation, including a visible emissions standard, based on the maximum degree of reduction for each air regulated NSR pollutant which would be emitted from any proposed major source or major modification, taking into account energy, environmental, and economic impact and other costs, determined by the Director in accordance with R18-2-406(A)(4) to be achievable for such source or modification.*
  22. *“Btu” means British thermal unit, which is the quantity of heat required to raise the temperature of one pound of water 1°F.*
  23. *“Categorical sources” means the following classes of sources:*
    - a. Coal cleaning plants with thermal dryers;
    - b. Kraft pulp mills;
    - c. Portland cement plants;
    - d. Primary zinc smelters;
    - e. Iron and steel mills;
    - f. Primary aluminum ore reduction plants;
    - g. Primary copper smelters;
    - h. Municipal incinerators capable of charging more than 250 tons of refuse per day;
    - i. Hydrofluoric, sulfuric, or nitric acid plants;
    - j. Petroleum refineries;
    - k. Lime plants;
    - l. Phosphate rock processing plants;
    - m. Coke oven batteries;
    - n. Sulfur recovery plants;
    - o. Carbon black plants using the furnace process;
    - p. Primary lead smelters;
    - q. Fuel conversion plants;
    - r. Sintering plants;
    - s. Secondary metal production plants;
    - t. Chemical process plants, which shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System codes 325193 or 312140;
    - u. Fossil-fuel boilers, combinations thereof, totaling more than 250 million Btus per hour heat input;
    - v. Petroleum storage and transfer units with a total storage capacity more than 300,000 barrels;
    - w. Taconite preprocessing plants;
    - x. Glass fiber processing plants;
    - y. Charcoal production plants;
    - z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btus per hour heat input.
  24. *“Categorically exempt activities” means any of the following:*
    - a. Any combination of diesel-, natural gas- or gasoline-fired engines with cumulative power equal to or less than 145 horsepower.
    - b. Natural gas-fired engines with cumulative power equal to or less than 155 horsepower.
    - c. Gasoline-fired engines with cumulative power equal to or less than 200 horsepower.
    - d. Any of the following emergency or stand-by engines used for less than 500 hours in each calendar year, provided the permittee keeps records documenting the hours of operation of the engines:
      - i. Any combination of diesel-, natural gas- or gasoline-fired emergency engines with cumulative power equal to or less than 2,500 horsepower.



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- ii. Natural gas-fired emergency engines with cumulative power equal to or less than 2,700 horsepower.
    - iii. Gasoline-fired emergency engines with cumulative power equal to or less than 3,700 horsepower.
  - e. Any combination of boilers with a cumulative maximum design heat input capacity of less than 10 million Btu/hr.
25. “CFR” means the Code of Federal Regulations, amended as of July 1, 2011, (and no future editions), with standard references in this Chapter by Title and Part, so that “40 CFR 51” means Title 40 of the Code of Federal Regulations, Part 51.
  26. “Charge” means the addition of metal bearing materials, scrap, or fluxes to a furnace, converter or refining vessel.
  27. “Clean coal technology” means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, that was not in widespread use as of November 15, 1990.
  28. “Clean coal technology demonstration project” means a project using funds appropriated under the heading “Department of Energy - Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.
  29. “Coal” means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D-388-91, (Classification of Coals by Rank).
  30. “Combustion” means the burning of matter.
  31. “Commence” means, as applied to construction of a source, or a major modification as defined in Article 4 of this Chapter, that the owner or operator has all necessary preconstruction approvals or permits and either has:
    - a. Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or
    - b. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
  32. “Construction” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, which would result in a change in actual emissions.
  33. “Continuous monitoring system” means a CEMS, CERMS, or CPMS.
  34. “Continuous emissions monitoring system” or “CEMS” means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and to provide, on a continuous basis, a permanent record of emissions.
  35. “Continuous emissions rate monitoring system” or “CERMS” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
  36. “Continuous parameter monitoring system” or “CPMS” means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process or control device operational parameters or other information and to provide, on a continuous basis, a permanent record of monitored values.
  37. “Controlled atmosphere incinerator” means one or more refractory-lined chambers in which complete combustion is promoted by recirculation of gases by mechanical means.
  38. “Conventional air pollutant” means any pollutant for which the Administrator has promulgated a primary or secondary national ambient air quality standard. A.R.S. § 49-401.01(12).
  39. “Department” means the Department of Environmental Quality. A.R.S. § 49-101(2)
  40. “Director” means the director of environmental quality who is also the director of the department. A.R.S. § 49-101(3).
  41. “Discharge” means the release or escape of an effluent from a source into the atmosphere.
  42. “Dust” means finely divided solid particulate matter occurring naturally or created by mechanical processing, handling or storage of materials in the solid state.
  43. “Dust suppressant” means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.
  44. “Effluent” means any air contaminant which is emitted and subsequently escapes into the atmosphere.
  45. “Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
  46. “Emission” means an air contaminant or gas stream, or the act of discharging an air contaminant or a gas stream, visible or invisible.
  47. “Emission standard” or “emission limitation” means a requirement established by the state, a local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
  48. “Emissions unit” means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant and includes an electric steam generating unit.
  49. “Equivalent method” means any method of sampling and analyzing for an air pollutant which has been demonstrated under R18-2-311(D) to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
  50. “Excess emissions” means emissions of an air pollutant in excess of an emission standard as measured by the compliance test method applicable to such emission standard.
  51. “Federal applicable requirement” means any of the following (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

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- a. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52.
  - b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act.
  - c. Any standard or other requirement under section 111 of the Act, including 111(d).
  - d. Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act.
  - e. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder and incorporated pursuant to R18-2-333.
  - f. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act.
  - g. Any standard or other requirement governing solid waste incineration, under section 129 of the Act.
  - h. Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act.
  - i. Any standard or other requirement for tank vessels under section 183(f) of the Act.
  - j. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act.
  - k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit.
  - l. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.
52. "Federal Land Manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.
53. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator under the Act, including all of the following:
- a. The requirements of the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants contained in Articles 9 and 11 of this Chapter.
  - b. The requirements of such other state or county rules or regulations approved by the Administrator, including the requirements of state and county operating and new source review permit and registration programs that have been approved by the Administrator. Notwithstanding this subsection, the condition of any permit or registration designated as being enforceable only by the state is not federally enforceable.
  - c. The requirements of any applicable implementation plan.
  - d. Emissions limitations, controls, and other requirements, and any associated monitoring, recordkeeping, and reporting requirements, other than those designated as enforceable only by the state, that are included in a permit pursuant to R18-2-306.01 or R18-2-306.02.
54. "Federally listed hazardous air pollutant" means a pollutant listed pursuant to R18-2-1701(9).
55. "Final permit" means the version of a permit issued by the Department after completion of all review required by this Chapter.
56. "Fixed capital cost" means the capital needed to provide all the depreciable components.
57. "Fuel" means any material which is burned for the purpose of producing energy.
58. "Fuel burning equipment" means any machine, equipment, incinerator, device or other article, except stationary rotating machinery, in which combustion takes place.
59. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
60. "Fume" means solid particulate matter resulting from the condensation and subsequent solidification of vapors of melted solid materials.
61. "Fume incinerator" means a device similar to an afterburner installed for the purpose of incinerating fumes, gases and other finely divided combustible particulate matter not previously burned.
62. "Good engineering practice (GEP) stack height" means a stack height meeting the requirements described in R18-2-332.
63. "Hazardous air pollutant" means any federally listed hazardous air pollutant.
64. "Heat input" means the quantity of heat in terms of Btus generated by fuels fed into the fuel burning equipment under conditions of complete combustion.
65. "Incinerator" means any equipment, machine, device, contrivance or other article, and all appurtenances thereof, used for the combustion of refuse, salvage materials or any other combustible material except fossil fuels, for the purpose of reducing the volume of material.
66. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.
67. "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.
68. "Insignificant activity" means any of the following activities:
- a. Liquid Storage and Piping
    - i. Petroleum product storage tanks containing the following substances, provided the applicant lists and identifies the contents of each tank with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such tank: diesel fuels and fuel oil in storage tanks with capacity of 40,000 gallons or less, lubricating oil, transformer oil, and used oil.
    - ii. Gasoline storage tanks with capacity of 10,000 gallons or less.
    - iii. Storage and piping of natural gas, butane, propane, or liquified petroleum gas, provided the applicant lists and identifies the contents of each stationary storage vessel with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such vessel.

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- iv. Piping of fuel oils, used oil and transformer oil, provided the applicant includes a system description.
  - v. Storage and handling of drums or other transportable containers where the containers are sealed during storage, and covered during loading and unloading, including containers of waste and used oil regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992k. Permit applicants must provide a description of material in the containers and the approximate amount stored.
  - vi. Storage tanks of any size containing exclusively soaps, detergents, waxes, greases, aqueous salt solutions, aqueous solutions of acids that are not regulated air pollutants, or aqueous caustic solutions, provided the permit applicant specifies the contents of each storage tank with a volume of 350 gallons or more.
  - vii. Electrical transformer oil pumping, cleaning, filtering, drying and the re-installation of oil back into transformers.
  - b. Internal combustion engine-driven compressors, internal combustion engine-driven electrical generator sets, and internal combustion engine-driven water pumps used for less than 500 hours per calendar year for emergency replacement or standby service, provided the permittee keeps records documenting the hours of operation of this equipment.
  - c. Low Emitting Processes
    - i. Batch mixers with rated capacity of 5 cubic feet or less.
    - ii. Wet sand and gravel production facilities that obtain material from subterranean and subaqueous beds, whose production rate is 200 tons/hour or less, and whose permanent in-plant roads are paved and cleaned to control dust. This does not include activities in emissions units which are used to crush or grind any non-metallic minerals.
    - iii. Powder coating operations.
    - iv. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
    - v. Blast-cleaning equipment using a suspension of abrasive in water and any exhaust system or collector serving them exclusively.
    - vi. Plastic pipe welding.
  - d. Site Maintenance
    - i. Housekeeping activities and associated products used for cleaning purposes, including collecting spilled and accumulated materials at the source, including operation of fixed vacuum cleaning systems specifically for such purposes.
    - ii. Sanding of streets and roads to abate traffic hazards caused by ice and snow.
    - iii. Street and parking lot striping.
    - iv. Architectural painting and associated surface preparation for maintenance purposes at industrial or commercial facilities.
  - e. Sampling and Testing
    - i. Noncommercial (in-house) experimental, analytical laboratory equipment which is bench scale in nature, including quality control/quality assurance laboratories supporting a stationary source and research and development laboratories.
    - ii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units.
  - f. Ancillary Non-Industrial Activities
    - i. General office activities, such as paper shredding, copying, photographic activities, and blueprinting, but not to include incineration.
    - ii. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use.
    - iii. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.
  - g. Miscellaneous Activities
    - i. Installation and operation of potable, process and waste water observation wells, including drilling, pumping, filtering apparatus.
    - ii. Transformer vents.
69. "Kraft pulp mill" means any stationary source which produces pulp from wood by cooking or digesting wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.
70. "Lead" means elemental lead or alloys in which the predominant component is lead.
71. "Lime hydrator" means a unit used to produce hydrated lime product.
72. "Lime plant" includes any plant which produces a lime product from limestone by calcination. Hydration of the lime product is also considered to be part of the source.
73. "Lime product" means any product produced by the calcination of limestone.
74. "Major modification" is defined as follows:
- a. A major modification is any physical change in or change in the method of operation of a major source that would result in both a significant emissions increase of any regulated NSR pollutant and a significant net emissions increase of that pollutant from the stationary source.
  - b. Any emissions increase or net emissions increase that is significant for nitrogen oxides or volatile organic compounds is significant for ozone.
  - c. For the purposes of this definition, none of the following is a physical change or change in the method of operation:
    - i. Routine maintenance, repair, and replacement;
    - ii. Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 - 825r;
    - iii. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
    - iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
    - v. Use of an alternative fuel or raw material by a stationary source that either:

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- (1) The source was capable of accommodating before December 12, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter; or
    - (2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
  - vi. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
  - vii. Any change in ownership at a stationary source;
  - viii. [Reserved.]
  - ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
    - (1) The SIP, and
    - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
  - x. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis; and
  - xi. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
  - d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major source is complying with the requirements of R18-2-412 for a PAL for that regulated NSR pollutant. Instead, the definition of PAL major modification in R18-2-401(17) shall apply.
75. "Major source" means:
- a. A major source as defined in R18-2-401.
  - b. A major source under section 112 of the Act:
    - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emission 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
    - ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
  - c. A major stationary source, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to a section 302(j) category.
76. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment or a process to operate in a normal and usual manner, but does not include failures that are caused by poor maintenance, careless operation or any other upset condition or equipment breakdown which could have been prevented by the exercise of reasonable care.
77. "Minor source" means a source of air pollution which is not a major source for the purposes of Article 4 of this Chapter and over which the Director, acting pursuant to A.R.S. § 49-402(B), has asserted jurisdiction.
78. "Minor source baseline area" means the air quality control region in which the source is located.
79. "*Mobile source*" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest. A.R.S. § 49-401.01(23).
80. "*Modification*" or "*modify*" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:
- a. A physical or operational change does not include routine maintenance, repair or replacement.
  - b. An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any permit condition that is legally and practically enforceable by the department.
  - c. A change in ownership at a source is not considered a modification. A.R.S. § 49-401.01(24).
81. "Monitoring device" means the total equipment, required under the applicable provisions of this Chapter, used to measure and record, if applicable, process parameters.
82. "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on public highways.
83. "Multiple chamber incinerator" means three or more refractory-lined combustion chambers in series, physically separated by refractory walls and interconnected by gas passage ports or ducts.
84. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.
85. "*National ambient air quality standard*" means the ambient air pollutant concentration limits established by the

*Administrator pursuant to section 109 of the Act. A.R.S. § 49-401.01(25).*

86. “Necessary preconstruction approvals or permits” means those permits or approvals required under the Act and those air quality control laws and rules which are part of the SIP.
87. “Net emissions increase” means:
- The amount by which the sum of subsections (87)(a)(i) and (ii) exceeds zero:
    - The increase in emissions of a regulated NSR pollutant from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to R18-2-402(D); and
    - Any other increases and decreases in actual emissions of the regulated NSR pollutant at the source that are contemporaneous with the particular change and are otherwise creditable.
    - For purposes of calculating increases and decreases in actual emissions under subsection (87)(a)(ii), baseline actual emissions shall be determined as provided in the definition of baseline actual emissions in R18-2-401(2), except that subsections R18-2-401(a)(iii) and (b)(iv) shall not apply.
  - An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
    - The date five years before construction on the particular change commences, and
    - The date that the increase from the particular change occurs.
  - An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit, which is in effect when the increase in actual emissions from the particular change occurs.
  - An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, or PM<sub>10</sub> which occurs before the applicable baseline date, as described in R18-2-218, is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
  - An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
  - A decrease in actual emissions is creditable only to the extent that it satisfies all of the following conditions:
    - The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
    - It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
    - It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
    - The emissions unit was actually operated and emitted the specific pollutant.
    - For a source located in an area designated as nonattainment for the regulated NSR pollutant, the Director has not relied on it in issuing any permit under Article 4 or R18-2-334, and the

state has not relied on it in demonstrating attainment or reasonable further progress.

- An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any emissions unit that replaces an existing emissions unit and that requires shutdown becomes operational only after a reasonable shutdown period, not to exceed 180 days.
88. “New source” means any stationary source of air pollution which is subject to an applicable new source performance standard under Article 9 of this Chapter.
89. “Nitric acid plant” means any facility producing nitric acid 30% to 70% in strength by either the pressure or atmospheric pressure process.
90. “Nitrogen oxides” means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in the Appendices to 40 CFR 60.
91. “Nonattainment area” means an area so designated by the Administrator acting pursuant to section 107 of the Act as exceeding national primary or secondary ambient air standards for a particular pollutant or pollutants.
92. “Nonpoint source” means a source of air contaminants which lacks an identifiable plume or emission point.
93. “Opacity” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
94. “Operation” means any physical or chemical action resulting in the change in location, form, physical properties, or chemical character of a material.
95. “Owner or operator” means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source.
96. “Particulate matter” means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.
97. “Particulate matter emissions” means all finely divided solid or liquid materials other than uncombined water, emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
98. “Permitting authority” means the department or a county department, agency or air pollution control district that is charged with enforcing a permit program adopted pursuant to A.R.S. § 49-480(A). A.R.S. § 49-401.01(28).
99. “Permitting exemption thresholds” for a regulated minor NSR pollutant means the following:

Regulated Air Pollutant	Emission Rate in tons per year (TPY)
PM <sub>2.5</sub> (primary emissions only; levels for precursors are set below)	5
PM <sub>10</sub>	7.5
SO <sub>2</sub>	20
NO <sub>x</sub>	20
VOC	20
CO	50
Pb	0.3

100. “Person” means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or

- agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.
101. “*Planning agency*” means an organization designated by the governor pursuant to 42 U.S.C. 7504. A.R.S. § 49-401.01(29).
  102. “*Predictive Emissions Monitoring System*” or “*PEMS*” means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process and control device operational parameters and other information, and calculate and record the mass emissions rate on a continuous basis.
  103. “*PM<sub>2.5</sub>*” means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53.
  104. “*PM<sub>10</sub>*” means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53.
  105. “*PM<sub>10</sub> emissions*” means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
  106. “*Plume*” means visible effluent.
  107. “*Pollutant*” means an air contaminant the emission or ambient concentration of which is regulated pursuant to this Chapter.
  108. “*Portable source*” means any building, structure, facility, or installation subject to regulation pursuant to A.R.S. § 49-426 which emits or may emit any air pollutant and is capable of being operated at more than one location.
  109. “*Potential to emit*” or “*potential emission rate*” means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is legally and practically enforceable by the Department or a county under A.R.S. Title 49, Chapter 3; any rule, ordinance, order or permit adopted or issued under A.R.S. Title 49, Chapter 3 or the state implementation plan.
  110. “*Primary ambient air quality standards*” means the ambient air quality standards which define levels of air quality necessary, with an adequate margin of safety, to protect the public health, as specified in Article 2 of this Chapter.
  111. “*Process*” means one or more operations, including equipment and technology, used in the production of goods or services or the control of by-products or waste.
  112. “*Project*” means a physical change in, or change in the method of operation of, an existing major source.
  113. “*Proposed permit*” means the version of a permit for which the Director offers public participation under R18-2-330 or affected state review under R18-2-307(D).
  114. “*Proposed final permit*” means the version of a Class I permit or Class I permit revision that the Department proposes to issue and forwards to the Administrator for review in compliance with R18-2-307(A).
  115. “*Reactivation of a very clean coal-fired electric utility steam generating unit*” means any physical change or change in the method of operation associated with commencing commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
    - a. Has not been in operation for the two-year period before enactment of the Clean Air Act Amendments of 1990, and the emissions from the unit continue to be carried in the Director’s emissions inventory at the time of enactment;
    - b. Was equipped before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
    - c. Is equipped with low-NO<sub>x</sub> burners before commencement of operations following reactivation; and
    - d. Is otherwise in compliance with the Act.
  116. “*Reasonable further progress*” means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.
  117. “*Reasonably available control technology*” (RACT) means devices, systems, process modifications, work practices or other apparatus or techniques that are determined by the Director to be reasonably available taking into account:
    - a. The necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;
    - b. The social, environmental, energy and economic impact of the controls;
    - c. Control technology in use by similar sources; and
    - d. The capital and operating costs and technical feasibility of the controls.
  118. “*Reclaiming machinery*” means any machine, equipment device or other article used for picking up stored granular material and either depositing this material on a conveyor or reintroducing this material into the process.
  119. “*Reference method*” means the methods of sampling and analyzing for an air pollutant as described in the Arizona Testing Manual; 40 CFR 50, Appendices A through K; 40 CFR 51, Appendix M; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C, as incorporated by reference in 18 A.A.C. 2, Appendix 2.
  120. “*Regulated air pollutant*” means any of the following:
    - a. Any conventional air pollutant.
    - b. Nitrogen oxides and volatile organic compounds.
    - c. Any air contaminant that is subject to a standard contained in Article 9 of this Chapter.
    - d. Any hazardous air pollutant as defined in Article 17 of this Chapter.
    - e. Any Class I or II substance listed in section 602 of the Act.
  121. “*Regulated minor NSR pollutant*” means any pollutant for which a national ambient air quality standard has been promulgated and the following precursors for such pollutants:
    - a. VOC and nitrogen oxides as precursors to ozone.
    - b. Nitrogen oxides and sulfur dioxide as precursors to PM<sub>2.5</sub>.
  122. “*Regulated NSR pollutant*” means any of the following:
    - a. Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this subsection as a constituent or

- precursor to such pollutant. Precursors for purposes of NSR are the following:
- i. Volatile organic compounds and nitrogen oxides are precursors to ozone in all areas.
  - ii. Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all areas.
  - iii. Nitrogen oxides are precursors to PM<sub>2.5</sub> in all areas.
- b. Any pollutant that is subject to any standard promulgated under Article 9 of this Chapter.
  - c. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act as of July 1, 2011.
  - d. [Reserved.]
  - e. Notwithstanding subsections (122)(a) through (d), the term regulated NSR pollutant shall not include any or all hazardous air pollutants listed under R18-2-1101, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act as of July 1, 2010.
  - f. Particulate matter emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On and after January 1, 2011, condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for particulate matter, PM<sub>2.5</sub> and PM<sub>10</sub> in permits issued under Article 4.
123. "Repowering" means:
- a. Replacing an existing coal-fired boiler with one of the following clean coal technologies:
    - i. Atmospheric or pressurized fluidized bed combustion;
    - ii. Integrated gasification combined cycle;
    - iii. Magnetohydrodynamics;
    - iv. Direct and indirect coal-fired turbines;
    - v. Integrated gasification fuel cells; or
    - vi. As determined by the Administrator, in consultation with the United States Secretary of Energy, a derivative of one or more of the above technologies; and
    - vii. Any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
  - b. Repowering also includes any oil, gas, or oil and gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States Department of Energy.
  - c. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Act.
124. "Run" means the net period of time during which an emission sample is collected, which may be, unless otherwise specified, either intermittent or continuous within the limits of good engineering practice.
125. "SCREEN model" means the AERSCREEN air dispersion model published by the Administrator in April 2011 and available on the Support Center for Regulatory Atmospheric Modeling web site: <http://www.epa.gov/ttn/scram>.
126. "Secondary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant, as specified in Article 2 of this Chapter.
127. "Secondary emissions" means emissions which are specific, well defined, quantifiable, occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
128. "Section 302(j) category" means:
- a. Any of the classes of sources listed in the definition of categorical source in subsection (23); or
  - b. Any category of affected facility which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
129. "Shutdown" means the cessation of operation of any air pollution control equipment or process equipment for any purpose, except routine phasing out of process equipment.
130. "Significant" means, in reference to a significant emissions increase, a net emissions increase or a stationary source's potential to emit a regulated NSR pollutant:
- a. A rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions.
VOC	40 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H <sub>2</sub> S)	10 tpy
Total reduced sulfur (including H <sub>2</sub> S)	10 tpy
Reduced sulfur compounds (including H <sub>2</sub> S)	10 tpy

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| Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 3.5 x 10 <sup>-6</sup> tpy |  |
| Municipal waste combustor metals (measured as particulate matter)   | 15 tpy                     |  |
| Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)                                   | 40 tpy                     |  |
| Municipal solid waste landfill emissions (measured as nonmethane organic compounds)                                       | 50 tpy                     |  |
- b. In ozone nonattainment areas classified as serious or severe, significant emissions of nitrogen oxides and VOC shall be determined under R18-2-405.
  - c. In a carbon monoxide nonattainment area classified as serious, a rate of emissions that would equal or exceed 50 tons per year, if the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
  - d. For a regulated NSR pollutant that is not listed in subsection (130)(a), any emission rate.
  - e. Notwithstanding the emission rates listed in subsection (130)(a), any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than 1 mg/m<sup>3</sup> (24-hour average).
131. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in this Section for that pollutant.
  132. "Smoke" means particulate matter resulting from incomplete combustion.
  133. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution. A.R.S. § 49-401.01(23).
  134. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.
  135. "Stack in existence" means that the owner or operator had either:
    - a. Begun, or caused to begin, a continuous program of physical onsite construction of the stack;
    - b. Entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.
  136. "Start-up" means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.
  137. "State implementation plan" or "SIP" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to and approved by the Administrator pursuant to 42 U.S.C. 7410.
  138. "Stationary rotating machinery" means any gas engine, diesel engine, gas turbine, or oil fired turbine operated from a stationary mounting and used for the production of electric power or for the direct drive of other equipment.
  139. "Stationary source" means any building, structure, facility or installation subject to regulation pursuant to A.R.S. § 49-426(A) which emits or may emit any air pollutant. "Building," "structure," "facility," or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" as described in the "Standard Industrial Classification Manual, 1987."
  140. "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized as a means of preventing emissions of sulfur dioxide or other sulfur compounds to the atmosphere.
  141. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.
  142. "Temporary source" means a source which is portable, as defined in A.R.S. § 49-401.01(23) and which is not an affected source.
  143. "Total reduced sulfur" (TRS) means the sum of the sulfur compounds, primarily hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during kraft pulping and other operations and measured by Method 16 in 40 CFR 60, Appendix A.
  144. "Trivial activities" means activities and emissions units, such as the following, that may be omitted from a permit or registration application. Certain of the following listed activities include qualifying statements intended to exclude similar activities:
    - a. Low-Emitting Combustion
      - i. Combustion emissions from propulsion of mobile sources;
      - ii. Emergency or backup electrical generators at residential locations;
      - iii. Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means capable of being moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device;
    - b. Low- Or Non-Emitting Industrial Activities
      - i. Blacksmith forges;
      - ii. Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling, sawing, grinding, turning, routing or machining of ceramic art work, precision parts, leather, metals, plastics, fiberboard, masonry, carbon, glass, or wood;
      - iii. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in



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- emission of HAP metals. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are insignificant activities based on size or production level thresholds. Brazing, soldering, and welding equipment, and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this definition;
- iv. Drop hammers or hydraulic presses for forging or metalworking;
  - v. Air compressors and pneumatically operated equipment, including hand tools;
  - vi. Batteries and battery charging stations, except at battery manufacturing plants;
  - vii. Drop hammers or hydraulic presses for forging or metalworking;
  - viii. Equipment used exclusively to slaughter animals, not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
  - ix. Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;
  - x. Equipment used for surface coating, painting, dipping, or spraying operations, except those that will emit VOC or HAP;
  - xi. CO<sub>2</sub> lasers used only on metals and other materials that do not emit HAP in the process;
  - xii. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
  - xiii. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
  - xiv. Laser trimmers using dust collection to prevent fugitive emissions;
  - xv. Process water filtration systems and demineralizers;
  - xvi. Demineralized water tanks and demineralizer vents;
  - xvii. Oxygen scavenging or de-aeration of water;
  - xviii. Ozone generators;
  - xix. Steam vents and safety relief valves;
  - xx. Steam leaks; and
  - xxi. Steam cleaning operations and steam sterilizers;
  - xxii. Use of vacuum trucks and high pressure washer/cleaning equipment within the stationary source boundaries for cleanup and in-source transfer of liquids and slurried solids to waste water treatment units or conveyances;
  - xxiii. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
  - xxiv. Electric motors.
- c. Building and Site Maintenance Activities
    - i. Plant and building maintenance and upkeep activities, including grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots, if these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit revision. Cleaning and painting activities qualify as trivial activities if they are not subject to VOC or hazardous air pollutant control requirements;
    - ii. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating, de-greasing, or solvent metal cleaning activities, and not otherwise triggering a permit revision;
    - iii. Janitorial services and consumer use of janitorial products;
    - iv. Landscaping activities;
    - v. Routine calibration and maintenance of laboratory equipment or other analytical instruments;
    - vi. Sanding of streets and roads to abate traffic hazards caused by ice and snow;
    - vii. Street and parking lot striping;
    - viii. Caulking operations which are not part of a production process.
  - d. Incidental, Non-Industrial Activities
    - i. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act;
    - ii. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing, industrial or commercial process;
    - iii. Tobacco smoking rooms and areas;
    - iv. Non-commercial food preparation;
    - v. General office activities, such as paper shredding, copying, photographic activities, pencil sharpening and blueprinting, but not including incineration;
    - vi. Laundry activities, except for dry-cleaning and steam boilers;
    - vii. Bathroom and toilet vent emissions;
    - viii. Fugitive emissions related to movement of passenger vehicles, if the emissions are not counted for applicability purposes under subsection (144)(c) of the definition of major source in this Section and any required fugitive dust control plan or its equivalent is submitted with the application;
    - ix. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use;
    - x. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition;
    - xi. Circuit breakers;
    - xii. Adhesive use which is not related to production.
  - e. Storage, Piping and Packaging
    - i. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP;
    - ii. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and

- nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
- iii. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
- iv. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
- v. Storage cabinets for flammable products;
- vi. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
- vii. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
- f. Sampling and Testing
  - i. Vents from continuous emissions monitors and other analyzers;
  - ii. Bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents;
  - iii. Equipment used for quality control, quality assurance, or inspection purposes, including sampling equipment used to withdraw materials for analysis;
  - iv. Hydraulic and hydrostatic testing equipment;
  - v. Environmental chambers not using HAP gases;
  - vi. Soil gas sampling;
  - vii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units;
- g. Safety Activities
  - i. Fire suppression systems;
  - ii. Emergency road flares;
- h. Miscellaneous Activities
  - i. Shock chambers;
  - ii. Humidity chambers;
  - iii. Solar simulators;
  - iv. Cathodic protection systems;
  - v. High voltage induced corona; and
  - vi. Filter draining.
- 145. "Unclassified area" means an area which the Administrator, because of a lack of adequate data, is unable to classify as an attainment or nonattainment area for a specific pollutant, and which, for purposes of this Chapter, is treated as an attainment area.
- 146. "Uncombined water" means condensed water containing analytical trace amounts of other chemical elements or compounds.
- 147. "Urban or suburban open area" means an unsubdivided tract of land surrounding a substantial urban development of a residential, industrial, or commercial nature and which, though near or within the limits of a city or town, may be uncultivated, used for agriculture, or lie fallow.
- 148. "Vacant lot" means a subdivided residential or commercial lot which contains no buildings or structures of a temporary or permanent nature.
- 149. "Vapor" means the gaseous form of a substance normally occurring in a liquid or solid state.
- 150. "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.
- 151. "Visible emissions" means any emissions which are visually detectable without the aid of instruments and which contain particulate matter.
- 152. "Volatile organic compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
  - a. Methane;
  - b. Ethane;
  - c. Methylene chloride (dichloromethane);
  - d. 1,1,1-trichloroethane (methyl chloroform);
  - e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
  - f. Trichlorofluoromethane (CFC-11);
  - g. Dichlorodifluoromethane (CFC-12);
  - h. Chlorodifluoromethane (HCFC-22);
  - i. Trifluoromethane (HFC-23);
  - j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
  - k. Chloropentafluoroethane (CFC-115);
  - l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
  - m. 1,1,1,2-tetrafluoroethane (HFC-134a);
  - n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
  - o. 1-chloro 1,1-difluoroethane (HCFC-142b);
  - p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
  - q. Pentafluoroethane (HFC-125);
  - r. 1,1,2,2-tetrafluoroethane (HFC-134);
  - s. 1,1,1-trifluoroethane (HFC-143a);
  - t. 1,1-difluoroethane (HFC-152a);
  - u. Parachlorobenzotrifluoride (PCBTF);
  - v. Cyclic, branched, or linear completely methylated siloxanes;
  - w. Acetone;
  - x. Perchloroethylene (tetrachloroethylene);
  - y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
  - z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
  - aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
  - bb. Difluoromethane (HFC-32);
  - cc. Ethylfluoride (HFC-161);
  - dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
  - ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
  - ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
  - gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
  - hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
  - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
  - jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
  - kk. Chlorofluoromethane (HCFC-31);
  - ll. 1 chloro-1-fluoroethane (HCFC-151a);
  - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
  - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);
  - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);
  - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);
  - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);
  - rr. Methyl acetate; and
  - ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE—7000);
  - tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE – 7500);
  - uu. 1,1,1,2,3,3,3-hentafluoropropane (HFC 227ea);

- vv. Methyl formate (HCOOCH<sub>3</sub>); and
- ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
- xx. Propylene carbonate; and
- yy. Dimethyl carbonate; and
- zz. Perfluorocarbon compounds that fall into these classes:

- i. Cyclic, branched, or linear, completely fluorinated alkanes.
- ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.
- iii. Cycle, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
- iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

aaa. The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

153. “Wood waste burner” means an incinerator designed and used exclusively for the burning of wood wastes consisting of wood slabs, scraps, shavings, barks, sawdust or other wood material, including those that generate steam as a by-product.

#### Historical Note

Former Section R9-3-101 repealed, new Section R9-3-101 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, paragraph (133) (Supp. 80-1). Editorial correction, paragraph (58) (Supp. 80-2). Amended effective July 9, 1980. Amended by adding new paragraphs (24), (55), (102), and (115) and renumbering accordingly, effective August 29, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended paragraph (133), added paragraph (156) and renumbered accordingly effective September 28, 1984 (Supp. 84-5). Amended paragraph (29) by deleting (aa) and (bb) effective August 9, 1985 (Supp. 85-4). Former Section R9-3-101 renumbered without change as R18-2-101 (Supp. 87-3). Amended paragraph (98) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective October 7, 1994 (Supp. 94-4). Amended effective February 28, 1995 (Supp. 95-1). Amended effective August 1, 1995 (Supp. 95-3). Amended effective January 31, 1997; filed with the Office of Secretary of State January 10, 1997 (Supp. 97-1). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August

7, 2012 (Supp. 12-2).

#### R18-2-102. Incorporated Materials

The following documents are incorporated by reference and are on file with the Office of the Secretary of State (1700 W. Washington St., Suite 103, Phoenix, AZ 85007) and the Department (1110 W. Washington St., Phoenix, AZ 85007):

- Sections 1 and 7 of the Department’s “Arizona Testing Manual for Air Pollutant Emissions,” amended as of March 1992 (and no future editions).
- All ASTM test methods referenced in this Chapter as of the year specified in the reference (and no future amendments). They are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103-1187.
- The U.S. Government Printing Office’s “Standard Industrial Classification Manual, 1987” (and no future editions).

#### Historical Note

Adopted effective September 26, 1990 (Supp. 90-3).

Amended effective February 3, 1993 (Supp. 93-1).

Amended effective November 15, 1993 (Supp. 93-4).

Amended effective June 10, 1994 (Supp. 94-2). Amended

effective December 7, 1995 (Supp. 95-4). Amended by

final rulemaking at 5 A.A.R. 3221, effective August 12,

1999 (Supp. 99-3). Amended by final rulemaking at 18

A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-103. Applicable Implementation Plan; Savings

No rule adopted in this Chapter shall preempt or nullify any applicable requirement or emission standard in an applicable implementation plan unless the Director revises the applicable implementation plan in conformance with the requirements of 40 CFR 51, Subpart F, and the Administrator approves the revision.

#### Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November

15, 1993 (Supp. 93-4).

### ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

#### R18-2-201. Particulate Matter: PM<sub>10</sub> and PM<sub>2.5</sub>

##### A. PM<sub>10</sub> Standards

- The level of the primary and secondary ambient air quality standards for PM<sub>10</sub> is 150 micrograms per cubic meter of PM<sub>10</sub> – 24-hour average concentration.
- To determine attainment of the primary and secondary standards, a person shall measure PM<sub>10</sub> in the ambient air by:
  - A reference method based on 40 CFR 50, Appendix J, and designated according to 40 CFR 53; or
  - An equivalent method designated according to 40 CFR 53.
- The primary and secondary 24-hour ambient air quality standards for PM<sub>10</sub> are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, determined according to 40 CFR 50, Appendix K, is less than or equal to one.

##### B. PM<sub>2.5</sub> Standards

- The primary ambient air quality standards for PM<sub>2.5</sub> are:
  - 15 micrograms per cubic meter of PM<sub>2.5</sub> – annual arithmetic mean concentration.
  - 35 micrograms per cubic meter of PM<sub>2.5</sub> – 24-hour average concentration.

2. The secondary ambient air quality standards for PM<sub>2.5</sub> are:
  - a. 15 micrograms per cubic meter of PM<sub>2.5</sub> – annual arithmetic mean concentration.
  - b. 35 micrograms per cubic meter of PM<sub>2.5</sub> – 24-hour average concentration.
3. To determine attainment of the primary and secondary standards, a person shall measure PM<sub>2.5</sub> in the ambient air by:
  - a. A reference method based on 40 CFR 50, Appendix L, and designated according to 40 CFR 53; or
  - b. An equivalent method designated according to 40 CFR 53.
4. The primary and secondary annual ambient air quality standards for PM<sub>2.5</sub> are met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 15 micrograms per cubic meter.
5. The primary and secondary 24-hour ambient air quality standards for PM<sub>2.5</sub> are met when the 98th percentile 24-hour concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-201 repealed, new Section R9-3-201 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (E) (Supp. 80-2). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection(B)(1) and deleted subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-201 renumbered without change as Section R18-2-201 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Section corrected to include subsection (B), which was inadvertently omitted in Supp. 05-3 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-202. Sulfur Oxides (Sulfur Dioxide)**

- A. The primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide, are:
  1. 0.03 parts per million (ppm) (80 µg/m<sup>3</sup>) -- annual arithmetic mean.
  2. 0.14 parts per million (ppm) (365 µg/m<sup>3</sup>) – maximum 24-hour concentration not to be exceeded more than once per calendar year.
  3. 75 parts per billion (ppb) – maximum one-hour concentration. The one-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 parts per billion, as determined according to 40 CFR 50, Appendix T.
- B. The secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide, is 0.5 parts per million (ppm) (1300 µg/m<sup>3</sup>) -- maximum three-hour concentration not to be exceeded more than once per year.
- C. The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix A or A-1, or by a Federal Equivalent Method designated according to 40 CFR 53.
- D. The standards in subsections (A)(1) and (2) shall apply:
  1. In an area designated nonattainment for a standard in subsection (A)(1) or (2) as of August 23, 2011, and areas not

meeting a state implementation plan call for a standard in subsection (A)(1) or (2), until the state submits pursuant to section 191 of the Act, and the Administrator approves, a state implementation plan providing for attainment the standard in subsection (A)(3) in that area.

2. In areas other than those identified in subsection (D)(1), until the effective date of the designation of that area, pursuant to section 107 of the act, for the standard in subsection (A)(3).

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-202 repealed, new Section R9-3-202 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended by deleting subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-202 renumbered without change as Section R18-2-202 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-203. Ozone: One-hour Standard and Eight-hour Average Standard**

- A. One-hour standard. Until June 15, 2005:
  1. The one-hour ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).
  2. The one-hour secondary ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).
  3. The one-hour standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 micrograms per cubic meter) is less than or equal to 1, determined by 40 CFR 50, Appendix H.
- B. Eight-hour averaged standard.
  1. The eight-hour average primary ambient air quality standard for ozone is 0.075 ppm.
  2. The eight-hour average secondary ambient air quality standard for ozone is 0.075 ppm.
  3. To determine attainment of the primary and secondary standards, a person shall measure ozone in the ambient air by:
    - a. A reference method based on 40 CFR 50, Appendix D, and designated according to 40 CFR 53; or
    - b. An equivalent method designated according to 40 CFR 53.
  4. Eight-hour average primary and secondary ambient air quality standards for ozone are met at an ambient air quality monitoring site when the three-year average of the annual fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 0.075 ppm, determined according to 40 CFR 50, Appendix P.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-204 repealed, new Section R9-3-204 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-204 renumbered without change as Section R18-2-204 (Supp. 87-3). Section R18-2-103 renumbered from R18-2-204 and amended effective September 26, 1990

(Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-204. Carbon monoxide**

- A.** The primary ambient air quality standards for carbon monoxide are:
1. 9 parts per million (10 milligrams per cubic meter) -- maximum eight-hour concentration not to be exceeded more than once per year.
  2. 35 parts per million (40 milligrams per cubic meter) -- maximum one-hour concentration not to be exceeded more than once per year.
- B.** An eight-hour average shall be considered valid if at least 75% of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using 6 or 7 as the divisor.
- C.** When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

#### **Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-205 repealed, new Section R9-3-205 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-205 renumbered without change as Section R18-2-205 (Supp. 87-3). Former Section R18-2-204 renumbered to R18-2-203, new Section R18-2-204 renumbered from R18-2-205 and amended effective September 26, 1990 (Supp. 90-3).

#### **R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)**

- A.** The primary ambient air quality standards for oxides of nitrogen, measured in the ambient air as nitrogen dioxide, are:
1. 53 parts per billion – annual average concentration.
  2. 100 parts per billion – one-hour average concentration.
- B.** The secondary ambient air quality standard for nitrogen dioxide is 0.053 (parts per million (100 micrograms per cubic meter) -- annual arithmetic mean.
- C.** The levels of the standards shall be measured by a reference method based on 40 CFR 50, Appendix F or a federal equivalent method designated in accordance with 40 CFR 53.
- D.** The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with 40 CFR, Appendix S for the annual standard.
- E.** The one-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 parts per billion, as determined in accordance with 40 CFR 50, Appendix S.
- F.** The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places, with fractional parts equal to or greater than 0.0005 ppm rounded up. To demonstrate attainment, an annual mean shall be based upon hourly data that is at least 75% complete or upon data derived from the manual methods, that is at least 75% complete for the scheduled sampling days in each calendar quarter.

#### **Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-206 repealed, new Section R9-3-206 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-206 renumbered without change as Section R18-2-206 (Supp. 87-3). Former Section R18-2-205 renumbered to R18-2-204, new Section R18-2-205 renumbered from R18-2-206 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-206. Lead**

- A.** The primary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter – maximum arithmetic mean averaged over a three-month period.
- B.** The secondary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter – maximum arithmetic mean averaged over a three-month period.
- C.** The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix G and designated in accordance with 40 CFR 53, or by an equivalent designated in accordance with part 53 of this chapter.
- D.** The national primary and secondary ambient air quality standards for lead are met when the maximum arithmetic three-month mean concentration for a three-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.
- E.** The former primary and secondary ambient air quality standards for lead of 1.5 micrograms per cubic meter averaged over a calendar quarter shall apply to an area until one year after the effective date of the designation of that area, pursuant to section 107 of the Act, for the standards in subsections (A) and (B).

#### **Historical Note**

Former Section R9-3-207 repealed effective May 14, 1979 (Supp. 79-1). New Section R9-3-207 adopted effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-207 renumbered without change as Section R18-2-207 (Supp. 87-3). Former Section R18-2-206 renumbered to R18-2-205, new Section R18-2-206 renumbered from R18-2-207 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-207. Renumbered**

#### **Historical Note**

Former Section R9-3-207 renumbered to R18-2-206 effective September 26, 1990 (Supp. 90-3).

#### **R18-2-208. Reserved**

#### **R18-2-209. Reserved**

#### **R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations**

40 CFR 81.303 as amended as of July 1, 2014 (and no future amendments or editions) is incorporated by reference as an applicable requirement and on file with the Department of Environmental

Quality. 40 CFR 81.303 is available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).  
Amended effective December 7, 1995 (Supp. 95-4).  
Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3).  
Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-211. Reserved**

**R18-2-212. Reserved**

**R18-2-213. Reserved**

**R18-2-214. Reserved**

#### **R18-2-215. Ambient air quality monitoring methods and procedures**

- A. Only those methods which have been either designated by the Administrator as reference or equivalent methods or approved by the Director shall be used to monitor ambient air.
- B. Quality assurance, monitor siting, and sample probe installation procedures shall be in accordance with procedures described in the Appendices to 40 CFR 58.
- C. The Director may approve other procedures upon a finding that the proposed procedures are substantially equivalent or superior to procedures in the Appendices to 40 CFR 58.

#### Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-215 renumbered without change as Section R18-2-215 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3).

#### **R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data**

Unless otherwise specified, interpretation of all ambient air quality standards contained in this Article shall be in accordance with 40 CFR 50, incorporated by reference in Appendix 2 of this Chapter.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-216 repealed, new Section R9-3-216 adopted effective August 29, 1980 (Supp. 80-4). Former Section R9-3-216 renumbered without change as Section R18-2-216 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### **R18-2-217. Designation and Classification of Attainment Areas**

- A. All attainment and unclassified areas or parts thereof shall be classified as either Class I, Class II or Class III.
- B. All of the following areas which were in existence on August 7, 1977, including any boundary changes to those areas which occurred subsequent to the date of enactment of the Clean Air Act Amendments of 1977 and before March 12, 1993, shall be Class I areas irrespective of attainment status and shall not be redesignated:
  1. International parks;
  2. National wilderness areas which exceed 5,000 acres in size;
  3. National memorial parks which exceed 5,000 acres in size; and
  4. National parks which exceed 6,000 acres in size.

- C. The following areas shall be designated only as Class I or II:
  1. An area which as of August 7, 1977, exceeds 10,000 acres in size and is one of the following:
    - a. A national monument,
    - b. A national primitive area,
    - c. A national preserve,
    - d. A national recreational area,
    - e. A national wild and scenic river,
    - f. A national wildlife refuge,
    - g. A national lakeshore or seashore.
  2. A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.
- D. All other areas shall be Class II areas unless redesignated under subsections (E) or (F).
- E. The Governor or the Governor's designee may redesignate areas of the state as Class I or Class II, provided that the following requirements are fulfilled:
  1. At least one public hearing is held in or near the area affected;
  2. Other states, Indian governing bodies and Federal Land Managers, whose land may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing.
  3. A discussion document of the reasons for the proposed redesignation including a description and analysis of health, environmental, economic, social and energy effects of the proposed redesignation is prepared by the Governor or the Governor's designee. The discussion document shall be made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing shall contain appropriate notification of the availability of such discussion document.
  4. Prior to the issuance of notice respecting the redesignation of an area which includes any federal lands, the Governor or the Governor's designee has provided written notice to the appropriate Federal Land Manager and afforded the Federal Land Manager adequate opportunity, not in excess of 60 days, to confer with the state respecting the redesignation and to submit written comments and recommendations. The Governor or the Governor's designee shall publish a list of any inconsistency between such redesignation and such recommendations, together with the reasons for making such redesignation against the recommendation of the Federal Land Manager, if any Federal Land Manager has submitted written comments and recommendations.
  5. The redesignation is proposed after consultation with the elected leadership of local governments in the area covered by the proposed redesignation.
  6. The redesignation is submitted to the Administrator as a revision to the SIP.
- F. The Governor or the Governor's designee may redesignate areas of the state as Class III if all of the following criteria are met:
  1. Such redesignation meets the requirements of subsection (E);
  2. Such redesignation has been approved after consultation with the appropriate committee of the legislature if it is in session or with the leadership of the legislature if it is not in session.

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3. The general purpose units of local government representing a majority of the residents of the area to be redesignated concur in the redesignation;
  4. Such redesignation shall not cause, or contribute to, concentration of any air pollutant which exceeds any maximum allowable increase or maximum allowable concentration permitted under the classification of any area;
  5. For any new major source as defined in R18-2-401 or a major modification of such source which may be permitted to be constructed and operated only if the area in question is redesignated as Class III, any permit application or related materials shall be made available for public inspection prior to a public hearing.
  6. The redesignation is submitted to the Administrator as a revision to the SIP.
- G.** A redesignation shall not be effective until approved by the Administrator as part of an applicable implementation plan.
- H.** Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Amended and subsection (B) renumbered to Section R18-2-218 effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4).

**R18-2-218. Limitation of Pollutants in Classified Attainment Areas**

- A.** Areas designated as Class I, II, or III shall be limited to the following increases in air pollutant concentrations occurring over the baseline concentration; provided that for any period other than an annual period, the applicable maximum allowable increase may be exceeded once per year at any one location:

**CLASS I**

Maximum Allowable Increase (Micrograms per cubic meter)

Particulate matter: PM<sub>2.5</sub>

Annual arithmetic mean	1
24-hr maximum	2

Particulate matter: PM<sub>10</sub>

Annual arithmetic mean	4
24-hour maximum	8

Sulfur dioxide:

Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Nitrogen dioxide:

Annual arithmetic mean	2.5
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**CLASS II**

Particulate matter: PM<sub>2.5</sub>

Annual arithmetic mean	4
24-hr maximum	9

Particulate matter: PM<sub>10</sub>

Annual arithmetic mean	17
24-hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Nitrogen dioxide:

Annual arithmetic mean	25
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**CLASS III**

Particulate matter: PM<sub>2.5</sub>

Annual arithmetic mean	8
24-hr maximum	18

Particulate matter: PM<sub>10</sub>

Annual arithmetic mean	34
24-hour maximum	60

Sulfur dioxide:

Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

Nitrogen dioxide:

Annual arithmetic mean	50
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- B.** The baseline concentration shall be that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline data.
1. The major source baseline date is:
    - a. January 6, 1975, for sulfur dioxide and PM<sub>10</sub>.
    - b. February 8, 1988, for nitrogen dioxide.
    - c. October 20, 2010, for PM<sub>2.5</sub>.
  2. The minor source baseline date shall be the earliest date after the trigger date on which a major source as defined in R18-2-401 or major modification subject to 40 CFR 52.21 or R18-2-406 submits a complete application under the relevant regulations. The trigger date is:
    - a. August 7, 1977, for PM<sub>10</sub> and sulfur dioxide.
    - b. February 8, 1988, for nitrogen dioxide.
    - c. October 20, 2011, for PM<sub>2.5</sub>.
  3. A baseline concentration shall be determined for each pollutant for which there is a minor source baseline date and shall include both:
    - a. The actual emissions representative of sources in existence on the minor source baseline date, except as provided in subsection (B)(4); and
    - b. The allowable emissions of major sources as defined in R18-2-401 which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.
  4. The following shall not be included in the baseline concentration and shall affect the applicable maximum allowable increase:
    - a. Actual emissions from any major source as defined in R18-2-401 on which construction commenced after the major source baseline date; and
    - b. Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.
- C.** The baseline date shall be established for each pollutant for which maximum allowable increases or other equivalent measures have been established if both:
1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R18-2-406; and
  2. In the case of a major source as defined in R18-2-401, the pollutant would be emitted in significant amounts, or in

the case of a major modification, there would be a significant net emissions increase of the pollutant.

- D. The baseline area shall be the AQCR that contains the area, designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act, in which the major source as defined in R18-2-401 or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the minor source baseline date is established, as follows: greater than or equal to 1 microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide or PM<sub>10</sub>; or greater than or equal to 0.3 microgram per cubic meter (annual average) for PM<sub>2.5</sub>. Area redesignations under R18-2-217 that would redesignate a baseline area may not intersect or be smaller than the area of impact of any new major source as defined in R18-2-401 or a major modification which either:
  1. Establishes a minor source baseline date, or
  2. Is subject to either 40 CFR 52.21 or R18-2-406 and would be constructed in Arizona.
- E. The maximum allowable concentration of any air pollutant in any area to which subsection (A) applies shall not exceed a concentration for each pollutant equal to the concentration permitted under the ambient air quality standards contained in this Article.
- F. For purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:
  1. Concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of a natural gas curtailment order which is in effect under the provisions of sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, over the emissions from such sources before the effective date of such order;
  2. The concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from using gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, 16 U.S.C. 792 - 825r, over the emissions from such sources before the effective date of the natural gas curtailment plan;
  3. Concentrations of PM<sub>10</sub> attributable to the increase in emissions from construction or other temporary activities of a new or modified source;
  4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and
  5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides, or PM<sub>10</sub> from major sources as defined in R18-2-401 when the following conditions are met:
    - a. The operating permit issued to such sources specifies the time period during which the temporary emissions increase of sulfur dioxide, nitrogen oxides, or PM<sub>10</sub> would occur. Such time period shall not be renewable and shall not exceed two years unless a longer period is specifically approved by the Director.
    - b. No emissions increase shall be approved which would either:
      - i. Impact any portion of any Class I area or any portion of any other area where an applicable incremental ambient standard is known to be violated in that portion; or
      - ii. Cause or contribute to the violation of a state ambient air quality standard.
- c. The operating permit issued to such sources specifies that, at the end of the time period described in subsection (F)(5)(a), the emissions levels from the sources would not exceed the levels occurring before the temporary emissions increase was approved.
6. The exception granted with respect to increment consumption under subsections (F)(1) and (2) shall not apply more than five years after the effective date of the order or natural gas curtailment plan on which the exception is based.
- G. If the Director or the Administrator determines that the SIP is substantially inadequate to prevent significant deterioration or that an applicable maximum allowable increase as specified in subsection (A) is being violated, the SIP shall be revised to correct the inadequacy or the violation. The SIP shall be revised within 60 days of such a finding by the Director or within 60 days following notification by the Administrator, or by such later date as prescribed by the Administrator after consultation with the Director.
- H. The Director shall review the adequacy of the SIP on a periodic basis and within 60 days of such time as information becomes available that an applicable maximum allowable increase is being violated.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Former Section R18-2-218 renumbered to R18-2-219, new Section R18-2-218 renumbered from R18-2-217(B) and amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-219. Repealed

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-218 repealed, new Section R9-3-218 adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-218 renumbered without change as Section R18-2-218 (Supp. 87-3). Former Section R18-2-219 renumbered to R18-2-220, new Section R18-2-219 renumbered from R18-2-218 and amended effective September 26, 1990 (Supp. 90-3). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-220. Air pollution emergency episodes

- A. Procedures shall be implemented by the Director in order to prevent the occurrence of ambient air pollutant concentrations which would cause significant harm to the health of persons, as specified in subsection (B)(4). The procedures and actions required for each stage are described in the Department's "Procedures for Prevention of Emergency Episodes," amended as of October 18, 1988 (and no future edition), which is incorporated herein by reference and on file with the Office of the Secretary of State.



B. The following stages are identified by air quality criteria in order to provide for sequential emissions reductions, public notification and increased Department monitoring and forecast responsibilities. The declaration of any stage, and the area of the state affected, shall be based on air quality measurements and meteorological analysis and forecast.

1. A Stage I air pollution alert shall be declared when any of the alert level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of alert level concentrations for the same pollutant during the subsequent 24-hour period. If, 48 hours after an alert has been initially declared, air pollution concentrations and meteorological conditions do not improve, the warning stage control actions shall be implemented but no warning shall be declared, unless air quality has deteriorated to the extent described in subsection (B)(2).
2. A Stage II air pollution warning shall be declared when any of the warning level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the warning level during the subsequent 24-hour period. If, 48 hours after a warning has been initially declared, air pollution concentrations and meteorological conditions do not improve, the emergency stage shall be declared and its control actions implemented.
3. A Stage III air pollution emergency shall be declared when any of the emergency level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the emergency level during the subsequent 24-hour period.
4. Summary of emergency episode and significant harm levels:

Pollutant	Averaging Time	Alert	Warning	Emergency	Significant Harm
Carbon monoxide (mg/m <sup>3</sup> )	1-hr	--	--	--	144
	4-hr	--	--	--	86.3
	8-hr	17	34	46	57.5
Nitrogen dioxide (ug/m <sup>3</sup> )	1-hr	1,130	2,260	3,000	3,750
	24-hr	282	565	750	938
Ozone (ppm)	1-hr	.2	.4	.5	.6
PM <sub>10</sub> (ug/m <sup>3</sup> )	24-hr	350	420	500	600
Sulfur dioxide (ug/m <sup>3</sup> )	24-hr	800	1,600	2,100	2,620

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B), paragraph (2) (Supp. 80-1). Editorial correction, subsection (A) (Supp. 80-2). Former Section R9-3-219 repealed, new Section R9-3-219 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-219 renumbered without change as Section R18-2-219 (Supp. 87-3). Section R18-2-220 renumbered from R18-2-219 and amended effective September 26, 1990 (Supp. 90-3).

### ARTICLE 3. PERMITS AND PERMIT REVISIONS

#### R18-2-301. Definitions

The following definitions apply to this Article:

1. "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to produce results adequate for the Director's determination of compliance in accordance with R18-2-311(D).
2. "Billable permit action" means the issuance or denial of a new permit, significant permit revision, or minor permit revision, or the renewal of an existing permit.
3. "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.
4. "CEM" means a continuous emission monitoring system as defined in R18-2-101.
5. "Complete" means, in reference to an application for a permit, permit revision or registration, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of a permit, permit revisions or registration processing does not preclude the Director from requesting or accepting any additional information.
6. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by any of the following:
  - a. Using that portion of a stack which exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall not include any of the following:
    - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
    - ii. The merging of exhaust gas streams under any of the following conditions:
      - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;
      - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
      - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the

- merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.
- iii. Smoke management in agricultural or silvicultural prescribed burning programs.
  - iv. Episodic restrictions on residential woodburning and open burning.
  - v. Techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
7. "Emissions allowable under the permit" means a permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
  8. "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.
  9. "Fuel oil" means Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D-2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specification for Diesel Fuel Oils).
  10. "Itemized bill" means a breakdown of the permit processing time into the categories of pre-application activities, completeness review, substantive review, and public involvement activities, and within each category, a further breakdown by employee name.
  11. "Major source threshold" means the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under the definition of major source in R18-2-101.
  12. "Minor NSR Modification" means any of the following changes that do not qualify as a major source or major modification:
    - a. Any physical change in or change in the method of operation of an emission unit or a stationary source that either:
      - i. Increases the potential to emit of a regulated minor NSR pollutant by an amount greater than the permitting exemption thresholds, or
      - ii. Results in emissions of a regulated minor NSR pollutant not previously emitted by such emission unit or stationary source in an amount greater than the permitting exemption thresholds.
    - b. Construction of one or more new emissions units that have the potential to emit regulated minor NSR pollutants at an amount greater than the permitting exemption threshold.
    - c. A change covered by subsection (12)(a) or (b) of this Section constitutes a minor NSR modification regardless of whether there will be a net decrease in total source emissions or a net increase in total source emissions that is less than the permitting exemption threshold as a result of decreases in the potential to emit of other emission units at the same stationary source.
  - d. For the purposes of this subsection the following do not constitute a physical change or change in the method of operation:
    - i. A change consisting solely of the construction of, or changes to, a combination of emissions units qualifying as a categorically exempt activity.
    - ii. For a stationary source that is required to obtain a Class II permit under R18-2-302 and that is subject to source-wide emissions caps under R18-2-306.01 or R18-2-306.02, a change that will not result in the violation of the existing emissions cap for that regulated minor NSR pollutant.
    - iii. Replacement of an emission unit by a unit with a potential to emit regulated minor NSR pollutants that is less than or equal to the potential to emit of the existing unit, provided the replacement does not cause an increase in emissions at other emission units at the stationary source. A unit installed under this provision is subject to any limits applicable to the unit it replaced.
    - iv. Routine maintenance, repair, and replacement.
    - v. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 to 825r.
    - vi. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
    - vii. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
    - viii. Use of an alternative fuel or raw material by a stationary source that either:
      - (1) The source was capable of accommodating before December 12, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter; or
      - (2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
    - ix. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
    - x. Any change in ownership at a stationary source
    - xi. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
      - (1) The SIP, and
      - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

- xii. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis.
- xiii. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
- e. For purposes of this subsection:
  - i. “Potential to emit” means the lower of a source’s or emission unit’s potential to emit or its allowable emissions.
  - ii. In determining potential to emit, the fugitive emissions of a stationary source shall not be considered unless the source belongs to a section 302(j) category.
  - iii. All of the roadways located at a stationary source constitute a single emissions unit.
- 13. “NAICS” means the five- or six-digit North American Industry Classification System-United States, 1997, number for industries used by the U.S. Department of Commerce.
- 14. “Permit processing time” means all time spent by Air Quality Division staff or consultants on tasks specifically related to the processing of an application for the issuance or renewal of a particular permit or permit revision, including time spent processing an application that is denied.
- 15. “Quantifiable” means, with respect to emissions, including the emissions involved in equivalent emission limits and emission trades, capable of being measured or otherwise determined in terms of quantity and assessed in terms of character. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, materials used in a process or production, modeling, or other reasonable measurement practices.
- 16. “Registration” means a registration under R18-2-302.01.
- 17. “Replicable” means, with respect to methods or procedures, sufficiently unambiguous that the same or equivalent results would be obtained by the application of the method or procedure by different users.
- 18. “Responsible official” means one of the following:
  - a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
    - i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
    - ii. The delegation of authority to such representatives is approved in advance by the permitting authority;
  - b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
  - c. For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this Article, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
  - d. For affected sources:
    - i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
    - ii. The designated representative for any other purposes under 40 CFR 70.
- 19. “Small source” means a source with a potential to emit, without controls, less than the rate defined as permitting exemption thresholds in R18-2-101, but required to obtain a permit solely because it is subject to a standard under 40 CFR 63.
- 20. “Startup” means the setting in operation of a source for any purpose.
- 21. “Synthetic minor” means a source with a permit that contains voluntarily accepted emissions limitations, controls, or other requirements (for example, a cap on production rates or hours of operation, or limits on the type of fuel) under R18-2-306.01 to reduce the potential to emit to a level below the major source threshold.
- 22. “Uncontrolled potential to emit” means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is subject to an elective limit under R18-2-302.01(F).

#### Historical Note

Former Section R18-2-301 renumbered to R18-2-302, new Section R18-2-301 adopted effective September 26, 1990 (Supp. 90-3). Correction to table in subsection (A)(13) (Supp. 93-1). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

Amended effective August 1, 1995 (Supp. 95-3).

Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-302. Applicability; Registration; Classes of Permits

- A. Except as otherwise provided in this Article, no person shall begin actual construction of, operate, or make a modification to any stationary source subject to regulation under this Article, without obtaining a registration, permit or permit revision from the Director.
- B. Class I and II permits and registrations shall be required as follows:
  - 1. A Class I permit shall be required for a person to begin actual construction of or operate any of the following:
    - a. Any major source,

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- b. Any solid waste incineration unit required to obtain a permit pursuant to Section 129(e) of the Act,
  - c. Any affected source, or
  - d. Any stationary source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
2. Unless a Class I permit is required, a Class II permit shall be required for:
- a. A person to begin actual construction of or operate any stationary source that emits or has the uncontrolled potential to emit, significant quantities of regulated NSR pollutants;
  - b. A person to make a physical or operational change to a stationary source that would cause the source to emit, or have the uncontrolled potential to emit significant quantities of regulated NSR pollutants.
  - c. A person to begin actual construction of a source subject to Article 17 of this Chapter.
  - d. A person to make a modification subject to Article 17 of this Chapter to a source for which a permit has not been issued under this Article.
  - e. A person to begin actual construction of or modify a stationary source that otherwise would be subject to registration but that the Director has determined requires a permit under R18-2-302.01(B)(3)(b).
3. Until the effective date of the Administrator's approval of the registration program in R18-2-302.01 into the state implementation plan, unless a Class I permit is required, a Class II permit shall be required for any of the activities that would require a registration under subsections (B)(4)(b) and (c).
4. After the effective date of the Administrator's approval of R18-2-302.01 into the state implementation plan, unless a Class I or II permit is required, registration shall be required for:
- a. A person to begin actual construction of or operate any stationary source that emits or has the maximum capacity to emit under its physical and operational design, without taking any limitations on operations or air pollution controls into account, any regulated minor NSR pollutant in an amount greater than or equal to a permitting exemption threshold.
  - b. A person to begin actual construction of or operate any stationary source subject to a standard under section 111 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
    - i. 40 CFR 60, Subpart AAA (Residential Wood Heaters).
    - ii. 40 CFR 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines).
    - iii. 40 CFR 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines).
  - c. A person to begin actual construction of or operate any stationary source, including an area source, subject to a standard under section 112 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
    - i. 40 CFR 61.145.
    - ii. 40 CFR 63, Subpart ZZZZ (Reciprocating Internal Combustion Engines).
    - iii. 40 CFR 63, Subpart WWWW (Ethylene Oxide Sterilizers).
    - iv. 40 CFR 63, Subpart CCCCC (Gasoline Distribution).
    - v. 40 CFR 63, Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations).
    - vi. 40 CFR 63, Subpart JJJJJ (Industrial, Commercial, and Institutional Boilers Area Sources), published at 76 FR 15554 (March 21, 2011).
    - vii. A regulation or requirement under section 112(r) of the Act.
  - d. A physical or operational change to a source that would cause the source to emit or have the maximum capacity to emit under its physical and operational design, without taking any limitations on operations or air pollution control into account, any regulated minor NSR pollutant in excess of a permitting exemption threshold.
- C. Notwithstanding subsections (A) and (B), the following stationary sources do not require a permit or registration unless the source is a major source, or unless operation without a permit would result in a violation of the Act:
- 1. A stationary source that consists solely of a single categorically exempt activity plus any combination of trivial activities.
  - 2. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations" does not include equipment classified as a source that requires a permit under Title V of the Act, or that is subject to a standard under 40 CFR 60, 61 or 63.
- D. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Director determines that maximum achievable control technology emission limitation (MACT) for new sources under Section 112 of the Act will be met. If MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meaning prescribed in 40 CFR 63.41.
- E. Elective limits or controls adopted under R18-2-302.01(F) shall not be considered in determining whether a source requires registration but shall be considered in determining any of the following:
- 1. Whether the registration is subject to the public participation requirements of R18-2-330, as provided in R18-2-302.01(B)(3)(a).
  - 2. Whether review for possible interference with attainment or maintenance of ambient standards is required under R18-2-302.01(C).
  - 3. Whether the source requires a Class II permit, as provided in subsection (B)(2)(a) or (b).
- F. The fugitive emissions of a stationary source shall not be considered in determining whether the source requires a Class II permit under subsection (B)(2)(a) or (b) or a registration under subsection (B)(4)(a) or (e), unless the source belongs to a section 302(j) category. If a permit is required for a stationary source, the fugitive emissions of the source shall be subject to all of the requirements of this Article.
- G. Notwithstanding subsections (A) and (B) of this Section, a person may begin actual construction, but not operation, of a source requiring a Class I permit or Class I permit revision upon the Director's issuance of the proposed final permit or proposed final permit revision.

**Historical Note**

Amended effective August 7, 1975 (Supp. 75-1).

Amended as an emergency effective December 15, 1975

(Supp. 75-2). Amended effective May 10, 1976 (Supp.

76-3). Amended effective April 12, 1977 (Supp. 77-2). Amended effective March 24, 1978 (Supp. 78-2). Former

Section R9-3-301 repealed, new Section R9-3-301 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended subsections (B) and (C) effective September 22, 1983 (Supp. 83-5). Amended subsection (B), paragraph (3) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-301 renumbered without change as Section R18-2-301 (Supp. 87-3). Former Section R18-2-302 renumbered to R18-2-302.01, new Section R18-2-302 renumbered from R18-2-301 and amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-302.01. Source Registration Requirements**

**A.** Application. An application for registration shall be submitted on the form specified by the Director and shall include the following information:

1. The name of the applicant.
2. The physical location of the source, including the street address, city, county, zip code and latitude and longitude coordinates.
3. The source's uncontrolled potential to emit each regulated minor NSR pollutant calculated in accordance with R18-2-327(C).
4. Identification of any elective limits or controls adopted under subsection (F).
5. In the case of a modification, each increase in the source's potential to emit that exceeds the applicable threshold in subsection (G)(1)(a).
6. Identification of the method used to determine the potential to emit or change in potential to emit specified under R18-2-302(B)(4)(a) or (d) or subsection (G)(1)(a) of this Section.
7. Process information for the source, including a list of emission units, design capacity, operations schedule, and identification of emissions control devices.

**B.** Registration Processing Procedures.

1. The Department shall complete a review of a registration application for administrative completeness within 30 calendar days, calculated in accordance with A.A.C. R18-1-503, after its receipt.
2. The Department shall complete a substantive review and take final action on a registration application within 60 calendar days if no hearing is requested, and 90 calendar days if a hearing is requested, calculated in accordance with A.A.C. R18-1-504, after the application is administratively complete.
3. Public Participation.
  - a. Except as provided in subsection (B)(3)(b), a registration for construction of a source shall be subject to the public notice and participation requirements of R18-2-330. The materials relevant to the registration decision made available to the public under R18-2-330(D)(11) shall include any determination made or modeling conducted by the Director under subsection (C).
  - b. A registration for construction of a source shall not be subject to the public notice and participation requirements of R18-2-330, if the source's uncon-

trolled potential to emit each regulated minor NSR pollutant is less than the applicable permitting exemption threshold.

**C.** Review for NAAQS Compliance; Requirement to Obtain a Permit.

1. The Director shall review each application for registration of a source with the uncontrolled potential to emit any regulated minor NSR pollutant in an amount equal to or greater than the permitting exemption threshold. The purpose of the review shall be to determine whether the new or modified source may interfere with attainment or maintenance of a standard imposed in Article 2 of this Chapter. In making the determination required by this subsection, the Director shall take into account the following factors:
    - a. The source's emission rates, including fugitive emission rates, taking into account any elective limits or controls adopted under subsection (F).
    - b. The location of emission units within the facility and their proximity to the ambient air.
    - c. The terrain in which the source is or will be located.
    - d. The source type.
    - e. The location and emissions of nearby sources.
    - f. Background concentrations of regulated minor NSR pollutants.
  2. The Director may undertake the review specified in subsection (C)(1) for a source with the uncontrolled potential to emit regulated minor NSR pollutants in an amount less than the permitting exemption threshold.
  3. If the Director determines under subsection (C)(1) or (C)(2) that a source's emissions may interfere with attainment or maintenance of a standard imposed in Article 2 of this Chapter, the Director shall perform a SCREEN model run for each regulated minor NSR pollutant for which that determination has been made.
  4. If the Director determines, based on performance of the SCREEN model pursuant to subsection (C)(3), that a source's emissions, taking into account any elective limits or controls adopted under subsection (F), will interfere with attainment of a standard imposed in Article 2 of this Chapter, the Director shall deny the application for registration. Notwithstanding R18-2-302(B)(4), the owner or operator of the source shall be required to obtain a permit under R18-2-302 and shall comply with R18-2-334 before beginning actual construction of the source or modification.
- D.** Notwithstanding R18-2-302(B)(4)(b) and (c), the Director shall deny an application for registration for a source subject to a standard under section 111 or 112 of the Act and require the owner or operator to obtain a permit under R18-2-302, if the Director determines based on the following factors that the requirement to obtain a permit is warranted:
1. The size and complexity of the source.
  2. The complexity of the section 111 or 112 standard applicable to the source.
  3. The public health or environmental risks posed by the pollutants subject to regulation under the section 111 or 112 standard.
- E.** Registration Contents. A registration shall contain the following elements:
1. Identification of each emission unit subject to an applicable requirement and all applicable requirements that apply to the unit, including any testing, monitoring, recordkeeping and reporting obligations imposed by the applicable requirement or by R18-2-312.

2. Any elective limits or controls and associated operating, maintenance, monitoring and recordkeeping requirements adopted pursuant to subsection (F).
  3. A requirement to retain any records required by the registration at the source for at least three years in a form that is suitable for expeditious inspection and review.
  4. For any source that has adopted elective limits or controls under subsection (F), a requirement to submit an annual compliance report on the form provided by the Director in the registration.
- F. Elective Limits or Controls.** The owner or operator of a source requiring registration may elect to include any of the following emission limitations in the registration, provided the registration also includes the operating, maintenance, monitoring and recordkeeping requirements specified below for the limitation.
1. A limitation on the hours of operation of any process or combination of processes. The owner or operator shall maintain a log or readily available business records showing actual operating hours through the preceding operating day for the process or processes subject to the limitation.
  2. A limitation on the production rate for any process or combination of processes. The owner or operator shall maintain a log or readily available business records showing the actual production rate through the preceding operating day for the process or processes subject to the limitation.
  3. A requirement to operate a fabric filter for the control of particulate matter emissions.
    - a. The owner or operator shall operate the fabric filter at all times that the emission unit controlled by the fabric filter is operated.
    - b. The owner or operator shall inspect the fabric filter at least once per month for tears and leaks and shall promptly repair any tears or leaks identified.
    - c. The owner or operator shall operate and maintain the fabric filter in substantial compliance with the manufacturer's operation and maintenance recommendations.
    - d. The owner or operator shall keep a log or readily available business records of the inspections required by subsection (F)(3)(b) and the maintenance activities required by subsection (F)(3)(c).
  4. Limitations on the concentration of VOC or hazardous air pollutants in process materials. The owner or operator shall maintain a log or readily available business records showing the VOC or hazardous air pollutant concentration in each material subject to such a limitation used during the current calendar year.
- G. Revised Registrations.**
1. Unless a Class II permit is required under R18-2-302(B)(2)(b), the owner or operator of a registered source shall file a revised registration on the occurrence of any of the following:
    - a. A modification to the source that would result in an increase in the source's uncontrolled potential to emit exceeding any of the following amounts:
      - i. 2.5 tons per year for NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, VOC or CO.
      - ii. 0.3 tons per year for lead.
    - b. Relocation of a portable source.
    - c. The transfer of the source to a new owner.
  2. The requirements of subsection (B) shall not apply to a revised registration. The owner or operator may begin actual construction and operation of the modified, relocated or transferred source on filing the revised registration.
- H. Registration Term.**
1. A source's registration shall expire five years after the date of issuance of the last registration for the source or any modification to the source.
  2. A source shall submit an application for renewal of a registration not later than six months before expiration of the registration's term.
  3. If a source submits a timely and complete application for renewal of a registration, the source's authorization to operate under its existing registration shall continue until the Director takes final action on the application.
  4. The Director may terminate a registration under R18-2-321(C). If the Director terminates a registration under R18-2-321(C)(3), the owner or operator shall be required to apply for a permit for the source under R18-2-302.
- I. Delayed Effective Date.** This Section shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.
- Historical Note**
- Amended effective August 7, 1975 (Supp. 75-1); Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective October 2, 1979 (Supp. 79-5). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-302 renumbered without change as Section R18-2-302 (Supp. 87-3). Section R18-2-302.01 renumbered from Section R18-2-302 and amended effective September 26, 1990 (Supp. 90-3). Section repealed effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).
- R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition**
- A.** An installation or operating permit issued before September 1, 1993, and the authority to operate, as provided in Laws 1992, Ch. 299, § 65, continues in effect until the installation or operating permit is terminated, or until the Director issues or denies a Class I or Class II permit to the source, whichever is earlier.
  - B.** The terms and conditions of installation permits issued before September 1, 1993, or in permits or permit revisions issued under R18-2-302 and authorizing the construction or modification of a stationary source, remain federal applicable requirements unless modified or revoked by the Director.
  - C.** All sources in existence on September 1, 2012, requiring a registration shall provide notice to the Director by no later than December 1, 2012, on a form provided by the Director.
  - D.** All sources requiring a registration that are in existence on the date R18-2-302.01 becomes effective under R18-2-302.01(I) may submit applications for registration at any time after R18-2-302.01 is effective and shall submit an application no later than 180 days after receipt of written notice from the Director that an application is required. Applications to register the construction or modification of a source must be submitted, and the registration must be issued, before the applicant begins actual construction of the source or modification.
  - E.** Sources in existence on the date R18-2-334 becomes effective under R18-2-334(I) are not subject to R18-2-334, unless the source undertakes a minor NSR modification. Notwithstanding any other provision of this Chapter, R18-2-334 shall apply

only to applications for permits or permit revisions filed after the date R18-2-334 takes effect under R18-2-334(I).

#### Historical Note

Amended effective August 7, 1975 (Supp. 75-1).  
Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective October 2, 1979 (Supp. 79-5).  
Amended effective May 28, 1982 (Supp. 82-3). Amended subsection (D), paragraph (1) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-303 renumbered without change as Section R18-2-303 (Supp. 87-3).  
Amended effective September 26, 1990 (Supp. 90-3).  
Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-304. Permit Application Processing Procedures

A. Unless otherwise noted, this Section applies to each source requiring a Class I or II permit or permit revision.

B. Standard Application Form and Required Information. To apply for any permit in this Chapter, applicants shall complete the "Standard Permit Application Form" and supply all information required by the "Filing Instructions" as shown in Appendix 1. The Director, either upon the Director's own initiative or on the request of a permit applicant, may waive a requirement that specific information or data be submitted in the application for a Class II permit for a particular source or category of sources if the Director determines that the information or data would be unnecessary to determine all of the following:

1. The applicable requirements to which the source may be subject;
2. That the source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of A.R.S. Title 49, Chapter 3, Article 2 and this Chapter;
3. The fees to which the source may be subject;
4. A proposed emission limitation, control, or other requirement that meets the requirements of R18-2-306.01 or R18-2-306.02.

C. A timely application is:

1. For a source, that becomes subject to the permit program as a result of a change in regulation and not as a result of construction or a physical or operational change, one that is submitted within 12 months after the source becomes subject to the permit program.
2. For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than 18 months, prior to the date of permit expiration.
3. Any source under R18-2-326(A)(3) which becomes subject to a standard promulgated by the Administrator pursuant to section 112(d) of the Act shall, within 12 months of the date on which the standard is promulgated, submit an application for a permit revision demonstrating how the source will comply with the standard.

D. If an applicable implementation plan allows the determination of an alternative emission limit, a source may, in its application, propose an emission limit that is equivalent to the emission limit otherwise applicable to the source under the applicable implementation plan. The source shall also demonstrate that the equivalent limit is quantifiable, accountable,

enforceable, and subject to replicable compliance determination procedures.

E. A complete application shall comply with all of the following:

1. To be complete, an application shall provide all information required by subsection (B) (standard application form section). An application for permit revision only need supply information related to the proposed change, unless the source's proposed permit revision will change the permit from a Class II permit to a Class I permit. A responsible official shall certify the submitted information consistent with subsection (H) (Certification of Truth, Accuracy, and Completeness).
2. An application for a new permit or permit revision shall contain an assessment of the applicability of the requirements of Article 4 of this Chapter. If the applicant determines that the proposed new source is a major source as defined in R18-2-401, or the proposed permit revision constitutes a major modification as defined in R18-2-101, then the application shall comply with all applicable requirements of Article 4.
3. An application for a new permit or permit revision shall contain an assessment of the applicability of Minor New Source Review requirements in R18-2-334. If the applicant determines that the proposed new source is subject to R18-2-334, or the proposed permit revision constitutes a Minor NSR Modification, then the application shall comply with all applicable requirements of R18-2-334.
4. An application for a new permit or a permit revision shall contain an assessment of the applicability of the requirements established under Article 17 of this Chapter. If the applicant determines that the proposed new source permit or permit revision is subject to the requirements of Article 17 of this Chapter, the application shall comply with all applicable requirements of that Article.
5. Except for proposed new major sources or major modifications subject to the requirements of Article 4 of this Chapter, an application for a new permit, a permit revision, or a permit renewal shall be deemed to be complete unless, within 60 days of receipt of the application, the Director notifies the applicant by certified mail that the application is not complete.
6. If a source wishes to voluntarily enter into an emissions limitation, control, or other requirement pursuant to R18-2-306.01, the source shall describe that emissions limitation, control, or other requirement in its application, along with proposed associated monitoring, recordkeeping, and reporting requirements necessary to demonstrate that the emissions limitation, control, or other requirement is permanent, quantifiable, and otherwise enforceable as a practical matter.
7. If, while processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response. Except for minor permit revisions as set forth in R18-2-319, a source's ability to continue operating without a permit, as set forth in subsection (J), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Director.
7. The completeness determination shall not apply to revisions processed through the minor permit revision process.

9. Activities which are insignificant pursuant to the definition of insignificant activities in R18-2-101 shall be listed in the application. The application need not provide emissions data regarding insignificant activities. If the Director determines that an activity listed as insignificant does not meet the requirements of the definition of insignificant activities in R18-2-101, the Director shall notify the applicant in writing and specify additional information required.
  10. If a permit applicant requests terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements, the permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable.
  11. The Director is not in disagreement with a notice of confidentiality submitted with the application pursuant to A.R.S. § 49-432.
- F.** A source applying for a Class I permit that has submitted information with an application under a claim of confidentiality pursuant to A.R.S. § 49-432 and R18-2-305 shall submit a copy of such information directly to the Administrator.
- G.** Duty to Supplement or Correct Application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a proposed permit.
- H.** Certification of Truth, Accuracy, and Completeness. Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Article shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- I.** Action on Application.
1. The Director shall issue or deny each permit according to the provisions of A.R.S. § 49-427. The Director may issue a permit with a compliance schedule for a source that is not in compliance with all applicable requirements at the time of permit issuance.
  2. In addition, a permit may be issued, revised, or renewed only if all of the following conditions have been met:
    - a. The application received by the Director for a permit, permit revision, or permit renewal shall be complete according to subsection (E).
    - b. Except for revisions qualifying as administrative or minor under R18-2-318 and R18-2-319, all of the requirements for public notice and participation under R18-2-330 shall have been met.
    - c. For Class I permits, the Director shall have complied with the requirements of R18-2-307 for notifying and responding to affected states, and if applicable, other notification requirements of R18-2-402(D)(2) and R18-2-410(C)(2).
    - d. For Class I and II permits, the conditions of the permit shall require compliance with all applicable requirements.
    - e. For permits for which an application is required to be submitted to the Administrator under R18-2-307(A), and to which the Administrator has properly objected to its issuance in writing within 45 days of receipt of the proposed final permit and all necessary supporting information from the Department, the Director has revised and submitted a proposed final permit in response to the objection and EPA has not objected to this proposed final permit within 45 days of receipt.
    - f. For permits to which the Administrator has objected to issuance pursuant to a petition filed under 40 CFR 70.8(d), the Administrator's objection has been resolved.
    - g. For a Class II permit that contains voluntary emission limitations, controls, or other requirements established pursuant to R18-2-306.01, the Director shall have complied with the requirement of R18-2-306.01(C) to provide the Administrator with a copy of the proposed permit.
  3. If the Director denies a permit under this Section, a notice shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the denial and a statement that the permit applicant is entitled to a hearing.
  4. The Director shall provide a statement that sets forth the legal and factual basis for the proposed permit conditions including references to the applicable statutory or regulatory provisions. The Director shall send this statement to any person who requests it and, for Class I permits, to the Administrator.
  5. Priority shall be given by the Director to taking action on applications for construction or modification submitted pursuant to Title I, Parts C (Prevention of Significant Deterioration) and D (New Source Review) of the Act.
- J.** Requirement for a Permit. Except as noted under the provisions in R18-2-317 and R18-2-319, no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued pursuant to this Chapter. However, if a source under R18-2-326(A)(3) submits a timely and complete application for continued operation under a permit revision or renewal, the source's failure to have a permit is not a violation of this Article until the Director takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the Director, any additional information identified as being needed to process the application. This subsection does not affect a source's obligation to obtain a permit revision before making a modification to the source.

#### Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Former Section R9-3-304 repealed, new Section R9-3-304 formerly Section R9-3-305 renumbered and amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-304 repealed, new Section R9-3-304 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-304 repealed, new Section R9-3-304 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-304 renumbered without change as Section R18-2-304 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp.



95-3). The reference to R18-2-101(54) in subsection (E)(8) corrected to reference R18-2-101(57) (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-305. Public Records; Confidentiality**

- A. The Director shall make all permits, including all elements required to be in the permit pursuant to R18-2-306, available to the public. No permit shall be issued unless the information required by R18-2-306 is present in the permit.
- B. A notice of confidentiality pursuant to A.R.S. § 49-432(C) shall:
  1. Precisely identify the information in the documents submitted which is considered confidential.
  2. Contain sufficient supporting information to allow the Director to evaluate whether such information satisfies the requirements related to trade secrets or, if applicable, how the information, if disclosed, is likely to cause substantial harm to the person's competitive position.
- C. Within 30 days of receipt of a notice of confidentiality that complies with subsection (B) above, the Director shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position pursuant to A.R.S. § 49-432(C)(1) and so notify the applicant in writing. If the Director agrees with the applicant that the information covered by the notice of confidentiality satisfies the statutory requirements, the Director shall include a notice in the file for the permit or permit application that certain information has been considered confidential.
- D. If the Director takes action pursuant to A.R.S. § 49-432(D) and obtains a final order authorizing disclosure, the Director shall place the information in the public file and shall notify any person who has requested disclosure. If the court determines that the information is not subject to disclosure, the Director shall provide the notice specified in subsection (C) above.

#### **Historical Note**

Amended effective August 7, 1975 (Supp. 75-1).  
 Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Former Section R9-3-306 renumbered as Section R9-3-305 effective August 6, 1976. References changed to conform (Supp. 76-4). Amended effective April 12, 1977 (Supp. 77-2). Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-305 renumbered without change as R18-2-305 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### **R18-2-306. Permit Contents**

- A. Each permit issued by the Director shall include the following elements:
  1. The date of issuance and the permit term.
  2. Enforceable emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under R18-2-306.01.
    - a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
- B. The permit shall state that, if an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.
- C. Any permit containing an equivalency demonstration for an alternative emission limit submitted under R18-2-304(D) shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- D. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.
- E. Each permit shall contain the following requirements with respect to monitoring:
  - a. All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including:
    - i. Monitoring and analysis procedures or test methods under 40 CFR 64;
    - ii. Other procedures and methods promulgated under sections 114(a)(3) or 504(b) of the Act; and
    - iii. Monitoring and analysis procedures or test methods required under R18-2-306.01.
  - b. 40 CFR 64 as adopted July 1, 1998, is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions if the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements not included in the permit as a result of such streamlining;
  - c. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported under subsection (A)(4). The monitoring requirements shall ensure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this subsection; and
  - d. As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.
- F. The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established under R18-2-306.01, for the following:
  - a. Records of required monitoring information that include the following:

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- i. The date, place as defined in the permit, and time of sampling or measurement;
    - ii. The date any analyses was performed;
    - iii. The name of the company or entity that performed the analysis;
    - iv. A description of the analytical technique or method used;
    - v. The results of any analysis; and
    - vi. The operating conditions existing at the time of sampling or measurement;
  - b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit.
5. The permit shall incorporate all applicable reporting requirements including reporting requirements established under R18-2-306.01 and require the following:
- a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements shall be clearly identified in the reports. All required reports shall be certified by a responsible official consistent with R18-2-304(H) and R18-2-309(A)(5).
  - b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of the deviations, and any corrective actions or preventive measures taken. Notice that complies with subsection (E)(3)(d) shall be considered prompt for the purposes of this subsection (A)(5)(b).
6. A permit condition prohibiting emissions exceeding any allowances the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.
- a. A permit revision is not required for increases in emissions that are authorized by allowances acquired under the acid rain program, if the increases do not require a permit revision under any other applicable requirement.
  - b. A limit shall not be placed on the number of allowances held by the source. The source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.
  - c. Any allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
  - d. Any permit issued under the requirements of this Chapter and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:
    - i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owner or operator of the unit or the designated representative of the owner or operator,
    - ii. Exceedances of applicable emission rates,
    - iii. Use of any allowance before the year for which it is allocated, and
    - iv. Contravention of any other provision of the permit.
7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.
8. Provisions stating the following:
- a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes A.R.S. Title 49, Chapter 3, and the air quality rules, 18 A.A.C. 2. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforceable requirement in a permit is a violation of the Act.
  - b. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
  - c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
  - d. The permit does not convey any property rights of any sort, or any exclusive privilege to the permit holder.
  - e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon the Director's request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of the records directly to the Administrator along with a claim of confidentiality.
  - f. For any major source operating in a nonattainment area for all pollutants for which the source is classified as a major source, the source shall comply with reasonably available control technology.
9. A provision to ensure that the source pays fees to the Director under A.R.S. § 49-426(E), R18-2-326, and R18-2-511.
10. A provision stating that a permit revision shall not be required under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes provided for in the permit.
11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. The terms and conditions shall:
- a. Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
  - b. Extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
  - c. Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.
12. Terms and conditions, if the permit applicant requests them, and as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading the increases and decreases without a case-by-

case approval of each emissions trade. The terms and conditions:

- a. Shall include all terms required under subsections (A) and (C) to determine compliance;
  - b. Shall not extend the permit shield in subsection (D) to all terms and conditions that allow the increases and decreases in emissions;
  - c. Shall not include trading that involves emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
  - d. Shall meet all applicable requirements and requirements of this Chapter.
13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If the terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
14. Upon request of a permit applicant, the Director shall issue a permit that contains terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this subsection shall not include modifications under any provision of Title I of the Act and shall not exceed emissions allowable under the permit. The terms and conditions shall provide, for Class I sources, for notice that conforms to R18-2-317(D) and (E), and for Class II sources, for logging that conforms to R18-2-317.02(B)(5). In addition, the notices for Class I and Class II sources shall describe how the increases and decreases in emissions will comply with the terms and conditions of the permit.
15. Other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2, and the rules adopted in 18 A.A.C. 2.

**B. Federally-enforceable Requirements.**

1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:
  - a. Except as provided in subsection (B)(2), all terms and conditions in a Class I permit, including any provision designed to limit a source's potential to emit;
  - b. Terms or conditions in a Class II permit setting forth federal applicable requirements; and
  - c. Terms and conditions in any permit entered into voluntarily under R18-2-306.01, as follows:
    - i. Emissions limitations, controls, or other requirements; and
    - ii. Monitoring, recordkeeping, and reporting requirements associated with the emissions limitations, controls, or other requirements in subsection (B)(1)(c)(i).
2. Notwithstanding subsection (B)(1)(a), the Director shall specifically designate as not being federally enforceable

under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.

- C. Each permit shall contain a compliance plan as specified in R18-2-309.
- D. Each permit shall include the applicable permit shield provisions under R18-2-325.
- E. Emergency provision.
  1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, that requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
  2. An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection (E)(3) are met.
  3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
    - a. An emergency occurred and the permittee can identify the cause or causes of the emergency;
    - b. At the time of the emergency the permitted facility was being properly operated;
    - c. During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and
    - d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile, or hand delivery within two working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.
  4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
  5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.
- F. A Class I permit issued to a major source shall require that revisions be made under R18-2-321 to incorporate additional applicable requirements adopted by the Administrator under the Act that become applicable to a source with a permit with a remaining permit term of three or more years. A revision shall not be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of the standards and regulations. Any permit revision required under this subsection shall comply with R18-2-322 for permit renewal and shall reset the five-year permit term.

**Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976. Reference changed to conform (Supp. 76-4). Former Section R9-3-306 repealed, new Section R9-3-306 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended

subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-306 renumbered without change as R18-2-306 (Supp. 87-3). Amended subsection (I) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4).

#### **R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards**

- A.** A source may voluntarily propose in its application, and accept in its permit, emissions limitations, controls, or other requirements that are permanent, quantifiable, and otherwise enforceable as a practical matter in order to avoid classification as a source that requires a Class I permit or to avoid one or more other applicable requirements. For the purposes of this Section, “enforceable as a practical matter” means that specific means to assess compliance with an emissions limitation, control, or other requirement are provided for in the permit in a manner that allows compliance to be readily determined by an inspection of records and reports.
- B.** In order for a source to obtain a permit containing voluntarily-accepted emissions limitations, controls, or other requirements, the source shall demonstrate all of the following in its permit application:
  - 1. The emissions limitations, controls, or other requirements to be imposed for the purpose of avoiding an applicable requirement are at least as stringent as the emissions limitations, controls, or other requirements that would otherwise be applicable to that source, including those that originate in an applicable implementation plan; and the permit does not waive, or make less stringent, any limitations or requirements contained in or issued pursuant to an applicable implementation plan, or that are otherwise federally enforceable.
  - 2. All voluntarily accepted emissions limitations, controls, or other requirements will be permanent, quantifiable, and otherwise enforceable as a practical matter.
- C.** At the same time as notice of proposed issuance is first published pursuant to A.R.S. § 49-426(D), the Director shall send a copy of any Class II permit proposed to be issued pursuant to this Section to the Administrator for review during the comment period described in the notice pursuant to R18-2-330(D).
- D.** The Director shall send a copy of each final permit issued pursuant to this Section to the Administrator.

#### **Historical Note**

Adopted effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

#### **R18-2-306.02. Expired**

#### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

#### **R18-2-307. Permit Review by the EPA and Affected States**

- A.** Except as provided in R18-2-304(F) and as waived by the Administrator, for each Class I permit, a copy of each of the following shall be provided to the Administrator as follows:
  - 1. The applicant shall provide a complete copy of the application including any attachments, compliance plans, and other information required by R18-2-304(E) at the time of submittal of the application to the Director.
  - 2. The Director shall provide the proposed final permit after public and affected state review.
  - 3. The Director shall provide the final permit at the time of issuance.
- B.** The Director shall keep all records associated with all permits for a minimum of five years from issuance.
- C.** No permit for which an application is required to be submitted to the Administrator under subsection (A) shall be issued if the Administrator properly objects to its issuance in writing within 45 days of receipt of the proposed final permit from the Department and all necessary supporting information.
- D.** Review by Affected States.
  - 1. For each Class I permit, the Director shall provide notice of each proposed permit to any affected state on or before the time that the Director provides this notice to the public as required under R18-2-330 except to the extent R18-2-319 requires the timing of the notice to be different.
  - 2. If the Director refuses to accept a recommendation of any affected state submitted during the public or affected state review period, the Director shall notify the Administrator and the affected state in writing. The notification shall include the Director’s reasons for not accepting any such recommendation and shall be provided to the Administrator as part of the submittal of the proposed final permit. The Director shall not be required to accept recommendations that are not based on federal applicable requirements or requirements of state law.
- E.** Any person who petitions the Administrator pursuant to 40 CFR 70.8(d) shall notify the Department by certified mail of such petition as soon as possible, but in no case more than 10 days following such petition. Such notice shall include the grounds for objection and whether such objections were raised during the public comment period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the Director shall not issue the permit until EPA’s objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day administrative review period and prior to the Administrator’s objection.
- F.** If the Director has issued a permit prior to receipt of the Administrator’s objection under subsection (E), and the Administrator indicates that it should be revised, terminated, or revoked and reissued, the Director shall reopen the permit in accordance with R18-2-321 and may thereafter issue only a revised permit that satisfies the Administrator’s objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.
- G.** Prohibition on Default Issuance.
  - 1. No Class I permit including a permit renewal or revision shall be issued until affected states and the Administrator have had an opportunity to review the proposed permit.
  - 2. No permit or renewal shall be issued unless the Director has acted on the application.

#### **Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976 (Supp. 76-4). New Section R9-3-307 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section

R9-3-307 repealed, new Section R9-3-307 adopted effective May 28, 1982 (Supp. 82-3). Amended subsection (B)(4)(b) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-307 renumbered without change as R18-2-307 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

### **R18-2-308. Emission Standards and Limitations**

Wherever applicable requirements apply different standards or limitations to a source for the same item, all applicable requirements shall be included in the permit.

#### **Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-308 repealed, new Section R9-3-308 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-308 renumbered without change as R18-2-308 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

### **R18-2-309. Compliance Plan; Certification**

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4), and (5).
2. Requirements for certifications of compliance with terms and conditions contained in the permit, including emissions limitations, standards, and work practices. Permits shall include each of the following:
  - a. The frequency of submissions of compliance certifications, which shall not be less than annually;
  - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;
  - c. A requirement that the compliance certification include all of the following (the identification of applicable information may cross-reference the permit or previous reports, as applicable):
    - i. The identification of each term or condition of the permit that is the basis of the certification;
    - ii. The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. The methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
    - iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the methods or means designated in subsection (2)(c)(ii). The certification shall identify each deviation and take it into account in the compliance certification. For emission units subject to 40 CFR 64, the certification shall also identify as possible exceptions to compliance any period during which compliance is required and in which an excursion or exceedance defined under 40 CFR 64 occurred; and
- iv. Other facts the Director may require to determine the compliance status of the source.
- d. A requirement that permittees submit all compliance certifications to the Director. Class I permittees shall also submit compliance certifications to the Administrator.
- e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. A requirement for any document required to be submitted by a permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
4. Inspection and entry provisions that require that upon presentation of proper credentials, the permittee shall allow the Director to:
  - a. Enter upon the permittee's premises where a source is located, emissions-related activity is conducted, or records are required to be kept under the conditions of the permit;
  - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
  - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
  - d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
  - e. Record any inspection by use of written, electronic, magnetic, or photographic media.
5. A compliance plan that contains all the following:
  - a. A description of the compliance status of the source with respect to all applicable requirements;
  - b. A description as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
    - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
  - c. A compliance schedule as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more

- detailed schedule is expressly required by the applicable requirement;
- iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
  - d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. The progress reports shall contain:
    - i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
    - ii. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
  6. The compliance plan content requirements specified in subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated under R18-2-333 with regard to the schedule and each method the source will use to achieve compliance with the acid rain emissions limitations.
  7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amendment filed September 18, 1979, effective following the adoption of Article 7. Nonferrous Smelter Orders. Amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Amendment filed September 18, 1979 effective January 8, 1980 (Supp. 80-2). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-309 renumbered without change as R18-2-309 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004 (Supp. 04-2).

#### **R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown**

##### **A. Applicability.**

This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to

all emission standards or limitations except for standards or limitations:

1. Promulgated pursuant to Sections 111 or 112 of the Act,
2. Promulgated pursuant to Titles IV or VI of the Clean Air Act,
3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A.,
4. Contained in R18-2-715(F), or
5. Included in a permit to meet the requirements of R18-2-406(A)(5).

##### **B. Affirmative Defense for Malfunctions.**

Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:

1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
9. All emissions monitoring systems were kept in operation if at all practicable; and
10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

##### **C. Affirmative Defense for Startup and Shutdown.**

1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative

tive enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:

- a. The excess emissions could not have been prevented through careful and prudent planning and design;
- b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
- c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
- d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
- e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
- f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
- g. All emissions monitoring systems were kept in operation if at all practicable; and
- h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

2. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection (B).

**D. Affirmative Defense for Malfunctions During Scheduled Maintenance.**

If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B).

**E. Demonstration of Reasonable and Practicable Measures.**

For an affirmative defense under subsection (B) or (C), the owner or operator of the source shall demonstrate, through submission of the data and information required by this Section and R18-2-310.01, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective June 19, 1981 (Supp. 81-3). Amended Arizona Testing Manual for Air Pollutant Emissions, effective September 22, 1983 (Supp. 83-5). Amended Arizona Testing Manual for Air Pollutant Emissions, as of September 15, 1984, effective August 9, 1985 (Supp. 85-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-310 renumbered without change as R18-2-310 (Supp. 87-3). Amended effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

**R18-2-310.01. Reporting Requirements**

- A.** The owner or operator of any source shall report to the Director any emissions in excess of the limits established by this

Chapter or the applicable permit. The owner or operator of any registered source may report excess emissions in accordance with this Section in order to qualify for the affirmative defense established in R18-2-310. The report shall be in two parts as specified below:

1. Notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occurrence of excess emissions that includes all available information from subsection (B).
2. Detailed written notification by submission of an excess emissions report within 72 hours of the notification under subsection (A)(1).

**B.** The excess emissions report shall contain the following information:

1. The identity of each stack or other emission point where the excess emissions occurred;
2. The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
3. The time and duration or expected duration of the excess emissions;
4. The identity of the equipment from which the excess emissions emanated;
5. The nature and cause of the emissions;
6. The steps taken, if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;
7. The steps that were or are being taken to limit the excess emissions; and
8. If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions resulted from startup or malfunction, a list of the steps taken to comply with the permit procedures.

- C.** In the case of continuous or recurring excess emissions, the notification requirements of this Section shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to subsections (A) and (B).

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-311. Test Methods and Procedures**

- A.** Except as otherwise specified in this Chapter, the applicable procedures and testing methods contained in the Arizona Testing Manual; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C shall be used to determine compliance with the requirements established in this Chapter or contained in permits issued pursuant to this Chapter.
- B.** Except as otherwise provided in this subsection the opacity of visible emissions shall be determined by Reference Method 9 of the Arizona Testing Manual. A permit may specify a method, other than Method 9, for determining the opacity of emissions from a particular emissions unit, if the method has been promulgated by the Administrator in 40 CFR 60, Appendix A.

- C. Except as otherwise specified in this Chapter, the heat content of solid fuel shall be determined according to ASTM method D-3176-89, (Practice for Ultimate Analysis of Coal and Coke) and ASTM method D-2015-91, (Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter).
- D. Except for ambient air monitoring and emissions testing required under Articles 9 and 11 of this Chapter, alternative and equivalent test methods in any test plan submitted to the Director may be approved by the Director for the duration of that plan provided that the following three criteria are met:
1. The alternative or equivalent test method measures the same chemical and physical characteristics as the test method it is intended to replace.
  2. The alternative or equivalent test method has substantially the same or better reliability, accuracy, and precision as the test method it is intended to replace.
  3. Applicable quality assurance procedures are followed in accordance with the Arizona Testing Manual, 40 CFR 60 or other quality assurance methods which are consistent with principles contained in the Arizona Testing Manual or 40 CFR 60 as approved by the Director.
- E. The owner or operator of a permitted source shall provide, or cause to be provided, performance testing facilities as follows:
1. Sampling ports adequate for test methods applicable to such facility.
  2. Safe sampling platform(s).
  3. Safe access to sampling platform(s).
  4. Utilities for sampling and testing equipment.
- F. Each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs is required to be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the arithmetic means of the results of the two other runs. If the Director, or the Director's designee is present, tests may only be stopped with the Director's or such designee's approval. If the Director, or the Director's designee is not present, tests may only be stopped for good cause, which includes forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the operator's control. Termination of testing without good cause after the first run is commenced shall constitute a failure of the test.
- G. Except as provided in subsection (H) compliance with the emission limits established in this Chapter or as prescribed in permits issued pursuant to this Chapter shall be determined by the performance tests specified in this Section or in the permit.
- H. In addition to performance tests specified in this Section, compliance with specific emission limits may be determined by:
1. Opacity tests.
  2. Emission limit compliance tests specifically designated as such in the regulation establishing the emission limit to be complied with.
  3. Continuous emission monitoring, where applicable quality assurance procedures are followed and where it is designated in the permit or in an applicable requirement to show compliance.
- I. Nothing in this Section shall be so construed as to prevent the utilization of measurements from emissions monitoring devices or techniques not designated as performance tests as evidence of compliance with applicable good maintenance and operating requirements.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-311 renumbered without change as R18-2-311 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-312. Performance Tests

- A. Within 60 days after a source subject to the permit requirements of this Article has achieved the capability to operate at its maximum production rate on a sustained basis but no later than 180 days after initial start-up of such source and at such other times as may be required by the Director, the owner or operator of such source shall conduct performance tests and furnish the Director a written report of the results of the tests.
- B. Performance tests shall be conducted and data reduced in accordance with the test method and procedures contained in the Arizona Testing Manual unless the Director:
1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
  2. Approves the use of an equivalent method;
  3. Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or
  4. Waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Director's satisfaction that the source is in compliance with the standard.
  5. Nothing in this Section shall be construed to abrogate the Director's authority to require testing.
- C. Performance tests shall be conducted under such conditions as the Director shall specify to the plant operator based on representative performance of the source. The owner or operator shall make available to the Director such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions of performance tests unless otherwise specified in the applicable standard.
- D. The owner or operator of a permitted source shall provide the Director two weeks prior notice of the performance test to afford the Director the opportunity to have an observer present.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-312 renumbered without change as R18-2-312 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-313. Existing Source Emission Monitoring

- A. Every source subject to an existing source performance standard as specified in this Chapter shall install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants and other gases specified in this Section for the applicable source category.
1. Applicability.
    - a. Fossil-fuel fired steam generators, as specified in subsection (C)(1), shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.



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- b. Fluid bed catalytic cracking unit catalyst regenerators, as specified in subsection (C)(4), shall be monitored for opacity.
  - c. Sulfuric acid plants, as specified in subsection (C)(3) of this Section, shall be monitored for sulfur dioxide emissions.
  - d. Nitric acid plants, as specified in subsection (C)(2), shall be monitored for nitrogen oxides emissions.
- 2. Emission monitoring shall not be required when the source of emissions is not operating.
- 3. Variations.
  - a. Unless otherwise prohibited by the Act, the Director may approve, on a case-by-case basis, alternative monitoring requirements different from the provisions of this Section if the installation of a continuous emission monitoring system cannot be implemented by a source due to physical plant limitations or extreme economic reasons. Alternative monitoring procedures shall be specified by the Director on a case-by-case basis and shall include, as a minimum, annual manual stack tests for the pollutants identified for each type of source in this Section. Extreme economic reasons shall mean that the requirements of this Section would cause the source to be unable to continue in business.
  - b. Alternative monitoring requirements may be prescribed when installation of a continuous emission monitoring system or monitoring device specified by this Section would not provide accurate determinations of emissions (e.g., condensed, uncombined water vapor may prevent an accurate determination of opacity using commercially available continuous emission monitoring systems).
  - c. Alternative monitoring requirements may be prescribed when the affected facility is infrequently operated (e.g., some affected facilities may operate less than one month per year).
- 4. Monitoring system malfunction: A temporary exemption from the monitoring and reporting requirements of this Section may be provided during any period of monitoring system malfunction, provided that the source owner or operator demonstrates that the malfunction was unavoidable and is being repaired expeditiously.
- B.** Installation and performance testing required under this Section shall be completed and monitoring and recording shall commence within 18 months of the effective date of this Section.
- C.** Minimum monitoring requirements:
  - 1. Fossil-fuel fired steam generators: Each fossil-fuel fired steam generator, except as provided in the following subsections, with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1976, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question.
    - a. A continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this Section by the owner or operator of any such steam generator of greater than 250 million Btu per hour heat input except where:
      - i. Gaseous fuel is the only fuel burned; or
      - ii. Oil or a mixture of gas and oil are the only fuels burned and the source is able to comply with the applicable particulate matter and opacity regulations without utilization of particulate matter collection equipment, and where the source has never been found to be in violation through any administrative or judicial proceedings, or accepted responsibility for any violation of any visible emission standard.
    - b. A continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section shall be installed, calibrated, using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on any fossil-fuel fired steam generator of greater than 250 million Btu per hour heat input which has installed sulfur dioxide pollutant control equipment.
    - c. A continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specification of this Section shall be installed, calibrated using nitric oxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on fossil-fuel fired steam generators of greater than 1000 million Btu per hour heat input when such facility is located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, unless the source owner or operator demonstrates during source compliance tests as required by the Department that such a source emits nitrogen oxides at levels 30% or more below the emission standard within this Chapter.
    - d. A continuous emission monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the performance specifications of this Section shall be installed, calibrated, operated, and maintained on fossil-fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard within this Chapter.
  - 2. Nitric acid plants: Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100% acid located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, shall install, calibrate using nitrogen dioxide calibration gas mixtures, maintain, and operate a continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specifications of this Section for each nitric acid producing facility within such plant.
  - 3. Sulfuric acid plants: Each sulfuric acid plant as defined in R18-2-101, of greater than 300 tons per day production capacity, the production being expressed as 100% acid, shall install, calibrate using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section for each sulfuric acid producing facility within such a plant.

4. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh-feed capacity shall install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section for each regenerator within such refinery.
- D. Minimum specifications:** Owners or operators of monitoring equipment installed to comply with this Section shall demonstrate compliance with the following performance specifications.
1. The performance specifications set forth in Appendix B of 40 CFR 60 are incorporated herein by reference and shall be used by the Director to determine acceptability of monitoring equipment installed pursuant to this Section. However where reference is made to the Administrator in Appendix B of 40 CFR 60, the Director may allow the use of either the state-approved reference method or the federally approved reference method as published in 40 CFR 60. The performance specifications to be used with each type of monitoring system are listed below.
    - a. Continuous emission monitoring systems for measuring opacity shall comply with performance specification 1.
    - b. Continuous emission monitoring systems for measuring nitrogen oxides shall comply with performance specification 2.
    - c. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 2.
    - d. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 3.
    - e. Continuous emission monitoring systems for measuring carbon dioxide shall comply with performance specification 3.
  2. Calibration gases: Span and zero gases shall be traceable to National Bureau of Standards reference gases whenever these reference gases are available. Every six months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A of 40 CFR 60 (Chapter 1) as amended: For sulfur dioxide, use Reference Method 6; for nitrogen oxides, use Reference method 7; and for carbon dioxide or oxygen, use Reference Method 3. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.
  3. Cycling time: Time includes the total time required to sample, analyze, and record an emission measurement.
    - a. Continuous emission monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive six-minute period.
    - b. Continuous emission monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
  4. Monitor location: All continuous emission monitoring systems or monitoring devices shall be installed such that representative measurements of emissions of process parameter (i.e., oxygen, or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous emission monitoring systems to obtain representative samples are contained in the applicable performance specifications of Appendix B of 40 CFR 60.
5. Combined effluents: When the effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere through more than one point, separate monitors shall be installed.
  6. Zero and drift: Owners or operators of all continuous emission monitoring systems installed in accordance with the requirements of this Section shall record the zero and span drift in accordance with the method prescribed by the manufacturer's recommended zero and span check at least once daily, using calibration gases specified in subsection (C) as applicable, unless the manufacturer has recommended adjustments at shorter intervals, in which case such recommendations shall be followed; shall adjust the zero span whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of Part 60, Chapter 1, Title 40 CFR are exceeded.
  7. Span: Instrument span should be approximately 200% of the expected instrument data display output corresponding to the emission standard for the source.
- E. Minimum data requirement:** The following subsections set forth the minimum data reporting requirements for sources employing continuous monitoring equipment as specified in this Section. These periodic reports do not relieve the source operator from the reporting requirements of R18-2-310.01.
1. The owners or operators of facilities required to install continuous emission monitoring systems shall submit to the Director a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known. The averaging period used for data reporting shall correspond to the averaging period specified in the emission standard for the pollutant source category in question. The required report shall include, as a minimum, the data stipulated in this subsection.
  2. For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of all six-minute opacity averages greater than any applicable standards for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four equally spaced, instantaneous opacity measurements per minute. Any time periods exempted shall be deleted before determining any averages in excess of opacity standards.
  3. For gaseous measurements the summary shall consist of emission averages in the units of the applicable standard for each averaging period during which the applicable standard was exceeded.
  4. The date and time identifying each period during which the continuous emission monitoring system was inoperative, except for zero and span checks and the nature of system repair or adjustment shall be reported. The Director may require proof of continuous emission monitoring system performance whenever system repairs or adjustments have been made.
  5. When no excess emissions have occurred and the continuous emission monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.
  6. Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous emission monitoring system or as necessary to convert

monitoring data to the units of the applicable standard for a minimum of two years from the date of collection of such data or submission of such summaries.

**F. Data reduction:** Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.

1. For fossil-fuel fired steam generators the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million Btu) where necessary.

- a. When the owner or operator of a fossil-fuel fired steam generator elects under subsection (C)(1)(d) to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry).

- i. When measurements are on a wet basis, except where wet scrubbers are employed or where moisture is otherwise added to stack gases, the following conversion procedure shall be used:

$$E(Q) = C(ws)F(w) \left[ \frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$

- ii. When measurements are on a wet basis and the water vapor content of the stack gas is determined at least once every 15 minutes the following conversion procedure shall be used:

$$E(Q) = C(ws)F \left[ \frac{20.9}{20.9(1 - B(wa))\%O(2ws)} \right]$$

Use of this equation is contingent upon demonstrating the ability to accurately determine B(ws) such that any absolute error in B(ws) will not cause an error of more than  $\pm 1.5\%$  in the term:

$$\left[ \frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$

- iii. When measurements are on a dry basis, the following conversion procedure shall be used:

$$E(Q) = CF \left[ \frac{20.9}{20.9 - \%O(2ws)} \right]$$

- b. When the owner or operator elects under subsection (C)(1)(d) to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure used;

$$E(Q) = CF(c) \left[ \frac{100}{\%CO(2)} \right]$$

- c. The values used in the equations under subsection (F)(1) above are derived as follows:

$E(Q)$  = pollutant emission, g/million cal (lb/million Btu).

$C$  = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by  $4.16 \times 10^{-5}$  M g/dscm per ppm ( $2.64 \times 10^{-9}$  M lb/dscf per ppm) where  $M$  = pollutant molecular weight, g/g-mole (lb/lb-mole),  $M = 64$  for sulfur dioxide and 46 for oxides of nitrogen.

$C(ws)$  = pollutant concentrations at stack conditions, g/wscm (lb/wscf), determined by multiplying the average concentration (ppm) for each one-hour period by  $4.15 \times 10^{-5}$  M lb/wscm per ppm ( $2.59 \times 10^{-5}$  M lb/wscf per ppm) where  $M$  = pollutant molecular weight, g/g mole (lb/lb mole),  $M = 64$  for sulfur dioxide and 46 for nitrogen oxides.

$\%O(2), \%CO(2)$  = Oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under subsection (D)(1)(d).

$F, F(c)$  = A factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted ( $F$ ), a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted ( $F(c)$ ), respectively. Values of  $F$  and  $F(c)$  are given in 40 CFR 60.45(f) (Chapter 1).

$F(w)$  = A factor representing a ratio of the volume of wet flue gases generated to the caloric value of the fuel combusted. Values of  $F(w)$  are given in Reference Method 19 of the Arizona Testing Manual.

$B(wa)$  = Proportion by volume of water vapor in the ambient air. Approval may be given for determination of  $B(wa)$  by on-site instrumental measurement provided that the absolute accuracy of the measurement technique can be demonstrated to be within  $\pm 0.7\%$  water vapor. Estimation methods for  $B(wa)$  are given in Reference Method 19 of the Arizona Testing Manual.

$B(ws)$  = Proportion by volume of water vapor in the stack gas.

2. For sulfuric acid plants as defined in R18-2-101, the owner or operator shall:
  - a. Establish a conversion factor three times daily according to the procedures of 40 CFR 60.84(b) (Chapter 1),
  - b. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in Kg/metric ton (lb/short ton), and
  - c. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.
3. For nitric acid plants, the owner or operator shall:
  - a. Establish a conversion factor according to the procedures of 40 CFR 60.73(b) (Chapter 1),
  - b. Multiply the conversion factor by the average nitrogen oxides concentration in the flue gases to obtain the nitrogen oxides emissions in the units of the applicable standard,
  - c. Report the average nitrogen oxides emission for each averaging period in excess of applicable emission standard in the quarterly summary.

4. The Director may allow data reporting or reduction procedures varying from those set forth in this Section if the owner or operator of a source shows to the satisfaction of the Director that his procedures are at least as accurate as those in this Section. Such procedures may include but are not limited to the following:
  - a. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).
  - b. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-313 renumbered without change as R18-2-313 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

#### R18-2-314. Quality Assurance

Facilities subject to the permit requirements of this Article shall submit a quality assurance plan to the Director that meets the requirements of R18-2-311(D)(3) within 12 months of the effective date of this Section. Facilities subject to the requirements of R18-2-313 shall submit a quality assurance plan as specified in the permit.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-314 renumbered without change as R18-2-314 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-315. Posting of Permit

- A. Any person who has been granted an individual or general permit shall post such permit or a certificate of permit issuance on location where the equipment is installed in such a manner as to be clearly visible and accessible. All equipment covered by the permit shall be clearly marked with one of the following:
  1. The current permit number,
  2. A serial number or other equipment number that is also listed in the permit to identify that piece of equipment.
- B. A copy of the complete permit shall be kept on the site.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-315 renumbered without change as R18-2-315 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-316. Notice by Building Permit Agencies

All agencies of the county or political subdivisions of the county that issue or grant building permits or approvals shall examine the plans and specifications submitted by an applicant for a permit or approval to determine if an air pollution permit will possibly be required under the provisions of this Chapter. If it appears that an air pollution permit will be required, the agency or political subdi-

vision shall give written notice to the applicant to contact the Director and shall furnish a copy of that notice to the Director.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-316 renumbered without change as R18-2-316 (Supp. 87-3).

#### R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I

- A. A facility with a Class I permit may make changes that contravene an express permit term without a permit revision if all of the following apply:
  1. The changes are not modifications under any provision of Title I of the Act or under A.R.S. § 49-401.01(24);
  2. The changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions;
  3. The changes do not violate any applicable requirements or trigger any additional applicable requirements;
  4. The changes satisfy all requirements for a minor permit revision under R18-2-319(A);
  5. The changes do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and
  6. The changes do not constitute a minor NSR modification.
- B. The substitution of an item of process or pollution control equipment for an identical or substantially similar item of process or pollution control equipment shall qualify as a change that does not require a permit revision, if the substitution meets all of the requirements of subsections (A), (D), and (E).
- C. Except for sources with authority to operate under general permits, permitted sources may trade increases and decreases in emissions within the permitted facility, as established in the permit under R18-2-306(A)(12), if an applicable implementation plan provides for the emissions trades without applying for a permit revision and based on the seven working days notice prescribed in subsection (D). This provision is available if the permit does not provide for the emissions trading as a minor permit revision.
- D. For each change under subsections (A) through (C), a written notice by certified mail or hand delivery shall be received by the Director and the Administrator a minimum of seven working days in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided less than seven working days in advance of the change but must be provided as far in advance of the change or, if advance notification is not practicable, as soon after the change as possible.
- E. Each notification shall include:
  1. When the proposed change will occur;
  2. A description of the change;
  3. Any change in emissions of regulated air pollutants;
  4. The pollutants emitted subject to the emissions trade, if any;
  5. The provisions in the implementation plan that provide for the emissions trade with which the source will comply and any other information as may be required by the provisions in the implementation plan authorizing the trade;
  6. If the emissions trading provisions of the implementation plan are invoked, then the permit requirements with which the source will comply; and
  7. Any permit term or condition that is no longer applicable as a result of the change.

- F. The permit shield described in R18-2-325 shall not apply to any change made under subsections (A) through (C). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the implementation plan authorizing the emissions trade.
- G. Except as otherwise provided for in the permit, making a change from one alternative operating scenario to another as provided under R18-2-306(A)(11) shall not require any prior notice under this Section.
- H. The Director shall make available to the public monthly summaries of all notices received under this Section.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-317 renumbered without change as R18-2-317 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-317.01. Facility Changes that Require a Permit Revision - Class II

- A. The following changes at a source with a Class II permit shall require a permit revision:
  1. A change that would trigger a new applicable requirement or violate an existing applicable requirement.
  2. Establishment of, or change in, an emissions cap under R18-2-306.02;
  3. A change that will require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
  4. A change that results in emissions that are subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3), (4), or (5) if the emissions cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
  5. A change that will authorize the burning of used oil, used oil fuel, hazardous waste, or hazardous waste fuel, or any other fuel not currently authorized by the permit;
  6. A change that requires the source to obtain a Class I permit;
  7. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better pollutant removal efficiency;
  8. Establishment or revision of a limit under R18-2-306.01;
  9. Increasing operating hours or rates of production above the permitted level;
  10. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results:
    - a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
    - b. From a change in an applicable requirement; and
  11. A minor NSR modification.
- B. A source with a Class II permit may make any physical change or change in the method of operation without revising the source's permit unless the change is specifically prohibited in the source's permit or is a change described in subsection (A).

A change that does not require a permit revision may still be subject to requirements in R18-2-317.02.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R.

4074, effective September 22, 1999 (Supp. 99-3).

Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II

- A. Except for a physical change or change in the method of operation at a Class II source requiring a permit revision under R18-2-317.01, or a change subject to logging or notice requirements in subsection (B) or (C), a change at a Class II source shall not be subject to revision, notice, or logging requirements under this Chapter.
- B. Except as otherwise provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source keeps onsite records of the changes according to Appendix 3:
  1. Implementing an alternative operating scenario, including raw material changes;
  2. Changing process equipment, operating procedures, or making any other physical change if the permit requires the change to be logged;
  3. Engaging in any new insignificant activity listed in the definition of insignificant activities in R18-2-101 but not listed in the permit;
  4. Replacing an item of air pollution control equipment listed in the permit with an identical (same model, different serial number) item. The Director may require verification of efficiency of the new equipment by performance tests; and
  5. A change that results in a decrease in actual emissions if the source wants to claim credit for the decrease in determining whether the source has a net emissions increase for any purpose. The logged information shall include a description of the change that will produce the decrease in actual emissions. A decrease that has not been logged is creditable only if the decrease is quantifiable, enforceable, and otherwise qualifies as a creditable decrease.
- C. Except as provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source provides written notice to the Department in advance of the change as provided below:
  1. Replacing an item of air pollution control equipment listed in the permit with one that is not identical but that is substantially similar and has the same or better pollutant removal efficiency: seven days. The Director may require verification of efficiency of the new equipment by performance tests;
  2. A physical change or change in the method of operation that increases actual emissions more than 10% of the major source threshold for any conventional pollutant but does not require a permit revision: seven days;
  3. Replacing an item of air pollution control equipment listed in the permit with one that is not substantially similar but that has the same or better efficiency: 30 days. The Director may require verification of efficiency of the new equipment by performance tests;
  4. A change that would trigger an applicable requirement that already exists in the permit: 30 days unless otherwise required by the applicable requirement;
  5. A change that amounts to reconstruction of the source or an affected facility: seven days. For purposes of this subsection, reconstruction of a source or an affected facility

shall be presumed if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new source or affected facility and the changes to the components have occurred over the 12 consecutive months beginning with commencement of construction; and

6. A change that will result in the emissions of a new regulated air pollutant above an applicable regulatory threshold but that does not trigger a new applicable requirement for that source category: 30 days. For purposes of this requirement, an applicable regulatory threshold for a conventional air pollutant shall be 10% of the applicable major source threshold for that pollutant.
- D. For each change under subsection (C), the written notice shall be by certified mail or hand delivery and shall be received by the Director the minimum amount of time in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided with less than required notice, but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible. The written notice shall include:
  1. When the proposed change will occur,
  2. A description of the change,
  3. Any change in emissions of regulated air pollutants, and
  4. Any permit term or condition that is no longer applicable as a result of the change.
- E. A source may implement any change in subsection (C) without the required notice by applying for a minor permit revision under R18-2-319 and complying with R18-2-319(D)(2) and (G).
- F. The permit shield described in R18-2-325 shall not apply to any change made under this Section, other than implementation of an alternate operating scenario under subsection (B)(1).
- G. Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, constitutes a change under R18-317.01(A).
- H. If a source change is described under both subsections (B) and (C), the source shall comply with subsection (C). If a source change is described under both subsection (C) and R18-2-317.01(B), the source shall comply with R18-2-317.01(B).
- I. A copy of all logs required under subsection (B) shall be filed with the Director within 30 days after each anniversary of the permit issue date. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-318. Administrative Permit Amendments

- A. Except for provisions pursuant to Title IV of the Act, an administrative permit amendment is a permit revision that does any of the following:
  1. Corrects typographical errors;
  2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
  3. Requires more frequent monitoring or reporting by the permittee;
  4. Allows for a change in ownership or operational control of a source as approved under R18-2-323 where the

Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility coverage, and liability between the current and new permittee has been submitted to the Director;

- B. Administrative permit amendments to Title IV provisions of the permit shall be governed by regulations promulgated by the Administrator under Title IV of the Act.
- C. The Director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and for Class I permits may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this Section.
- D. The Director shall submit a copy of Class I permits revised under this Section to the Administrator.
- E. Except for administrative permit amendments involving a transfer under R18-2-323, the source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-318 renumbered without change as R18-2-318 (Supp. 87-3). Amended subsection (A) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-318.01. Annual Summary Permit Amendments for Class II Permits

The Director may amend any Class II permit annually without following R18-2-321 in order to incorporate changes reflected in logs or notices filed under R18-2-317.02. The amendment shall be effective to the anniversary date of the permit. The Director shall make available to the public for any source:

1. A complete record of logs and notices sent to the Department under R18-2-317.02; and
2. Any amendments or revisions to the source's permit.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

#### R18-2-319. Minor Permit Revisions

- A. Minor permit revision procedures may be used only for those changes at a Class I source that satisfy all of the following:
  1. Do not violate any applicable requirement;
  2. Do not involve substantive changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
  3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
  4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
    - a. A federally enforceable emissions cap that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and
    - b. An alternative emissions limit approved under regulations promulgated under the section 112(i)(5) of the Act.

5. Are not modifications under any provision of Title I of the Act;
  6. Are not changes in fuels not represented in the permit application or provided for in the permit;
  7. Are not minor NSR modifications subject to R18-2-334, except that minor NSR modifications subject to R18-2-334(G) may be processed as minor permit revisions; and
  8. Are not required to be processed as a significant permit revision under R18-2-320.
- B.** Minor permit revision procedures shall be used for the following changes at a Class II source:
1. A change that triggers a new applicable requirement if all of the following apply:
    - a. The change is not a minor NSR modification subject to R18-2-334, except that minor NSR modifications subject to R18-2-334(G) may be processed as minor permit revisions;
    - b. A case-by-case determination of an emission limitation or other standard is not required; and
    - c. The change does not require the source to obtain a Class I permit;
  2. A change that increases emissions above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;
  3. A change in fuel from fuel oil or coal, to natural gas or propane, if not authorized in the permit;
  4. A change that results in emissions subject to monitoring, recordkeeping, or reporting under R18-2-306(A)(3),(4), or (5) and that cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
  5. A decrease in the emissions permitted under an emissions cap unless the decrease requires a change in the conditions required to enforce the cap or to ensure that emissions trades conducted under the cap are quantifiable and enforceable; and
  6. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better efficiency.
- C.** As approved by the Director, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that the minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the Administrator.
- D.** An application for minor permit revision shall be on the standard application form contained in Appendix 1 and include the following:
1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
  2. For Class I sources, and any source that is making the change immediately after it files the application, the source's suggested draft permit;
  3. Certification by a responsible official, consistent with standard permit application requirements, that the proposed revision meets the criteria for use of minor permit revision procedures and a request that the procedures be used;
- E.** EPA and affected state notification. For Class I permits, within five working days of receipt of an application for a minor permit revision, the Director shall notify the Administrator and affected states of the requested permit revision in accordance with R18-2-307.
- F.** For Class I permits, the Director shall not issue a final permit revision until after the Administrator's 45-day review period or until the Administrator has notified the Director that the Administrator will not object to issuance of the permit revision, whichever is first, although the Director may approve the permit revision before that time. Within 90 days of the Director's receipt of an application under minor permit revision procedures, or 15 days after the end of the Administrator's 45-day review period, whichever is later, the Director shall do one or more of the following:
1. Issue the permit revision as proposed,
  2. Deny the permit revision application,
  3. Determine that the proposed permit revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures, or
  4. Revise the proposed permit revision and transmit to the Administrator the new proposed permit revision as required in R18-2-307.
- G.** The source may make the change proposed in its minor permit revision application immediately after it files the application. After a Class I source makes a change allowed by the preceding sentence, and until the Director takes any of the actions specified in subsection (F), the source shall comply with both the applicable requirements governing the change and the proposed revised permit terms and conditions. During this time period, the Class I source need not comply with the existing permit terms and conditions it seeks to modify. However, if the Class I source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.
- H.** The permit shield under R18-2-325 shall not extend to minor permit revisions.
- I.** Notwithstanding any other part of this Section, the Director may require a permit to be revised under R18-2-320 for any change that, when considered together with any other changes submitted by the same source under this Section or R18-2-317.02 over the life of the permit, do not satisfy subsection (A) for Class I sources or subsection (B) for Class II sources.
- J.** The Director shall make available to the public monthly summaries of all applications for minor permit revisions.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-319 renumbered without change as R18-2-319 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-320. Significant Permit Revisions

- A.** For Class I sources, a significant revision shall be used for an application requesting a permit revision that does not qualify as a minor permit revision or as an administrative amendment. A significant revision that is only required because of a change described in R18-2-319(A)(6) or (7) shall not be considered a significant permit revision under part 70 for the purposes of 40 CFR 64.5(a)(2). Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.
- B.** A source with a Class II permit shall make the following changes only after the permit is revised following the public participation requirements of R18-2-330:
1. Establishing or revising a voluntarily accepted emission limitation or standard as described by R18-2-306.01 or

R18-2-306.02, except a decrease in the limitation authorized by R18-2-319(B)(5);

2. Making any change in fuel not authorized by the permit and that is not fuel oil or coal, to natural gas or propane;
  3. A change that is a minor NSR modification subject to R18-2-334, except for a minor modification subject to R18-2-334(G);
  4. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results from:
    - a. Removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
    - b. A change in an applicable requirement.
  5. A change that will cause the source to violate an existing applicable requirement including the conditions establishing an emissions cap;
  6. A change that will require any of the following:
    - a. A case-by-case determination of an emission limitation or other standard;
    - b. A source-specific determination of ambient impacts, or a visibility or increment analysis; or
    - c. A case-by-case determination of a monitoring, recordkeeping, and reporting requirement.
  7. A change that requires the source to obtain a Class I permit.
- C. Any modification to a major source of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significant permit revision procedures and any rules adopted under A.R.S. § 49-426.03.
- D. Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected states, and review by the Administrator that apply to permit issuance and renewal. Notwithstanding R18-2-330(C), the Director may provide notice for changes requiring a significant permit revision solely under subsection (B)(2), (4) or (6)(c) by posting a notice on the Department's web site, sending e-mails to persons who have requested electronic notification of the Department's proposed air quality permit actions and by mailing a copy of the notice as provided in R18-2-330(C)(1).
- E. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

#### Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-321. Permit Reopenings; Revocation and Reissuance;

#### Termination

##### A. Reopening for Cause.

1. Each issued permit shall include provisions specifying the conditions under which the permit shall be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
    - a. Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to R18-2-322(B). Any permit revision required pursuant to this subsection shall comply with provisions in R18-2-322 for permit renewal and shall reset the five-year permit term.
    - b. Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the Class I permit.
    - c. The Director or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
    - d. The Director or the Administrator determines that the permit needs to be revised or revoked to assure compliance with the applicable requirements.
  2. Proceedings to reopen and issue a permit, including appeal of any final action relating to a permit reopening, shall follow the same procedures as apply to initial permit issuance and shall, except for reopenings under subsection (A)(1)(a), affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
  3. Reopenings under subsection (A)(1) shall not be initiated before a notice of such intent is provided to the source by the Director at least 30 days in advance of the date that the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency.
  4. When a permit is reopened and revised pursuant to this Section, the Director may make appropriate revisions to the permit shield established pursuant to R18-2-325.
- B. Within 10 days of receipt of notice from the Administrator that cause exists to reopen a Class I permit, the Director shall notify the source. The source shall have 30 days to respond to the Director. Within 90 days of receipt of notice from the Administrator that cause exists to reopen a permit, or within any extension to the 90 days granted by EPA, the Director shall forward to the Administrator and the source a proposed determination of termination, revision, or revocation and reissuance of the permit. Within 90 days of receipt of an EPA objection to the Director's proposal, the Director shall resolve the objection and act on the permit.
- C. The Director may issue a notice of termination of a permit or registration issued pursuant to this Chapter if:
1. The Director has reasonable cause to believe that the permit or registration was obtained by fraud or misrepresentation.



2. The person applying for the permit or registration failed to disclose a material fact required by the application form or the regulation applicable to the permit or registration, of which the applicant had or should have had knowledge at the time the application was submitted.
  3. The terms and conditions of the permit or registration have been or are being violated.
- D.** If the Director issues a notice of termination under this Section, the notice shall be served on the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation and a statement that the permittee is entitled to a hearing.

#### Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-321 renumbered without change as R18-2-321 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-322. Permit Renewal and Expiration

- A.** A permit being renewed is subject to the same procedural requirements, including any for public participation and affected states and Administrator review, that would apply to that permit's initial issuance.
- B.** Except as provided in R18-2-303(A), permit expiration terminates the source's right to operate unless a timely application for renewal that is sufficient under A.R.S. § 41-1064 has been submitted in accordance with R18-2-304. Any testing that is required for renewal shall be completed before the proposed permit is issued by the Director.
- C.** The Director shall act on an application for a permit renewal within the same time-frames as on an initial permit.

#### Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-322 renumbered without change as R18-2-322 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-323. Permit Transfers

- A.** Except as provided in A.R.S. § 49-429 and subsection (B), a Class I or II permit may be transferred to another person if the person who holds the permit gives notice to the Director in writing at least 30 days before the proposed transfer. The notice shall contain the following:
1. The permit number and expiration date;
  2. The name, address, and telephone number of the current permit holder;
  3. The name, address and telephone number of the person to receive the permit;
  4. The name and title of the individual within the organization who is accepting responsibility for the permit along with a signed statement by that person indicating such acceptance;
  5. A description of the equipment to be transferred;
  6. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee;
  7. Provisions for the payment of any fees pursuant to R18-2-326 or R18-2-501 that will be due and payable before the effective date of transfer;
  8. Sufficient information about the source's technical and financial capabilities of operating the source to allow the Director to make the decision in subsection (B) including:

- a. The qualifications of each person principally responsible for the operation of the source;
- b. A statement by the chief financial officer of the new permittee that it is financially capable of operating the facility in compliance with the law, and the information that provides the basis for that statement;
- c. A brief description of any action for the enforcement of any federal or state law, or any county, city, or local government ordinance relating to the protection of the environment, instituted against any person employed by the new permittee and principally responsible for operating the facility during the five years preceding the date of application. In lieu of this description, the new permittee may submit a copy of the certificate of disclosure or 10-K form required under A.R.S. § 49-109, or a statement that this information has been filed in compliance with A.R.S. § 49-109.

- B.** The Director shall deny the transfer if the Director determines that the organization receiving the permit is not capable of operating the source in compliance with A.R.S. Title 49, Chapter 3, Article 2, the provisions of this Chapter or the provisions of the permit. Notice of the denial shall be sent to the original permit holder by certified mail stating the reason for the denial within 10 working days of the Director's receipt of the application. If the transfer is not denied within 10 working days after receipt of the notice, it shall be deemed approved.
- C.** To appeal the transfer denial:
1. Both the transferor and transferee shall petition the Office of Administrative Hearings in writing for a public hearing; and
  2. All parties shall follow the appeal process for a permit.
- D.** The Director shall make available to the public monthly summaries of all notices received under this Section.

#### Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-323 renumbered without change as R18-2-323 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

#### R18-2-324. Portable Sources

- A.** A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has a permit issued by the Director and obtains a county permit shall request that the Director terminate the permit. Upon issuance of the county permit, the permit issued by the Director is no longer valid.
- B.** A portable source which has a county permit but proposes to operate outside that county shall obtain a permit from the Director. A portable source that has a permit issued by a county and obtains a permit issued by the Director shall request that the county terminate the permit. Upon issuance of a permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (D).
- C.** An owner of portable source equipment which requires a permit under this Chapter shall obtain the permit prior to renting

or leasing said equipment. This permit shall be provided by the owner to the renter or lessee, and the renter or lessee shall be bound by the permit provisions. In the event a copy of the permit is not provided to the renter or lessee, both the owner and the lessee or renter shall be responsible for the operation of this equipment in compliance with the permit conditions and any violations thereof.

- D.** A portable source may be transferred from one location to another provided that the owner or operator of such equipment notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer by certified mail at least 10 working days before the transfer. The notification required under this subsection shall include:
1. A description of the equipment to be transferred including the permit number for such equipment;
  2. A description of the present location;
  3. A description of the location to which the equipment is to be transferred, including the availability of all utilities, such as water and electricity, necessary for the proper operation of all control equipment;
  4. The date on which the equipment is to be moved; and
  5. The date on which operation of the equipment will begin at the new location.
- E.** Any permit for a portable source shall contain conditions that will assure compliance with all applicable requirements at all authorized locations.

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).  
Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-325. Permit Shields

- A.** Each Class I or II permit issued under this Chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that such applicable requirements are included and expressly identified in the permit. The Director may include in a permit determinations that other requirements specifically identified are not applicable. Any permit under this Chapter that does not expressly state that a permit shield exists shall not provide such a shield.
- B.** Nothing in this Section or in any permit shall alter or affect the following:
1. The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that Section;
  2. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
  3. The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;
  4. The ability of the Administrator or the Director to obtain information from a source pursuant to Section 114 of the Act, or any provision of state law;
  5. The authority of the Director to require compliance with new applicable requirements adopted after the permit is issued.
- C.** In addition to the provisions of R18-2-321, a permit may be reopened by the Director and the permit shield revised when it is determined that standards or conditions in the permit are based on incorrect information provided by the applicant.

#### Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-326. Fees Related to Individual Permits

- A.** Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:
1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
  2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and for which either R18-2-302(B)(2)(a)(i) or (ii) applies.
  3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and for which neither R18-2-302(B)(2)(a)(i) nor (ii) applies.
- B.** Fees for Permit Actions.
1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
    - a. \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
    - b. The actual costs of public notice conducted according to R18-2-330.
  2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
  3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.
- C.** Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:
1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$20,800
Air Curtain Destructors	\$750
Cement Plants	\$63,690
Combustion/Boilers	\$15,480
Compressor Stations	\$12,730
Electronics	\$20,490
Expandable Foam	\$14,680
Foundries	\$19,520
Landfills	\$15,960

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Lime Plants	\$60,160
Copper & Nickel Mines	\$15,000
Gold Mines	\$15,000
Mobile Home Manufacturing	\$14,830
Paper Mills	\$20,480
Paper Coaters	\$15,480
Petroleum Products Terminal Facilities	\$22,730
Polymeric Fabric Coaters	\$20,480
Reinforced Plastics	\$15,480
Semiconductor Fabrication	\$26,930
Copper Smelters	\$63,690
Utilities - Fossil Fuel Fired Except Coal	\$16,440
Utilities - Coal Fired	\$32,570
Vitamin/Pharmaceutical Manufacturing	\$15,800
Wood Furniture	\$15,480
Others	\$20,490
Others with Continuous Emissions Monitoring	\$20,490

2. An emissions-based fee of \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
  - a. For purposes of this Section, “actual emissions” means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
  - b. For purposes of this Section, regulated pollutants consist of the following:
    - i. Nitrogen oxides and any volatile organic compounds;
    - ii. Conventional air pollutants, except carbon monoxide and ozone;
    - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
    - iv. Any federally listed hazardous air pollutant.
  - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source’s actual emissions:
    - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
    - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM<sub>10</sub>;
    - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(E)(8);
    - iv. Fugitive emissions of PM<sub>10</sub> from activities other than crushing, belt transfers, screening, or stacking; and
    - v. Fugitive emissions of VOC from solution-extraction units.
  - d. The Director shall adjust the rate for emission-based fees every November 1, after December 4, 2007, by multiplying \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by

the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

- D. Class II Title V Fees. The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$8,070
Portables	\$8,070
Small Source	\$750

- E. Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$5,230
Portables	\$5,230
Gasoline Service Stations	\$750

- F. The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.
- G. Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:
  1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director’s receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
  2. The Director’s decision after informal review shall become final unless, within 30 days after person’s receipt of the informal review decision, the person requests a hearing under R18-1-202.
  3. If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.
- H. The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, after December 4, 2007, by multiplying \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every Novem-

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ber 1, to the nearest \$10, beginning December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

- I.** An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:

1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
  - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
  - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.

- J.** Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by December 15 of the calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.

- K.** If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.

- M.** Transition.

1. Subsections (A) through (J) of this Section are effective December 4, 2007. The first administrative or inspection fees are due on February 1, 2008.
2. Except as provided in subsection (b), all fees incurred after December 4, 2007, are payable in accordance with the rates contained in this Section.
  - a. Emission-based fees for calendar year 2006 shall be billed at \$38.25 per ton and be due February 1, 2008.
  - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
  - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

**Historical Note**

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4).

**R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011**

In addition to the emissions-based fees required under R18-2-326(C) for Class I Title V sources for Calendar Year 2008, a one-time emissions-based fee of \$20.82 per ton of actual emissions of all regulated pollutants emitted during Calendar Year 2008 shall be due within 30 days of the invoice postmark date for the increased fee.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2).

**R18-2-327. Annual Emissions Inventory Questionnaire**

- A.** Every source subject to permit requirements under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
- B.** The questionnaire shall be on a form provided by the Director and shall include the following information:
1. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
  2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.
  3. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:
    - a. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant.

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ant in the definition of “significant” in R18-2-101(130)(a), whichever is less.

- b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.

**C.** Actual quantities of emissions shall be determined using the following emission factors or data:

1. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, or data quality assured pursuant to Appendix F of 40 CFR 60.
2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
3. When sufficient data pursuant to subsection (C)(1) or (2) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 “Compilation of Air Pollutant Emission Factors,” Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC, including Supplements A through F and all updates published through July 1, 2011 (and no future editions). AP-42 is incorporated by reference and is on file with the Department of Environmental Quality and can be obtained from the Government Printing Office, 732 North Capitol Street, NW, Washington, D.C. 20401, telephone (202) 512-1800, or by downloading the document from the web site for the EPA Clearinghouse for Emission Inventories and Emission Factors.
4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
5. When sufficient data pursuant to subsections (C)(1) through (4) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as one of the methods in subsections (C)(1) through (4).

**D.** Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.

**E.** An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.

**F.** The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

### Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

### R18-2-328. Conditional Orders

**A.** The Director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of A.R.S. Title 49, Chapter 3, Article 2, or this Chapter, for any non-federally enforceable requirement of a permit issued pursuant to this Chapter if the Director makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, impede attainment or maintenance of the national ambient air quality standards, or constitute a violation of the Act; and
2. Either of the following is true:
  - a. There has been a breakdown of equipment or upset of operations beyond the control of the petitioner which causes the source to be out of compliance with the requirements of this Chapter; the source was in compliance with the requirements of this Chapter before the breakdown or upset, and the breakdown or upset may be corrected within a reasonable time;
  - b. There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

**B.** The following procedures shall apply to a person seeking a conditional order:

1. The person shall file a petition for a conditional order with the Director. The petition shall contain at a minimum:
  - a. A description of the breakdown or upset;
  - b. A description of corrective action being undertaken to bring the source back into compliance;
  - c. An estimate of emissions related to the breakdown or upset;
  - d. A compliance schedule with a date of final compliance and interim dates as appropriate;
  - e. A detailed analysis of the economic and social costs and benefits of achieving compliance with the requirement for which the variance is sought, if the petition is based on subsection (A)(2)(b).
2. If the issuance of the conditional order requires a public hearing pursuant to R18-2-330, the Director shall set the hearing date within 30 days after the filing of the petition and the hearing shall be held within 60 days after the filing of the petition.
3. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in A.R.S. § 49-444 and R18-2-330.

**C.** Decisions on petitions for a conditional order shall be made as follows:

1. For any conditional order that requires a revision to the SIP, the Director shall comply with the requirements contained in 40 CFR 51, Subpart F.
2. For any other conditional order, the Director shall grant or deny the petition with such terms and conditions as are

listed in subsection (E)(2) within 30 days after the conclusion of any required hearing, or, if no hearing is held, within 60 days after the filing of the petition.

- D. A fee to cover the costs of processing conditional orders may be charged by the Director prior to issuance consistent with R18-2-326(I) or (J). The fee shall be deposited in the permit administration fund established in A.R.S. § 49-455.
- E. The terms of a conditional order or its renewal shall conform to the following:
  - 1. A conditional order issued by the Director shall be valid for such period as the Director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this Chapter and Title V of the Act, and three years in the case of any other source that is required to obtain a permit pursuant to this Chapter.
  - 2. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include:
    - a. A detailed plan for completion of corrective steps needed to conform to the provisions of A.R.S. Title 49, Chapter 3, Article 2, this Chapter, and the requirements of any permit issued pursuant to this Chapter;
    - b. A requirement that necessary construction shall begin as expeditiously as practicable and proceed as specified in the compliance schedule;
    - c. Written reports, at least quarterly, of the status of the source and construction progress;
    - d. The right of the Director to make periodic inspection of the facilities for which the conditional order is granted;
    - e. Such additional terms and conditions as the Director finds necessary to meet the requirements of this Section and A.R.S. § 49-437.
  - 3. A holder of a conditional order may petition the Director to renew the order. The total term of the initial period and all renewals shall not exceed three years from the date of initial issuance of the order. Petitions for renewal may be filed at any time not more than 60 days nor less than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of a petition, shall renew the conditional order for one year if the petitioner is in compliance and conforming with the terms and conditions imposed. The Director may refuse to renew the conditional order if, after a public hearing held within 30 days of receipt of a petition, the Director finds that the petitioner is not in compliance and conforming with the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance and conforming with the terms and conditions, the Director may renew a conditional order for a total term of two additional years only if the Director finds that failure to comply and conform is due to conditions beyond the control of such petitioner.
  - 4. If the Director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the Director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the Director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this Section, except that the total term of the renewal shall not exceed two years.

- 5. A conditional order issued by the Director shall be effective when issued unless:

- a. The conditional order varies from the requirements of the applicable implementation plan, in which case the conditional order shall be submitted to the Administrator as a revision to the applicable implementation plan pursuant to Section 110(I) of the Act and shall become effective upon approval by the Administrator.
- b. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to Title V of the Act, in which case the conditional order shall be submitted to the Administrator if required by Section 505 of the Act and shall be effective at the end of the review period specified in such section, unless objected to within such period by the Administrator.

- F. Violation of the terms and conditions of the conditional order shall subject the source to suspension or revocation of the conditional order in accordance with A.R.S. § 49-441.

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

#### **R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees**

- A. The terms and conditions of either a delayed compliance order (DCO) or consent decree shall be incorporated into a permit through a permit revision. In the event the permit expires prior to the expiration of the DCO or consent decree, the DCO or consent decree shall be incorporated into any permit renewal.
- B. The owner or operator of a source subject to a DCO or consent decree shall submit to the Director a quarterly report of the status of the source and construction progress and copies of any reports to the Administrator required under the order or decree. The Director may require additional reporting requirements and conditions in permits issued under this Article.
- C. For the purpose of this Chapter, sources subject to a consent decree issued by a federal court shall meet the same requirements as those subject to a DCO.

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

#### **R18-2-330. Public Participation**

- A. The Director shall provide public notice, an opportunity for public comment, and an opportunity for a hearing before taking any of the following actions:
  - 1. A permit issuance or renewal of a permit,
  - 2. A significant permit revision,
  - 3. Revocation and reissuance or reopening of a permit,
  - 4. Any conditional orders pursuant to R18-2-328,
  - 5. Granting a variance from a general permit under R18-2-507 and R18-2-1705.
- B. The Director shall provide public notice of receipt of complete applications for permits or permit revisions subject to Article 4 of this Chapter by publishing a notice in a newspaper of general circulation in the county where the source is or will be located.
- C. The Director shall provide the notice required pursuant to subsection (A) as follows:
  - 1. The Director shall publish the notice once each week for two consecutive weeks in two newspapers of general circulation in the county where the source is or will be located.
  - 2. The Director shall mail a copy of the notice to persons on a mailing list developed by the Director consisting of

those persons who have requested in writing to be placed on such a mailing list.

- D. The notice required by subsection (C) shall include the following:
1. Identification of the affected facility;
  2. Name and address of the permittee or applicant;
  3. Name and address of the permitting authority processing the permit action;
  4. The activity or activities involved in the permit action;
  5. The emissions change involved in any permit revisions;
  6. The air contaminants to be emitted;
  7. If applicable, that a notice of confidentiality has been filed under R18-2-305;
  8. If applicable, that the source has submitted a risk management analysis under R18-2-1708;
  9. A statement that any person may submit written comments, or a written request for a public hearing, or both, on the proposed permit action, along with the deadline for such requests or comments;
  10. The name, address, and telephone number of a person from the Department from whom additional information may be obtained;
  11. Locations where copies of the permit or permit revision application, the proposed permit, and all other materials available to the Director that are relevant to the permit decision may be reviewed, including the closest Department office, and the times at which they shall be available for public inspection.
  12. The Director shall include a statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits under R18-2-1204, or the utilization of emission reduction credits under R18-2-1206.
- E. The Director shall hold a public hearing to receive comments on petitions for conditional orders which would vary from requirements of the applicable implementation plan. For all other actions involving a proposed permit, the Director shall hold a public hearing only upon written request. If a public hearing is requested, the Director shall schedule the hearing and publish notice as described in A.R.S. § 49-444 and subsection (D). The Director shall give notice of any public hearing at least 30 days in advance of the hearing.
- F. At the time the Director publishes the first notice under subsection (C)(1), the applicant shall post a notice containing the information required in subsection (D) at the site where the source is or may be located. Consistent with federal, state, and local law, the posting shall be prominently placed at a location under the applicant's legal control, adjacent to the nearest public roadway, and visible to the public using the public roadway. If a public hearing is to be held, the applicant shall place an additional posting providing notice of the hearing. Any posting shall be maintained until the public comment period is closed.
- G. The Director shall provide at least 30 days from the date of its first notice for public comment to receive comments and requests for a hearing. The Director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final proposed permit is submitted to EPA, in the case of a Class I permit, or a final decision is made, in the case of a Class II permit, the record and copies of the Director's responses shall be made available to the applicant and all commenters.

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).  
Amended by final rulemaking at 8 A.A.R. 1815, effective

March 18, 2002 (Supp. 02-1). R18-2-330 has been corrected to include subsection (D)(12), which was omitted when the Section was amended in the 02-1 supplement (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (supp. 12-2).

#### R18-2-331. Material Permit Conditions

- A. For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a "material permit condition" shall mean a condition which satisfies all of the following:
1. The condition is in a permit or permit revision issued by the Director or a control officer after November 15, 1993.
  2. The condition is identified within the permit as a material permit condition.
  3. The condition is one of the following:
    - a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement;
    - b. A requirement to install, operate, or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required under Article 17 of this Chapter;
    - c. A requirement for the installation or certification of a monitoring device;
    - d. A requirement for the installation of air pollution control equipment;
    - e. A requirement for the operation of air pollution control equipment;
    - f. An opacity standard required by Section 111 or Title I, Part C or D of the Act.
  4. Violation of the condition is not covered by A.R.S. § 49-464(A) through (F), or (H) through (J) or A.R.S. § 49-514(A) through (F), or (H) through (J).
- B. For the purposes of subsections (A)(3)(c), (d), and (e), a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this Section, "circumstances outside the control of the source" shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.
- C. For purposes of this Section, the term "emission standard" shall have the meaning specified in A.R.S. §§ 49-464(U) and 49-514(T).

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).  
Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

#### R18-2-332. Stack Height Limitation

- A. The limitations set forth herein shall not apply to stacks or dispersion techniques used by the owner or operator prior to December 31, 1970, for which the owner or operator had:
1. Begun, or caused to begin, a continuous program of physical on-site construction of the stack;
  2. Entered into building agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time; or
  3. Coal-fired steam electric generating units, subject to the provisions of Section 118 of the Act which commenced

operation before July 1, 1975, with stacks constructed under a construction contract awarded before February 8, 1974.

**B.** GEP stack height is calculated as the greater of the following four numbers in subsections (1) through (4):

1. 213.25 feet (65 meters);
2. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under 40 CFR Parts 51 and 52 and R18-2-403,  $H_g = 2.5H$ ;
3. For all other stacks,  $H_g = H + 1.5L$ , where  
 $H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack;  
 $H$  = height of nearby structure measured from the ground-level elevation at the base of the stack;  
 $L$  = lesser dimension (height or projected width) of nearby structure;

provided that the EPA, the Director, or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

4. The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain obstacles;
5. For a specific structure or terrain feature, "nearby" shall be:
  - a. For purposes of applying the formulae in subsections (B)(2) and (3), that distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km (1/2 mile).
  - b. For conducting demonstrations under subsection (B)(4), means not greater than 0.8 km (1/2 mile). An exception is that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height ( $H_+$ ) of the feature, not to exceed 2 miles if such feature achieved a height ( $H_+$ ) 0.8 km from the stack. The height shall be at least 40% of the GEP stack height determined by the formula provided in subsection (B)(3), or 85 feet (26 meters), whichever is greater, as measured from the ground-level elevation at the base of the stack.
6. "Excessive concentrations" means, for the purpose of determining good engineering practice stack height under subsection (B)(4):
  - a. For sources seeking credit for stack height exceeding that established under subsections (B)(2) and (3), a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the requirements for permits or permit revisions under Article 4 of this Chapter, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which

individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than the applicable maximum allowable increase contained in R18-2-218. The allowable emission rate to be used in making demonstrations under subsection (B)(4) shall be prescribed by the new source performance standard which is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

- b. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subsections (B)(2) and (3), either:
  - i. A maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects as provided in subsection (B)(6)(a), except that emission rate specified by any applicable SIP shall be used; or
  - ii. The actual presence of a local nuisance caused by the existing stack, as determined by the Director; and
- c. For sources seeking credit after January 12, 1979, for a stack height determined under subsections (B)(2) and (3), where the Director requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subsections (B)(2) and (3), a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.
- C.** The degree of emission limitation required of any source after the respective date given in subsection (A) above for control of any pollutant shall not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique.
- D.** The good engineering practice (GEP) stack height for any source seeking credit because of plume impaction which results in concentrations in violation of national ambient air quality standards or applicable maximum allowable increases under R18-2-218 can be adjusted by determining the stack height necessary to predict the same maximum air pollutant concentration on any elevated terrain feature as the maximum concentration associated with the emission limit which results from modelling the source using the GEP stack height as determined herein and assuming the elevated terrain features to be equal in elevation to the GEP stack height. If this adjusted GEP stack height is greater than stack height the source proposes to use, the source's emission limitation and air quality impact shall be determined using the proposed stack height and the actual terrain heights.
- E.** Before the Director issues a permit or permit revision under this Article to a source based on a good engineering practice stack height that exceeds the height allowed by subsection (B), the Director shall notify the public of the availability of the



demonstration study and provide opportunity for a public hearing in accordance with the requirements of R18-1-402.

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-333. Acid Rain

- A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of June 28, 2013, (and no future amendments) are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.
- B. When used in 40 CFR 72, 74, 75 or 76, “Permitting Authority” means the Arizona Department of Environmental Quality and “Administrator” means the Administrator of the United States Environmental Protection Agency.
- C. If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining portions of this Title, the regulations incorporated in this Section apply and take precedence.

#### Historical Note

Adopted effective October 7, 1994 (Supp. 94-4).  
 Amended effective December 7, 1995 (Supp. 95-4).  
 Amended effective December 4, 1997 (Supp. 97-4).  
 Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expeditious rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

#### R18-2-334. Minor New Source Review

- A. Applicability.
  1. Except as provided in subsection (A)(4), this Section shall apply to the following activities:
    - a. Construction of any new Class I or Class II source, including the construction of any source requiring a Class II permit under R18-2-302.01(C)(4); or
    - b. Any minor NSR modification to a Class I or Class II source.
  2. This Section shall apply to a regulated minor NSR pollutant emitted by a new stationary source, if the source will have the potential to emit that pollutant at an amount equal to or greater than the permitting exemption threshold.
  3. This Section shall apply to an increase in emissions of a regulated minor NSR pollutant from a minor NSR modification, if the modification would increase the source’s potential to emit that pollutant by an amount equal to or greater than the permitting exemption threshold.
  4. This Section shall not apply to the emissions of a pollutant from any of the activities identified in this subsection, if the emissions of that pollutant are subject to Article 4 of this Chapter.
- B. No person shall begin actual construction of a new stationary source, or minor NSR modification, subject to this Section without first obtaining a permit, a permit revision, a proposed

final permit, or a proposed final permit revision from the Director in accordance with R18-2-304.

- C. The Director shall not issue a proposed final Class I permit or permit revision or a Class II permit or permit revision subject to this Section to a person proposing to construct a new source or make a minor NSR modification unless the source or modification meets one of the following conditions for each regulated minor NSR pollutant subject to this section:
  1. The owner or operator elects to implement RACT.
    - a. In the case of a new source, the owner or operator shall implement RACT for each emissions unit that has the potential to emit a regulated minor NSR pollutant in an amount equal to or greater than 20% of the permitting exemption threshold.
    - b. In the case of a minor NSR modification, the owner or operator shall implement RACT for each emissions unit that will experience an increase in the potential to emit a regulated minor NSR pollutant equal to or greater than 20% of the permitting exemption threshold.
    - c. When it is technically feasible and otherwise consistent with the definition of RACT to apply the same devices, systems, process modifications, work practices or other apparatus or techniques to a group of emissions units, that group of emissions units shall be treated as a single emissions unit for purposes of subsections (C)(1)(a) and (b). The following are examples of situations to which this subsection may apply:
      - i. Emissions from a group of emissions units can be vented to a single control device.
      - ii. A low-VOC coating can be used in several spray-painting booths.
  2. An ambient air quality assessment demonstrates that emissions from the source or minor NSR modification will not interfere with attainment or maintenance of a standard imposed in Article 2 of this Chapter.
    - a. An owner or operator may elect to have the Director perform a SCREEN model of its emissions. If the results of the SCREEN model indicate that the source or minor NSR modification will interfere with attainment or maintenance of a standard imposed in Article 2 of this Chapter, the owner or operator may perform a more refined model to make the demonstration required by this subsection.
    - b. The requirements of this subsection shall be satisfied, if the results of the SCREEN or more refined modeling conducted pursuant to subsection (B)(2)(a) demonstrate either of the following:
      - i. Ambient concentrations resulting from emissions from the source or modification combined with existing concentrations of regulated minor NSR pollutants will not cause or exacerbate the violation of a standard imposed in Article 2 of this Chapter.
      - ii. Emissions from the source or minor modification will have an ambient impact below the significance levels as defined in R18-2-401.
    - c. The assessment required by this subsection shall take into account any limitations, controls or emissions decreases that are or will be enforceable in the permit or permit revision for the source.
- D. RACT Determinations.
  1. Except as otherwise provided in this subsection, the Director shall determine RACT on the basis of a case-by-case analysis performed by the permit applicant of the

emission reduction methods available for each emission unit subject to the RACT requirement under subsection (C)(1).

2. The Director shall accept a requirement proposed by a permit applicant as RACT under subsection (C)(1) if it complies with the most recently adopted of the following guidelines or standards in effect at the time of the application:
  - a. A control technique guideline issued by the Administrator under section 108(f)(1) of the Act.
  - b. An emissions standard established or revised by the Administrator for the same type of source under section 111 or 112 of the Act after November 15, 1990.
  - c. An applicable requirement of this Chapter or of air quality control regulations adopted by a County under A.R.S. § 49-479 that has been specifically identified as constituting RACT.
  - d. A RACT standard imposed on the same type of source by a general permit.
  - e. A RACT standard imposed on the same type of source under this Section no more than 10 years before submission of the application by the permit applicant. To facilitate identification of previously imposed RACT standards, the Director shall establish an online database of RACT determinations made under this Section.
- E. Notwithstanding an election to adopt RACT under subsection (C)(1), a permit applicant subject to this Section shall conduct an ambient air quality impact assessment under subsection (C)(2) upon the Director's request. The Director shall make such a request, if there is reason to believe that a source or minor NSR modification could interfere with attainment or maintenance of a standard imposed in Article 2 of this Chapter. In making that determination, the Director shall take into consideration:
  1. The source's emission rates.
  2. The location of emission units within the facility and their proximity to the ambient air.
  3. The terrain in which the source is or will be located.
  4. The source type.
  5. The location and emissions of nearby sources.
  6. Background concentrations of regulated minor NSR pollutants.
- F. The Director shall deny an application for a Class I permit or permit revision or a Class II permit or permit revision subject to this Section, if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with attainment or maintenance of a standard imposed in Article 2 of this Chapter.
- G. An application for a permit or permit revision subject to this Section may be processed as a minor permit revision if one of the following conditions is satisfied for each pollutant subject to subsection (C):
  1. A RACT standard is imposed under subsection (D)(2) on each emissions unit that requires such a standard under subsection (C)(1).
  2. The results of the SCREEN model for a regulated minor NSR pollutant show expected concentrations, including background concentrations, that are less than 75% of the applicable standard imposed in Article 2 of this Chapter.
- H. A copy of the notice required by R18-2-330 for permits or significant permit revisions subject to this Section must also be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the permit or permit revision will be located. The

notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under this subpart.

- I. All modeling required pursuant to this Section shall be conducted in accordance with 40 CFR 51, Appendix W.
- J. The Director shall specify those conditions in the permit that are implemented pursuant to this Section. The specified conditions shall be included in subsequent permit renewals unless modified pursuant to this Section or Article 4 of this Chapter.
- K. The issuance of a permit or permit revision under this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.
- L. Delayed Effective Date. This Section shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

### ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

#### R18-2-401. Definitions

The following definitions apply to this Article:

1. "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Class I area, as determined according to R18-2-410.
2. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subsections (2)(a) through (c).
  - a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
    - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
    - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
    - iii. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
    - iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(a)(ii).

- b. For any existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under 40 CFR 52.21 or by the Director for a permit required under the state implementation plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
    - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
    - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period. This provision applies to excess emissions associated with a malfunction.
    - iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major source must currently comply, had such major source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the state of Arizona has taken credit for such emissions reductions in an attainment demonstration or maintenance plan submitted to the Administrator pursuant to section 110(a)(1) of the Act.
    - iv. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units affected by the project. A different consecutive 24-month period may be used for each regulated NSR pollutant.
    - v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(b)(ii) or (iii).
  - c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
  - d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures in subsection (2)(a), for other existing emissions units in accordance with the procedures contained in subsection (2)(b), and for new emissions units in accordance with the procedures contained in subsection (2)(c).
3. "Basic design parameter" means:
    - a. Except as provided in subsection (3)(c), for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on Btu content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit.
    - b. Except as provided in subsection (3)(c), the basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.
    - c. If the owner or operator believes the basic design parameters in subsections (3)(a) and (b) are not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Director an alternative basic design parameters for the source's process unit. If the Director approves of the use of an alternative basic design parameters, the Director shall issue a permit that is legally enforceable that records such basic design parameters and requires the owner or operator to comply with such parameters.
    - d. The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameters specified in subsections (3)(a) and (b).
    - e. If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameters using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
    - f. Efficiency of a process unit is not a basic design parameter.
    - g. The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
  4. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application.
  5. "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
    - a. Using that portion of a stack that exceeds good engineering practice stack height;
    - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

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- c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams that increases the exhaust gas plume rise. This shall not include any of the following:
- The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
  - The merging of exhaust gas streams under any of the following conditions:
    - The source owner or operator demonstrates that the facility was originally designed and constructed with the merged gas streams;
    - After July 18, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
    - Before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Department shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Department shall deny credit for the effects of the merging in calculating the allowable emissions for the source.
  - Smoke management in agricultural or silvicultural prescribed burning programs.
  - Episodic restrictions on residential woodburning and open burning.
  - Techniques that increase final exhaust gas plume rise if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
6. "Existing emissions unit" is any emissions unit that is currently in existence and that is not a new emissions unit. A replacement unit is an existing emissions unit.
7. "High terrain" means any area having an elevation of 900 feet or more above the base of a source.
8. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
9. "Low terrain" means any area other than high terrain.
10. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on one of the following:
- The most stringent emissions limitation that is contained in any implementation plan approved or promulgated under sections 110 or 172 of the Act for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or
  - The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standards of performance in Articles 9 and 11 of this Chapter.
11. "Major source" means:
- Any stationary source located in a nonattainment area that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that the following thresholds shall apply in areas subject to subpart 2, subpart 3 or subpart 4 of part D, Title I of the Act:

Pollutant Emitted	Nonattainment Pollutant and Classification	Quantity Threshold tons/year or more
Carbon Monoxide (CO)	CO, Serious, if stationary sources contribute significantly to CO levels in the area as determined under rules issued by the Administrator	50
VOC	Ozone, Serious	50
VOC	Ozone, Severe	25
PM <sub>10</sub>	PM <sub>10</sub> , Serious	70
NO <sub>x</sub>	Ozone, Serious	50
NO <sub>x</sub>	Ozone, Severe	25

- Any stationary source located in an attainment or unclassifiable area that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant if the source is classified as a Categorical Source, or 250 tons per year or more of any regulated NSR pollutant if the source is not classified as a Categorical Source;
  - Any stationary source that emits, or has the potential to emit, five or more tons of lead per year;
  - A major source that is major for VOC or nitrogen oxides shall be considered major for ozone; or
  - The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a major stationary source, unless the source belongs to a section 302(j) category.
12. "New emissions unit" means any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

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13. “Plantwide applicability limitation” or “PAL” means an emission limitation that is based on the baseline actual emissions of all emissions units at the stationary source that emit or have the potential to emit the PAL pollutant, expressed in tons per year, for a pollutant at a major source, that is enforceable as a practical matter and established source-wide in accordance with this Section.
14. “PAL allowable emissions” means “allowable emissions” as defined in R18-2-101, except that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit’s potential to emit.
15. PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
16. “PAL effective period” means the period beginning with the PAL effective date and ending 10 years later.
17. “PAL major modification” means any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
18. “PAL permit” means the permit issued by the Director that establishes a PAL for a major source.
19. “PAL pollutant” means the pollutant for which a PAL is established at a major source.
20. “Projected actual emissions” means:
  - a. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant during any 12-month period in the 60 calendar months following the date the unit resumes regular operation after the project, or in any 12-month period in the 120 calendar months following that date if the project involves increasing the design capacity or potential to emit of any emissions unit for that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major source.
  - b. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major source:
    - i. Shall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the county, state or federal regulatory authorities, and compliance plans under these regulations; and
    - ii. Shall include fugitive emissions to the extent quantifiable;
    - iii. Shall include emissions associated with start-ups and shutdowns, except emissions from a shutdown associated with a malfunction; and
    - iv. Shall exclude, only for calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
  - c. In lieu of using the method set out subsections (20)(b)(i) through (iv), the owner or operator may elect to use the emissions unit’s potential to emit, in tons per year.
21. “Reconstruction” of sources located in nonattainment areas shall be presumed to have taken place if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source, as determined in accordance with the provisions of 40 CFR 60.15(f)(1) through (3).
22. “Replacement unit” means an emissions unit for which all the criteria listed in subsections (22)(a) through (d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.
  - a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
  - b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
  - c. The replacement does not alter the basic design parameters of the process unit.
  - d. The replaced emissions unit is permanently removed from the major source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
23. “Resource recovery project” means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste that provides more than 50% of the heat input shall be considered a resource recovery project under this Article.
24. “Significant emissions unit” means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.
25. “Significance levels” means the following ambient concentrations for the enumerated pollutants:

Averaging Time					
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO <sub>2</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
NO <sub>2</sub>	1 µg/m <sup>3</sup>				
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>
PM <sub>10</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			
PM <sub>2.5</sub>	0.06 µg/m <sup>3</sup>	0.07 µg/m <sup>3</sup>			
Class I area					
PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>			
Class II area					
PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>			
Class III area					

Except for the annual pollutant concentrations, the Department shall deem that exceedance of significance levels has occurred when the ambient concentration of the above pollutant is exceeded more than once per year at any one location. If the concentration occurs at a specific location and at a time when Arizona ambient air quality standards for the pollutant are not violated, the significance level does not apply.

26. “Small emissions unit” means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-401 renumbered without change as Section R18-2-401 (Supp. 87-3). Section R18-2-401 renumbered to R18-2-601. New Section R18-2-401 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Typographical error corrected in R18-2-401(9)(a) (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 1134, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-402. General

- A. The preconstruction review requirements of this Article shall apply to the construction of any new major source or any project at an existing major source.
- B. The requirements of R18-2-403 through R18-2-410 apply to the construction of a major source or a major modification of any existing stationary source, except as this Article otherwise provides.
- C. No person shall begin actual construction of a new major source or a major modification subject to the requirements of R18-2-403 through R18-2-410 without first obtaining a proposed final permit from the Director, pursuant to R18-2-307(A)(2), stating that the major source or major modification shall meet those requirements.
- D. The requirements of this Article apply to projects at major sources in accordance with the following principles.
  1. Except as otherwise provided in subsection (E), a project is a major modification for a regulated NSR pollutant if it causes both a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
  2. The procedure for calculating before beginning actual construction whether a significant emissions increase will occur depends upon the types of emissions units being modified as set forth in subsections (D)(3) through (6). The procedure for calculating before beginning actual construction whether a significant net emissions increase will occur at the major source is set forth in the definition of net emissions increase in R18-2-101. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
  3. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
  4. Actual-to-potential applicability test for projects that only involve new emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
- E. Any major source with a PAL for a regulated NSR pollutant shall comply with R18-2-412.
- F. This subsection applies with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (F)(6) of this Section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in R18-2-401(20)(b)(i) through (iv) of the definition of projected actual emissions for calculating projected actual emissions.
  1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
    - a. A description of the project;
    - b. Identification of the emissions unit(s) with emissions of a regulated NSR pollutant that could be affected by the project;
    - c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under R18-2-401(20)(b)(iii) of the definition of projected actual emissions and an explanation for why such amount was excluded; and
    - d. Any netting calculations, if applicable.
  2. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out subsection (F)(1) to the Director. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.
  3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (F)(1)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of a section 302(j) category or if the emissions unit is located at a major stationary source that belongs to a section 302(j) category.
  4. The owner or operator shall submit a report to the Director if for a calendar year the annual emissions, in tons per year, from the project identified in subsection (F)(1)(a) exceed the sum of the baseline actual emissions, as docu-

mented and maintained under subsection (F)(1)(c), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subsection (F)(1)(c). The owner or operator shall submit the report to the Director within 60 days after the end of the calendar year. The report shall contain the following:

- a. The name, address and telephone number of the major source;
  - b. The annual emissions as calculated pursuant to subsection (F)(3); and
  - c. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.
5. Notwithstanding subsection (F)(4), if any existing emissions unit identified in subsection (F)(1)(b) is an electric utility steam generating unit, the owner or operator shall submit a report to the Director within 60 days after the end of each calendar year during which the owner or operator must generate records under subsection (F)(3). The report shall document the unit's post-project annual emissions during the calendar year that preceded submission of the report.
  6. A "reasonable possibility" under subsection (F) occurs when the owner or operator calculates the project to result in one of the following:
    - a. A projected actual emissions increase of at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant.
    - b. A projected actual emissions increase that, added to the amount of emissions excluded under subsection R18-2-401(20)(b)(iv) of the definition of projected actual emissions, sums to at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of subsection (F)(6)(b), and not also within the meaning of subsection (F)(6)(a), subsections (F)(2) through (5) do not apply to the project.
- G.** An application for a permit or permit revision under this Article, other than a PAL permit pursuant to R18-2-412, shall not be considered complete unless the application demonstrates that:
1. The requirements in subsection (H) are met;
  2. The more stringent of the applicable new source performance standards in Article 9 of this Chapter or the existing source performance standards in Article 7 of this Chapter are applied to the proposed new major source or major modification of a major source;
  3. The visibility requirements contained in R18-2-410 are satisfied;
  4. All applicable provisions of Article 3 of this Chapter are met;
  5. The new major source or major modification will be in compliance with whatever emission limitation, design, equipment, work practice or operational standard, or combination thereof is applicable to the source or modification. The degree of emission limitation required for control of any pollutant under this Article shall not be affected in any manner by:
    - a. Stack height in excess of GEP stack height except as provided in R18-2-332; or
    - b. Any other dispersion technique, unless implemented prior to December 31, 1970;
6. The new major source or major modification will not exceed the applicable standards for hazardous air pollutants contained in this Chapter;
  7. The new major source or major modification will not exceed the limitations, if applicable, on emission from nonpoint sources contained in Article 6 of this Chapter;
  8. A stationary source that will emit five or more tons of lead per year will not violate the ambient air quality standards for lead contained in R18-2-206;
  9. The new major source or major modification will not have an adverse impact on visibility, as determined according to R18-2-410.
- H.** Except for assessing air quality impacts within Class I areas, the air impact analysis required to be conducted as part of a permit application shall initially consider only the geographical area located within a 50 kilometer radius from the point of greatest emissions for the new major source or major modification. The Director, on his own initiative or upon receipt of written notice from any person shall have the right at any time to request an enlargement of the geographical area for which an air quality impact analysis is to be performed by giving the person applying for the permit or permit revision written notice thereof, specifying the enlarged radius to be so considered. In performing an air impact analysis for any geographical area with a radius of more than 50 kilometers, the person applying for the permit or permit revision may use monitoring or modeling data obtained from major sources having comparable emissions or having emissions which are capable of being accurately used in such demonstration, and which are subjected to terrain and atmospheric stability conditions which are comparable or which may be extrapolated with reasonable accuracy for use in such demonstration.
- I.** Unless the requirement has been satisfied pursuant to Article 3 of this Chapter, the Director shall comply with following requirements:
1. Within 60 days after receipt of an application for a permit or permit revision subject to this Article, or any addition to such application, the Director shall advise the applicant of any deficiency. The date of receipt of the application shall be, for the purpose of this Section, the date on which the Director received all required information. The permit application shall not be deemed complete if the Director fails to meet the requirements of this subsection.
  2. A copy of any notice required by R18-2-330 shall be sent to the permit applicant, to the Administrator, and to the following officials and agencies having cognizance over the location where the proposed major source or major modification would occur:
    - a. The air pollution control officer, if one exists, for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
    - b. The county manager for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
    - c. The city or town managers of the city or town which contains, and any city or town the boundaries of which are within 5 miles of, the location of the proposed or existing source that is the subject of the permit or permit revision application;
    - d. Any regional land use planning agency with authority for land use planning in the area where the pro-

- posed or existing source that is the subject of the permit or permit revision application is located; and
- e. Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the proposed source or modification.
3. The Director shall take final action on the application within one year of the proper filing of the completed application. The Director shall notify the applicant in writing of his approval or denial.
  4. The authority to construct and operate a new major source or major modification under a permit or permit revision issued under this Article shall terminate if the owner or operator does not commence the proposed construction or major modification within 18 months of issuance or if, during the construction or major modification, the owner or operator suspends work for more than 18 months. The Director may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

#### Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-402 repealed, new Section R9-3-402 adopted effective May 14, 1979 (Supp. 79-1). Amended and adopted by reference Open Burning Guidelines for Air Pollution Control effective September 22, 1983 (Supp. 83-5). Former Section R9-3-402 renumbered without change as Section R18-2-402 (Supp. 87-3). Section R18-2-402 renumbered to R18-2-602, new Section R18-2-402 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-403. Permits for Sources Located in Nonattainment Areas**

- A. Except as provided in subsections (C) through (G) below, no permit or permit revision shall be issued under this Article to a person proposing to construct a new major source or make a major modification that is major for the pollutant for which the area is designated nonattainment unless:
  1. The person demonstrates that the new major source or the major modification will meet an emission limitation which is the lowest achievable emission rate (LAER) for that source for that regulated NSR pollutant.
  2. The person demonstrates that all existing major sources owned or operated by that person (or any entity controlling, controlled by, or under common control with that person) in the state are in compliance with, or on a schedule of compliance for, all conditions contained in permits of each of the sources and all other applicable emission limitations and standards under the Act and this Chapter.
  3. The person demonstrates that emission reductions for the specific pollutant(s) from source(s) in existence in the allowable offset area of the new major source or major modification (whether or not under the same ownership) meet the offset requirements of R18-2-404.
- B. No permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source located in a nonattainment area unless:
  1. The person performs an analysis of alternative sites, sizes, production processes, and environmental control

techniques for such new major source or major modification; and

2. The Director determines that the analysis demonstrates that the benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.
- C. At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.
  - D. Secondary emissions shall not be considered in determining the potential to emit of a new source or modification and therefore whether the new source or modification is major. However, if a new source or modification is subject to this Section on the basis of its direct emissions, a permit or permit revision under this Article to construct the new source or modification shall be denied unless the requirements of R18-2-403(A)(3) and R18-2-404 are met for reasonably quantifiable secondary emissions caused by the new source or modification.
  - E. A permit to construct a new major source or major modification shall be denied unless the conditions specified in subsections (A)(1), (2), and (3) are met for fugitive emissions caused by the new source or modification. However, these conditions shall not apply to a new major source or major modification that would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.
  - F. The requirements of subsection (A)(3) shall not apply to temporary emissions units, such as pilot plants, portable facilities that will be relocated outside of the nonattainment area and the construction phase of a new source, if those units will operate for no more than 24 months in the nonattainment area, are otherwise in compliance with the requirement to obtain a permit under this Chapter and are in compliance with the conditions of that permit.
  - G. A decrease in actual emissions shall be considered in determining the potential of a new source or modification to emit only to the extent that the Director has not relied on it in issuing any permit or permit revision under this Article or the state has not relied on it in demonstrating attainment or reasonable further progress.
  - H. Within 30 days of the issuance of any permit under this Section, the Director shall submit control technology information from the permit to the Administrator for the purposes listed in Section 173(d) of the Act.
  - I. The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

#### Historical Note

Former Section R9-3-403 repealed, new Section R9-3-403 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-403 renumbered without change as Section R18-2-403 (Supp. 87-3). Section R18-2-403 renumbered to R18-2-603, new Section R18-2-403 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012



(Supp. 12-2).

**R18-2-404. Offset Standards**

- A.** Increased emissions by a major source or major modification subject to R18-2-403 shall be offset by real reductions in the actual emissions of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major. Except as provided in R18-2-405, emissions increases shall be offset by decreases at a ratio of at least 1 to 1.
- B.** Except as provided in subsection (B)(1) or (2), for sources and modifications subject to this Section, the baseline for determining credit for emissions reductions is the emissions limit for the source generating the offset credit under the applicable implementation plan in effect at the time the application for a permit or permit revision is filed.
1. The offset baseline shall be the actual emissions of the source from which offset credit is obtained where either of the following conditions is satisfied:
    - a. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted.
    - b. The applicable implementation plan does not contain an emissions limitation for that source or source category.
  2. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.
- C.** For an existing fuel combustion source, emissions offset credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable or actual emissions for the fuels involved is not acceptable, unless the permit for the existing source is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a fuel generating higher emissions. The owner or operator of the existing source must demonstrate that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.
- D.** Offset Credit for Shutdowns.
1. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be credited for offsets if they meet both of the following conditions.
    - a. The reductions are surplus, permanent, quantifiable, and federally enforceable.
    - b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the Director may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
  2. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection

(D)(1)(b) may be credited only if one of the following conditions is satisfied:

- a. The shutdown or curtailment occurred on or after the date the construction permit application is filed.
  - b. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of subsection (D)(1)(a).
- E.** No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314 (July 8, 1977).
- F.** All emission reductions claimed as offset credits shall be federally enforceable by the time a permit is issued to the owner or operator of the major source subject to this Section and shall be in effect by the time the new or modified source subject to the permit commences operation.
- G.** The owner or operator of a major source or major modification subject to this Section must obtain offset credits from the same source or from other sources in the same nonattainment area, except that the Director may allow the owner or operator to obtain offset credits from another nonattainment area if both of the following conditions are satisfied:
1. The other area has an equal or higher nonattainment classification than the area in which the source is located.
  2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.
- H.** Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under this Article or the state has not relied on it in a demonstration of attainment or reasonable further progress.
- I.** The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset under this Section shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
- J.** In ozone nonattainment areas classified as marginal, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.10 to 1. In ozone nonattainment areas classified as moderate, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.15 to 1. New major sources and major modifications in serious and severe ozone nonattainment areas shall comply with this Section and R18-2-405.

**Historical Note**

Former Section R9-3-404 repealed, new Section R9-3-404 adopted effective May 14, 1979 (Supp. 79-1). Amended by adding subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-404 renumbered without change as Section R18-2-404 (Supp. 87-3). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Section R18-2-404 renumbered to R18-2-604, new Section R18-2-404 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012

(Supp. 12-2).

**R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe**

- A. Applicability. The provisions of this Section only apply to stationary sources of VOC or nitrogen oxides in ozone nonattainment areas classified as serious or severe. Unless otherwise provided in this Section, all requirements of Articles 3 and 4 of this Chapter apply.
- B. “Significant” means, for the purposes of a major modification of any major stationary source of VOC or nitrogen oxides, or for determining whether an otherwise minor source is major under the definition of major source in R18-2-401, any physical change or change in the method of operations that results in net increases in emissions of either pollutant by more than 25 tons when aggregated with all other creditable increases and decreases in emissions from the source over the previous five consecutive calendar years, including the calendar year in which the increase is proposed.
- C. For any major source that emits or has the potential to emit less than 100 tons of VOC or oxides of nitrogen per year, a physical or operational change that results in a significant increase in VOC or oxides of nitrogen, respectively, from any discrete operation, unit, or other pollutant emitting activity at the source shall constitute a major modification, except that the increase shall not constitute a major modification, if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities at the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such an election, the change shall constitute a major modification but BACT shall be substituted for LAER when applying R18-2-403(A)(1) to the major modification.
- D. For any stationary source that emits or has the potential to emit 100 tons or more of VOC or oxides of nitrogen per year, a physical or operational change that results in any significant increase in VOC from any discrete operation, unit or other pollutant emitting activity at the source or oxides of nitrogen, respectively, shall constitute a major modification except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities within the source at an internal offset ratio of at least 1.3 to 1, R18-2-403(A)(1) shall not apply to the change.
- E. For any new major source or major modification that is classified as major because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as serious, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.2 to 1. The offset shall be made in accordance with the provisions of R18-2-404.
- F. For any new major source or major modification that is classified as such because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as severe, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.3 to 1. These offsets shall be made in accordance with the provisions of R18-2-404.

**Historical Note**

Former R9-3-405, Other industries, renumbered R9-3-406, new Section adopted effective September 17, 1975 (Supp. 75-1). Former Section R9-3-405 repealed, new Section R9-3-405 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5).

Former Section R9-3-405 renumbered without change as Section R18-2-405 (Supp. 87-3). Section R18-2-405 renumbered to R18-2-605, new Section R18-2-405 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas**

- A. Except as provided in subsections (B) through (G) below and R18-2-408 (Innovative control technology), no permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source that would be constructed in an area designated as attainment or unclassifiable for any regulated NSR pollutant unless the source or modification meets the following conditions:
1. A new major source shall apply best available control technology (BACT) for each regulated NSR pollutant for which the potential to emit is significant.
  2. A major modification shall apply BACT for each regulated NSR pollutant for which the project would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
  3. For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.
  4. BACT shall be determined on a case-by-case basis and may constitute application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques, for control of such pollutant. In no event shall such application of BACT result in emissions of any pollutant, which would exceed the emissions allowed by any applicable new source performance standard or national emission standard for hazardous air pollutants under Articles 9 and 11 of this Chapter or by the applicable implementation plan. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.
  5. The person applying for the permit or permit revision under this Article performs an air impact analysis and monitoring as specified in R18-2-407, and such analysis demonstrates that allowable emission increases from the proposed new major source or major modification, in conjunction with all other applicable emission increases or reductions, including secondary emissions, for all pol-

lutants listed in R18-2-218(A), and including minor and mobile source emissions of nitrogen oxides and PM<sub>10</sub>:

- a. Would not cause or contribute to concentrations of conventional air pollutants in violation of any ambient air quality standard in Article 2 of this Chapter in any air quality control region or any applicable maximum allowable increase under R18-2-218 over the baseline concentration for any attainment or unclassified area; or
  - b. Would not contribute to an increase in ambient concentrations for a pollutant by an amount in excess of the significance level for such pollutant in any adjacent area in which Arizona primary or secondary ambient air quality standards for that pollutant are being violated. A new major source of volatile organic compounds or nitrogen oxides, or a major modification to a major source of volatile organic compounds or nitrogen oxides shall be presumed to contribute to violations of the Arizona ambient air quality standards for ozone if it will be located within 50 kilometers of a nonattainment area for ozone. The presumption may be rebutted for a new major source or major modification if it can be satisfactorily demonstrated to the Director that emissions of volatile organic compounds or nitrogen oxides from the new major source or major modification will not contribute to violations of the Arizona ambient air quality standards for ozone in adjacent nonattainment areas for ozone. Such a demonstration shall include a showing that topographical, meteorological, or other physical factors in the vicinity of the new major source or major modification are such that transport of volatile organic compounds emitted from the source are not expected to contribute to violations of the ozone standards in the adjacent nonattainment areas.
6. Air quality models:
- a. All estimates of ambient concentrations required under this Section shall be based on the applicable air quality models, data basis, and other requirements specified in 40 CFR 51, Appendix W, "Guideline On Air Quality Models," as of July 1, 2011 (and no future amendments or editions), which shall be referred to hereinafter as "Guideline" and is adopted by reference and is on file with the Department.
  - b. Where an air quality impact model specified in the "Guideline" is not applicable, the model may be modified or another model substituted. Such a change shall be subject to notice and opportunity for public comment. Written approval of the EPA Administrator shall be obtained for any modification or substitution.
- B. The requirements of this Section shall not apply to a new major source or major modification to a source with respect to a particular pollutant if the person applying for the permit or permit revision under this Article demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment for the pollutant.
- C. The requirements of this Section shall not apply to a new major source or a major modification if such source or modification would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source 1980 does not belong to a section 302(j) category.
- D. The requirements of this Section shall not apply to a new major source or major modification to a source when the

owner of such source is a nonprofit health or educational institution.

- E. The requirements of this Section shall not apply to a portable source which would otherwise be a new major source or major modification to an existing source if such portable source will operate for no more than 24 months, is under a permit or permit revision under this Article, is in compliance with the conditions of that permit or permit revision under this Article, the emissions from the source will not impact a Class I area nor an area where an applicable increment is known to be violated, and reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Director not less than 10 calendar days in advance of the proposed relocation unless a different time duration is previously approved by the Director.
- F. Special rules applicable to Federal Land Managers:
1. Notwithstanding any other provision of this Section, a Federal Land Manager may present to the Director a demonstration that the emissions attributed to such new major source or major modification to a source would have an adverse impact on visibility or other specifically defined air quality related values of any Federal Mandatory area designated in R18-2-217(B) regardless of the fact that the change in air quality resulting from emissions attributable to such new major source or major modification to a source in existence will not cause or contribute to concentrations which exceed the maximum allowable increases for the area in R18-2-218. If the Director concurs with such demonstrations, the permit or permit revision under this Article shall be denied.
  2. If the owner or operator of a proposed new major source or a source for which major modification is proposed demonstrates to the Federal Land Manager that the emissions attributable to such major source or major modification will have no significant adverse impact on the visibility or other specifically defined air quality-related values of such areas and the Federal Land Manager so certifies to the Director, the Director may issue a permit or permit revision under this Article, notwithstanding the fact that the change in air quality resulting from emissions attributable to such new major source or major modification will cause or contribute to concentrations which exceed the maximum allowable increases for a Class I area. Such a permit or permit revision under this Article shall require that such new major source or major modification comply with such emission limitations as may be necessary to assure that emissions will not cause increases in ambient concentrations greater than the following maximum allowable increases over baseline concentrations for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM <sub>2.5</sub> :	
Annual arithmetic mean	4
24-hr maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91

3-hr maximum	325
Nitrogen dioxide	
Annual arithmetic mean	25

- G.** The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.
- H.** At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

#### Historical Note

Former Section R9-3-405, renumbered effective September 17, 1975 (Supp. 75-1). Former Section R9-3-406 repealed, new Section R9-3-406 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-406 renumbered without change as Section R18-2-406 (Supp. 87-3). Section R18-2-406 renumbered to R18-2-606, new Section R18-2-406 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). The references to R18-2-101(97)(a) in subsection (A)(1) and (2) amended to reference R18-2-101(104)(a) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

- A.** Any application for a permit or permit revision under this Article to construct a new major source or major modification to a major source shall contain an analysis of ambient air quality in the area that the new major source or major modification would affect for each of the following pollutants:
- For the new source, each pollutant that it would have the potential to emit in a significant amount;
  - For the modification, each pollutant for which it would result in a significant net emissions increase.
- B.** With respect to any such pollutant for which no Arizona ambient air quality standard exists, the analysis shall contain all air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of the pollutant would affect.
- C.** With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
- D.** In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.
- E.** The owner or operator of a proposed stationary source or modification to a source of volatile organic compounds who satisfies all conditions of 40 CFR 51, Appendix S, Section IV, may

provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subsections (B), (C), and (D) above.

- F.** Post-construction monitoring. The owner or operator of a new major source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the effect emissions from the new source or modification may have, or are having, on air quality in any area.
- G.** Operations of monitoring stations. The owner or operator of a new major source or major modification shall meet the requirements of 40 CFR 58, Appendix B, during the operation of monitoring stations for purposes of satisfying subsections (B) through (F) above.
- H.** The requirements of subsections (B) through (G) above shall not apply to a new major source or major modification to an existing source with respect to monitoring for a particular pollutant if:
- The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
    - Carbon Monoxide - 575  $\mu\text{g}/\text{m}^3$ , eight-hour average;
    - Nitrogen dioxide - 14  $\mu\text{g}/\text{m}^3$ , annual average;
    - $\text{PM}_{2.5}$  - 4  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - $\text{PM}_{10}$  - 10  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - Sulfur dioxide - 13  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - Lead - 0.1  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - Fluorides - 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average;
    - Total reduced sulfur - 10  $\mu\text{g}/\text{m}^3$ , one-hour average;
    - Hydrogen sulfide - 0.04  $\mu\text{g}/\text{m}^3$ , one-hour average;
    - Reduced sulfur compounds - 10  $\mu\text{g}/\text{m}^3$ , one-hour average;
    - Ozone - increased emissions of less than 100 tons per year of volatile organic compounds or oxides of nitrogen; or
  - The concentrations of the pollutant in the area that the new source or modification would affect are less than the concentrations listed in subsection (H)(1) above.
- I.** Any application for permit or permit revision under this Article to construct a new major source or major modification to a source shall contain:
- An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new source or modification and general commercial, residential, industrial, and other growth associated with the new source or modification. The applicant need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
  - An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new source or modification.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-407 renumbered without change as Section R18-2-407 (Supp. 87-3). Section R18-2-407 renumbered to R18-2-607, new Section R18-2-407 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-408. Innovative Control Technology

- A.** Notwithstanding the provisions of R18-2-406(A)(1) through (3), the owner or operator of a proposed new major source or major modification may request that the Director approve a

system of innovative control technology rather than the best available control technology requirements otherwise applicable to the new source or modification.

- B.** The Director shall approve the installation of a system of innovative control technology if the following conditions are met:
1. The owner or operator of the proposed source or modification satisfactorily demonstrates that the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
  2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under R18-2-406(A)(2) by a date specified in the permit or permit revision under this Article for the source. Such date shall not be later than four years from the time of start-up or seven years from the issuance of a permit or permit revision under this Article;
  3. The source or modification would meet requirements equivalent to those in R18-2-406(A) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified in the permit or permit revision under this Article.
  4. Before the date specified in the permit or permit revision under this Article, the source or modification would not:
    - a. Cause or contribute to any violation of an applicable state ambient air quality standard; or
    - b. Impact any area where an applicable increment is known to be violated.
  5. All other applicable requirements including those for public participation have been met.
  6. The Director receives the consent of the governors of other affected states.
  7. The limits on pollutants contained in R18-2-218 for Class I areas will be met for all periods during the life of the source or modification.
- C.** The Director shall withdraw any approval to employ a system of innovative control technology made under this Section if:
1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
  2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
  3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.
- D.** If the new source or major modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection (C) above, the Director may allow the owner or operator of the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-408 renumbered without change as Section R18-2-408 (Supp. 87-3). Section R18-2-408 renumbered to R18-2-608, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-409. Air Quality Models

- A.** Where the Director requires a person requesting a permit or permit revision under this Article to perform air quality impact

modeling to obtain such permit or permit revision under this Article, the modeling shall be performed in a manner consistent with the Guideline specified in R18-2-406(A)(6)(a).

- B.** Where the person requesting a permit or permit revision under this Article can demonstrate that an air quality impact model specified in the Guideline is inappropriate, the model may be modified or another model substituted. However, before such modification or substitution can occur, the Director shall make a written finding that:
1. No model in the Guideline is appropriate for a particular permit or permit revision under this Article under consideration, or
  2. The data base required for the appropriate model in the Guideline is not available, and
  3. The model proposed as a substitute or modification is likely to produce results equal or superior to those obtained by models in the Guideline, and
  4. The model proposed as a substitute or modification has been approved by the Administrator.
- C.** The substitution or modification of an air quality model under this Section shall be included in the public notice under R18-2-330(C).

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-409 renumbered without change as Section R18-2-409 (Supp. 87-3). Section R18-2-409 renumbered to R18-2-609, new Section R18-2-409 adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-410. Visibility Protection

- A.** For any new major source or major modification subject to the provisions of this Chapter, no permit or permit revision under this Article shall be issued to a person proposing to construct or modify the source unless the applicant has provided:
1. An analysis of the anticipated impacts of the proposed source on visibility in any Class I areas which may be affected by the emissions from that source; and
  2. Results of monitoring of visibility in any area near the proposed source for such purposes and by such means as the Director determines is necessary and appropriate.
- B.** A determination of an adverse impact on visibility shall be made based on consideration of all of the following factors:
1. The times of visitor use of the area;
  2. The frequency and timing of natural conditions in the area that reduce visibility;
  3. All of the following visibility impairment characteristics:
    - a. Geographic extent,
    - b. Intensity,
    - c. Duration,
    - d. Frequency,
    - e. Time of day;
  4. The correlation between the characteristics listed in subsection (B)(3) and the factors described in subsections (B)(1) and (2).
- C.** The Director shall not issue a permit or permit revision pursuant to this Article or Article 3 of this Chapter for any new major source or major modification subject to this Chapter unless the following requirements have been met:
1. The Director shall notify the individuals identified in subsection (C)(2) within 30 days of receipt of any advance notification of any such permit or permit revision under this Article.
  2. Within 30 days of receipt of an application for a permit or permit revision under this Article for a source whose emissions may affect a Class I area, the Director shall provide written notification of the application to the Fed-

eral Land Manager and the federal official charged with direct responsibility for management of any lands within any such area. The notice shall:

- a. Include a copy of all information relevant to the permit or permit revision under this Article,
  - b. Include an analysis of the anticipated impacts of the proposed source on visibility in any area which may be affected by emissions from the source, and
  - c. Provide for no less than a 30-day period within which written comments may be submitted.
3. The Director shall consider any analysis provided by the Federal Land Manager that is received within the comment period provided in subsection (C)(2).
- a. Where the Director finds that the analysis provided by the Federal Land Manager does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the area, the Director shall, within the public notice required under R18-2-330, either explain the decision or specify where the explanation can be obtained.
  - b. When the Director finds that the analysis provided by the Federal Land Manager demonstrates to the satisfaction of the Director that an adverse impact on visibility will result in the area, the Director shall not issue a permit or permit revision under this Article for the proposed major new source or major modification.
4. When the proposed permit decision is made, pursuant to R18-2-304(J), and available for public review, the Director shall provide the individuals identified in subsection (C)(2) with a copy of the proposed permit decision and shall make available to them any materials used in making that determination.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-410 renumbered without change as Section R18-2-410 (Supp. 87-3). Section R18-2-410 renumbered to R18-2-610, new Section R18-2-410 adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-411. Repealed

#### Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-412. PALs

##### A. Applicability.

1. The Director may approve the use of a PAL for any existing major source if the PAL meets the requirements of this Section.
2. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Section, and complies with the PAL permit:
  - a. Is not a major modification for the PAL pollutant,
  - b. Does not have to be approved through the PSD program, and
  - c. Is not subject to the provisions in R18-2-403(C) or R18-2-406(H).
3. Except as provided under subsection (A)(2)(c), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

**B.** Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major source shall submit the following information to the Director for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.
2. Calculations of the baseline actual emissions (with supporting documentation).
3. The calculation procedures that the major source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (L)(1).

**C.** General requirements for establishing PALs.

1. The Director is allowed to establish a PAL at a major source, provided that at a minimum, the following requirements are met:
  - a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month sum, rolled monthly). For each month during the first 11 months from the PAL effective date, the major source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
  - b. The PAL shall be established in a PAL permit that meets the requirements in subsection (D).
  - c. The PAL permit shall contain all the requirements of subsection (F).
  - d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major source.
  - e. Each PAL shall regulate emissions of only one pollutant.
  - f. Each PAL shall have a PAL effective period of 10 years.
  - g. The owner or operator of the major source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections (K) through (M) for each emissions unit under the PAL through the PAL effective period.
2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under R18-2-404 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**D.** Action on PAL permit application. A PAL permit application shall be processed in accordance with one of the following:

1. As an initial Class I permit pursuant to R18-2-304.
2. As a renewal of a Class I permit pursuant to R18-2-322.
3. As a significant revision to a Class I permit pursuant to R18-2-320.

- E.** Setting the 10-year actuals PAL level.
1. Except as provided in subsection (E)(2), the PAL level for a major source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant. When establishing the PAL level, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
  2. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (E)(1), the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.
- F.** Contents of the PAL permit. The PAL permit must contain, at a minimum, the following information:
1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.
  2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
  3. Specification in the PAL permit that if a major source owner or operator applies to renew a PAL in accordance with subsection (I) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.
  4. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
  5. A requirement that, once the PAL expires, the major source is subject to the requirements of subsection (H).
  6. The calculation procedures that the major source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subsection (L)(1).
  7. A requirement that the major source owner or operator monitor all emissions units in accordance with the provisions under subsection (K).
  8. A requirement to retain the records required under subsection (L) onsite. Such records may be retained in an electronic format.
  9. A requirement to submit the reports required under subsection (M) by the required deadlines.
  10. Any other requirements that the Director deems necessary to implement and enforce the PAL.
- G.** PAL effective period and reopening of the PAL permit.
1. PAL effective period. The Director shall specify a PAL effective period of 10 years.
  2. Reopening of the PAL permit.
    - a. During the PAL effective period, the Director must reopen the PAL permit to:
      - i. Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL,
      - ii. Reduce the PAL if the owner or operator of the major source creates creditable emissions reductions for use as offsets under R18-2-404, and
      - iii. Revise the PAL to reflect an increase in the PAL as provided under subsection (J).
    - b. The Director shall have discretion to reopen the PAL permit for the following:
      - i. Reduce the PAL to reflect new federal applicable requirements with compliance dates after the PAL effective date;
      - ii. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major source under the State Implementation Plan; and
      - iii. Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.
    - c. Except for the permit reopening in subsection (G)(2)(a)(i) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection (D).
- H.** Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in subsection (I) shall expire at the end of the PAL effective period, and the following requirements shall apply.
1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.
    - a. Within the time-frame specified for PAL renewals in subsection (I)(2), the major source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate) by distributing the PAL allowable emissions for the major source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as would be required under subsection (I)(5), such distribution shall be made as if the PAL had been adjusted.
    - b. The Director shall decide how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.
  2. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS,

- CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
3. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (H)(1)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
  4. Any physical change or change in the method of operation at the major source will be subject to the applicability criteria set forth at subsection (C).
  5. The major source owner or operator shall continue to comply with any applicable requirements that may have applied during the PAL effective period. Emission limitations that were eliminated by the PAL in accordance with subsection (A)(2)(c) shall not be reinstated.
- I. Renewal of a PAL.**
1. The Director shall follow the procedures specified in subsection (F) in approving any request to renew a PAL for a major source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.
  2. Application deadline. A major source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
  3. Application requirements. The application to renew a PAL permit shall contain the following information.
    - a. The information required in subsections (B)(1) through (3).
    - b. A proposed PAL level.
    - c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
    - d. Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.
  4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subsections (I)(4)(a) and (b). However, in no case may any such adjustment fail to comply with subsection (I)(4)(c).
    - a. If the emissions level calculated in accordance with subsection (F) is equal to or greater than 80% of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subsection (I)(4)(b); or
    - b. The Director may set the PAL at a level that the Director determines to be more representative of the source's baseline actual emissions, or that the Director determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in the Director's written rationale.
  5. Notwithstanding subsections (I)(4)(a) and (b):
    - i. If the potential to emit of the major source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and
    - ii. The Director shall not approve a renewed PAL level higher than the current PAL, unless the PAL has been increased in accordance with subsection (J).
- J. Increasing a PAL during the PAL effective period.**
1. The Director may increase a PAL emission limitation only if the following requirements are met:
    - a. The owner or operator of the major source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major source's emissions to equal or exceed its PAL.
    - b. As part of this application, the major source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT or LAER equivalent controls, plus the sum of the PAL allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT or LAER equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT or LAER analysis at the time the application is submitted, as applicable for the particular PAL pollutant, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
    - c. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (J)(1)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
    - d. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
  2. The Director shall calculate the new PAL level as the sum of the PAL allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT or LAER equivalent controls as determined in accordance with subsection (J)(1)(b), plus the sum of the baseline actual emissions of the small emissions units.



3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection (D).
- K. Monitoring requirements for PALs.**
1. General requirements.
    - a. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
    - b. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsections (K)(2)(a) through (d) and must be approved by the Director.
    - c. Notwithstanding subsection (K)(1)(b), the owner or operator may also employ an alternative monitoring approach if approved by the Director as meeting the requirements of subsection (K)(1)(a).
    - d. Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.
  2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (K)(3) through (9):
    - a. Mass balance calculations for activities using coatings or solvents,
    - b. CEMS,
    - c. CPMS or PEMS, and
    - d. Emission factors.
  3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
    - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
    - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
    - c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a site-specific monitoring program to support another content within the range.
  4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
    - a. CEMS must comply with applicable Performance Specifications found in 40 CFR 60, Appendix B; and
    - b. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
  5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
    - a. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
    - b. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.
  6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
    - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
    - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
    - c. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the Director determines that testing is not required.
  7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
  8. Notwithstanding the requirements in subsections (K)(3) through (7), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:
    - a. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s), or
    - b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
  9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every five years after issuance of the PAL.
- L. Recordkeeping requirements.**
1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Section and with the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:
  - a. A copy of the PAL permit application and any applications for revisions to the PAL, and
  - b. Each annual certification of compliance pursuant to R18-2-309(2) and the data relied on in certifying compliance.
- M. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with R18-2-306(A)(5). The reports shall meet the following requirements:
  1. Semi-annual report. The semi-annual report shall be submitted to the Director within 30 days of the end of each reporting period. This report shall contain the following information:
    - a. The identification of owner and operator and the permit number.
    - b. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subsection (L)(1).
    - c. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
    - d. A list of any emissions units modified or added to the major source during the preceding six-month period.
    - e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
    - f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subsection (K)(7).
    - g. A certification by the responsible official consistent with R18-2-304(H).
  2. Deviation report. The major source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL permit requirements, including periods where no monitoring is available, in accordance with R18-2-306(A)(5). The reports shall contain the following information:
    - a. The identification of owner and operator and the permit number,
    - b. The PAL permit requirement that experienced the deviation or that was exceeded,
    - c. Emissions resulting from the deviation or the exceedance, and
    - d. A certification by the responsible official consistent with R18-2-304(H).
  3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or method within three months after completion of such test or method.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

## ARTICLE 5. GENERAL PERMITS

### R18-2-501. Applicability

- A. The Director may issue general permits for a facility class that contains 10 or more facilities that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, or recordkeeping. "Similar in nature" refers to facility size, processes, and operating conditions.
- B. The Director may issue general permits, in accordance with subsection (A), with emission limitations, controls, or other requirements that meet the requirements of R18-2-306.01. A source that seeks to vary from such a general permit, and obtain an emission limitation, control, or other requirement not contained in that general permit, shall apply for a permit pursuant to Article 3 of this Chapter.
- C. General permits shall not be issued for affected sources except as provided in regulations promulgated by the Administrator under Title IV of the Act.
- D. Unless otherwise stated, the provisions of Article 3 shall apply to general permits.

#### Historical Note

Former Section R18-2-501 renumbered to R18-2-502, new Section R18-2-501 adopted effective September 26, 1990 (Supp. 90-3). Former Section R18-2-501 renumbered to R18-2-701; new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3).

### R18-2-502. General Permit Development

- A. The Director may issue a general permit on the Director's own initiative or in response to a petition.
- B. Any person may submit a petition to the Director requesting the issuance of a general permit for a defined class of facilities. The petition shall propose a particular class of facilities, and list the approximate number of facilities in the proposed class along with their size, processes, and operating conditions, and demonstrate how the class meets the criteria for a general permit as specified in R18-2-501 and A.R.S. § 49-426(H). The Director shall provide a written response to the petition within 120 days of receipt.
- C. General permits shall be issued for classes of facilities using the same engineering principles that applies to permits for individual sources and following the public notice requirements of R18-2-504.
- D. General permits shall include all of the following:
  1. All elements contained in R18-2-306(A) except R18-2-306(A)(2)(b) and (6).
  2. The process for individual sources to apply for coverage under the general permit.
- E. General permits developed by the Director shall require sources that are covered under the general permit to install and operate reasonably available control technology for any regulated Minor NSR pollutants allowed under the general permit at an amount equal to or greater than the permitting exemption threshold. This requirement shall not apply to any pollutants subject to an emissions standard established or revised by the Administrator under section 111 or 112 of the Act after November 15, 1990.

#### Historical Note

Former Section R9-3-501 repealed, new Section R9-3-501 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (D) effective June 19, 1981 (Supp. 81-3).

Amended subsections (C) and (D) effective February 2, 1982 (Supp. 82-1). Amended subsection (D) effective May 25, 1982 (Supp. 82-3). Former Section R9-3-501 renumbered without change as Section R18-2-501 (Supp. 87-3). Former Section R18-2-502 repealed, new Section R18-2-502 renumbered from R18-2-501 and amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-502 renumbered to R18-2-702; new Section R18-2-502 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-503. Application for Coverage under General Permit**

- A. Once the Director has issued a general permit, any source which is a member of the class of facilities covered by the general permit may apply to the Director for authority to operate under the general permit. At the time the Director issues a general permit, the Director may also establish a specific application form with filing instructions for sources in the category covered by the general permit. Applicants shall complete the specific application form or, if none has been adopted, the standard application form contained in Appendix 1 to this Chapter. The specific application form shall, at a minimum, require the applicant to submit the following information:
  1. Information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine qualification for, and to assure compliance with, the general permit.
  2. A compliance plan that meets the requirements of R18-2-309.
- B. For sources required to obtain a permit under Title V of the Act, the Director shall provide the Administrator with a permit application summary form and any relevant portion of the permit application and compliance plan. To the extent possible, this information shall be provided in computer-readable format compatible with the Administrator's national database management system.
- C. The Director shall act on the application for coverage under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time. The Director may defer acting on an application under this subsection (if) the Director has provided notice of intent to renew or not renew the permit.
- D. The Director shall deny an application for coverage from any Class I source that is subject to case-by-case standards or requirements.

#### **Historical Note**

Former Section R9-3-503 repealed, new Section R9-3-503 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (6) effective June 19, 1981 (Supp. 81-3). Amended subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-503 renumbered without change as Section R18-2-503 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-503 renumbered to R18-2-703; new Section R18-2-503 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-504. Public Notice**

- A. This Section applies to issuance, revision, or renewal of a general permit.
- B. The Director shall provide public notice for any proposed new general permit, for any revision of an existing general permit, and for renewal of an existing general permit.

- C. The Director shall publish notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county and shall provide at least 30 days from the date of the first notice for public comment. The notice shall describe the following:
  1. The proposed permit;
  2. The category of sources that would be affected;
  3. The air contaminants which the Director expects to be emitted by a typical facility in the class and the class as a whole;
  4. The Director's proposed actions and effective date for the actions;
  5. Locations where documents relevant to the proposed permit will be available during normal business hours;
  6. The name, address, and telephone number of a person within the Department who may be contacted for further information;
  7. The address where any person may submit comments or request a public hearing and the date and time by which comments or a public hearing request are required to be received;
  8. The process by which sources may obtain authorization to operate under the general permit.
- D. For general permits under which operation may be authorized in lieu of Class I permits, the Director shall give notice of the proposed general permit to each affected state at the same time that the proposed general permit goes out for public notice. The Director shall provide the proposed final permit to the Administrator after public and affected state review. No Class I permit shall be issued if the Administrator properly objects to its issuance in writing within 45 days from receipt of the proposed final permit and any necessary supporting information from the Director.
- E. Written comments to the Director shall include the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued pursuant to the criteria for issuance in A.R.S. §§ 49-426 and 49-427 and this Chapter.
- F. At the time a general permit is issued, the Director shall make available a response to all relevant comments on the proposed permit raised during the public comment period and during any requested public hearing. The response shall specify which provisions, if any, of the proposed permit have been changed and the reason for the changes. The Director shall also notify in writing any petitioner and each person who has submitted written comments on the proposed general permit or requested notice of the final permit decision.

#### **Historical Note**

Former Section R9-3-504 repealed, new Section R9-3-504 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-504 renumbered without change as Section R18-2-504 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-504 renumbered to R18-2-704; new Section R18-2-504 adopted effective November 15, 1993 (Supp. 93-4).

#### **R18-2-505. General Permit Renewal**

- A. The Director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall coincide with the term of the general permit regardless of when the authorization began during the five-year period, except as provided in R18-2-510(C). In addition to the public notice required to issue a proposed permit under R18-2-504, the Director shall notify in writing all sources who

have been granted, or who have applications pending for, authorization to operate under the permit. The written notice shall describe the source's duty to reapply and may include requests for information required under the proposed permit.

- B.** At the time a general permit is renewed, the Director shall notify in writing all sources who were granted coverage under the previous permit and shall require them to submit a timely renewal application. For purposes of general permits, a timely application is one that is submitted within the time-frame specified by the Director in the written notification. Until such time that a timely application is submitted, the source shall continue to comply with the previously issued general permit coverage. Upon submittal of a timely application, the source shall comply with the renewed permit. Failure to submit a timely application terminates the source's right to operate.

#### Historical Note

Former Section R9-3-1007 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-505 repealed, new Section R9-3-505 adopted effective May 14, 1979 (Supp. 79-1). Editorial corrections, subsection (B), paragraph (5), and subsection (D), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-505 renumbered without change as Section R18-2-505 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-505 renumbered to R18-2-705; new Section R18-2-505 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### R18-2-506. Relationship to Individual Permits

Any source covered under a general permit may request to be excluded from coverage by applying for an individual source permit. Coverage under the general permit shall terminate on the date the individual permit is issued.

#### Historical Note

Former Section R9-3-1008 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-506 repealed, new Section R9-3-506 adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (1) effective June 19, 1981 (Supp. 81-3). Former Section R9-3-506 renumbered without change as Section R18-2-506 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-506 renumbered to R18-2-706; new Section R18-2-506 adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-507. General Permit Variances

- A.** Where MACT (maximum achievable control technology) or HAPRACT (hazardous air pollutant reasonably available control technology) has been established in a general permit for a source category designated under R18-2-1702, the owner or operator of a source within that source category may apply for a variance from the standard by demonstrating compliance with R18-2-1708 at the time the source applies for coverage under the general permit.
- B.** If the owner or operator makes the showing required by R18-2-1708 and otherwise qualifies for the general permit, the Director shall, in accordance with the procedures established pursuant to this Article, approve the application and authorize operation under a variance from the standard of the general permit.

- C.** Except as modified by the variance, the source shall comply with all conditions of the general permit.
- D.** A proposed variance to a standard in a general permit shall be subject to the public notice requirements of R18-2-330.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-507 renumbered without change as Section R18-2-507 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-507 renumbered to R18-2-707; new Section R18-2-507 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

#### R18-2-508. General Permit Shield

Each general permit issued under this Article shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that, as of the date authority to operate for a source is granted, compliance with the conditions of the permit shall be deemed compliance with any applicable requirement in effect on the date of permit issuance. Any permit under this Article that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. A permit shield provided for a general permit shall meet all the requirements of R18-2-325.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-508 renumbered without change as Section R18-2-508 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-508 renumbered to R18-2-708; new Section R18-2-508 adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-509. General Permit Appeals

Any person who filed a comment on a proposed general permit as provided in R18-2-504 may appeal the terms and conditions of the general permit, as they apply to the facility class covered under a general permit, by filing an appeal with the Office of Administrative Hearings within 30 days after receipt of notice that the general permit has been issued.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-509 renumbered without change as Section R18-2-509 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-509 renumbered to R18-2-709; new Section R18-2-509 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

#### R18-2-510. Terminations of General Permits and Revocations of Authority to Operate under a General Permit

- A.** The Director may terminate a general permit at any time if:
1. The Director has determined that the emissions from the sources in the facility class cause or contribute to ambient

air quality standard violations which are not adequately addressed by the requirements in the general permit, or

2. The Director has determined that the terms and conditions of the general permit no longer meet the requirements of A.R.S. §§ 49-426 and 49-427.

- B. The Director shall provide written notice to all sources operating under a general permit prior to termination of a general permit. Such notice shall include an explanation of the basis for the proposed action. Within 180 days of receipt of the notice of the expiration, termination or cancellation of any general permit, sources notified shall submit an application to the Director for an individual permit.
- C. The Director may require a source authorized to operate under a general permit to apply for and obtain an individual source permit at any time if the source is not in compliance with the terms and conditions of the general permit.
- D. If the Director revokes a source's authority to operate under a general permit pursuant to subsection (C), the Director shall notify the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation of authority and a statement that the permittee is entitled to a hearing. A source previously authorized to operate under a general permit may operate under the terms of the general permit until the earlier of the date it submits a complete application for an individual permit, at which time it may operate under that application, or 180 days after receipt of the notice of revocation of authority to operate under the general permit.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsections (E)(3) and (E)(4) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-510 renumbered without change as Section R18-2-510 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-510 renumbered to R18-2-710; new Section R18-2-510 adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-511. Fees Related to General Permits

- A. Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of each application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B. Administrative or Inspection Fee. The owner or operator of a source required to have a general permit, that has undergone initial startup by January 1, shall pay, for each calendar year, the applicable administrative or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
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Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$750
Other Class II Title V General Permits	\$4,520
	<b>Inspection Fee</b>
Class II Non-Title V Crematories	\$1,500
Other Class II Non-Title V General Permits	\$3,020

#### Historical Note

Former Section R18-2-511 renumbered to R18-2-711; new Section R18-2-511 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4).

#### R18-2-512. Changes to Facilities Granted Coverage under General Permits

- A. This Section applies to changes made at a facility that has been granted coverage under a general permit.
- B. Facility Changes that Require New Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source requests new authorization to operate from the Director:
  1. Adding new emissions units that require new authorization to operate,
  2. Installing replacement emissions units that require authorization to operate.
- C. Facility Changes that Do Not Require Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source provides written notification to the Department:
  1. Adding new emissions units that do not require authorization to operate,
  2. Installing a replacement emissions unit with a higher capacity that does not require authorization to operate,
  3. Adding or replacing air pollution control equipment.
- D. A source that has been granted coverage under a general permit shall keep a record of any physical change or change in the method of operation that could affect emissions. The record shall include a description of the change and the date the change occurred.
- E. For sources that submit a request or notification under subsection (B) or (C), the applicant shall provide information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine continued qualification for, and to assure compliance with, the general permit. The Director shall act on a request for new authority to operate under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-512 renumbered without change as Section R18-2-512 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-712 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August

7, 2012 (Supp. 12-2).

**R18-2-513. Portable Sources Covered under a General Permit**

- A. This Section applies to sources that have been granted coverage under a general permit that allows for the operation of a source at more than one location.
- B. General permits developed by the Director for portable sources shall contain conditions that will assure compliance with all applicable requirements at all authorized locations.
- C. Owners and operators that hold multiple coverages under the same general permit may interchange equipment between sources without obtaining new authorization to operate. At no time shall an owner or operator interchange equipment that would cause the combined facility to exceed emission limitations in the general permit. Equipment covered under different general permits shall not be interchanged except that a new authorization to operate is obtained in accordance with this Article.
- D. Owners and operators that operate multiple portable sources under a general permit shall have an equivalent number of coverages under a general permit as the number of locations at which each portable source operates.
- E. A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has been granted coverage under a general permit that subsequently obtains a county permit shall request that the Director terminate the coverage under the general permit. Upon issuance of the county permit, the coverage under the general permit issued by the Director is no longer valid.
- F. A portable source which has a county permit but proposes to operate outside that county may obtain coverage under a general permit from the Director. A portable source that has a permit issued by a county and obtains coverage under a general permit issued by the Director shall request that the county terminate the permit. Upon issuance of coverage under a general permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (G).
- G. A portable source granted coverage under a general permit may be transferred from one location to another provided that the owner or operator of such equipment notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer prior to the transfer. The notification required under this subsection shall include:
  1. A description of the equipment to be transferred including the permit number and as appropriate the Authorization-to-Operate number for each piece of equipment;
  2. A description of the present location;
  3. A description of the location to which the equipment is to be transferred, including the availability of all utilities, such as water and electricity, necessary for the proper operation of all control equipment;
  4. The date on which the equipment is to be moved;
  5. The date on which operation of the equipment will begin at the new location;
  6. A complete equipment list of all equipment that will be located at the new location; and
  7. Revised emissions calculations demonstrating that the equipment at the new location continues to qualify for the general permit under which the source has coverage.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (2) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-513 renumbered without change as Section R18-2-513 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-713 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-514. Renumbered**

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-514 renumbered without change as Section R18-2-514 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-714 effective November 14, 1993 (Supp. 93-4).

**R18-2-515. Renumbered**

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Section R9-3-515 will be repealed and new Section R9-3-515 adopted effective following the adoption of Article 7. Nonferrous Smelter Orders, filed September 18, 1979 for public hearing (Supp. 79-5). Section R9-3-515 adopted effective May 14, 1979, amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Section R9-3-515 filed September 18, 1979 for public hearing and effective following the adoption of Article 7 now amended and effective January 8, 1980 (Supp. 80-1). Amended as an emergency effective March 6, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency adoption effective March 6, 1980 now adopted and amended effective July 9, 1980. Amended subsection (C), paragraph (1) effective August 29, 1980 (Supp. 80-4). Amended as an emergency effective October 9, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 9, 1980, now adopted and amended effective June 19, 1981 (Supp. 81-3). Amended subsection (B), paragraph (1) effective February 2, 1982 (Supp. 82-1). Amended effective May 25, 1982 (Supp. 82-3). Amended subsections ((C)(3) and (C)(5) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-515 renumbered without change as Section R18-2-515 (Supp. 87-3). Section amended and subsections (C)(1)(h) through (C)(7) renumbered to R18-2-515.01 and subsections (C)(8) through (C)(9) renumbered to R18-2-515.02 effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715 effective November 15, 1993 (Supp. 93-4).

**R18-2-515.01. Renumbered**

**Historical Note**

Section R18-2-515.01 renumbered from R18-2-515(C)(1)(h) through (C)(7) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.01 effective November 15, 1993 (Supp. 93-4).

**R18-2-515.02. Renumbered**

**Historical Note**

R18-2-515.02 renumbered from R18-2-515(C)(8) through (C)(9) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.02 effective November 15, 1993 (Supp. 93-4).

**R18-2-516. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-4). Former Section R9-3-516 renumbered without change as Section R18-2-516 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-716 effective November 15, 1993 (Supp. 93-4).

**R18-2-517. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-517 renumbered without change as Section R18-2-517 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-717 effective November 15, 1993 (Supp. 93-4).

**R18-2-518. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-4). Former Section R9-3-518 renumbered without change as Section R18-2-518 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-718 effective November 15, 1993 (Supp. 93-4).

**R18-2-519. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (A), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-519 renumbered without change as Section R18-2-519 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-719 effective November 15, 1993 (Supp. 93-4).

**R18-2-520. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (1) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-520 renumbered without change as Section R18-2-520 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-720 effective November 15, 1993 (Supp. 93-4).

(Supp. 93-4).

**R18-2-521. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-521 renumbered without change as Section R18-2-521 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-721 effective November 15, 1993 (Supp. 93-4).

**R18-2-522. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-522 renumbered without change as Section R18-2-522 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-722 effective November 15, 1993 (Supp. 93-4).

**R18-2-523. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-523 renumbered without change as Section R18-2-523 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-723 effective November 15, 1993 (Supp. 93-4).

**R18-2-524. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-524 renumbered without change as Section R18-2-524 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-724 effective November 15, 1993 (Supp. 93-4).

**R18-2-525. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B) (Supp. 79-6). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-525 renumbered without change as Section R18-2-525 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-725 effective November 15, 1993 (Supp. 93-4).

**R18-2-526. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-526 renumbered without change as Section R18-2-526 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-726 effective November 15, 1993 (Supp. 93-4).

**R18-2-527. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-527 renumbered without change as Section

R18-2-527 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-727 effective November 15, 1993 (Supp. 93-4).

#### **R18-2-528. Renumbered**

##### **Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-528 renumbered without change as Section R18-2-528 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-728 effective November 15, 1993 (Supp. 93-4).

#### **R18-2-529. Renumbered**

##### **Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-529 renumbered without change as Section R18-2-529 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-729 effective November 15, 1993 (Supp. 93-4).

#### **R18-2-530. Renumbered**

##### **Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-730 effective November 15, 1993 (Supp. 93-4).

### **ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES**

#### **R18-2-601. General**

For purposes of this Article, any source of air contaminants which due to lack of an identifiable emission point or plume cannot be considered a point source, shall be classified as a nonpoint source. In applying this criteria, such items as air-curtain destructors, heater-planners, and conveyor transfer points shall be considered to have identifiable plumes. Any affected facility subject to regulation under Article 7 of this Chapter or Title 18, Chapter 2, Article 9, shall not be subject to regulation under this Article.

##### **Historical Note**

Former Section R9-3-601 repealed, new Section R9-3-601 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-601 renumbered without change as Section R18-2-601 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-601 renumbered to R18-2-801, new Section R18-2-601 renumbered from R18-2-401 and amended effective November 15, 1993 (Supp. 93-4). Section updated to reflect corrected citation reference (Supp. 08-1).

#### **R18-2-602. Unlawful Open Burning**

A. In addition to the definitions contained in A.R.S. § 49-501, in this Section:

1. "Agricultural burning" means burning vegetative materials related to producing and harvesting crops and raising animals for the purpose of marketing for profit, or providing a livelihood, but does not include burning of household waste or prohibited materials. A person may conduct agricultural burns in fields, piles, ditch banks, fence rows, or canal laterals for purposes such as weed control, waste disposal, disease and pest prevention, or site preparation.
2. "Approved waste burner" means an incinerator constructed of fire resistant material with a cover or screen that is closed when in use, and has openings in the sides or top no greater than one inch in diameter.
3. "Class I Area" means any one of the Arizona mandatory federal Class I areas defined in A.R.S. § 49-401.01.

4. "Construction burning" means burning wood or vegetative material from land clearing, site preparation, or fabrication, erection, installation, demolition, or modification of any buildings or other land improvements, but does not include burning household waste or prohibited material.
5. "Dangerous material" means any substance or combination of substances that is capable of causing bodily harm or property loss unless neutralized, consumed, or otherwise disposed of in a controlled and safe manner.
6. "Delegated authority" means any of the following:
  - a. A county, city, town, air pollution control district, or fire district that has been delegated authority to issue open burning permits by the Director under A.R.S. § 49-501(E); or
  - b. A private fire protection service provider that has been assigned authority to issue open burning permits by one of the authorities in subsection (A)(6)(a).
7. "Director" means the Director of the Department of Environmental Quality, or designee.
8. "Emission reduction techniques" means methods for controlling emissions from open outdoor fires to minimize the amount of emissions output per unit of area burned.
9. "Flue," as used in this Section, means any duct or passage for air or combustion gases, such as a stack or chimney.
10. "Household waste" means any solid waste including garbage, rubbish, and sanitary waste from a septic tank that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas, but does not include construction debris, landscaping rubble, or demolition debris.
11. "Independent authority to permit fires" means the authority of a county to permit fires by a rule adopted under Arizona Revised Statutes, Title 49, Chapter 3, Article 3, and includes only Maricopa, Pima, and Pinal counties.
12. "Open outdoor fire or open burning" means the combustion of material of any type, outdoors and in the open, where the products of combustion are not directed through a flue. Open outdoor fires include agricultural, residential, prescribed, and construction burning, and fires using air curtain destructors.
13. "Prohibited materials" means nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; lead-painted wood; linoleum flooring, and composite counter-tops; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil, and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes, and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.
14. "Residential burning" means open burning of vegetative materials conducted by or for the occupants of residential dwellings, but does not include burning household waste or prohibited material.
15. "Prescribed burning" has the same meaning as in R18-2-1501.



- B.** Unlawful open burning. Notwithstanding any other rule in this Chapter, a person shall not ignite, cause to be ignited, permit to be ignited, allow, or maintain any open outdoor fire in a county without independent authority to permit fires except as provided in A.R.S. § 49-501 and this Section.
- C.** Open outdoor fires exempt from a permit. The following fires do not require an open burning permit from the Director or a delegated authority:
1. Fires used only for:
    - a. Cooking of food,
    - b. Providing warmth for human beings,
    - c. Recreational purposes,
    - d. Branding of animals,
    - e. Orchard heaters for the purpose of frost protection in farming or nursery operations, and
    - f. The proper disposal of flags under 4 U.S.C. 1, § 8.
  2. Any fire set or permitted by any public officer in the performance of official duty, if the fire is set or permission given for the following purpose:
    - a. Control of an active wildfire; or
    - b. Instruction in the method of fighting fires, except that the person setting these fires must comply with the reporting requirements of subsection (D)(3)(f).
  3. Fire set by or permitted by the Director of Department of Agriculture for the purpose of disease and pest prevention in an organized, area-wide control of an epidemic or infestation affecting livestock or crops.
  4. Prescribed burns set by or assisted by the federal government or any of its departments, agencies, or agents, or the state or any of its agencies, departments, or political subdivisions, regulated under Article 15 of this Chapter.
- D.** Open outdoor fires requiring a permit.
1. The following open outdoor fires are allowed with an open burning permit from the Director or a delegated authority:
    - a. Construction burning;
    - b. Agricultural burning;
    - c. Residential burning;
    - d. Prescribed burns conducted on private lands without the assistance of a federal or state land manager as defined under R18-2-1501;
    - e. Any fire set or permitted by a public officer in the performance of official duty, if the fire is set or permission given for the purpose of weed abatement, or the prevention of a fire hazard, unless the fire is exempt from the permit requirement under subsection (C)(3);
    - f. Open outdoor fires of dangerous material under subsection (E);
    - g. Open outdoor fires of household waste under subsection (F); and
    - h. Open outdoor fires that use an air curtain destructor, as defined in R18-2-101.
  2. A person conducting an open outdoor fire in a county without independent authority to permit fires shall obtain a permit from the Director or a delegated authority unless exempted under subsection (C). Permits may be issued for a period not to exceed one year. A person shall obtain a permit by completing an ADEQ-approved application form.
  3. Open outdoor fire permits issued under this Section shall include:
    - a. A list of the materials that the permittee may burn under the permit;
    - b. A means of contacting the permittee authorized by the permit to set an open fire in the event that an order to extinguish the open outdoor fire is issued by the Director or the delegated authority;
- c. A requirement that burns be conducted during the following periods, unless otherwise waived or directed by the Director on a specific day basis:
    - i. Year-round: ignite fire no earlier than one hour after sunrise; and
    - ii. Year-round: extinguish fire no later than two hours before sunset;
  - d. A requirement that the permittee conduct all open burning only during atmospheric conditions that:
    - i. Prevent dispersion of smoke into populated areas;
    - ii. Prevent visibility impairment on traveled roads or at airports that result in a safety hazard;
    - iii. Do not create a public nuisance or adversely affect public safety;
    - iv. Do not cause an adverse impact to visibility in a Class I area; and
    - v. Do not cause uncontrollable spreading of the fire;
  - e. A list of the types of emission reduction techniques that the permittee shall use to minimize fire emissions.;
  - f. A reporting requirement that the permittee shall meet by providing the following information in a format provided by the Director for each date open burning occurred, on either a daily basis on the day of the fire, or an annual basis in a report to the Director or delegated authority due on March 31 for the previous calendar year:
    - i. The date of each burn;
    - ii. The type and quantity of fuel burned for each date open burning occurred;
    - iii. The fire type, such as pile or pit, for each date open burning occurred; and
    - iv. For each date open burning occurred, the legal location, to the nearest section, or latitude and longitude, to the nearest degree minute, or street address for residential burns;
  - g. A requirement that the person conducting the open burn notify the local fire-fighting agency or private fire protection service provider, if the service provider is a delegated authority, before burning. If neither is in existence, the person conducting the burn shall notify the state forester.;
  - h. A requirement that the permittee start each open outdoor fire using items that do not cause the production of black smoke;
  - i. A requirement that the permittee attend the fire at all times until it is completely extinguished;
  - j. A requirement that the permittee provide fire extinguishing equipment on-site for the duration of the burn;
  - k. A requirement that the permittee ensure that a burning pit, burning pile, or approved waste burner be at least 50 feet from any structure;
  - l. A requirement that the permittee have a copy of the burn permit on-site during open burning;
  - m. A requirement that the permittee not conduct open burning when an air stagnation advisory, as issued by the National Weather Service, is in effect in the area of the burn or during periods when smoke can be expected to accumulate to the extent that it will significantly impair visibility in Class I areas;

- n. A requirement that the permittee not conduct open burning when any stage air pollution episode is declared under R18-2-220;
  - o. A statement that the Director, or any other public officer, may order that the burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or extreme fire danger; and
  - p. A list of the activities prohibited and the criminal penalties provided under A.R.S. § 13-1706.
4. The Director or a delegated authority shall not issue an open burning permit under this Section:
- a. That would allow burning prohibited materials other than under a permit for the burning of dangerous materials;
  - b. If the applicant has applied for a permit under this Section to burn a dangerous material which is also hazardous waste under 40 CFR 261, but does not have a permit to burn hazardous waste under 40 CFR 264, or is not an interim status facility allowed to burn hazardous waste under 40 CFR 265; or
  - c. If the burning would occur at a solid waste facility in violation of 40 CFR 258.24 and the Director has not issued a variance under A.R.S. § 49-763.01.
- E. Open outdoor fires of dangerous material. A fire set for the disposal of a dangerous material is allowed by the provisions of this Section, when the material is too dangerous to store and transport, and the Director has issued a permit for the fire. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The Director shall permit fires for the disposal of dangerous materials only when no safe alternative method of disposal exists, and burning the materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
- F. Open outdoor fires of household waste. An open outdoor fire for the disposal of household waste is allowed by provisions of this Section when permitted in writing by the Director or a delegated authority. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The permittee shall conduct open outdoor fires of household waste in an approved waste burner and shall either:
- 1. Burn household waste generated on-site on farms or ranches of 40 acres or more where no household waste collection or disposal service is available; or
  - 2. Burn household waste generated on-site where no household waste collection and disposal service is available and where the nearest other dwelling unit is at least 500 feet away.
- G. Permits issued by a delegated authority. The Director may delegate authority for the issuance of open burning permits to a county, city, town, air pollution control district, or fire district. A delegated authority may not issue a permit for its own open burning activity. The Director shall not delegate authority to issue permits to burn dangerous material under subsection (E). A county, city, town, air pollution control district, or fire district with delegated authority from the Director may assign that authority to one or more private fire protection service providers that perform fire protection services within the county, city, town, air pollution control district, or fire district. A private fire protection provider shall not directly or indirectly condition the issuance of open burning permits on the applicant being a customer. Permits issued under this subsection shall comply with the requirements in subsection (D)(3) and be in a format prescribed by the Director. Each delegated authority shall:
- 1. Maintain a copy of each permit issued for the previous five years available for inspection by the Director;
  - 2. For each permit currently issued, have a means of contacting the person authorized by the permit to set an open fire if an order to extinguish open burning is issued; and
  - 3. Annually submit to the Director by May 15 a record of daily burn activity, excluding household waste burn permits, on a form provided by the Director for the previous calendar year containing the information required in subsections (D)(3)(e) and (D)(3)(f).
- H. The Director shall hold an annual public meeting for interested parties to review operations of the open outdoor fire program and discuss emission reduction techniques.
- I. Nothing in this Section is intended to permit any practice that is a violation of any statute, ordinance, rule, or regulation.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Correction, subsection (C) repealed effective October 2, 1979, not shown (Supp. 80-1). Former Section R9-3-602 renumbered without change as Section R18-2-602 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-602 renumbered from R18-2-401 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-603. Repealed

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-603 renumbered without change as Section R18-2-603 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-603 renumbered to R18-2-803, new Section R18-2-603 renumbered from R18-2-403 effective November 15, 1993 (Supp. 93-4). Repealed effective October 8, 1996 (Supp. 96-4).

#### R18-2-604. Open Areas, Dry Washes, or Riverbeds

- A. No person shall cause, suffer, allow, or permit a building or its appurtenances, or a building or subdivision site, or a driveway, or a parking area, or a vacant lot or sales lot, or an urban or suburban open area to be constructed, used, altered, repaired, demolished, cleared, or leveled, or the earth to be moved or excavated, without taking reasonable precautions to limit excessive amounts of particulate matter from becoming airborne. Dust and other types of air contaminants shall be kept to a minimum by good modern practices such as using an approved dust suppressant or adhesive soil stabilizer, paving, covering, landscaping, continuous wetting, detouring, barring access, or other acceptable means.
- B. No person shall cause, suffer, allow, or permit a vacant lot, or an urban or suburban open area, to be driven over or used by motor vehicles, trucks, cars, cycles, bikes, or buggies, or by animals such as horses, without taking reasonable precautions to limit excessive amounts of particulates from becoming airborne. Dust shall be kept to a minimum by using an approved dust suppressant, or adhesive soil stabilizer, or by paving, or by barring access to the property, or by other acceptable means.
- C. No person shall operate a motor vehicle for recreational purposes in a dry wash, riverbed or open area in such a way as to cause or contribute to visible dust emissions which then cross

property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises. For purposes of this subsection “motor vehicles” shall include, but not be limited to trucks, cars, cycles, bikes, buggies and 3-wheelers. Any person who violates the provisions of this subsection shall be subject to prosecution under A.R.S. § 49-463.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-604 renumbered without change as Section R18-2-604 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-604 renumbered to R18-2-804, new Section R18-2-604 renumbered from R18-2-404 and amended effective November 15, 1993 (Supp. 93-4).

#### R18-2-605. Roadways and Streets

- A. No person shall cause, suffer, allow or permit the use, repair, construction or reconstruction of a roadway or alley without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Dust and other particulates shall be kept to a minimum by employing temporary paving, dust suppressants, wetting down, detouring or by other reasonable means.
- B. No person shall cause, suffer, allow or permit transportation of materials likely to give rise to airborne dust without taking reasonable precautions, such as wetting, applying dust suppressants, or covering the load, to prevent particulate matter from becoming airborne. Earth or other material that is deposited by trucking or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-605 renumbered without change as Section R18-2-605 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-605 renumbered to R18-2-805, new Section R18-2-605 renumbered from R18-2-405 effective November 15, 1993 (Supp. 93-4).

#### R18-2-606. Material Handling

No person shall cause, suffer, allow or permit crushing, screening, handling, transporting or conveying of materials or other operations likely to result in significant amounts of airborne dust without taking reasonable precautions, such as the use of spray bars, wetting agents, dust suppressants, covering the load, and hoods to prevent excessive amounts of particulate matter from becoming airborne.

#### Historical Note

Section R18-2-606 renumbered from R18-2-406 effective November 15, 1993 (Supp. 93-4).

#### R18-2-607. Storage Piles

- A. No person shall cause, suffer, allow, or permit organic or inorganic dust producing material to be stacked, piled, or otherwise stored without taking reasonable precautions such as chemical stabilization, wetting, or covering to prevent excessive amounts of particulate matter from becoming airborne.
- B. Stacking and reclaiming machinery utilized at storage piles shall be operated at all times with a minimum fall of material and in such manner, or with the use of spray bars and wetting agents, as to prevent excessive amounts of particulate matter from becoming airborne.

#### Historical Note

Section R18-2-607 renumbered from R18-2-407 effective November 15, 1993 (Supp. 93-4).

#### R18-2-608. Mineral Tailings

No person shall cause, suffer, allow, permit construction of, or otherwise own or operate, mineral tailing piles without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Reasonable precautions shall mean wetting, chemical stabilization, revegetation or such other measures as are approved by the Director.

#### Historical Note

Section R18-2-608 renumbered from R18-2-408, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 228, effective March 7, 2009 (Supp. 09-1).

#### R18-2-609. Agricultural Practices

A person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix and Yuma planning areas, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including tilling of land and application of fertilizers without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

#### Historical Note

Section R18-2-609 renumbered from R18-2-409 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2).

#### R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

The definitions in R18-2-101 and the following definitions apply to R18-2-610.01, R18-2-610.02, and R18-2-610.03:

1. “Access restriction” means reducing PM emissions by reducing the number of trips driven on agricultural aprons and access roads by restricting or eliminating public access to noncropland or commercial farm roads with signs or physical obstruction at locations that effectively control access to the area.
2. “Aggregate cover” means reducing PM emissions and wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to noncropland or commercial farm roads. The aggregate should be clean, hard and durable, and should be applied and maintained to a depth sufficient to reduce PM emissions.
3. “Area A” means the area delineated according to A.R.S. § 49-541(1).
4. “Best management practice” (BMP) means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. “Cessation of Night Tilling” means the discontinuation of tillage from sunset to sunrise on a day identified by the Maricopa or Pinal County Dust Control Forecast as being high risk of dust generation.
6. “Chemical irrigation” means reducing a minimum of one ground operation across a commercial farm by applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system, which reduces soil disturbance and increases efficiency of application.
7. “Chips/ mulches” means reducing PM emissions and soil movement and preserving soil moisture by applying and maintaining nontoxic chemical or organic dust suppressants to a depth sufficient to reduce PM emissions. Materials shall meet all specifications required by federal, state, or local water agencies, and is not prohibited for use by any applicable regulations.

8. “Combining tractor operations” means reducing soil compaction and a minimum of one tillage or ground operation across a commercial farm by using a tractor, implement, harvester, or other farming support vehicle to perform two or more tillage, cultivation, planting, or harvesting operations at the same time. If Equipment modification is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
9. “Commercial farm” means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
10. “Commercial farm road” means a road that is unpaved, owned by a commercial farmer, and is used exclusively to service a commercial farm.
11. “Commercial farmer” means an individual, entity, or joint operation in general control of a commercial farm.
12. “Committee” means the Governor’s Agricultural Best Management Practices Committee as established by A.R.S. § 49-457.
13. “Conservation Tillage” means a tillage system that reduces a minimum of three tillage operations. This system reduces soil and water loss by planting into existing plant stubble on the field after harvest as well as managing the stubble so that it remains intact during the planting season.
14. “Cover crop” means establishing cover crops that maintain a minimum of 60 percent ground cover. Native or volunteer vegetation that meets the minimum ground cover requirement is acceptable. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
15. “Critical area planting” means reducing PM<sub>10</sub> emissions and wind erosion by planting trees, shrubs, vines, grasses, or other vegetative cover on noncropland in order to maintain at least 60 percent ground cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
16. “Cropland” means land on a commercial farm that:
  - a. Is within the time-frame of final harvest to plant emergence, but does not include tillage activities;
  - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
  - c. Is a turn-row.
17. “Cross-wind ridges” means stabilizing soil and reducing PM emissions and wind erosion by creating soil ridges in a commercial farm by tillage or planting operations. Ridges should be at least four inches in height, and be aligned as perpendicular as possible to the prevailing wind direction.
18. “Dust Control Forecast” means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
  - a. Projected meteorological conditions, including:
    - i. Wind speed and direction,
    - ii. Stagnation,
    - iii. Recent precipitation, and
    - iv. Potential for precipitation;
  - b. Existing concentrations of air pollution at the time of the forecast; and
  - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
19. “Equipment modification” means reducing PM emissions and soil erosion during tillage or ground operations by modifying and maintaining an existing piece of agricultural equipment, installing shielding equipment, modifying land planting and land leveling, matching the equipment to row spacing, or grafting to new varieties or technological improvements. If combining tractor operations is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
20. “Fallow Field” means an area of land that is routinely cultivated, planted and harvested and is unplanted for one or more growing seasons or planting cycles, but is intended to be placed back in agricultural production.
21. “Field Capacity” means the amount of water remaining in the soil two days after having been saturated and after free drainage has ceased.
22. “Forage Crop” means a product grown for consumption by any domestic animal.
23. “Genetically Modified” (GMO) means a living organism whose genetic material has been altered, changing one or more of its characteristics.
24. “GPS: Global Position Satellite System” means using a satellite navigation system on farm equipment to calculate position in the field.
25. “Green chop” means reducing soil compaction, soil disturbance and a minimum of one ground operation across a commercial farm by harvesting a Forage Crop without allowing it to dry in the field.
26. “Ground operation” means an agricultural operation that is not a tillage operation, which involves equipment passing across the field. A ground operation includes harvest activities. A pass through the field may be a subset of a ground operation.
27. “Harvest” means the time after planting up through harvest, including gathering mature crops from a commercial farm, as well as all actions taken immediately after crop removal, such as cooling, sorting, cleaning, and packing.
28. “Integrated Pest Management” means reducing soil compaction and a minimum of one ground operation across a commercial farm for spraying by using a combination of techniques including organic, conventional, and biological farming practices to suppress pest problems.
29. “Limited harvest activity” means performing no ground operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
30. “Limited tillage activity” means performing no tillage operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
31. “Maricopa PM nonattainment area” means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
32. “Multi-year crop” means reducing PM emissions from wind erosion and a minimum of one tillage and ground operation across a commercial farm, by protecting the

- soil surface by growing a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
33. “Noncropland” means any commercial farm land that:
    - a. Is no longer used for agricultural production;
    - b. Is no longer suitable for production of crops;
    - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
    - d. Includes a ditch, ditch bank, equipment yard, storage yard, or well head.
  34. “NRCS” means the Natural Resource Conservation Service.
  35. “Organic material cover” means reducing PM emissions and wind erosion and preserving soil moisture by applying and maintaining cover material such as animal waste or plant residue, to a soil surface to reduce soil movement. Material shall be evenly applied and maintained to a depth sufficient to reduce PM emissions and coverage should be a minimum of 70 percent.
  36. “Permanent cover” means reducing PM emissions and wind erosion by maintaining a long-term perennial vegetative cover on cropland that is temporarily not producing a major crop. Perennial species such as grasses and/or legumes shall be used to establish at least 60 percent cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
  37. “Pinal County PM Nonattainment Area” means the West Pinal PM<sub>10</sub> planning area and the West Central PM<sub>2.5</sub> planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
  38. “Plant stubble” means stubble on the soil surface, which insulates soil to reduce evaporation of moisture, and also protects the soil from wind and water erosion.
  39. “Planting based on soil moisture” means reducing PM emissions and wind erosion by applying water or having enough moisture in the soil to germinate the seed prior to planting. Soil must have a minimum soil moisture content of 60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
  40. “PM” includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
  41. “Precision Farming” means reducing the number of passes across a commercial farm by at least 12 inches per pass by using GPS to precisely guide farm equipment in the field.
  42. “Reduce vehicle speed” means reducing PM emissions and soil erosion from the operation of farm vehicles or farm equipment on noncropland or commercial farm roads at speeds not to exceed 15. This can be achieved through installation of engine speed governors, signage, or speed control devices.
  43. “Reduced harvest activity” means reducing soil disturbance, soil and water loss, and the number of mechanical harvest passes by a minimum of one ground operation across a commercial farm, by means other than equipment modification or combining tractor operations.
  44. “Reduced tillage system” means reducing soil disturbance, soil and water loss, by using a single piece of equipment that reduces a minimum of three tillage operations, by means other than equipment modification or combining tractor operations.
  45. “Regulated agricultural activity” means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(1)(a) through (P)(1)(d).
  46. “Regulated area” means the regulated area as defined in A.R.S. § 49-457(P)(6).
  47. “Residue management” means reducing PM emissions and wind erosion by maintaining a minimum of 60 percent ground cover of crop and other plant residues on a soil surface between the time of harvest of one crop and the commencement of tillage for a new crop. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
  48. “Sequential cropping” means reducing PM emissions and wind erosion by growing crops in a sequence or close rotation that limits the amount of time bare soil is exposed on a commercial farm to 30 days or less.
  49. “Shuttle System/Larger Carrier” means reducing one out of every four trips across a commercial farm by using multiple or larger bins/trailers to haul commodity from the field.
  50. “Significant Agricultural Earth Moving Activities” means either leveling activities conducted on a commercial farm that disturb the soil more than 4 inches below the surface, or the creation, maintenance and relocation of: ditches, canals, ponds, irrigation lines, tailwater recovery systems (agricultural sumps) and other water conveyances, not to include activities performed on cropland for tillage, ground operations or harvest.
  51. “Silt content test method” means the test method as described in Appendix 2.
  52. “Stabilization of soil prior to plant emergence” means reducing PM emissions by applying water to soil prior to crop emergence in order to cause the soil to form a visible crust.
  53. “Surface roughening” means reducing PM emissions or wind erosion by manipulating a soil surface by means such as rough discing or tillage in order to produce or maintain clods on the land surface. Compliance shall be determined by NRCS Practice Code 609, Surface Roughening, amended through November 2008 (and no future editions).
  54. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on noncropland or commercial farm roads with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
  55. “Tillage” means any mechanical practice that physically disturbs the soil, and includes preparation for planting, such as plowing, ripping, or discing.
  56. “Tillage based on soil moisture” means reducing PM emissions by irrigating fields to the depth of the proposed cut prior to soil disturbances or conducting tillage to coincide with precipitation. Soil must have a minimum soil moisture content of 40-60% of field capacity at planting depth. Compliance shall be determined by NRCS Esti-

- inating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
57. "Timing of a tillage operation" means reducing wind erosion and PM emissions by performing tillage operations that minimize the amount of time within 45 days.
  58. "Tillage operation" means an agricultural operation that mechanically manipulates the soil for the enhancement of crop production. Examples include disking or bedding. A pass through the field may be a subset of a tillage operation.
  59. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from noncropland or commercial farm roads or and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
  60. "Transgenic Crops" means reducing a minimum of one tillage or ground operation, the number of chemical spray applications, or soil disturbances by using plants that are genetically modified.
  61. "Transplanting" means reducing a minimum of one ground operation across a commercial farm and minimizing soil disturbance by utilizing plants already in a growth state as compared to seeding.
  62. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
  63. "Watering" means reducing PM emissions and wind erosion by applying water to noncropland or commercial farm road bare soil surfaces during periods of high traffic until the surfaces are visibly moist.
  64. "Watering on a high risk day" means reducing PM emissions and wind erosion by applying water to commercial farm road bare soil surfaces until the surfaces are visibly moist, on a day forecast to be high risk for dust generation by the Maricopa or Pinal County Dust Control Forecast.
  65. "Wind barrier" means reducing PM emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

#### Historical Note

Former Section R18-2-610 renumbered to R18-2-612; new Section R18-2-610 adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Amended by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (A) corrected at the request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### R18-2-610.01. Agricultural PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area

- A. A commercial farmer within the Maricopa County PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest or ground operation activities:
  1. Chemical irrigation,
  2. Combining tractor operations,
  3. Equipment modification,
  4. Green Chop,
  5. Integrated Pest Management,
  6. Limited harvest activity ,
  7. Limited tillage activity ,
  8. Multi-year crop,
  9. Cessation of Night Tilling,
  10. Planting based on soil moisture,
  11. Precision Farming,
  12. Reduced harvest activity,
  13. Reduced tillage system,
  14. Tillage based on soil moisture,
  15. Timing of a tillage operation,
  16. Transgenic Crops,
  17. Transplanting,
  18. Shuttle System/Larger Carrier, or
  19. Conservation Tillage.
- C. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
  1. Access restriction,
  2. Aggregate cover,
  3. Wind barrier,
  4. Critical area planting,
  5. Organic material cover,
  6. Reduce vehicle speed,
  7. Synthetic particulate suppressant,
  8. Track-out control system, or
  9. Watering.
- D. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
  1. Wind barrier,
  2. Cover crop,
  3. Cross-wind ridges,
  4. Chips/mulches,
  5. Multi-year crop,
  6. Permanent cover,
  7. Stabilization of soil prior to plant emergence,
  8. Residue management,
  9. Sequential cropping, or
  10. Surface roughening.
- E. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
  1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);

2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
  4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
  2. The mailing address or physical address of the commercial farm; and
  3. The best management practices selected for tillage, harvest, and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices identified in the most recently submitted Best Management Practices Program General Permit Record Form shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM<sub>10</sub> general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- Historical Note**
- New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4).  
Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).
- ations; Moderate PM Nonattainment Areas, Designated After June 1, 2009**
- A.** A commercial farmer within a PM Moderate Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest and ground operation activities:
1. Chemical irrigation,
  2. Combining tractor operations,
  3. Equipment modification,
  4. Green Chop,
  5. Integrated Pest Management,
  6. Limited harvest activity,
  7. Limited tillage activity,
  8. Multi-year crop,
  9. Cessation of Night Tilling,
  10. Planting based on soil moisture,
  11. Precision Farming,
  12. Reduced harvest activity,
  13. Reduced tillage system,
  14. Tillage based on soil moisture,
  15. Timing of a tillage operation,
  16. Transgenic Crops,
  17. Transplanting, or
  18. Shuttle System/Larger Carrier, or
  19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
1. Access restriction,
  2. Aggregate cover,
  3. Wind barrier,
  4. Critical area planting,
  5. Organic material cover,
  6. Reduce vehicle speed,
  7. Synthetic particulate suppressant,
  8. Track-out control system, or
  9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
1. Wind barrier,
  2. Cover crop,
  3. Cross-wind ridges,
  4. Chips/mulches,
  5. Multi-year crop,
  6. Permanent cover,
  7. Stabilization of soil prior to plant emergence,
  8. Residue management,
  9. Sequential cropping, or
  10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance

**R18-2-610.02. Agricultural PM General Permit for Crop Oper-**

Method, amended through April 1998 (and no future editions);

2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
  4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
  2. The mailing address or physical address of the commercial farm; and
  3. The best management practice selected for tillage, harvest and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

#### Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### R18-2-610.03. Agricultural PM General Permit for Crop Oper-

#### ations; Pinal County PM Nonattainment Area

- A.** On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of best management practices as described in sections (B)(1)(b), (B)(2)(b), (B)(3)(b), (B)(4)(b), and (B)(5)(b).
- B.** On all days, a commercial farmer shall implement at least one best management practice from each category to reduce PM emissions, as described below in subsections (1)(a), (2)(a), (3)(a), (4)(a), and (6), and at least two best management practices from subsection (5)(a). If a commercial farmer implements the Conservation tillage or Reduced tillage system best management practice for the tillage category, they do not have to implement a best management practice from the subsections (2)(a), (2)(b), (5)(a) and (5)(b).
1. Tillage:
    - a. A commercial farmer shall implement at least one of the following:
      - i. Combining tractor operations,
      - ii. Equipment modification,
      - iii. Multi-year crop,
      - iv. Cessation of night tilling,
      - v. Planting based on soil moisture,
      - vi. Precision farming,
      - vii. Tillage based on soil moisture,
      - viii. Timing of a tillage operation,
      - ix. Transgenic crops,
      - x. Transplanting,
      - xi. Reduced tillage system, or
      - xii. Conservation tillage.
    - b. Unless choosing limited tillage activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
      - i. Multi-year crop,
      - ii. Planting based on soil moisture,
      - iii. Tillage based on soil moisture,
      - iv. Limited tillage activity,
      - v. Reduced tillage system, or
      - vi. Conservation tillage.
  2. Ground Operations and Harvest:
    - a. A commercial farmer shall implement at least one of the following:
      - i. Combining tractor operations,
      - ii. Equipment modification,
      - iii. Chemical irrigation,
      - iv. Green chop,
      - v. Integrated pest management,
      - vi. Multi-year crop,
      - vii. Precision farming,
      - viii. Reduced harvest activity,
      - ix. Transgenic crops, or
      - x. Shuttle System/Larger Carrier.
    - b. Unless choosing limited harvest activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
      - i. Green chop,
      - ii. Integrated pest management,
      - iii. Multi-year crop, or
      - iv. Limited harvest activity.
  3. Noncropland:



- a. A commercial farmer shall implement at least one of the following best management practices:
    - i. Access restriction,
    - ii. Aggregate cover,
    - iii. Wind barrier,
    - iv. Critical area planting,
    - v. Organic material cover,
    - vi. Reduce vehicle speed,
    - vii. Synthetic particulate suppressant, or
    - viii. Watering.
  - b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a non-cropland area that experiences more than 20 VDT from 2 or more axle vehicles, commercial farmer shall ensure implementation of at least one of the following best management practices:
    - i. Aggregate cover,
    - ii. Wind barrier,
    - iii. Critical area planting,
    - iv. Organic material cover,
    - v. Synthetic particulate suppressant, or
    - vi. Watering on a high risk day.
4. Commercial farm roads:
- a. A commercial farmer shall implement at least one of the following best management practices:
    - i. Access restriction,
    - ii. Reduce vehicle speed,
    - iii. Track-out control system,
    - iv. Aggregate cover,
    - v. Synthetic particulate suppressant,
    - vi. Watering, or,
    - vii. Organic material cover.
  - b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a road that experiences more than 20 VDT from 2 or more axle vehicles, a commercial farmer shall ensure implementation of at least one of the following best management practices:
    - i. Aggregate cover,
    - ii. Synthetic particulate suppressant,
    - iii. Wind barrier,
    - iv. Organic material cover,
    - v. Roads are stabilized as determined by the silt content test method,
    - vi. Watering on a high risk day.
5. Cropland:
- a. A commercial farmer shall implement at least two of the following best management practices, one from subsection (i) through (vii), and one from subsection (viii) through (xi), to reduce PM emissions from cropland:
    - i. Wind barrier,
    - ii. Cover crop,
    - iii. Cross-wind ridges,
    - iv. Chips/mulches,
    - v. Sequential cropping
    - vi. Residue management,
    - vii. Surface roughening,
    - viii. Multi-year crop,
    - ix. Permanent cover, or
    - x. Stabilization of soil prior to plant emergence.
  - b. On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
    - i. Wind barrier,
    - ii. Cover crop,
    - iii. Cross-wind ridges,
    - iv. Chips/mulches,
    - v. Surface roughening,
    - vi. Multi-year crop,
    - vii. Permanent cover,
    - viii. Stabilization of soil prior to plant emergence, or
    - ix. Residue management.
6. A commercial farmer shall implement at least one of the following best management practices, when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
- a. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  - b. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  - c. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
  - d. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- C. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form demonstrating compliance with this rule. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
- 1. The name of the commercial farmer, signature, and date signed;
  - 2. The mailing address or physical address of the commercial farm; and
  - 3. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
  - 4. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- D. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the commercial farmer with a Best Management Practices Pro-

gram 3-year Survey. The commercial farmer shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA without reference to a commercial farmer's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:

1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
  2. The signature of the commercial farmer and the date the form was signed;
  3. The acreage of each crop type planted/growing during the calendar year that the survey is conducted;
  4. The total miles of commercial farm roads at the commercial farm;
  5. The total acreage of the noncropland at the commercial farm;
  6. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
  7. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- E.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- F.** A person may develop different practices to control PM emissions not contained in subsections (B)(1) through (B)(6) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- G.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- H.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- I.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- J.** The Director shall document noncompliance with this Section before issuing a compliance order.
- K.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- a. "Animal waste handling and transporting" means the processes by which any animal excretions and mixtures containing animal excretions are collected and transported.
  - b. "Arenas, corrals and pens" means areas where animals are confined for the purposes of, but not limited to, feeding, displaying, safety, racing, exercising, or husbandry.
  - c. "Commercial animal operation" means a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and a commercial swine facility, as defined in this Section.
  - d. "Commercial animal operator" means an individual, entity, or joint operation in general control of a commercial animal operation.
  - e. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
    - i. Projected meteorological conditions, including:
      - (1) Wind speed and direction,
      - (2) Stagnation,
      - (3) Recent precipitation, and
      - (4) Potential for precipitation;
    - ii. Existing concentrations of air pollution at the time of the forecast; and
    - iii. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
  - f. "High traffic areas" means areas that experience more than 20 VDT from 2 or more axle vehicles.
  - g. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
  - h. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, State, or Federal entities.
  - i. "Pinal County PM Nonattainment Area" means the West Pinal PM<sub>10</sub> planning area and the West Central PM<sub>2.5</sub> planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
  - j. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
  - k. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).
  - l. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(P)(6).
  - m. "Track-out control device" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from unpaved access connections and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or

#### Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### **R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03**

The definitions in R18-2-101 and the following definitions apply to R18-2-611.01, R18-2-611.02, and R18-611.03:

1. The following definitions apply to a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and commercial swine facility:

## Department of Environmental Quality – Air Pollution Control

- equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
- n. “Unpaved access connections” means any unpaved road connection which connects to a paved public road.
  - o. “Unpaved roads or feed lanes” means roads and feed lanes that are unpaved, owned by a commercial animal operator, and used exclusively to service a commercial animal operation.
  - p. “VDT” (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
2. The following definitions apply to a commercial dairy operation:
- a. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
  - b. “Apply a fibrous layer” means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
  - c. “Bunkers” means below ground level storage systems for storing large amount of silage, which is covered with a plastic tarp.
  - d. “Calves” means young dairy stock under two months of age.
  - e. “Cement cattle walkways to milk barn” means reducing PM emissions by fencing pathways from the corrals to the milking barn, restricting dairy cattle to surfaces with concrete floors.
  - f. “Commercial dairy operation” means a dairy operation with more than 150 dairy cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
  - g. “Cover manure hauling trucks” means reducing PM emissions by completely covering the top of the loaded area.
  - h. “Covers for silage” means reducing PM emissions and wind erosion by using large plastic tarps to completely cover silage.
  - i. “Do not run cattle” means reducing PM emissions by walking dairy cattle to the milking barn.
  - j. “Feed higher moisture feed to dairy cattle” means reducing PM emissions by feeding dairy cattle one or any combination of the following:
    - i. Add water to ration mix to achieve a 20% minimum moisture level,
    - ii. Add molasses or tallow to ration mix at a minimum of 1%,
    - iii. Add silage, or
    - iv. Add green chop.
  - k. “Feed green chop” means feeding high moisture feed that contains at least 30% moisture directly to dairy cattle.
  - l. “Groom manure surface” means reducing PM emissions and wind erosion by:
    - i. Flushing or vacuuming lanes daily,
    - ii. Scraping and harrowing pens on a weekly basis, and
    - iii. Removing manure every four months with equipment that leaves an even corral surface of compacted manure on top of the soil.
  - m. “Hutches” means raised, roofed enclosures that protect the calves from the elements.
  - n. “Pile manure between cleanings” means reducing PM emissions by collecting loose surface materials within the confines of the surface area of the occupied feed pen every two weeks.
  - o. “Provide cooling in corral” means reducing PM emissions by using cooling systems under the corral shades to reduce the ambient air temperature, thereby increasing stocking density in the cool areas of the corrals.
  - p. “Provide shade in corral” means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
  - q. “Push equipment” means manure harvesting equipment pushed in front of a tractor.
  - r. “Silage” means fermented, high-moisture fodder that can be fed to ruminants, such as cattle and sheep; usually made from grass crops including corn, sorghum or other cereals, by using the entire green plant.
  - s. “Store and maintain feed stock” means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
  - t. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial dairy operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
  - u. “Use drag equipment to maintain pens” means reducing PM emissions by using manure equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
  - v. “Use free stall housing” means reducing PM emissions by enclosing one cow per stall, which are outfitted with concrete floors.
  - w. “Water misting systems” means reducing PM emissions from dry manure by using systems that project a cloud of very small water particles onto the manure surface, keeping the surface visibly moist.
  - x. “Wind barrier” means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establish-

- ment, amended through August 21, 2009 (and no future editions).
3. The following definitions apply to a commercial beef cattle feedlot:
    - a. "Add moisture to pen surface" means reducing PM emissions and wind erosion by applying at least three to six gallons of water per head/per day in pens occupied by beef cattle.
    - b. "Add molasses or tallow to feed" means reducing PM emissions by adding molasses or tallow so that it equals three percent of the total ration.
    - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
    - d. "Apply a fibrous layer in working areas" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
    - e. "Bulk materials" means reducing PM emissions by using a closed conveyor system instead of vehicular means to move grain or other.
    - f. "Commercial beef cattle feedlot" means a beef cattle feedlot with more than 500 beef cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
    - g. "Concrete apron" means reducing PM emissions by using solidly formed concrete surface, at least 4 inches thick on top of the soil surface, inside the feed pen for 8 feet approaching the feed bunk or water trough.
    - h. "Control cattle during movements" means reducing PM emissions by suppressing the animal's ability to run by driving them forward while intruding on their "flight zones" or restraining the animal's movement.
    - i. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
    - j. "Feed higher moisture feed to beef cattle" means reducing PM emissions by feeding beef cattle feed that contains at least 30% moisture.
    - k. "Frequent manure removal" means reducing PM emissions and wind erosion by harvesting loose manure on top of the pen surface at least once every six months.
    - l. "Pile manure between cleanings" means reducing PM emissions by collecting loose manure surface materials, by scraping or pushing, within the confines of the surface area of the occupied feed pen at least four times per year.
    - m. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
    - n. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
    - o. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
    - p. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial beef feedlot with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
    - q. "Use drag equipment to maintain pens" means reducing PM emissions by using manure harvesting equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
    - r. "Wind barrier" means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
  4. The following definitions apply to a commercial poultry facility:
    - a. "Add moisture through ventilation systems" means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining a minimum of 20% moisture in the air within the housing system to bind small particles to larger particles.
    - b. "Add oil and/or moisture to the feed" means reducing PM emissions by adding a minimum of 1% edible oil and/or moisture to feed rations to bind small particles to larger particles.
    - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
    - d. "Clean aisles between cage rows" means reducing PM emissions by cleaning the aisles between cage rows at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
    - e. "Clean fans, louvers, and soffit inlets in a commercial poultry facility" means reducing PM emissions by cleaning fans, louvers, and soffit inlets when the facility is empty between depopulating and populating the facility.
    - f. "Clean floors and walls in a commercial poultry facility" means reducing PM emissions by cleaning floors and walls to prevent dried manure, spilled

- feed, and debris accumulation when the facility is empty between depopulating and populating the facility.
- g. “Commercial poultry facility” means a poultry operation with more than 25,000 egg laying hens within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
  - h. “Control vegetation on building exteriors” means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and building.
  - i. “Enclose transfer points” means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduce air contact with the feed rations during feed conveyance.
  - j. “House in fully enclosed ventilated buildings” means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
  - k. “Maintain moisture in manure solids” means reducing PM emissions by maintaining a moisture content of a minimum of 15% in the solids sufficient to bind small particles to larger particles.
  - l. “Minimize drop distance” means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is approximately 1 foot or less, which reduces air contact with the feed rations during feed conveyance.
  - m. “Poultry” means any domesticated bird including chickens, turkeys, ducks, geese, guineas, ratites and squabs.
  - n. “Remove spilled feed” means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
  - o. “Stack separated manure solids” means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
  - p. “Store feed” means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
  - q. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial poultry operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
  - r. “Use enclosed feed distribution system” means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during feed conveyance.
  - s. “Use a flexible discharge spout” means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
  - t. “Use no bedding in the production facility” means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.
  - u. “Use of a rotary dryer to dry manure waste” means reducing PM10 emissions by drying the manure waste in a rotary dryer fitted with a baghouse or wet scrubber. A commercial poultry facility using a rotary dryer must comply with all of the following:
    - i. Install, maintain, and operate the baghouse or wet scrubber in a manner consistent with the manufacturer’s specifications at all times the rotary dryer is operated. The manufacturer specifications must be available on site upon request.
    - ii. Conduct monthly observations using EPA Method 22 on the control equipment to ensure proper operation. If improper operation is observed through EPA Method 22, the dryer must stop immediately and the equipment repaired before resuming operations.
    - iii. For baghouses, conduct an annual black light inspection of the bags to detect broken or leaking bags. If broken or leaking bags are detected it must be repaired or replaced immediately.
    - iv. Maintain a record of all repair activity required under (ii) and (ii) that must be made available within two days of Director’s request for inspection.
5. The following definitions apply to a commercial swine facility:
- a. “Add oil and/or moisture to the feed” means reducing PM emissions by adding a minimum of 0.5% edible oil and/or moisture to feed rations to bind small particles to larger particles.
  - b. “Add moisture through ventilation systems” means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining minimum of 15% moisture in the air within the housing system to bind small particles to larger particles.
  - c. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
  - d. “Clean aisles between pens and stalls” means reducing PM emissions by cleaning the aisles between pens and stalls at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
  - e. “Clean fans, louvers, and soffit inlets in a commercial swine facility” means reducing PM emissions by cleaning fans, louvers, and soffit inlets between transfer of animal groups, but in any case, at least every 6 months.
  - f. “Clean pens, floors and walls in a commercial swine facility” means reducing PM emissions by cleaning pens, floors, and walls between transfer of animal groups to prevent dried manure, spilled feed, and

- debris accumulation, but in any case, at least every 6 months.
- g. “Commercial swine facility” means a swine operation with more than 50 animal units for more than 30 consecutive days within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area. One thousand pounds equals one animal unit.
  - h. “Control vegetation on building exteriors” means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and the building.
  - i. “Enclose transfer points” means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduces air contact with the feed rations during feed conveyance.
  - j. “House in fully enclosed ventilated buildings” means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
  - k. “Lagoon” means a liquid manure storage and treatment pond.
  - l. “Maintain moisture in manure solids” means reducing PM<sub>10</sub> emissions by maintaining a minimum moisture content of 10% in the solids sufficient to bind small particles to larger particles.
  - m. “Minimize drop distance” means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is 3 feet or less, which reduces air contact with the feed rations during feed conveyance.
  - n. “Remove spilled feed” means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
  - o. “Slatted flooring” means reducing PM emissions by using flooring that is a slotted concrete or wire-mesh floor set above a liquid manure collection pit, which allows the excrement to fall through the flooring into the liquid pit below, which prevents solids build-up. Slats 4 to 8 inches wide with spacing of about 1 inch in between are recommended.
  - p. “Sloped concrete flooring” means reducing PM emissions by pouring concrete with a minimum of 0.25% grade inside of the barns which provides drainage and easier cleaning of floor areas.
  - q. “Stack separated manure solids” means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
  - r. “Store feed” means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
  - s. “Store separated manure solids” means reducing PM emissions by storing manure solids in a wind-blocked area behind a wall, structure, or area with natural wind protection to minimize blowing air movement over the manure stack.
  - t. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial swine operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
  - u. “Use a flexible discharge spout” means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
  - v. “Use enclosed feed distribution system” means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during the feed conveyance.
  - w. “Use no bedding in the production facility” means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Section repealed; new Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (2)(a) corrected at request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).

#### R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas

- A. A commercial animal operator within a Serious PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Use free stall housing,
    - b. Provide shade in corral,
    - c. Provide cooling in corral,
    - d. Cement cattle walkways to milk barn,
    - e. Groom manure surface,
    - f. Water misting systems,
    - g. Use drag equipment to maintain pens,
    - h. Pile manure between cleanings,
    - i. Feed green chop,
    - j. Keep calves in barns or hutches,
    - k. Do not run cattle,
    - l. Apply a fibrous layer, or
    - m. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to dairy cattle,
    - b. Store and maintain feed stock,
    - c. Covers for silage,
    - d. Store silage in bunkers,
    - e. Cover manure hauling trucks, or
    - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
  - 3. Unpaved Access Connections:

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- a. Install signage to limit vehicle speed to 15 mph,
  - b. Install speed control devices,
  - c. Restrict access to through traffic,
  - d. Install and maintain a track-out control device,
  - e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant, or
  - h. Apply and maintain water as a dust suppressant.
- 4. Unpaved Roads or Feed Lanes:
  - a. Install engine speed governors on feed truck to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict access to through traffic,
  - e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant,
  - h. Apply and maintain water as a dust suppressant,
  - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
  - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Concrete aprons,
    - b. Provide shade in corral,
    - c. Add moisture to pen surface,
    - d. Manure removal,
    - e. Pile manure between cleanings,
    - f. Feed higher moisture feed to beef cattle,
    - g. Control cattle during movements,
    - h. Use drag equipment to maintain pens,
    - i. Apply a fibrous layer, or
    - j. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to beef cattle,
    - b. Add molasses or tallow to feed,
    - c. Store and maintain feed stock,
    - d. Bulk materials,
    - e. Use drag equipment to maintain pens,
    - f. Cover manure hauling trucks, or
    - g. Do not load manure when wind exceeds 15 mph.
  - 3. Unpaved Access Connections:
    - a. Install and maintain a track-out control device,
    - b. Apply and maintain pavement in high traffic areas,
    - c. Apply and maintain aggregate cover,
    - d. Apply and maintain synthetic particulate suppressant, or
    - e. Apply and maintain water as a dust suppressant.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed truck to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict access to through traffic,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant,
    - h. Apply and maintain water as a dust suppressant, or
    - i. Apply and maintain oil on roads or feed lanes.
- D. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens (Housing):
    - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
    - b. Use no bedding,
    - c. Control vegetation on building exteriors,
    - d. Add moisture through ventilation systems, or
    - e. House in fully enclosed ventilated buildings.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to the feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean floors and walls in a commercial poultry facility,
    - i. Clean aisles between cage rows,
    - j. Stack separated manure solids,
    - k. Maintain moisture in manure solids, or
    - l. Use of a rotary dryer to dry manure waste.
  - 3. Unpaved Access Connections:
    - a. Install speed control devices,
    - b. Restrict traffic access,
    - c. Install and maintain a track-out control system, or
    - d. Install signage to limit vehicle speed to 15 mph.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed trucks to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict traffic access,
    - e. Apply and maintain aggregate cover,
    - f. Apply and maintain synthetic particulate suppressant,
    - g. Apply and maintain water, or
    - h. Apply and maintain oil on roads or feed lanes.
- E. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens (Housing):
    - a. House in fully enclosed ventilated buildings,
    - b. Use no bedding,
    - c. Use a slatted floor system,
    - d. Use sloped concrete flooring,
    - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
    - f. Control vegetation on building exteriors, or
    - g. Add moisture through ventilation systems.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean pens, floors, and walls in a commercial swine facility,
    - i. Clean aisles between pens and stalls,
    - j. Store separated manure solids in a wind-blocked area,
    - k. Stack separated manure solids,

- l. Maintain moisture in manure solids, or
- m. Maintain liquid lagoon level.
- 3. Unpaved Access Connections:
  - a. Install speed control devices,
  - b. Restrict traffic access,
  - c. Install and maintain a track-out control system,
  - d. Install signage to limit vehicle speed to 15 mph.
- 4. Unpaved Roads or Feed Lanes:
  - a. Install engine speed governors on feed trucks to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict traffic access,
  - e. Apply and maintain aggregate cover,
  - f. Apply and maintain synthetic particulate suppressant,
  - g. Apply and maintain water,
  - h. Apply and maintain oil on roads or feed lanes, or
  - i. Wind barrier.
- F. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practice Program General Permit Record form shall include the following information:
  - 1. The name of the commercial animal operator, signature, and date signed,
  - 2. The mailing address or physical address of the commercial animal operation, and
  - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G. Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H. A person may develop different practices not contained in subsection (B), (C), (D), or (E), that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee.
- I. The Director shall not assess a fee to a commercial animal operator for coverage under the Best Management Practice Program General Permit Record Form.
- J. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

#### Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4).  
Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015

(Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).

#### R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

- A. A commercial animal operator within a Moderate PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Use free stall housing,
    - b. Provide shade in corral,
    - c. Provide cooling in corral,
    - d. Cement cattle walkways to milk barn,
    - e. Groom manure surface,
    - f. Water misting systems,
    - g. Use drag equipment to maintain pens,
    - h. Pile manure between cleanings,
    - i. Feed green chop,
    - j. Keep calves in barns or hutches,
    - k. Do not run cattle,
    - l. Apply a fibrous layer, or
    - m. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to dairy cattle,
    - b. Store and maintain feed stock,
    - c. Covers for silage,
    - d. Store silage in bunkers,
    - e. Cover manure hauling trucks, or
    - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
  - 3. Unpaved Access Connections:
    - a. Install signage to limit vehicle speed to 15 mph,
    - b. Install speed control devices,
    - c. Restrict access to through traffic,
    - d. Install and maintain a track-out control device,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant, or
    - h. Apply and maintain water as a dust suppressant.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed truck to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict access to through traffic,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant,
    - h. Apply and maintain water as a dust suppressant,
    - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
    - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Concrete aprons,
    - b. Provide shade in corral,



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- c. Add moisture to pen surface,
  - d. Manure removal,
  - e. Pile manure between cleanings,
  - f. Feed higher moisture feed to beef cattle,
  - g. Control cattle during movements,
  - h. Use drag equipment to maintain pens,
  - i. Apply a fibrous layer, or
  - j. Wind barrier.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Feed higher moisture feed to beef cattle,
  - b. Add molasses or tallow to feed,
  - c. Store and maintain feed stock,
  - d. Bulk materials,
  - e. Use drag equipment to maintain pens,
  - f. Cover manure hauling trucks, or
  - g. Do not load manure when wind exceeds 15 mph.
3. Unpaved Access Connections:
- a. Install and maintain a track-out control device,
  - b. Apply and maintain pavement in high traffic areas,
  - c. Apply and maintain aggregate cover,
  - d. Apply and maintain synthetic particulate suppressant, or
  - e. Apply and maintain water as a dust suppressant.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed truck to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict access to through traffic,
  - e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant,
  - h. Apply and maintain water as a dust suppressant, or
  - i. Apply and maintain oil on roads or feed lanes.
- D.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
- a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
  - b. Use no bedding,
  - c. Control vegetation on building exteriors;
  - d. Add moisture through ventilation systems, or
  - e. House in fully enclosed ventilated buildings.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
  - b. Store feed,
  - c. Add oil and/or moisture to the feed,
  - d. Use enclosed feed distribution system,
  - e. Use flexible discharge spout,
  - f. Minimize drop distance,
  - g. Enclose transfer points,
  - h. Clean floors and walls in a commercial poultry facility,
  - i. Clean aisles between cage rows,
  - j. Stack separated manure solids, or
  - k. Maintain moisture in manure solids.
3. Unpaved Access Connections:
- a. Install speed control devices,
  - b. Restrict traffic access,
  - c. Install and maintain a track-out control system, or
  - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
- b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict traffic access,
  - e. Apply and maintain aggregate cover,
  - f. Apply and maintain synthetic particulate suppressant,
  - g. Apply and maintain water,
  - h. Apply and maintain oil on roads or feed lanes, or
  - i. Wind barrier.
- E.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
- a. House in fully enclosed ventilated buildings,
  - b. Use no bedding,
  - c. Use a slatted floor system,
  - d. Use sloped concrete flooring,
  - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
  - f. Control vegetation on building exteriors, or
  - g. Add moisture through ventilation systems.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
  - b. Store feed,
  - c. Add oil and/or moisture to feed,
  - d. Use enclosed feed distribution system,
  - e. Use flexible discharge spout,
  - f. Minimize drop distance,
  - g. Enclose transfer points,
  - h. Clean pens, floors, and walls in a commercial swine facility,
  - i. Clean aisles between pens and stalls,
  - j. Store separated manure solids in a wind-blocked area,
  - k. Stack separated manure solids,
  - l. Maintain moisture in manure solids, or
  - m. Maintain liquid lagoon level.
3. Unpaved Access Connections:
- a. Install speed control devices,
  - b. Restrict traffic access,
  - c. Install and maintain a track-out control system,
  - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict traffic access,
  - e. Apply and maintain aggregate cover,
  - f. Apply and maintain synthetic particulate suppressant,
  - g. Apply and maintain water,
  - h. Apply and maintain oil on roads or feed lanes, or
  - i. Wind barrier.
- F.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,

- 2. The mailing address or physical address of the commercial animal operation, and
- 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H.** A person may develop different practices not contained in subsection (B), (C), (D), or (F) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- J.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K.** The Director shall document noncompliance with this Section before issuing a compliance order.
- L.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

#### Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### **R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area**

- A.** A commercial animal operator within the Pinal County PM Nonattainment Area shall implement at least one best management practice from each category to reduce PM emissions.
- B.** In addition to subsection (A), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, commercial dairy operations within the Pinal County PM Nonattainment Area shall apply and maintain one of the four following BMPs on unpaved roads that experience more than 20 VDT from 2 or more axle vehicles:
  - 1. Apply and maintain pavement in high traffic areas,
  - 2. Apply and maintain aggregate cover,
  - 3. Apply and maintain synthetic particulate suppressant, or
  - 4. Apply and maintain water as a dust suppressant.
- C.** In addition to subsection (A), commercial beef feedlots within the Pinal County PM Nonattainment Area, shall add water to pen surface, as defined in R18-2-611(3)(a), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast.
- D.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Use free stall housing,
    - b. Provide shade in corral,
    - c. Provide cooling in corral,
    - d. Cement cattle walkways to milk barn,
    - e. Groom manure surface,
    - f. Water misting systems,
    - g. Use drag equipment to maintain pens,
    - h. Pile manure between cleanings,
    - i. Feed green chop,
    - j. Keep calves in barns or hutches,
    - k. Do not run cattle,
    - l. Apply a fibrous layer, or
    - m. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to dairy cattle,
    - b. Store and maintain feed stock,
    - c. Covers for silage,
    - d. Store silage in bunkers,
    - e. Cover manure hauling trucks, or
    - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
  - 3. Unpaved Access Connections:
    - a. Install signage to limit vehicle speed to 15 mph,
    - b. Install speed control devices,
    - c. Restrict access to through traffic,
    - d. Install and maintain a track-out control device,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant, or
    - h. Apply and maintain water as a dust suppressant.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed truck to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict access to through traffic,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant,
    - h. Apply and maintain water as a dust suppressant,
    - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
    - j. Apply and maintain pavement or cement feed lanes.
- E.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Concrete aprons,
    - b. Provide shade in corral,
    - c. Add water to pen surface,
    - d. Manure removal,
    - e. Pile manure between cleanings,
    - f. Feed higher moisture feed to beef cattle,
    - g. Control cattle during movements,
    - h. Use drag equipment to maintain pens,
    - i. Apply a fibrous layer, or
    - j. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to beef cattle;
    - b. Add molasses or tallow to feed,
    - c. Store and maintain feed stock,
    - d. Bulk materials,
    - e. Use drag equipment to maintain pens,
    - f. Cover manure hauling trucks, or
    - g. Do not load manure when wind exceeds 15 mph.
  - 3. Unpaved Access Connections:
    - a. Install and maintain a track-out control device,
    - b. Apply and maintain pavement in high traffic areas,
    - c. Apply and maintain aggregate cover,

- d. Apply and maintain synthetic particulate suppressant, or
  - e. Apply and maintain water as a dust suppressant.
- 4. Unpaved Roads or Feed Lanes:
  - a. Install engine speed governors on feed truck to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict access to through traffic,
  - e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant,
  - h. Apply and maintain water as a dust suppressant, or
  - i. Apply and maintain oil on roads or feed lanes.
- F. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens (Housing):
    - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
    - b. Use no bedding,
    - c. Control vegetation on building exteriors,
    - d. Add moisture through ventilation systems, or
    - e. House in fully enclosed ventilated buildings.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to the feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean floors and walls in a commercial poultry facility,
    - i. Clean aisles between cage rows,
    - j. Stack separated manure solids, or
    - k. Maintain moisture in manure solids.
  - 3. Unpaved Access Connections:
    - a. Install speed control devices,
    - b. Restrict traffic access,
    - c. Install and maintain a track-out control system, or
    - d. Install signage to limit vehicle speed to 15 mph.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed trucks to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict traffic access,
    - e. Apply and maintain aggregate cover,
    - f. Apply and maintain synthetic particulate suppressant,
    - g. Apply and maintain water, or
    - h. Apply and maintain oil on roads or feed lanes.
- G. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens (Housing):
    - a. House in fully enclosed ventilated buildings,
    - b. Use no bedding,
    - c. Use a slatted floor system,
    - d. Use sloped concrete flooring,
    - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
    - f. Control vegetation on building exteriors, or
    - g. Add moisture through ventilation systems.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean pens, floors, and walls in a commercial swine facility,
    - i. Clean aisles between pens and stalls,
    - j. Store separated manure solids in a wind-blocked area,
    - k. Stack separated manure solids,
    - l. Maintain moisture in manure solids, or
    - m. Maintain liquid lagoon level.
  - 3. Unpaved Access Connections:
    - a. Install speed control devices,
    - b. Restrict traffic access,
    - c. Install and maintain a track-out control system,
    - d. Install signage to limit vehicle speed to 15 mph.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed trucks to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict traffic access,
    - e. Apply and maintain aggregate cover,
    - f. Apply and maintain synthetic particulate suppressant,
    - g. Apply and maintain water,
    - h. Apply and maintain oil on roads or feed lanes, or
    - i. Wind barrier.
- H. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
  - 1. The name of the commercial animal operator, signature, and date signed,
  - 2. The mailing address or physical address of the commercial animal operation, and
  - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- I. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director shall provide the commercial animal operator with a Best Management Practices Program 3-year Survey. The commercial animal operator shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA in a format that does not refer to a commercial animal operator's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:

1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
  2. The signature of the commercial farmer and the date the form was signed;
  3. The number of animals in a commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
  4. The total miles of unpaved roads at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
  5. The total acreage of the unpaved access connections and equipment areas at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
  6. The best management practices selected for each category; and
  7. For commercial dairy operations and beef cattle feedlots, an acknowledgement that water was applied on the day of a high risk day as predicted by the Pinal County Dust Control Forecast.
- J.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- K.** A person may develop different practices not contained in subsection (D), (E), (F), or (G) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- L.** The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- M.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- N.** The Director shall document noncompliance with this Section before issuing a compliance order.
- O.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- Historical Note**
- New Section made by exempt rulemaking pursuant to  
Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective  
July 2, 2015 (Supp. 15-3).
- R18-2-612. Definitions for R18-2-612.01**
- The definitions in R18-2-101 and the following definitions apply to R18-2-612.01:
1. "Access restriction" means reducing PM emission by reducing the number of trips driven on unpaved operation and maintenance and unpaved utility roads by restricting or eliminating public access by the use of signs or physical obstruction at locations that effectively control access to roads.
  2. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads. The aggregate should be clean, hard and durable, and should be applied a depth sufficient to create soil stabilization in accordance with material specifications. A minimum depth of three inches is the standard in the absence of such specifications.
  3. "Apply and maintain water" means reducing PM emissions and wind erosion by applying water to bare soil surfaces until the surfaces are visibly moist.
  4. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
  5. "Biological control of aquatic weeds" means reducing at least one trip, or to one trip if only one trip is needed, per treatment, made by vehicles for the purposes of removing aquatic weeds from canals by using fish, and other biologic means, within the canal through the use of to control the growth of aquatic weeds that reduce operating capacities and create debris that causes other operational issues.
  6. "Canals" means facilities constructed for the sole purpose of the control, conveyance, and delivery of water. These facilities may be either open earthen channels, lined or unlined, or buried pipelines, which are used to convey water uphill and under obstructions, such as roadways and wash and river channels. These facilities include, but are not limited to, gate, inlet, outlet, safety, and measuring structures required to control water along the canals and deliver water to irrigation district customers, as well as compacted earthen banks constructed to protect these facilities from storm runoff events.
  7. "Committee" means the Governor's Agricultural Best Management Practices Committee.
  8. "Debris" means trash, rubble, and other non-soil materials.
  9. "Dredge canals" means reducing PM emissions by mechanically removing muck, debris, and other foreign objects from canals while material is still wet or damp.
  10. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
    - a. Projected meteorological conditions, including:
      - i. Wind speed and direction,
      - ii. Stagnation,
      - iii. Recent precipitation, and
      - iv. Potential for precipitation;
    - b. Existing concentrations of air pollution at the time of the forecast; and
    - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
  11. "Earth materials" means natural materials covering the ground surface, which includes, but are not limited to, dirt, rocks, or soil.
  12. "Grading roadways" means mechanically smoothing and compacting the roadway surface.
  13. "Irrigation District" means a political subdivision, governed by title 48, chapter 19.
  14. "Limit activity" means performing only critical operational or emergency activity on a day forecast to be high risk for dust generation as forecasted by the Pinal County Dust Control Forecast.
  15. "Major earth moving activities" means the mechanical movement of earth materials to reconstruct, relocate, reshape, reconfigure canals, including operation and maintenance roads and utility access roads.

16. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
17. "Minor earth moving activities" means the mechanical movement of earth materials to repair and maintain the existing configuration, location, bank slopes, or inclines of canals.
18. "Muck" means water that is saturated with mud, dirt, and soil, which accumulates over time along the bottom of canals.
19. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, or the State.
20. "Pinal County PM Nonattainment Area" means the West Pinal PM<sub>10</sub> planning area and the West Central PM<sub>2.5</sub> planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
21. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
22. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the use of vehicles owned or operated by the irrigation district on unpaved operation, maintenance, and utility access roads, at speeds not to exceed 25 mph. This can be achieved through worker behavior modifications, signage, or any other necessary means.
23. "Regulated agricultural activity" means activities of an irrigation district, which affects those lands and facilities that are under the jurisdiction and control of an irrigation district, as described in § 49-457(P)(1)(f) and A.R.S. § 49-457(P)(5)(b).
24. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6)(c).
25. "Sediment" means muck that has dried after removal from canals.
26. "Supervisory control system" means a system that allows the irrigation district to control operational structures from a remote computer location in order to reduce at least one trip made by vehicles to access structures for operational purposes.
27. "Synthetic or natural particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface with organic material, such as muck, animal waste or biosolids, or with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide.
28. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
29. "Unauthorized use" means any travel or access by non-district personnel in non-district vehicles along roadways under the control of an irrigation district without the permission of the irrigation district.
30. "Unpaved operation and maintenance roads" means unpaved roadways that lay adjacent to canals, which provide access for irrigation district personnel and equipment for direct operation and maintenance of canals, and are under the control of the irrigation district.
31. "Unpaved utility access roads" means unpaved roadways used to provide access to canals, and also includes office and shop facilities, equipment yards, staging areas and other lands under the control of the irrigation district.
32. "Weed management" means reducing at least one trip made by vehicles for the purposes of removing weeds by using a combination of techniques, including organic, chemical, or biological means, to control weeds along canal banks and land surfaces not used for conveying water, excluding unpaved roadways.
33. "Wind barrier" means reducing PM<sub>10</sub> emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

#### Historical Note

New Section R18-2-612 renumbered from R18-2-610 at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Former Section R18-2-612 renumbered to R18-2-614; new Section R18-2-612 made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009

- A. An irrigation district within a PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each of the following categories to reduce PM emissions:
  1. Unpaved operation and maintenance roads:
    - a. Access restriction,
    - b. Apply and maintain aggregate cover,
    - c. Install supervisory control system to limit vehicle travel,
    - d. Limit activity,
    - e. Install signage to limit vehicle speed to 25 mph,
    - f. Post warning signs for unauthorized use at point of entry to roads,
    - g. Reduce vehicle speed,
    - h. Install and maintain a track-out control system,
    - i. Apply and maintain synthetic or natural particulate suppressant,
    - j. Apply and maintain water before, during, and after major and minor earth moving activities,
    - k. Apply and maintain water when grading roadways,
    - l. Use paved non-district or paved public roads to access structures, or
    - m. Install wind barriers.
  2. Canals:

- a. Dredge canals while muck or debris is still wet,
  - b. Dispose of muck or debris while still damp,
  - c. Weed management,
  - d. Biological control of aquatic weeds, or
  - e. Apply and maintain water before, during and after major and minor earth moving activities.
- 3. Unpaved utility access roads:
  - a. Access restriction,
  - b. Apply and maintain aggregate cover,
  - c. Limit activity,
  - d. Install signage to limit vehicle speed to 25 mph,
  - e. Post warning signs for unauthorized use at points of entry to roads,
  - f. Reduce vehicle speed,
  - g. Install and maintain a track-out control system,
  - h. Apply and maintain pavement,
  - i. Apply and maintain synthetic or natural particulate suppressant,
  - j. Apply and maintain water before, during and after major and minor earth moving activities,
  - k. Apply and maintain water when grading roadways,
  - l. Use paved non-district or paved public roads to access structures, or
  - m. Install wind barriers.
- B. From and after December 31, 2015, an irrigation district engaged in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the irrigation district. The Best Management Practice Program General Permit Record form shall include the following information:
  - 1. The name, business address, and the irrigation district representative responsible for the preparation and implementation of the best management practices;
  - 2. The signature of the irrigation district representative and the date the form was signed; and
  - 3. The best management practice selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- C. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the irrigation district with a Best Management Practices Program 3-year Survey. The irrigation district shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA then be submitted to the Department. The 3-year Survey shall include the following information:
  - 1. The name, business address, and phone number of the irrigation district representative responsible for the preparation and implementation of the best management practices;
  - 2. The signature of the irrigation district representative and the date the form was signed;
  - 3. The total miles of canals that the irrigation district controls;
  - 4. The total miles of unpaved operation and maintenance roads;
  - 5. The total miles of the unpaved utility access roads; and
  - 6. The best management practices selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- D. Records of any changes to those Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the irrigation district onsite and made available for review by the Director within two business days of notice to the irrigation district by the Department.
- E. An irrigation district may develop different practices not contained in either of the categories of subsection (A)(1), (A)(2), or (A)(3) that reduce PM and may submit such practices that are proven effective through in-district trials. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- F. An irrigation district shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- G. The Director shall not assess a fee to an irrigation district for coverage under the agricultural PM general permit.
- H. An irrigation district shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- I. The Director shall document noncompliance with this Section before issuing a compliance order.
- J. An irrigation district that is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

#### Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### R18-2-613. Definitions for R18-2-613.01

- 1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
- 2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
- 3. "Artificial wind barrier" means a physical barrier to the wind.
- 4. "Bed row spacing" means increasing or decreasing the size of a planting bed area to reduce the number of passes and soil disturbance by increasing plant density.
- 5. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM<sub>10</sub> emissions from a regulated agricultural activity.
- 6. "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
- 7. "Combining tractor operations" means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
- 8. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Yuma PM<sub>10</sub> nonattainment area.
- 9. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
- 10. "Conservation irrigation" means the use of drips, sprinklers, or underground lines to conserve water, and to reduce the weed population, the need for tillage, and soil compaction.
- 11. "Conservation tillage" means types of tillage that reduce the number of passes and the amount of soil disturbance.
- 12. "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.

13. "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
14. "Cropland" means land on a commercial farm that:
  - a. Is within the time-frame of final harvest to plant emergence;
  - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
  - c. Is a turn-row.
15. "Cross-wind ridges" means soil ridges formed by a tillage operation.
16. "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
17. "Cross-wind vegetative strips" means herbaceous cover established in one or more strips within the same field.
18. "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
19. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at six feet in height is more than 25 mph at the commercial farm site.
20. "Manure application" means applying animal waste or biosolids to a soil surface.
21. "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.
22. "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
23. "Night farming" means performing regulated agricultural activities at night when moisture levels are higher and winds are lighter.
24. "Noncropland" means any commercial farmland that:
  - a. Is no longer used for agricultural production;
  - b. Is no longer suitable for production of crops;
  - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
  - d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.
25. "Permanent cover" means a perennial vegetative cover on cropland.
26. "Planting based on soil moisture" means applying water to soil before performing planting operations.
27. "Precision farming" means use of satellite navigation to calculate position in the field, to reduce overlap during field operations, and allow operations to occur during nighttime and inclement weather, thus generating less PM<sub>10</sub>.
28. "Reduce vehicle speed" means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 20 mph.
29. "Reduced harvest activity" means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
30. "Regulated agricultural activity" means a commercial farming practice that may produce PM<sub>10</sub> within the Yuma PM<sub>10</sub> nonattainment area.
31. "Residue management" means managing the amount and distribution of crop and other plant residues on a soil surface.
32. "Sequential cropping" means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
33. "Surface roughening" means manipulating a soil surface to produce or maintain clods.
34. "Synthetic particulate suppressant" means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, and polyacrylamide, an emulsion of a petroleum product, and an enzyme product that is used to control particulate matter.
35. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
36. "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
37. "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM<sub>10</sub>.
38. "Transgenic crops" means the use of genetically modified crops such as "herbicide ready" crops, which reduces the need for tillage or cultivation operations, and reduces soil disturbance.
39. "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
40. "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.
41. "Watering" means applying water to noncropland.
42. "Yuma PM<sub>10</sub> nonattainment area" means the Yuma PM<sub>10</sub> planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Section R18-2-313 renumbered to R18-2-313.01; new Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### R18-2-613.01.Yuma PM<sub>10</sub> Nonattainment Area; Agricultural Best Management Practices

- A. A commercial farmer shall comply with this Section by August 1, 2005.
- B. A commercial farmer who begins a regulated agricultural activity after August 1, 2005, shall comply with this Section within 60 days after beginning the regulated agricultural activity.
- C. A commercial farmer shall implement at least one of the best management practices from each of the following categories at each commercial farm:
  1. Tillage and harvest, subsection (E);
  2. Noncropland, subsection (F); and
  3. Cropland, subsection (G).
- D. A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.
- E. A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from tillage and harvest:
  1. Bed row spacing,
  2. Chemical irrigation,
  3. Combining tractor operations,
  4. Conservation irrigation,
  5. Conservation tillage,
  6. Equipment modification,
  7. Limited activity during a high-wind event,
  8. Multi-year crop,
  9. Night farming,
  10. Planting based on soil moisture,
  11. Precision farming,
  12. Reduced harvest activity,
  13. Tillage based on soil moisture,
  14. Timing of a tillage operation, or

15. Transgenic crops.
- F. A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from noncropland:
  1. Access restriction;
  2. Aggregate cover;
  3. Artificial wind barrier;
  4. Critical area planting;
  5. Manure application;
  6. Reduce vehicle speed;
  7. Synthetic particulate suppressant;
  8. Track-out control system;
  9. Tree, shrub, or windbreak planting; or
  10. Watering.
- G. A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from cropland:
  1. Artificial wind barrier;
  2. Cover crop;
  3. Cross-wind ridges;
  4. Cross-wind strip-cropping;
  5. Cross-wind vegetative strips;
  6. Manure application;
  7. Mulching;
  8. Multi-year crop;
  9. Permanent cover;
  10. Planting based on soil moisture;
  11. Precision farming;
  12. Residue management;
  13. Sequential cropping;
  14. Surface roughening; or
  15. Tree, shrub, or windbreak planting.
- H. A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM<sub>10</sub>. A person may submit practices that are proven effective through demonstration trials to the Director. The Director shall review the submitted practices.
- I. A commercial farmer shall maintain records demonstrating compliance with this Section. The commercial farmer shall provide the records to the Director within two business days of written notice to the commercial farmer. The records shall contain:
  1. The name of the commercial farmer,
  2. The mailing address or physical location of the commercial farm, and
  3. The best management practices selected for tillage and harvest, noncropland, and cropland by the commercial farmer, and the date each best management practice was implemented.

#### Historical Note

New Section R18-2-313.01 renumbered from Section R18-2-313 by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

#### R18-2-614. Evaluation of Nonpoint Source Emissions

Opacity of an emission from any nonpoint source shall not be greater than 40% measured according to the 40 CFR 60, Appendix A, Reference Method 9. An open fire permitted under R18-2-602 or regulated under Article 15 is exempt from this requirement.

#### Historical Note

Section R18-2-614 renumbered from R18-2-612; amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

### ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

#### R18-2-701. Definitions

For purposes of this Article:

1. "Acid mist" means sulfuric acid mist as measured in the Arizona Testing Manual and 40 CFR 60, Appendix A.
2. "Architectural coating" means a coating used commercially or industrially for residential, commercial or industrial buildings and their appurtenances, structural steel, and other fabrications such as storage tanks, bridges, beams and girders.
3. "Asphalt concrete plant" means any facility used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt cements. This is limited to facilities, including drum dryer plants that introduce asphalt into the dryer, which employ two or more of the following processes:
  - a. A dryer.
  - b. Systems for screening, handling, storing, and weighing hot aggregate.
  - c. Systems for loading, transferring, and storing mineral filler.
  - d. Systems for mixing asphalt concrete.
  - e. The loading, transferring, and storage systems associated with emission control systems.
4. "Black liquor" means waste liquor from the brown stock washer and spent cooking liquor which have been concentrated in the multiple-effect evaporator system.
5. "Calcine" means the solid materials produced by a lime plant.
6. "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the ASTM Method D388-05 "Standard Classification of Coals by Rank" and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat including but not limited to, coal derived gases (not meeting the definition of natural gas), solvent-refined coal, coal-oil mixtures, and coal-water mixtures, are considered "coal" for the purposes of this subpart.
7. "Coal refuse" means any by-product of coal mining, physical coal cleaning, and coal preparation operations (e.g., culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.
8. "Concentrate" means enriched copper ore recovered from the froth flotation process.
9. "Concentrate dryer" means any facility in which a copper sulfide ore concentrate charge is heated in the presence of air to eliminate a portion of the moisture from the charge, provided less than 5% of the sulfur contained in the charge is eliminated in the facility.
10. "Concentrate roaster" means any facility in which a copper sulfide ore concentrate is heated in the presence of air to eliminate 5% or more of the sulfur contained in the charge.
11. "Condensate stripper system" means a column, and associated condensers, used to strip, with air or steam, TRS compounds from condensate streams from various processes within a kraft pulp mill.
12. "Control device" means the air pollution control equipment used to remove particulate matter or gases generated by a process source from the effluent gas stream.
13. "Converter" means any vessel to which copper matte is charged and oxidized to copper.



14. "Electric generating plant" means all electric generating units located at a stationary source.
15. "Electric generating unit" means a combustion unit of more than 25 megawatts electric that serves a generator that produces electricity for sale and that burns coal for more than 10.0 percent of the average annual heat input during any three consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale is considered an electric generating unit.
16. "Existing source" means any source which does not have an applicable new source performance standard under Article 9 of this Chapter.
17. "Facility" means an identifiable piece of stationary process equipment along with all associated air pollution equipment.
18. "Federal mercury standards" means the emissions limits, monitoring, testing, recordkeeping, reporting and notification requirements applicable or relating to emissions of mercury from electric generating units under 40 CFR Part 63, Subpart UUUUU.
19. "Fugitive dust" means fugitive emissions of particulate matter.
20. "High sulfur oil" means fuel oil containing 0.90% or more by weight of sulfur.
21. "Inlet mercury" means the average concentration of mercury in the coal burned at an electric generating unit, as determined by ASTM methods, EPA-approved methods or alternative methods approved by the Director.
22. "Lime kiln" means a unit used to calcinate lime rock or kraft pulp mill lime mud, which consists primarily of calcium carbonate, into quicklime, which is calcium oxide.
23. "Low sulfur oil" means fuel oil containing less than 0.90% by weight of sulfur.
24. "Matte" means a metallic sulfide made by smelting copper sulfide ore concentrate or the roasted product of copper sulfide ores.
25. "Mercury" means mercury or mercury compounds in either a gaseous or particulate form.
26. "Miscellaneous metal parts and products" for purposes of industrial coating include all of the following:
  - a. Large farm machinery, such as harvesting, fertilizing and planting machines, tractors, and combines;
  - b. Small farm machinery, such as lawn and garden tractors, lawn mowers, and rototillers;
  - c. Small appliances, such as fans, mixers, blenders, crock pots, dehumidifiers, and vacuum cleaners;
  - d. Commercial machinery, such as office equipment, computers and auxiliary equipment, typewriters, calculators, and vending machines;
  - e. Industrial machinery, such as pumps, compressors, conveyor components, fans, blowers, and transformers;
  - f. Fabricated metal products, such as metal-covered doors and frames;
  - g. Any other industrial category which coats metal parts or products under the Code in the "Standard Industrial Classification Manual, 1987" of Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (non-electric machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), and Major Group 39 (miscellaneous manufacturing industries), except all of the following:
    - i. Automobiles and light-duty trucks;
    - ii. Metal cans;
    - iii. Flat metal sheets and strips in the form of rolls or coils;
    - iv. Magnet wire for use in electrical machinery;
    - v. Metal furniture;
    - vi. Large appliances;
    - vii. Exterior of airplanes;
    - viii. Automobile refinishing;
    - ix. Customized top coating of automobiles and trucks, if production is less than 35 vehicles per day;
    - x. Exterior of marine vessels.
27. "Multiple-effect evaporator system" means the multiple-effect evaporators and associated condenser and hotwell used to concentrate the spent cooking liquid that is separated from the pulp.
28. "Neutral sulfite semichemical pulping" means any operation in which pulp is produced from wood by cooking or digesting wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating or grinding.
29. "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in ASTM D396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D975-90 (Specification for Diesel Fuel Oils).
30. "Potential electric output capacity" means 33% of a unit's maximum design heat input, divided by 3,413 Btu per kilowatt-hour, divided by 1,000 kilowatt-hours per megawatt-hour, and multiplied by 8,760 hours per year.
31. "Process source" means the last operation or process which produces an air contaminant resulting from either:
  - a. The separation of the air contaminants from the process material, or
  - b. The conversion of constituents of the process materials into air contaminants which is not an air pollution abatement operation.
32. "Process weight" means the total weight of all materials introduced into a process source, including fuels, where these contribute to pollution generated by the process.
33. "Process weight rate" means a rate established pursuant to R18-2-702(E).
34. "Recovery furnace" means the unit, including the direct-contact evaporator for a conventional furnace, used for burning black liquor to recover chemicals consisting primarily of sodium carbonate and sodium sulfide.
35. "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D-323-90 (Test Method for Vapor Pressure of Petroleum Products) (Reid Method).
36. "Reveratory smelting furnace" means any vessel in which the smelting of copper sulfide ore concentrates or calcines is performed and in which the heat necessary for smelting is provided primarily by combustion of a fossil fuel.
37. "Rotary lime kiln" means a unit with an included rotary drum which is used to produce a lime product from limestone by calcination.

38. “Slag” means fused and vitrified matter separated during the reduction of a metal from its ore.
  39. “Smelt dissolving tank” means a vessel used for dissolving the smelt collected from the kraft mill recovery furnace.
  40. “Smelter feed” means all materials utilized in the operation of a copper smelter, including metals or concentrates, fuels and chemical reagents, calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products are emitted to the atmosphere.
  41. “Smelting” means processing techniques for the smelting of a copper sulfide ore concentrate or calcine charge leading to the formation of separate layers of molten slag, molten copper, or copper matte.
  42. “Smelting furnace” means any vessel in which the smelting of copper sulfide ore concentrates or calcines is performed and in which the heat necessary for smelting is provided by an electric current, rapid oxidation of a portion of the sulfur contained in the concentrate as it passes through an oxidizing atmosphere, or the combustion of a fossil fuel.
  43. “Standard conditions” means a temperature of 293K (68°F or 20°C) and a pressure of 101.3 kilopascals (29.92 in. Hg or 1013.25 mb).
  44. “Supplementary control system” (SCS) means a system by which sulfur dioxide emissions are curtailed during periods when meteorological conditions conducive to ground-level concentrations in excess of ambient air quality standards for sulfur dioxide either exist or are anticipated.
  45. “Vapor pressure” means the pressure exerted by the gaseous form of a substance in equilibrium with its liquid or solid form.
3. After April 23, 2006, greater than 20% in any area that is attainment or unclassifiable for each particulate matter standard except as provided in subsections (D) and (E).
  - C. If the presence of uncombined water is the only reason for an exceedance of any visible emissions requirement in this Article, the exceedance shall not constitute a violation of the applicable opacity limit.
  - D. A person owning or operating a source may petition the Director for an alternative applicable opacity limit. The petition shall be submitted to ADEQ by May 15, 2004.
    1. The petition shall contain:
      - a. Documentation that the affected facility and any associated air pollution control equipment are incapable of being adjusted or operated to meet the applicable opacity standard. This includes:
        - i. Relevant information on the process operating conditions and the control devices operating conditions during the opacity or stack tests;
        - ii. A detailed statement or report demonstrating that the source investigated all practicable means of reducing opacity and utilized control technology that is reasonably available considering technical and economic feasibility; and
        - iii. An explanation why the source cannot meet the present opacity limit although it is in compliance with the applicable particulate mass emission rule.
      - b. If there is an opacity monitor, any certification and audit reports required by all applicable subparts in 40 CFR 60 and in Appendix B, Performance Specification 1.
      - c. A verification by a responsible official of the source of the truth, accuracy, and completeness of the petition. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
    2. If the unit for which the alternative opacity standard is being applied is subject to a stack test, the petition shall also include:
      - a. Documentation that the source conducted concurrent EPA Reference Method stack testing and visible emissions readings or is utilizing a continuous opacity monitor. The particulate mass emission test results shall clearly demonstrate compliance with the applicable particulate mass emission limitation by being at least 10% below that limit. For multiple units that are normally operated together and whose emissions vent through a single stack, the source shall conduct simultaneous particulate testing of each unit. Each control device shall be in good operating condition and operated consistent with good practices for minimizing emissions.
      - b. Evidence that the source conducted the stack tests according to R18-2-312, and that they were witnessed by the Director or the Director’s agent or representative.
      - c. Evidence that the affected facility and any associated air pollution control equipment were operated and maintained to the maximum extent practicable to minimize the opacity of emissions during the stack tests.
    3. If the source for which the alternative opacity standard is being applied is located in a nonattainment area, the petitioner shall include all the information listed in subsections (D)(1) and (D)(2), and in addition:

#### Historical Note

Former Section R18-2-701 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-701 renumbered from R18-2-501 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

#### R18-2-702. General Provisions

- A. The provisions of this Article shall only apply to a source that is all of the following:
  1. An existing source, as defined in R18-2-101;
  2. A point source. For the purposes of this Section, “point source” means a source of air contaminants that has an identifiable plume or emissions point; and
  3. A stationary source, as defined in R18-2-101.
- B. Except as otherwise provided in this Chapter relating to specific types of sources, the opacity of any plume or effluent, from a source described in subsection (A), as determined by Reference Method 9 in 40 CFR 60, Appendix A, shall not be:
  1. Greater than 20% in an area that is nonattainment or maintenance for any particulate matter standard, unless an alternative opacity limit is approved by the Director and the Administrator as provided in subsections (D) and (E), after February 2, 2004;
  2. Greater than 40% in an area that is attainment or unclassifiable for each particulate matter standard; and

- a. In subsection (D)(1)(a)(ii), the detailed statement or report shall demonstrate that the alternative opacity limit fulfills the Clean Air Act requirement for reasonably available control technology; and
  - b. In subsection (D)(2)(b), the stack tests shall be conducted with an opportunity for the Administrator or the Administrator's agent or representative to be present.
- E.** If the Director receives a petition under subsection (D) the Director shall approve or deny the petition as provided below by October 15, 2004:
1. If the petition is approved under subsection (D)(1) or (D)(2), the Director shall include an alternative opacity limit in a proposed significant permit revision for the source under R18-2-320 and R18-2-330. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that an alternative opacity limit under this Section shall not be greater than 40%. For multiple units that are normally operated together and whose emissions vent through a single stack, any new alternative opacity limit shall reflect the opacity level at the common stack exit, and not individual in-duct opacity levels.
  2. If the petition is approved under subsection (D)(3), the Director shall include an alternative opacity limit in a proposed revision to the applicable implementation plan, and submit the proposed revision to EPA for review and approval. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that the alternative opacity limit shall not be greater than 40%.
  3. If the petition is denied, the source shall either comply with the 20% opacity limit or apply for a significant permit revision to incorporate a compliance schedule under R18-2-309(5)(c)(iii) by April 23, 2006.
  4. A source does not have to petition for an alternative opacity limit under subsection (D) to enter into a revised compliance schedule under R18-2-309(5)(c).
- F.** The Director, Administrator, source owner or operator, inspector or other interested party shall determine the process weight rate, as used in this Article, as follows:
1. For continuous or long run, steady-state process sources, the process weight rate is the total process weight for the entire period of continuous operation, or for a typical portion of that period, divided by the number of hours of the period, or portion of hours of that period.
  2. For cyclical or batch process sources, the process weight rate is the total process weight for a period which covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during the period.
- Historical Note**
- Former Section R18-2-702 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-702 renumbered from R18-2-502 and amended effective November 15, 1993 (Supp. 93-4). Amended by exempt rulemaking at 9 A.A.R. 5550, effective February 3, 2004 (Supp. 03-4).
- R18-2-703. Standards of Performance for Existing Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment**
- A.** This Section applies to the following:
1. Installations in which fuel is burned for the primary purpose of producing power, steam, hot water, hot air or other liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitation shall apply, except for wood waste burners as regulated under R18-2-704.
  2. All fossil-fuel fired steam generating units or general fuel burning equipment which are greater than or equal to 73 megawatts capacity.
- B.** For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. The heat content of solid fuel shall be determined in accordance with R18-2-311. Compliance tests shall be conducted during operation at the nominal rated capacity of each unit.
- C.** No person shall cause, allow or permit the emission of particulate matter in excess of the amounts calculated by one of the following equations:
1. For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 1.02Q^{0.769}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 Q = the heat input in million Btu per hour.
  2. For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:  

$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meaning as in subsection (C)(1).
- D.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E.** When low sulfur oil is fired:
1. Existing fuel-burning equipment or steam-power generating installations which commenced construction or a major modification prior to May 30, 1972, shall not emit more than 1.0 pounds sulfur dioxide maximum three-hour average, per million Btu (430 nanograms per joule) heat input.
  2. Existing fuel-burning equipment or steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit more than 0.80 pounds of sulfur dioxide maximum three-hour average per million Btu (340 nanograms per joule) heat input.
- F.** When high sulfur oil is fired, all existing steam-power generating and general fuel-burning installations which are subject to the provisions of this Section shall not emit more than 2.2 pounds of sulfur dioxide maximum three-hour average per million Btu (946 nanograms per joule) heat input.
- G.** When solid fuel is fired:
1. Existing general fuel-burning equipment and steam-power generating installations which commenced construction or a major modification prior to May 30, 1972, shall not emit more than 1.0 pounds of sulfur dioxide maximum three-hour average, per million Btu (430 nanograms per joule) heat input.
  2. Existing general fuel-burning equipment and steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit more than 0.80 pounds of sulfur dioxide, maximum three-hour average, per million Btu (340 nanograms per joule) heat input.
- H.** Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permit-

tee, unless the applicant demonstrates to the satisfaction of the Director that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.

1. The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
  2. In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
  3. When the conditions justifying the use of high sulfur oil no longer exists, the permit shall be modified accordingly.
  4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- I.** Existing steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit nitrogen oxides in excess of the following amounts:
1. 0.20 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when gaseous fossil fuel is fired.
  2. 0.30 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when liquid fossil fuel is fired.
  3. 0.70 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when solid fossil fuel is fired.
- J.** Emission and fuel monitoring systems, where deemed necessary by the Director for sources subject to the provisions of this Section shall, conform to the requirements of R18-2-313.
- K.** The applicable reference methods given in the Appendices to 40 CFR 60 shall be used to determine compliance with the standards as prescribed in subsections (C) through (G) and (I). All tests shall be run at the heat input calculated under subsection (B).

#### Historical Note

Former Section R18-2-703 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-703 renumbered from R18-2-503 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-704. Standards of Performance for Incinerators

- A.** No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator, smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity except during the times specified in subsection (D).
- B.** No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any incinerator, in excess of the following limits:
1. For multiple chamber incinerators, controlled atmosphere incinerators, fume incinerators, afterburners or other unspecified types of incinerators, emissions shall not exceed 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
  2. For wood waste burners other than air curtain destructors, emissions discharged from the stack or burner top opening shall not exceed 0.2 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.

- C.** Air curtain destructors shall not be used within 500 feet of the nearest dwelling.
- D.** Incinerators shall be exempt from the opacity and emission requirements described in subsections (A) and (B) as follows:
1. For multiple chamber incinerators, controlled atmosphere incinerators, fume incinerators, afterburners or other unspecified types of incinerators, such exemption shall be for not more than 30 seconds in any 60-minute period.
  2. Wood waste burners shall be exempt both:
    - a. For a period once each day for the purpose of building a new fire but not to exceed 60 minutes, and
    - b. For an upset of operations not to exceed three minutes in any 60-minute period.
- E.** The owner or operator of any incinerator subject to the provisions of this Section shall record the daily charging rates and hours of operation.
- F.** The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A, shall be used to determine compliance with the standards prescribed in subsection (B) as follows:
    - a. Method 5 for the concentration of particulate matter and the associated moisture content;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis and calculation of excess air, using the integrated sampling technique.
  2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 0.85 dscm (30.0 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Director.

#### Historical Note

Former Section R18-2-704 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-704 renumbered from R18-2-504 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

#### R18-2-705. Standards of Performance for Existing Portland Cement Plants

- A.** The provisions of this Section are applicable to the following affected facilities in portland cement plants: kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems.
- B.** No person shall cause, allow or permit the discharge of particulate matter from any identifiable process source within any existing cement plant subject to the provisions of this Section which exceeds the amounts calculated by one of the following equations:
1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the max-

imum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$

where “E” and “P” are defined as indicated in subsection (B)(1).

- C. No process source within any portland cement plant shall exceed 20% opacity.
- D. No person shall cause, allow or permit discharge into the atmosphere of an amount in excess of 6 pounds of sulfur oxides, calculated as sulfur dioxide, per ton cement kiln feed from cement plants subject to the provisions of this Section.
- E. The owner or operator of any portland cement plant subject to the provisions of this Section shall record the daily production rates and the kiln feed rates.
- F. The test methods and procedures required by this Section are as follows:
  - 1. The reference methods in 40 CFR 60, Appendix A, except as provided for in R18-2-312 shall be used to determine compliance with the standards prescribed in subsection (B) as follows:
    - a. Method 5 for the concentration of particulate matter and the associated moisture content;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis.
  - 2. For Method 5, the minimum sampling time and minimum sample volume for each run except when process variables or other factors justifying otherwise to the satisfaction of the Director, shall be as follows:
    - a. 60 minutes and 0.85 dscm (30.0 dscf) for the kiln,
    - b. 60 minutes and 1.15 dscm (40.6 dscf) for the clinker cooler.
  - 3. Total kiln feed rate, except fuels, expressed in metric tons per hour on a dry basis, shall be both:
    - a. Determined during each testing period by suitable methods; and
    - b. Confirmed by a material balance over the production system.
  - 4. For each run, particulate matter emissions, expressed in g/metric ton of kiln feed, shall be determined by dividing the emission rate in g/hr by the kiln feed rate. The emission rate shall be determined by the equation,  $g/hr = Q_s \times c$ , where  $Q_s$  = volumetric flow rate of the total effluent in dscm/hr as determined in accordance with subsection (F)(1)(c), and  $c$  = particulate concentration in g/dscm as determined in accordance with subsection (F)(1)(a).

#### Historical Note

Former Section R18-2-705 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-705 renumbered from R18-2-505 effective November 15, 1993 (Supp. 93-4).

#### R18-2-706. Standards of Performance for Existing Nitric Acid Plants

- A. No person shall cause, allow or permit discharge from any nitric acid plant producing weak nitric acid, which is either:
  - 1. 30 to 70% in strength by either the increased pressure or atmospheric pressure process, or
  - 2. More than 1.5 kg of total oxides of nitrogen per metric ton (3.0 lbs/ton) of acid produced expressed as nitrogen dioxide.
- B. The opacity of any plume subject to the provisions of this Section shall not exceed 10%.
- C. A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained and oper-

ated by the owner or operator, in accordance with Section R18-2-313.

- D. The test methods and procedures required by this Section are as follows:
  - 1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with the standard prescribed in subsection (A) as follows:
    - a. Method 7 for the concentration of  $NO_x$ ;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis.
  - 2. For Method 7, the sample site shall be selected according to Method 1 and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than 1 m (3.28 ft.). Each run shall consist of at least four grab samples taken at approximately 15-minute intervals. The arithmetic mean of the samples shall constitute the run value. A velocity traverse shall be performed once per run.
  - 3. Acid production rate, expressed in metric tons per hour of 100% nitric acid, shall be both:
    - a. Determined during each testing period by suitable methods, and
    - b. Confirmed by a material balance over the production system.
  - 4. For each run, nitrogen oxides, expressed in g/metric ton of 100% nitric acid, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation:
 
$$g/hr = Q_s \times c$$
 where  $Q_s$  = volumetric flow rate of the effluent in dscm/hr, as determined in accordance with subsection (D)(1)(c), and  $c$  =  $NO_x$  concentration in g/dscm, as determined in accordance with subsection (D)(1)(a).

#### Historical Note

Former Section R18-2-706 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-706 renumbered from R18-2-506 effective November 15, 1993 (Supp. 93-4).

#### R18-2-707. Standards of Performance for Existing Sulfuric Acid Plants

- A. Facilities that produce sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfide and mercaptans or acid sludge shall not discharge into the atmosphere:
  - 1. Greater than 2 kg of sulfur dioxide per metric ton (4 lbs/ton) of sulfuric acid produced (calculated as 100%  $H_2SO_4$ ), or
  - 2. Greater than 0.075 kg of sulfuric acid mist per metric ton (0.15 lbs/ton) or sulfuric acid produced (calculated as 100%  $H_2SO_4$ ).
- B. This Section shall not apply to metallurgical plants or other facilities where conversion to sulfuric acid is utilized as a means of controlling emissions to the atmosphere of sulfur dioxide or other sulfur compounds.
- C. A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained and operated by the owner or operator, in accordance with R18-2-313.
- D. The test methods and procedures required by this Section are as follows:
  - 1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with standards prescribed in subsection (A) as follows:
    - a. Method 8 for concentration of  $SO_2$  and acid mist;

- b. Method 1 for sample and velocity traverses;
  - c. Method 2 for velocity and volumetric flow rate;
  - d. Method 3 for gas analysis.
2. The moisture content can be considered to be zero. For Method 8 the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 1.15 dscm (40.6 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Director.
  3. Acid production rate, expressed in metric tons per hour of 100% H<sub>2</sub>SO<sub>4</sub>, shall be both:
    - a. Determined during each testing period by suitable methods, and
    - b. Confirmed by a material balance over the production system.
  4. Acid mist and sulfur dioxide emissions, expressed in g/metric ton of 100% H<sub>2</sub>SO<sub>4</sub>, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation, g/hr-Q<sub>s</sub> x c, where Q<sub>s</sub> = volumetric flow rate of the effluent in dscm/hr as determined in accordance with subsection (D)(1)(c), and c = acid mist and SO<sub>2</sub> concentrations in g/dscm as determined in accordance with subsection (D)(1)(a).

#### Historical Note

Former Section R18-2-707 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-707 renumbered from R18-2-507 effective November 15, 1993 (Supp. 93-4).

#### R18-2-708. Standards of Performance for Existing Asphalt Concrete Plants

- A. Fixed asphalt concrete plants and portable asphalt concrete plants shall meet the standards set forth in this Section.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing asphalt concrete plant in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emission rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Liquid fuel containing greater than 0.9% sulfur by weight shall not be utilized for asphalt concrete plants subject to this Section.
- F. Solid fuel containing greater than 0.5% sulfur by weight shall not be utilized for asphalt concrete plants subject to this Section.

#### G. The test methods and procedures required under this Section are:

1. The referenced methods given in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in subsection (B).
  - a. Method 5 for the concentration of particulate matter and the associated moisture content,
  - b. Method 1 for sample and velocity traverses,
  - c. Method 2 for velocity and volumetric flow rate,
  - d. Method 3 for gas analysis.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.
3. Percent sulfur in liquid fuel shall be determined by ASTM method D-129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method), and the percent sulfur in solid fuel shall be determined by ASTM method D-3177-89 (Test Method for Total Sulfur in the Analysis Sample of Coal and Coke).

#### Historical Note

Former Section R18-2-708 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-708 renumbered from R18-2-508 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-709. Expired

#### Historical Note

Former Section R18-2-709 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-709 renumbered from R18-2-509 and amended effective November 15, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

#### R18-2-710. Standards of Performance for Existing Storage Vessels for Petroleum Liquids

- A. No person shall place, store or hold in any reservoir, stationary tank or other container having a capacity of 40,000 (151,400 liters) or more gallons any petroleum liquid having a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:
  1. A floating roof consisting of a pontoon type double-deck type roof resting on the surface of the liquid contents and equipped with a closure seal to close the space between the roof eave and tank wall and a vapor balloon or vapor dome, designed in accordance with accepted standards of the petroleum industry. The control equipment shall not be used if the petroleum liquid has a vapor pressure of 12 pounds per square inch absolute or greater under actual storage conditions.
    - a. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.
    - b. There shall be no visible holes, tears, or other openings in the seal or any seal fabric. Where applicable, all openings except drains shall be equipped with a cover, seal, or lid. The cover, seal, or lid shall be in a

closed position at all times, except when the device is in actual use.

- c. Automatic bleeder vents shall be closed at all times, except when the roof is floated off or landed on the roof leg supports.
  - d. Rim vents, if provided, shall be set to open when the roof is being floated off the roof leg supports, or at the manufacturer's recommended setting.
2. Other equipment proven to be of equal efficiency for preventing discharge of hydrocarbon gases and vapors to the atmosphere.
- B.** Any other petroleum liquid storage tank shall be equipped with a submerged filling device, or acceptable equivalent, for the control of hydrocarbon emissions.
- C.** All facilities for dock loading of petroleum products, having a vapor pressure of 1.5 pounds per square inch absolute or greater at loading pressure, shall provide for submerged filling or acceptable equivalent for control of hydrocarbon emissions.
- D.** All pumps and compressors which handle volatile organic compounds shall be equipped with mechanical seals or other equipment of equal efficiency to prevent the release of organic contaminants into the atmosphere.
- E.** The monitoring of operations required by this Section is as follows:
1. The owner or operator of any petroleum liquid storage vessel to which this Section applies shall for each such storage vessel maintain a file of each type of petroleum liquid stored, of the typical Reid vapor pressure of each type of petroleum liquid stored and of dates of storage. Dates on which the storage vessel is empty shall be shown.
  2. The owner or operator of any petroleum liquid storage vessel to which this Section applies shall for such storage vessel determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if either:
    - a. The petroleum liquid has a true vapor pressure, as stored, greater than 26 mm Hg (0.5 psia) but less than 78 mm Hg (1.5 psia) and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or
    - b. The petroleum liquid has a true vapor pressure, as stored, greater than 470 mm Hg (9.1 psia) and is stored in a storage vessel other than one equipped with a vapor recovery system or its equivalent.
  3. The average monthly storage temperature shall be an arithmetic average calculated for each calendar month, or portion thereof, if storage is for less than a month, from bulk liquid storage temperatures determined at least once every seven days.
  4. The true vapor pressure shall be determined by the procedures in American Petroleum Institute Bulletin 2517, amended as of February 1980 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the Director requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, the Reid vapor pressure may be used. For other liquids, supporting analytical data must be

made available upon request to the Director when typical Reid vapor pressure is used.

#### Historical Note

Section R18-2-710 renumbered from R18-2-510 effective November 15, 1993 (Supp. 93-4).

#### R18-2-711. Expired

#### Historical Note

Section R18-2-711 renumbered from R18-2-511 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

#### R18-2-712. Expired

#### Historical Note

Section R18-2-712 renumbered from R18-2-512 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

#### R18-2-713. Expired

#### Historical Note

Section R18-2-713 renumbered from R18-2-513 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

#### R18-2-714. Standards of Performance for Existing Sewage Treatment Plants

- A.** No person shall cause, allow or permit to be emitted into the atmosphere, from any municipal sewage treatment plant sludge incinerator:
1. Smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity for more than 30 seconds in any 60-minute period.
  2. Particulate matter in concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- B.** The owner or operator of any sludge incinerator subject to the provisions of this Section shall monitor operations by doing all of the following:
1. Install, calibrate, maintain and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall have an accuracy of  $\pm 5\%$  over its operating range.
  2. Provide access to the sludge charged so that a well-mixed representative grab sample of the sludge can be obtained.
  3. Install, calibrate, maintain and operate a weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid wastes are incinerated together. The weighing device shall have an accuracy of  $\pm 5\%$  over its operating range.
- C.** The test methods and procedures required by this Section are as follows:
1. The reference methods set forth in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in subsection (A) as follows:

- a. Method 5 for concentration of particulate matter and associated moisture content;
  - b. Method 1 for sample and velocity traverses;
  - c. Method 2 for volumetric flow rate; and
  - d. Method 3 for gas analysis.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.

**Historical Note**

Section R18-2-714 renumbered from R18-2-514 effective November 15, 1993 (Supp. 93-4).

**R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements**

- A. No owner or operator of a primary copper smelter shall cause, allow or permit the discharge of particulate matter into the atmosphere from any process in total quantities in excess of the amount calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (A)(1).
- B. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- C. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter for that process.
- D. The opacity of emissions subject to the provisions of this Section shall not exceed 20%.
- E. The reference methods set forth in the Arizona Testing Manual and 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:
  1. Method A1 or Reference Method 5 for concentration of particulate matter and associated moisture content,
  2. Reference Method 1 for sample and velocity traverses,
  3. Reference Method 2 for volumetric flow rate,
  4. Reference Method 3 for gas analysis.
- F. Except as provided in a consent decree or a delayed compliance order, the owner or operator of any primary copper smelter shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from any stack required to be monitored by R18-2-715.01(K) in excess of the following:
  1. For the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17" W:
    - a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 6,882 pounds per hour.
    - b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission

level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	24,641
1	22,971
2	21,705
4	20,322
7	19,387
12	18,739
20	17,656
32	16,988
48	16,358
68	15,808
94	15,090
130	14,423
180	13,777
245	13,212
330	12,664
435	12,129
560	11,621
710	11,165
890	10,660
1100	10,205
1340	9,748
1610	9,319
1910	8,953
2240	8,556

2. For the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W:
  - a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 604 pounds per hour.
  - b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	8678
1	7158
2	5903
4	4575
7	4074
12	3479
20	3017
32	2573
48	2111
68	1703
94	1461
130	1274
180	1145
245	1064



330	1015
435	968
560	933
710	896
890	862
1100	828
1340	797
1610	765
1910	739
2240	712

- G. Except as provided in a consent decree or a delayed compliance order, for the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17"W, annual average fugitive emissions calculated under R18-2-715.01(T) shall not exceed 295 pounds per hour.
- H. In addition to the limits in subsection (F)(3), except as provided in a consent decree or a delayed compliance order, the owner or operator of the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from combined stack and fugitive emissions units in excess of the 2420 pounds per hour annual average calculated under R18-2-715.01(U).

#### Historical Note

Section R18-2-715 renumbered from R18-2-515 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

- A. The cumulative occurrence and emission limits in R18-2-715(F) apply to the total of sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not uncaptured fugitive emissions or emissions due solely to the use of fuel for space heating or steam generation.
- B. The owner or operator shall include periods of malfunction, startup, shutdown or other upset conditions when determining compliance with the cumulative occurrence or annual average emission limits in R18-2-715(F), (G), or (H).
- C. The owner or operator shall determine compliance with the cumulative occurrence and emission limits contained in R18-2-715(F) as follows:
- The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period defined in subsection (J) ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(F) if either:
    - The annual average is greater than the annual average computed for the preceding day; or
    - The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
  - The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements in subsection (K).
- D. For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986, except that:
- The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(1) and R18-2-715(G)(1) is January 15, 2002, and
  - The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(2), (F)(3), (G)(2), and (H) is the effective date of this rule.
- E. For purposes of subsection (C), a three-hour emissions average in excess of an emission level E violates the associated cumulative occurrence limit n listed in R18-2-715(F) if:
- The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
  - The average is calculated during the last operating day of the compliance period being reported.
- F. A three-hour emissions average only violates the cumulative occurrence limit n of an emission level E on the day containing the last hour in the average.
- G. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(F).
- H. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(F).
- I. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(F).
- J. To determine compliance with subsections (C) through (I), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- K. To determine compliance with R18-2-715(F) or (H), the owner or operator of any smelter subject to R18-2-715(F) or (H) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in each stack that could emit five percent or more of the allowable annual average sulfur dioxide emissions from the smelter.
- The owner or operator shall continuously monitor sulfur dioxide concentrations and stack gas volumetric flow rates in the outlet of each piece of sulfur dioxide control equipment.
  - The owner or operator shall continuously monitor captured fugitive emissions for sulfur dioxide concentrations and stack gas volumetric flow rates and include these emissions as part of total plant emissions when determining compliance with the cumulative occurrence and emission limits in R18-2-715(F) and (H).
  - If the owner or operator demonstrates to the Director that measurement of stack gas volumetric flow in the outlet of any particular piece of sulfur dioxide control equipment would yield inaccurate results once operational or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.

4. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all monitored stacks, outlets, or other approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
5. The owner or operator shall demonstrate that the continuous monitoring system meets all of the following requirements:
  - a. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 6.
  - b. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
  - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring system.
  - d. The Director shall approve the location of all sampling points for monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
  - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case specifications or recommendations shall be followed. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
- L. The owner or operator of a smelter subject to this Section shall measure at least 95 percent of the hours during which emissions occurred in any month.
- M. Failure of the owner or operator of a smelter subject to this Section to measure any 12 consecutive hours of emissions according to the requirements of subsection (K) or (S) is a violation of this Section.
- N. The owner or operator of any smelter subject to this Section shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring equipment required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
- O. To determine total overall emissions, the owner or operator of any smelter subject to this Section shall perform material balances for sulfur according to the procedures prescribed by Appendix 8 of this Chapter.
- P. The owner or operator of any smelter subject to this Section shall maintain a record of all average hourly emissions measurements and all calculated average monthly emissions required by this Section. The record of the emissions shall be retained for at least five years following the date of measurement or calculation. The owner or operator shall record the measurement or calculation results as pounds per hour of sulfur dioxide. The owner or operator shall summarize the following data monthly and submit the summary to the Director within 20 days after the end of each month:
  1. For all periods described in subsection (C) and (R), the annual average emissions as calculated at the end of each day of the month;
  2. The total number of hourly periods during the month in which measurements were not taken and the reason for loss of measurement for each period;
  3. The number of three-hour emissions averages that exceeded each of the applicable emissions levels listed in R18-2-715(F) and (G)(1)(b) for the compliance periods ending on each day of the month being reported;
  4. The date on which a cumulative occurrence limit listed in R18-2-715(F) or (G)(1)(b) was exceeded if the exceedance occurred during the month being reported; and
  5. For all periods described in subsection (T) and (U), the annual average emissions as calculated at the end of the last day of each month.
- Q. An owner or operator shall install instrumentation to monitor each point in the smelter facility where a means exists to bypass the sulfur removal equipment, to detect and record all periods that the bypass is in operation. An owner or operator of a copper smelter shall report to the Director, not later than the 15th day of each month, the recorded information required by this Section, including an explanation for the necessity of the use of the bypass.
- R. The owner or operator shall determine compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G)(1) as follows:
  1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (R)(8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(G)(1)(a) if either:
    - a. The annual average is greater than the annual average computed for the preceding day; or
    - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
  2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements contained in subsection (S).
  3. For purposes of subsection (R)(2), a three-hour emissions average in excess of an emission level  $E_f$  violates the associated cumulative occurrence limit  $n$  listed in R18-2-715(G)(1)(b) if:
    - a. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
    - b. The average is calculated during the last operating day of the compliance period being reported.
  4. A three-hour emissions average only violates the cumulative occurrence limit  $n$  of an emission level  $E_f$  on the day containing the last hour in the average.
  5. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(G)(1)(b).

6. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(G)(1).
  7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(G)(1)(b).
  8. To determine compliance with subsections (R)(1) through (7), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- S. To determine compliance with R18-2-715(G)(1), the owner or operator of the smelter subject to R18-2-715(G)(1) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
1. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration from an approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
  2. The owner or operator of a smelter subject to the requirements of this subsection shall conduct quality assurance procedures on the continuous monitoring system according to the methods in 40 CFR 60, Appendix F, except that an annual relative accuracy test audit (RATA) is not required.
- T. The emission limit in R18-2-715(G)(2) applies to the total of uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(G)(2) as follows:
1. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
  2. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(G)(2) if the fugitive annual average computed at the end of each month exceeds the allowable annual average emission limit.
- U. The emission limit in R18-2-715(H) applies to the total of stack and uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(H) as follows:
1. The owner or operator shall calculate annual average stack emissions at the end of the last day of each month by averaging the emissions for all hours measured during the previous 12-month period ending on that day according to the requirements contained in subsection (K).
  2. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
  3. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(H) if the total of the stack and fugitive annual averages computed at the end of each month exceeds the allowable annual average emission limit.

#### Historical Note

Section R18-2-715.01 renumbered from R18-2-515.01 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3).

#### R18-2-715.02. Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions

- A. For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986.
- B. No later than 24 months before the compliance date, the owner or operator of a smelter subject to R18-2-715 shall submit to the Director the results of an evaluation of the fugitive emissions from the smelter. The evaluation results shall contain all of the following information:
1. A measurement or accurate estimate of total fugitive emissions from the smelter during typical operations, including planned start-up and shutdown. The measurement or estimate shall contain the amount of both average short-term (24 hours) and average long-term (monthly) fugitive emissions from the smelter. The evaluation plan shall be approved in advance by the Department and shall specify the method used to determine the fugitive emission amounts, including the conditions determined to be "typical operations" for the smelter.
  2. A measurement or accurate estimate of the relative proportion, expressed as a percentage, of total fugitive emissions during typical operations, including planned start-up and shutdown, produced by any of the following smelter processes:
    - a. Roaster or dryer operation;
    - b. Calcine or dried concentrate transfer;
    - c. Reverberatory furnace operations, including feeding, slag return, matte and slag tapping;
    - d. Matte transfer; and
    - e. Converter operations.
  3. The measurement technique or method of estimation used to fulfill the requirement in subsection (B)(2) shall be approved in advance by the Department.
  4. The results of at least a six-month fugitive emission impact analysis conducted during that part of the year when fugitive emissions are expected to have the greatest ambient air quality impact. The study shall utilize sufficient measurements of fugitive emissions, meteorological conditions and ambient sulfur dioxide concentrations to

associate fugitive emissions with specific measured ambient concentrations of sulfur dioxide. The study shall describe in detail the techniques used to make the required determinations. The design of the study shall be approved in advance by the Department.

- C. On the basis of the results of the evaluation as well as other data and information contained in the records of the Department, the Director shall determine whether fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of the ambient sulfur dioxide standards in the vicinity of the smelter. If the Director finds that fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of a smelter, then the Director shall adopt rules specifying the emission limits and undertake other appropriate measures necessary to maintain ambient sulfur dioxide standards.
- D. The requirements of subsection (B) shall not apply to a smelter subject to this Section if the owner or operator of that smelter can demonstrate to the Director both that:
  - 1. Compliance with the applicable cumulative occurrence and emission limits listed in R18-2-715(F) will require the smelter to undergo major modifications to its physical configuration or work practices prior to the compliance date, and
  - 2. That the modification will reduce fugitive emissions to such an extent that such emissions will not cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of the smelter.
- E. In order to assess the sufficiency of the cumulative occurrence and emission limits contained in R18-2-715(F) to maintain the ambient air quality standards for sulfur dioxide set forth in R18-2-202, an owner or operator of a smelter subject to this Section shall continue to calibrate, maintain and operate any ambient sulfur dioxide monitoring equipment owned by the smelter owner or operator and in operation within the area of the smelter enclosed by a circle with 10-mile radius as calculated from a center point which shall be the point of the smelter's greatest sulfur dioxide emissions, for a period of at least three years after the compliance date.
  - 1. Such monitors shall be operated and maintained in accordance with 40 CFR 50 and 58 and such other conditions as the Director deems necessary.
  - 2. The location of ambient sulfur dioxide monitors and length of time such monitors remain at a location shall be determined by the Director.

#### Historical Note

Section R18-2-715.02 renumbered from R18-2-515.02 and amended effective November 15, 1993 (Supp. 93-4).

#### R18-2-716. Standards of Performance for Existing Coal Preparation Plants

- A. The provisions of this Section are applicable to any of the following affected facilities in coal preparation plants: thermal dryers, pneumatic coal-cleaning equipment, coal processing and conveying equipment including breakers and crushers, coal storage systems, and coal transfer and loading systems. For purposes of this Section, the definitions contained in 40 CFR 60.251 are adopted by reference and incorporated herein.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing coal preparation plant in total quantities in excess of the amounts calculated by one of the following equations:
  - 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the

maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$

where:

E = the maximum allowable particulate emissions rate in pounds-mass per hour.

P = the process weight rate in tons-mass per hour.

- 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$

where "E" and "P" are defined as indicated in subsection (B)(1).

- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Fugitive emissions from coal preparation plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The test methods and procedures required by this Section are as follows:
  - 1. The reference methods in the 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, are used to determine compliance with standards prescribed in subsection (B) as follows:
    - a. Method 5 for the concentration of particulate matter and associated moisture content,
    - b. Method 1 for sample and velocity traverses,
    - c. Method 2 for velocity and volumetric flow rate,
    - d. Method 3 for gas analysis.
  - 2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf) except that short sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.
  - 3. The owner or operator shall construct the facility so that particulate emissions from thermal dryers or pneumatic coal cleaning equipment can be accurately determined by applicable test methods and procedures under subsection (F)(1).

#### Historical Note

Section R18-2-716 renumbered from R18-2-516 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-717. Expired

#### Historical Note

Section R18-2-717 renumbered from R18-2-517 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

#### R18-2-718. Repealed

#### Historical Note

Section R18-2-718 renumbered from R18-2-518 effective

November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

#### **R18-2-719. Standards of Performance for Existing Stationary Rotating Machinery**

- A.** The provisions of this Section are applicable to the following affected facilities: all stationary gas turbines, oil-fired turbines, or internal combustion engines. This Section also applies to an installation operated for the purpose of producing electric or mechanical power with a resulting discharge of sulfur dioxide in the installation's effluent gases.
- B.** For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. Compliance tests shall be conducted during operation at the normal rated capacity of each unit. The total heat input of all operating fuel-burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.
- C.** No person shall cause, allow or permit the emission of particulate matter, caused by combustion of fuel, from any stationary rotating machinery in excess of the amounts calculated by one of the following equations:
- For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 1.02Q^{0.769}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 Q = the heat input in million Btu per hour.
  - For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:  

$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meaning as in subsection (C)(1).
- D.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E.** No person shall cause, allow or permit to be emitted into the atmosphere from any stationary rotating machinery, smoke for any period greater than 10 consecutive seconds which exceeds 40% opacity. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- F.** When low sulfur oil is fired, stationary rotating machinery installations shall burn fuel which limits the emission of sulfur dioxide to 1.0 pound per million Btu heat input.
- G.** When high sulfur oil is fired, stationary rotating machinery installations shall not emit more than 2.2 pounds of sulfur dioxide per million Btu heat input.
- H.** Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee. This condition may not be included in the permit if the applicant demonstrates to the satisfaction of the Director both that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.
- The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
  - In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
  - When the conditions justifying the use of high sulfur oil no longer exist, the permit shall be modified accordingly.

4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.

- I.** The owner or operator of any stationary rotating machinery subject to the provisions of this Section shall record daily the sulfur content and lower heating value of the fuel being fired in the machine.
- J.** The owner or operator of any stationary rotating machinery subject to the provisions of this Section shall report to the Director any daily period during which the sulfur content of the fuel being fired in the machine exceeds 0.8%.
- K.** The test methods and procedures required by this Section are as follows:
- To determine compliance with the standards prescribed in subsections (C) through (H), the following reference methods shall be used:
    - Reference Method 20 in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, for the concentration of sulfur dioxide and oxygen.
    - ASTM Method D129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method) for the sulfur content of liquid fuels.
    - ASTM Method D1072-90 (Test Method for Total Sulfur in Fuel Gases for the sulfur content of gaseous fuels).
  - To determine compliance with the standards prescribed in subsection (J), the following reference methods shall be used:
    - ASTM Method D129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method) for the sulfur content of liquid fuels.
    - ASTM Method D1072-90 (Test Method for Total Sulfur in Fuel Gases) for the sulfur content of gaseous fuels.

#### **Historical Note**

Section R18-2-719 renumbered from R18-2-519 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

#### **R18-2-720. Standards of Performance for Existing Lime Manufacturing Plants**

- A.** The provisions of this Section are applicable to the following affected facilities used in the manufacture of lime: rotary lime kilns, vertical lime kilns, lime hydrators, and limestone crushing facilities. This Section is also applicable to limestone crushing equipment which exists apart from other lime manufacturing facilities.
- B.** No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any lime manufacturing or limestone crushing facility in total quantities in excess of the amounts calculated by one of the following equations:
- For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.

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2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
  - C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
  - D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
  - E. Fugitive emissions from lime plants shall be controlled in accordance with R18-2-604 through R18-2-607.
  - F. The owner or operator subject to the provisions of this Section shall install, calibrate, maintain, and operate a continuous monitoring system, except as provided in subsection (G), to monitor and record the opacity of the gases discharged into the atmosphere from any rotary lime kiln. The span of this system shall be set at 70% opacity.
  - G. The owner or operator of any rotary lime kiln using a wet scrubbing emission control device subject to the provisions of this Section shall not be required to monitor the opacity of the gases discharged as required in subsection (F).
  - H. The test methods and procedures required by this Section are as follows:
    1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with this Section as follows:
      - a. Method 5 for the measurement of particulate matter,
      - b. Method 1 for sample and velocity traverses,
      - c. Method 2 for velocity and volumetric flow rate,
      - d. Method 3 for gas analysis,
      - e. Method 4 for stack gas moisture,
      - f. Method 9 for visible emissions.
    2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dscm/hr (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.
    3. Because of the high moisture content of the exhaust gases from the hydrators, in the range of 40 to 85% by volume, the Method 5 sample train may be modified to include a calibrated orifice immediately following the sample nozzle when testing lime hydrators. In this configuration, the sampling rate necessary for maintaining isokinetic conditions can be directly related to exhaust gas velocity without a correction for moisture content.
- Historical Note**  
 Section R18-2-720 renumbered from R18-2-520 and amended effective November 15, 1993 (Supp. 93-4).  
 Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).
- R18-2-721. Standards of Performance for Existing Nonferrous Metals Industry Sources**
- A. The provisions of this Section are applicable to the following affected facilities:
    1. Mines,
    2. Mills,
    3. Concentrators,
    4. Crushers,
    5. Screens,
    6. Material handling facilities,
    7. Fine ore storage,
    8. Dryers,
    9. Roasters, and
    10. Loaders.
  - B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any process source subject to the provisions of this Section in total quantities in excess of the amounts calculated by one of the following equations:
    1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
    2. For process sources having a process weight greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
  - C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
  - D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
  - E. No person shall cause, allow or permit to be discharged into the atmosphere from any dryer or roaster the operating temperature of which exceeds 700°F, reduced sulfur in excess of 10% of the sulfur entering the process as feed. Reduced sulfur includes sulfur equivalent from all sulfur emissions including sulfur dioxide, sulfur trioxide, and sulfuric acid.
  - F. The owner or operator of any mining property subject to the provisions of this Section shall record the daily process rates and hours of operation of all material handling facilities.
  - G. A continuous monitoring system for measuring sulfur dioxide emissions shall be installed, calibrated, maintained and operated by the owner or operator where dryers or roasters are not expected to achieve compliance with the standard under subsection (E).
  - H. The test methods and procedures required by this Section are as follows:
    1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standard prescribed in this Section as follows:
      - a. Method 5 for the concentration of particulate matter and the associated moisture content;
      - b. Method 1 for sample and velocity traverses;
      - c. Method 2 for velocity and volumetric flow rate;
      - d. Method 3 for gas analysis and calculation of excess air, using the integrated sample technique;
      - e. Method 6 for concentration of SO<sub>2</sub>.
    2. For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf), except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Director. The probe and filter holder heating systems in the sampling train shall be

set to provide a gas temperature no greater than 160°C. (320°F.).

3. For Method 6, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft.). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
4. For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.

#### Historical Note

Section R18-2-721 renumbered from R18-2-521 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-722. Standards of Performance for Existing Gravel or Crushed Stone Processing Plants

- A. The provisions of this Section are applicable to the following affected facilities: primary rock crushers, secondary rock crushers, tertiary rock crushers, screens, conveyors and conveyor transfer points, stackers, reclaimers, and all gravel or crushed stone processing plants and rock storage piles.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere except as fugitive emissions in any one hour from any gravel or crushed stone processing plant in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:
 
$$E = 55.0P^{0.11} - 40$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. Spray bar pollution controls shall be utilized in accordance with "EPA Control of Air Emissions From Process Operations In The Rock Crushing Industry" (EPA 340/1-79-002), "Wet Suppression System" (pages 15-34, amended as of January 1979 (and no future amendments or editions)), as incorporated herein by reference and on file with the Office of the Secretary of State, with placement of spray bars and nozzles as required by the Director to minimize air pollution.
- E. Fugitive emissions from gravel or crushed stone processing plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The owner or operator of any affected facility subject to the provisions of this Section shall install, calibrate, maintain, and operate monitoring devices which can be used to determine daily the process weight of gravel or crushed stone produced. The weighing devices shall have an accuracy of  $\pm 5\%$  over their operating range.

- G. The owner or operator of any affected facility shall maintain a record of daily production rates of gravel or crushed stone produced.

- H. The test methods and procedures required by this Section are as follows:

1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:
  - a. Method 5 for concentration of particulate matter and moisture content,
  - b. Method 1 for sample and velocity traverses,
  - c. Method 2 for velocity and volumetric flow rate,
  - d. Method 3 for gas analysis.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf), except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.

#### Historical Note

Section R18-2-722 renumbered from R18-2-522 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-723. Standards of Performance for Existing Concrete Batch Plants

Fugitive dust emitted from concrete batch plants shall be controlled in accordance with R18-2-604 through R18-2-607.

#### Historical Note

Section R18-2-723 renumbered from R18-2-523 and amended effective November 15, 1993 (Supp. 93-4).

#### R18-2-724. Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment

- A. This Section applies to industrial and commercial installations which are less than 73 megawatts capacity (250 million Btu per hour), but in the aggregate on any premises are rated at greater than 500,000 Btu per hour (0.146 megawatts), and in which fuel is burned for the primary purpose of producing steam, hot water, hot air or other liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.
- B. For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. The heat content of solid fuel shall be determined in accordance with R18-2-311. Compliance tests shall be conducted during operation at the nominal rated capacity of each unit. The total heat input of all fuel-burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.
- C. No person shall cause, allow or permit the emission of particulate matter, caused by combustion of fuel, from any fuel-burning operation in excess of the amounts calculated by one of the following equations:

1. For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 1.02Q^{0.769}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 Q = the heat input in million Btu per hour.
  2. For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:  

$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meanings as in subsection (C)(1).
- D.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E.** Fossil-fuel fired industrial and commercial equipment installations shall not emit more than 1.0 pounds of sulfur dioxide per million Btu heat input when low sulfur oil is fired.
- F.** Fossil-fuel fired industrial and commercial equipment installations shall not emit more than 2.2 pounds of sulfur dioxide per million Btu heat input when high sulfur oil is fired.
- G.** Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee. This condition may be omitted from the permit if the applicant demonstrates to the satisfaction of the Director both that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.
1. The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
  2. In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
  3. When the conditions justifying the use of high sulfur oil no longer exist, the permit shall be modified accordingly.
  4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- H.** When coal is fired, fossil-fuel fired industrial and commercial equipment installations shall not emit more than 1.0 pounds of sulfur dioxide per million Btu heat input.
- I.** The owner or operator subject to the provisions of this Section shall install, calibrate, maintain and operate a continuous monitoring system for measurement of the opacity of emissions discharged into the atmosphere from the control device.
- J.** For the purpose of reports required under excess emissions reporting required by R18-2-310.01, the owner or operator shall report all six-minute periods in which the opacity of any plume or effluent exceeds 15%.
- K.** The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards as prescribed in this Section.
    - a. Method 1 for selection of sampling site and sample traverses,
    - b. Method 3 for gas analysis to be used when applying Reference Methods 5 and 6,
    - c. Method 5 for concentration of particulate matter and the associated moisture content,
    - d. Method 6 for concentration of SO<sub>2</sub>.
  2. For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf), except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Director. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C. (320°F).
  3. For Method 6, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
  4. For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.
  5. Gross calorific value shall be determined in accordance with the applicable ASTM methods: D-2015-91 (Test for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter) for solid fuels; D-240-87 (Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter) for liquid fuels; and D-1826-88 (Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter) for gaseous fuels. The rate of fuels burned during each testing period shall be determined by suitable methods and shall be confirmed by a material balance over the fossil-fuel fired system.

#### Historical Note

Section R18-2-724 renumbered from R18-2-524 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-725. Standards of Performance for Existing Dry Cleaning Plants

- A.** No person shall conduct any dry cleaning operation using chlorinated synthetic solvents without minimizing organic solvent emissions by good modern practices including but not limited to the use of an adequately sized and properly maintained activated carbon absorber or other equally effective control device.
- B.** No person shall operate any dry cleaning establishment using petroleum solvents other than non-photochemically reactive solvents without reducing solvent emissions by at least 90%. For purposes of this subsection, a photochemically reactive solvent shall be any solvent with an aggregate of more than 20% of its total volume composed of the chemical compounds classified in subsections (B)(1) through (3), or which exceeds any of the following percentage composition limitations, referred to the total volume of solvent:
1. A combination of the following types of compounds having an olefinic or cyclo-olefinic type of unsaturation -- hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones: 5%.
  2. A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8%.
  3. A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichlorethylene or toluene: 20%.



- C. Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution is discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to the adjoining property.

#### Historical Note

Section R18-2-725 renumbered from R18-2-525 effective November 15, 1993 (Supp. 93-4).

#### R18-2-726. Standards of Performance for Sandblasting Operations

No person shall cause or permit sandblasting or other abrasive blasting without minimizing dust emissions to the atmosphere through the use of good modern practices. Examples of good modern practices include wet blasting and the use of effective enclosures with necessary dust collecting equipment.

#### Historical Note

Section R18-2-726 renumbered from R18-2-526 effective November 15, 1993 (Supp. 93-4).

#### R18-2-727. Standards of Performance for Spray Painting Operations

- A. No person shall conduct any spray paint operation without minimizing organic solvent emissions. Such operations other than architectural coating and spot painting, shall be conducted in an enclosed area equipped with controls containing no less than 96% of the overspray.
- B. No person shall either:
1. Employ, apply, evaporate or dry any architectural coating containing photochemically reactive solvents for industrial or commercial purposes; or
  2. Thin or dilute any architectural coating with a photochemically reactive solvent.
- C. For purposes of subsection (B), a photochemically reactive solvent shall be any solvent with an aggregate of more than 20% of its total volume composed of the chemical compounds classified in subsections (1) through (3), or which exceeds any of the following percentage composition limitations, referred to the total volume of solvent:
1. A combination of the following types of compounds having an olefinic or cyclo-olefinic type of unsaturation -- hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones: 5%.
  2. A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8%.
  3. A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichlorethylene or toluene: 20%.
- D. Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the groups or organic compounds described in subsection (C)(1) through (3), it shall be considered to be a member of the group having the least allowable percent of the total volume of solvents.

#### Historical Note

Section R18-2-727 renumbered from R18-2-527 effective November 15, 1993 (Supp. 93-4).

#### R18-2-728. Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants

- A. The provisions of this Section are applicable to the following affected facilities in ammonium sulfide manufacturing plants: sulfide unloading facilities, reactor-absorbers, bubble cap scrubbers, and fume incinerators.

- B. No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator or other outlet smoke, fumes, gases, particulate matter or other gas-borne material, the opacity of which exceeds 20%.
- C. No person shall cause, allow or permit to be emitted into the atmosphere from any emission point from any incinerator, or to pass a convenient measuring point near such emission point, particulate matter of concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- D. No person shall allow hydrogen sulfide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.03 parts per million by volume for any averaging period of 30 minutes or more.
- E. Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution are discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to adjoining property.
- F. The owner or operator of any ammonium sulfide tailgas incinerator subject to the provisions of this Section shall do both of the following:
1. Install, calibrate, maintain, and operate a flow measuring device which can be used to determine either the mass or volume of tailgas charged to the incinerator. The flow measuring device shall have an accuracy of  $\pm 5\%$  over its operating range.
  2. Provide access to the tailgas charged so that a well-mixed representative grab sample can be obtained.
- G. The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in this Section as follows:
    - a. Method 5 for the concentration of particulate matter and the associated moisture content;
    - b. Method 1 for sample and velocity traverse;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis and calculation of excess air, using the integrated sample technique;
    - e. Method 11 shall be used to determine the concentration of  $H_2S$  and Method 6 shall be used to determine the concentration of  $SO_2$ .
  2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 0.85 dscm (30.0 dscf) except that shorter sampling times and smaller sample volumes, when necessitated by process variables or other factors, may be approved by the Director.
  3. Particulate matter emissions, expressed in g/dscm, shall be corrected to 12%  $CO_2$  by using the following formula:

$$C_{12} = \frac{12c}{\%CO_2}$$

where:

$C_{12}$  = the concentration of particulate matter corrected to 12%  $CO_2$ ,

$c$  = the concentration of particulate matter as measured by Method 5, and

$\%CO_2$  = the percentage of  $CO_2$  as measured by Method 3, or, when applicable, the adjusted outlet  $CO_2$  percentage.

4. If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where fuel gas lines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals. For most fuel gases, sample times exceeding 20 minutes may result in depletion of the collecting solution, although fuel gases containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.
5. If Method 5 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining CO<sub>2</sub> concentration by Method 3 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining SO<sub>2</sub> concentration by Method 3 shall be at the centroid of the cross section if the cross sectional area is less than 5 m<sup>2</sup> (54 ft<sup>2</sup>) or at a point no closer to the walls than 1 m (3.28 feet) if the cross sectional area is 5 m<sup>2</sup> or more and the centroid is more than 1 meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.36 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals.

#### Historical Note

Section R18-2-728 renumbered from R18-2-528 effective November 15, 1993 (Supp. 93-4).

#### R18-2-729. Standards of Performance for Cotton Gins

- A. Fugitive dust, lint, bolls, cotton seed or other material emitted from a cotton gin or lying loose in a yard shall be collected and disposed of in an efficient manner or shall be treated in accordance with R18-2-604 through R18-2-607.
- B. No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator, smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 40% opacity.
- C. No person shall cause, allow, or permit the discharge of particulate matter into the atmosphere in any one hour from any cotton gin in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$

where "E" and "P" are defined as indicated in subsection (C)(1).

- D. The test methods and procedures required by this Section are as follows:
  1. The reference methods in the Arizona Testing Manual and 40 CFR 60, Appendix A shall be used to determine compliance with this Section as follows:
    - a. Method A-2 for the measurement of particulate matter,
    - b. Method 1 for sample and velocity traverses,
    - c. Method 2 for velocity and volumetric flow rate,
    - d. Method 3 for gas analysis,
    - e. Method 9 for visible emissions.
  2. For Method A-2, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dry standard cubic meters per hour (0.53 dry standard cubic feet per minute), except that shorter sampling times, when necessitated by progress variables or other factors, may be approved by the Director.

#### Historical Note

Section R18-2-729 renumbered from R18-2-529 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

#### R18-2-730. Standards of Performance for Unclassified Sources

- A. No existing source which is not otherwise subject to standards of performance under this Article or Article 9 or 11 of this Chapter, shall cause or permit the emission of pollutants at rates greater than the following:
  1. For particulate matter discharged into the atmosphere in any one hour from any unclassified process source in total quantities in excess of the amounts calculated by one of the following equations:
    - a. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
    - b. For process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:
 
$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (A)(1)(a).
  2. Sulfur dioxide – 600 parts per million.
  3. Nitrogen oxides expressed as NO<sub>2</sub> – 500 parts per million.
- B. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. No person shall emit gaseous or odorous materials from equipment, operations or premises under the person's control in such quantities or concentrations as to cause air pollution.

- E. No person shall operate or use any machine, equipment, or other contrivance for the treatment or processing of animal or vegetable matter, separately or in combination, unless all gaseous vapors and gas entrained effluents from such operations, equipment, or contrivance have been either:
1. Incinerated to destruction, as indicated by a temperature measuring device, at not less than 1,200°F if constructed or reconstructed prior to January 1, 1989, or 1,600°F with a minimum residence time of 0.5 seconds if constructed or reconstructed thereafter; or
  2. Passed through such other device which is designed, installed and maintained to prevent the emission of odors or other air contaminants and which is approved by the Director.
- F. Materials including solvents or other volatile compounds, paints, acids, alkalies, pesticides, fertilizers and manure shall be processed, stored, used and transported in such a manner and by such means that they will not evaporate, leak, escape or be otherwise discharged into the ambient air so as to cause or contribute to air pollution. Where means are available to reduce effectively the contribution to air pollution from evaporation, leakage or discharge, the installation and use of such control methods, devices, or equipment shall be mandatory.
- G. Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution is discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to adjoining property.
- H. No person shall allow hydrogen sulfide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.03 parts per million by volume for any averaging period of 30 minutes or more.
- I. No person shall cause, allow or permit discharge from any stationary source carbon monoxide emissions without the use of complete secondary combustion of waste gases generated by any process source.
- J. No person shall allow hydrogen cyanide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.3 parts per million by volume for any averaging period of eight hours.
- K. No person shall allow sodium cyanide dust or dust from any other solid cyanide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 140 micrograms per cubic meter for any averaging period of eight hours.
- L. No owner or operator of a facility engaged in the surface coating of miscellaneous metal parts and products may operate a coating application system subject to this Section that emits volatile organic compounds in excess of any of the following:
1. 4.3 pounds per gallon (0.5 kilograms per liter) of coating, excluding water, delivered to a coating applicator that applies clear coatings.
  2. 3.5 pounds per gallon (0.42 kilograms per liter) of coating, excluding water delivered to a coating applicator in a coating application system that is air dried or forced warm air dried at temperatures up to 194°F (90°C).
  3. 3.5 pounds per gallon (0.42 kilograms per liter) of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings.
  4. 3.0 pounds per gallon (0.36 kilograms per liter) of coating, excluding water, delivered to a coating applicator for all other coatings and application systems.
- M. If more than one emission limitation in subsection (L) applies to a specific coating, then the least stringent emission limitation shall be applied.
- N. All VOC emissions from solvent washings shall be considered in the emission limitations in subsection (L), unless the solvent is directed into containers that prevent evaporation into the atmosphere.

#### Historical Note

Renumbered from R18-2-530 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

#### R18-2-731. Standards of Performance for Existing Municipal Solid Waste Landfills

- A. This Section applies to each municipal solid waste landfill (MSW landfill) at which:
1. Construction, reconstruction, or modification began before May 30, 1991; and
  2. Waste was accepted at any time since November 8, 1987, or additional design capacity is available for future waste deposition.
- B. For the purposes of this Section, "Municipal solid waste landfill or MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA (Resource Conservation and Recovery Act) Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.
- C. MSW landfills covered by this Section shall comply with 40 CFR 60, Subpart WWW, as modified by this subsection. 40 CFR 60, Subpart WWW, "Standards of Performance for Municipal Solid Waste Landfills," is incorporated by reference in R18-2-901.
1. Definitions. In addition to the definitions in 40 CFR 60.751, "Administrator" means the Director of the Department of Environmental Quality.
  2. Reporting. Each MSW landfill shall comply with the reporting requirements of 40 CFR 60.757. The initial design capacity report and initial NMOC emission rate report shall be due 90 days after the effective date of this rule.
  3. Design plan. An MSW landfill that is required to install a collection and control system shall submit a design plan for the system to the Director with a Standard Permit Application Form not later than 12 months after it submitted or should have submitted a NMOC emission rate report indicating emissions greater than 50 Mg per year. The design plan shall be prepared by a professional engineer registered in Arizona. The Director shall not approve the design plan if it does not meet the requirements of 40 CFR 60.752(b)(2)(ii).
  4. System installation. An MSW landfill that is required to install a collection and control system shall complete installation of the system not later than 30 months after the effective date of this rule.

5. An MSW landfill that first becomes subject to the collection and control system requirement after the effective date of this rule shall submit a design plan for the system to the Director not later than 12 months after it submitted or should have submitted an NMOC emission rate report indicating emissions greater than 50 Mg per year.

#### Historical Note

Adopted effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1).

#### R18-2-732. Expired

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

#### R18-2-733. Repealed

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Section repealed by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

#### R18-2-733.01. Repealed

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Section repealed by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

#### R18-2-734. Standards of Performance for Mercury Emissions from Electric Generating Units

- A. Applicability and Purpose. The requirements of this Section apply to owners and operators of electric generating units. The purpose of this Section is to establish:
  1. Interim standards for mercury emissions from electric generating units that shall apply until compliance with the emissions limits in the federal mercury standards is required.
  2. State standards for mercury emissions from electric generating units that shall apply if the federal mercury standards are vacated by a federal court or repealed by the administrator.
- B. Interim Standards. The following requirements shall apply until the date that compliance with the federal mercury standards or subsection (G) is required:
  1. The owners and operators shall comply with the mercury control strategy operations and maintenance plan approved as part of the permit for the electric generating plant.
  2. The owners and operators shall operate and maintain the electric generating plant, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing mercury emissions. This requirement shall apply to any air pollution control equipment installed pursuant to subsection (B)(1) or to any new air pollution control equipment installed to comply with the federal mercury standards if such equipment replaces equipment installed pursuant to subsection (B)(1).
- C. Incorporation of Federal Mercury Standards. The federal mercury standards in 40 CFR Part 63, Subpart UUUUU, as of July

1, 2013 (and no future amendments or editions) are incorporated by reference and shall remain effective to the extent specified in this Section regardless of whether they are vacated by a federal court or repealed by the administrator. Subpart UUUUU of 40 C.F.R. Part 63 is published by the United States Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see [http://catalog.gpo.gov/fdlpdire/FDLPdir.jsp?st\\_12=AZ&flag=searchp](http://catalog.gpo.gov/fdlpdire/FDLPdir.jsp?st_12=AZ&flag=searchp)). It is also available online at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. The owners and operators shall provide to the director a copy of all notices and reports submitted to the Administrator under the federal mercury standards, except for any reports or data submitted to the Administrator through electronic systems (for example, Compliance and Emissions Data Reporting Interface (CEDRI), Emission Collection Monitoring Plan System Client Tool (ECMPS) or the Emissions Reporting Tool (ERT)).

- D. Notice of State Standard Applicability. The director shall provide notice to the responsible official for each electric generating plant of any repeal or federal court vacatur of the federal mercury standards. If the repeal or vacatur occurred after the date the electric generating plant was required to comply with the emission limits in the federal mercury standards, the plant shall continue to comply with the federal mercury standards until the date that compliance with subsection (G) is required.
- E. Application for Permit Revision. Within 120 days of receipt of written notice from the director under subsection (D), the owners and operators shall submit an application for a permit revision that proposes:
  1. The mercury emission limit or limits in subsection (G) that shall apply to the electric generating plant.
  2. A date for demonstrating compliance with the mercury emission limit consistent with subsection (F)(2).
  3. A mercury monitoring plan consistent with subsection (H)(2).
- F. Permit Revision Setting State Standard. A permit revision granted in response to the application submitted under subsection (E) shall contain the following conditions:
  1. The mercury emission limit or limits in subsection (G) that shall apply to the electric generating plant.
  2. The date compliance with the emission limit or limits shall be required. Unless the application requests an earlier date, the compliance date shall be the later of December 31, 2016 or the end of the first averaging period commencing no later than 180 days after permit issuance.
  3. The date for demonstrating initial compliance with the emission limit or limits, which shall be 45 days after completion of the first full averaging period after the compliance date established under subsection (F)(2).
  4. The date on which compliance with subsection (B), or the obligation to comply with the federal mercury standards in subsection (D), as applicable, shall no longer be required.
  5. A mercury monitoring plan consistent with subsection (H).
  6. Compliance reporting requirements consistent with subsection (I).
- G. State Mercury Emission Limits. Emissions from an electric generating unit shall comply with one or more of the emission

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limits specified in the following table, as selected by the owners and operators under subsection (F).

No.	Limit	Averaging Period	Applicable To
1.	10 percent of inlet mercury	Rolling 12-month	Electric generating plant
2.	0.0087 pounds per gigawatt-hour	Rolling 12-month	Electric generating plant
3.	0.011 pounds per gigawatt-hour	Rolling 90-boiler operating days	EGUs identified in averaging group
4.	1.0 pounds per Trillion Btu	Rolling 90-boiler operating days	EGUs identified in averaging group
5.	0.013 pounds per gigawatt-hour	Rolling 30-boiler operating days	Individual electric generating unit
6.	1.2 pounds per Trillion Btu	Rolling 30-boiler operating days	Individual electric generating unit

#### H. Compliance Monitoring and Recordkeeping.

1. Compliance with subsection (G) shall be determined using a mercury CEMS or sorbent trap monitoring system pursuant to Appendix A of the federal mercury standards and in accordance with an approved mercury monitoring plan.
2. The mercury monitoring plan shall include the following elements:
  - a. Identification of the emission limit or limits in subsection (G) for which compliance will be demonstrated.
  - b. Identification of whether a mercury CEMS or sorbent trap monitoring system will be used as the primary compliance method. Backup methods may be identified and approved in the plan.
  - c. Description of the parameters that will be monitored, including mercury concentration, stack flow, fuel mercury content, fuel rate, electricity generation rate, moisture percent, and any diluent or other gas or process parameters necessary to calculate compliance in terms of the applicable emission limit.
  - d. Description and example of the calculations required to convert monitored parameters to mercury emissions in terms of the emission limit.
  - e. Establishment of CEMS analyzer data availability, and QA/QC requirements.
  - f. Procedures for completing an initial demonstration of compliance, except as otherwise provided in subsection (I)(1).
2. At least once per month, the mercury emissions data shall be compiled into a record demonstrating compliance with the emission limit or limits established in the permit revision issued under subsection (F). This record shall be completed no later than the 15th day of the following month.
3. Records shall be maintained as follows:
  - a. Records demonstrating compliance with the emissions limits shall be maintained for five years.

- b. If a mercury CEMS is used, daily CEMS data, QA/QC data identified in the mercury monitoring plan, any maintenance work conducted on the CEMS or data logging system, and a calculation of all mercury CEMS downtime shall be maintained for five years.
- c. If a sorbent trap monitoring system is used, all sorbent monitoring data and any maintenance work conducted on the system shall be maintained for five years.

#### I. Reporting. The owners and operators shall submit to the director the following reports:

1. An initial demonstration of compliance, which must be submitted to the director within 180 days after completion of the first full averaging period. This requirement shall not apply to an electric generating unit if an initial demonstration of compliance has been completed for that unit under 40 C.F.R. 63.10005(d)(3) and the demonstration shows compliance with subsection (G) for that unit. The report shall include:
  - a. The name of the electric generating plant and electric generating units.
  - b. The applicable emission limit or limits for the plant or the electric generating units.
  - c. The mercury emissions for the plant, group of averaged units, or each unit, as applicable, during the initial compliance demonstration in terms of the applicable standard.
  - d. A certification by a responsible official.
2. Semiannual compliance reports, which must be submitted to the director on the dates established in the electric generating plant's air quality permit. The report shall include:
  - a. The name of the electric generating plant and electric generating units;
  - b. The applicable emission limit or limits for the plant or the electric generating units.
  - c. The mercury emissions for the plant, or each unit, as applicable, for each month during the six month period ending the month prior to the semiannual report in terms of the applicable standard.
  - d. An explanation of any excess emissions, the duration of the excess emissions, and corrective actions taken, if any, to resolve those excess emissions.
  - e. A certification by a responsible official.

#### J. Exemption. After receipt of notice under subsection (D), in lieu of submitting the permit revision application required by subsection (E), the owners and operators may notify the director in writing that they elect to comply with the vacated or repealed federal mercury standards at an electric generating plant. If the owners and operators for an electric generating plant make this election, the plant shall be exempt from subsections (E) through (I). If the owners and operators of an electric plant elect this option:

1. "Administrator" shall mean "Director" whenever it appears in the federal mercury standards or regulations referenced therein.
2. "EPA" shall mean "ADEQ, Air Quality Division" whenever it appears in the federal mercury standards or regulations referenced therein.
3. In lieu of reports submitted to the Administrator through electronic systems (for example, Compliance and Emissions Data Reporting Interface (CEDRI), Emission Collection Monitoring Plan System Client Tool (ECMPS) or Emissions Reporting Tool (ERT)) pursuant to the federal mercury standards, the owners or operators shall submit to the Director, semiannually at the time required by permit, the RATA or the rolling 30-day

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or rolling 90-day average mercury value for each EGU or the plant, as applicable.

4701, effective January 29, 2007 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R.

**Table 1. Emission Limitations for Small, Medium, and Large HMIWI**

Pollutant	Units (7% oxygen, dry basis)	Emission Limitation		
		Small HMIWI	Medium HMIWI	Large HMIWI
Particulate matter	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	115 (0.05)	69 (0.03)	34 (0.015)
Carbon monoxide	Parts per million by volume	40	40	40
Dioxin/furans	Nanograms per dry standard cubic meter total dioxin/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter toxic equivalent quantity (grains per billion dry standard cubic feet).	125 (55) or 2.3 (1.0)	125 (55) or 2.3 (1.0)	125 (55) or 2.3 (1.0)
Hydrogen chloride	Parts per million by volume or percent reduction.	100 or 93%	100 or 93%	100 or 93%
Sulfur dioxide	Parts per million by volume	55	55	55
Nitrogen oxides	Parts per million by volume	250	250	250
Lead	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	1.2 (0.52) or 70%	1.2 (0.52) or 70%	1.2 (0.52) or 70%
Cadmium	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.16 (0.07) or 65%	0.16 (0.07) or 65%	0.16 (0.07) or 65%
Mercury	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.55 (0.24) or 85%	0.55 (0.24) or 85%	0.55 (0.24) or 85%

**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3).

**Table 2. Emissions Limitations for Rural HMIWI**

<b>Pollutant</b>	<b>Units (7% oxygen, dry basis)</b>	<b>Emission Limitation</b>
Particulate matter	Milligrams per dry standard cubic meter (grains per dry standard cubic foot)	197 (0.086)
Carbon monoxide	Parts per million by volume	40
Dioxin/furans	Nanograms per dry standard cubic meter total dioxin/ furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter toxic equivalent quantity (grains per billion dry standard cubic feet)	800 (350) or 15 (6.6)
	Parts per million by volume	3100 (1.0)
Hydrogen chloride	Parts per million by volume	55
Sulfur dioxide	Parts per million by volume	250
Nitrogen oxides	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet)	10 (4.4)
Lead	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet)	4 (1.7)
Cadmium	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet)	7.5 (3.3)
Mercury		

**Historical Note**

Table 2 adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3).

**ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)**

602 effective November 15, 1993 (Supp. 93-4).

**R18-2-801. Classification of Mobile Sources**

- A.** This Article is applicable to mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as motor vehicles, agricultural vehicles, or agricultural equipment used in normal farm operations.
- B.** Unless otherwise specified, no mobile source shall emit smoke or dust the opacity of which exceeds 40%.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1).  
Amended effective September 26, 1990 (Supp. 90-3).  
Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-801 renumbered to Section R18-2-901, new Section R18-2-801 renumbered from R18-2-601 effective November 15, 1993 (Supp. 93-4).

**R18-2-802. Off-road Machinery**

- A.** No person shall cause, allow or permit to be emitted into the atmosphere from any off-road machinery, smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B.** Off-road machinery shall include trucks, graders, scrapers, rollers, locomotives and other construction and mining machinery not normally driven on a completed public roadway.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1).  
Amended effective September 26, 1990 (Supp. 90-3).  
Former Section R18-2-802 renumbered to Section R18-2-902, new Section R18-2-802 renumbered from R18-2-

**R18-2-803. Heater-planer Units**

No person shall cause, allow or permit to be emitted into the atmosphere from any heater-planer operated for the purpose of reconstructing asphalt pavements smoke the opacity of which exceeds 20%. However three minutes' upset time in any one hour shall not constitute a violation of this Section.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1).  
Amended effective September 26, 1990 (Supp. 90-3).  
Former Section R18-2-803 renumbered to Section R18-2-903, new Section R18-2-803 renumbered from R18-2-603 effective November 15, 1993 (Supp. 93-4).

**R18-2-804. Roadway and Site Cleaning Machinery**

- A.** No person shall cause, allow or permit to be emitted into the atmosphere from any roadway and site cleaning machinery smoke or dust for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B.** In addition to complying with subsection (A), no person shall cause, allow or permit the cleaning of any site, roadway, or alley without taking reasonable precautions to prevent particulate matter from becoming airborne. Reasonable precautions may include applying dust suppressants. Earth or other material shall be removed from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water or by other means.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1).  
Amended effective September 26, 1990 (Supp. 90-3).  
Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-804 renumbered to Section R18-2-

904, new Section R18-2-804 renumbered from R18-2-604 effective November 15, 1993 (Supp. 93-4).

#### **R18-2-805. Asphalt or Tar Kettles**

- A.** No person shall cause, allow or permit to be emitted into the atmosphere from any asphalt or tar kettle smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%.
- B.** In addition to complying with subsection (A), no person shall cause, allow or permit the operation of an asphalt or tar kettle without minimizing air contaminant emissions by utilizing all of the following control measures:
  1. The control of temperature recommended by the asphalt or tar manufacturer;
  2. The operation of the kettle with lid closed except when charging;
  3. The pumping of asphalt from the kettle or the drawing of asphalt through cocks with no dipping;
  4. The dipping of tar in an approved manner;
  5. The maintaining of the kettle in clean, properly adjusted, and good operating condition;
  6. The firing of the kettle with liquid petroleum gas or other fuels acceptable to the Director.

#### **Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1).  
 Amended effective September 26, 1990 (Supp. 90-3).  
 Former Section R18-2-805 renumbered to Section R18-2-905, new Section R18-2-805 renumbered from R18-2-605 effective November 15, 1993 (Supp. 93-4).

### **ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**

#### **R18-2-901. Standards of Performance for New Stationary Sources**

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of June 28, 2013, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.

9. Subpart Ec - Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.
26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
34. Subpart Y - Standards of Performance for Coal Preparation Plants.



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35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
40. Subpart DD - Standards of Performance for Grain Elevators.
41. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
42. Subpart GG - Standards of Performance for Stationary Gas Turbines.
43. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
44. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
45. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
46. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
47. Subpart NN - Standards of Performance for Phosphate Rock Plants.
48. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
49. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
50. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
51. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
52. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
53. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
54. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
55. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
56. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
57. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
58. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
59. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
60. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
61. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
62. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
63. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
64. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
65. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
66. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
67. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
68. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO<sub>2</sub> Emissions.
69. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
70. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
71. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
72. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
73. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
74. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
75. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
76. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
77. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
78. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
79. Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.
80. Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.
81. Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.
82. Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.
83. Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
84. Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.
85. Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.
86. Subpart OOOO - Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Section R18-2-901 renumbered to R18-2-1101, new Section R18-2-901 renumbered from R18-2-801 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999, and at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expediated rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

**R18-2-902. General Provisions**

- A.** As used in 40 CFR 60: “Administrator” means the Director of the Arizona Department of Environmental Quality, except that the Director shall not be authorized to approve alternate or equivalent test methods or alternative standards or work practices.
- B.** From the general standards identified in R18-2-901, delete the following:
- 40 CFR 60.4. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.
  - 40 CFR 60.5 and 60.6.
- C.** The Director shall not be delegated authority to deal with equivalency determinations or innovative technology waivers as covered in Sections 111(h)(3) and 111(j) of the Act.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section R18-2-902 renumbered to R18-2-1102, new Section R18-2-902 renumbered from R18-2-802 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4).

**R18-2-903. Standards of Performance for Fossil-fuel Fired Steam Generators**

As exceptions to 40 CFR 60.40 through 60.47:

- In place of 40 CFR 60.43(a)(2), the following language shall be substituted: 340 nanograms per joule heat input (0.8 pounds per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue.
- Delete 40 CFR 60.43(b).
- If an owner or operator of a fossil-fuel fired steam generator obtained an installation permit for two or more fuel-burning equipment or steam-power generating installations before May 14, 1979, that permitted the installation to comply with the sulfur dioxide emission standards

specified in R18-2-901 and this Section as if the equipment or installations were one emission discharge point:

- The owner or operator shall comply with the applicable sulfur dioxide emission standards in the manner specified in the installation permit;
  - The Department shall incorporate the emission standards under subsection (3)(a) into each owner’s or operator’s operating permit as an enforceable permit condition;
  - No single fuel-burning equipment or steam-power generating installation shall emit sulfur dioxide in excess of:
    - 520 nanograms per joule heat input (1.2 pounds per million BTU) for solid fossil fuel or solid fossil fuel and wood residue; or
    - 340 nanograms per joule heat input (0.8 pounds per million BTU) for liquid fossil fuel or liquid fossil fuel and wood residue.
4. When an owner or operator subject to subsection (3) changes the equipment configuration so that each fuel-burning equipment or steam-powered generating installation constitutes one emission discharge point:
- The owner or operator shall comply with the emissions standards specified in subsection (1) and R18-2-901; and
  - The Department shall incorporate the emissions standards into the owner’s or operator’s operating permit as enforceable permit conditions.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-903 renumbered without change as Section R18-2-903 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-903 renumbered from R18-2-803 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 14 A.A.R. 230, effective March 8, 2008 (Supp. 08-1).

**R18-2-904. Standards of Performance for Incinerators**

- A.** Incinerators with a charging rate of more than 45 metric tons or 49.6 tons per day shall conform to the requirements of 40 CFR 60.50 through 60.54.
- B.** Incinerators with a charging rate of 45 metric tons or 49.6 tons per day or less that commence construction or modification after May 14, 1979, shall conform to the requirements of 40 CFR 60.52 through 60.54 and of R18-2-704(A).

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-904 renumbered without change as Section R18-2-904 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-904 renumbered from R18-2-804 and amended effective November 15, 1993 (Supp. 93-4).

**R18-2-905. Standards of Performance for Storage Vessels for Petroleum Liquids**

In addition to 40 CFR 60.110 - 60.113:

- Any petroleum liquid storage tank of less than 40,000 gallons (151,412 liters) capacity shall be equipped with a submerged filling device or acceptable equivalent as determined by the Director for the control of hydrocarbon emissions.
- All facilities for dock loading of petroleum products having a vapor pressure of 2.0 pounds per square inch absolute, or greater, at loading pressure shall provide for

submerged filling or other acceptable equivalent for control of hydrocarbon emissions.

3. All pumps and compressors which handle volatile organic compounds shall be equipped with mechanical seals or other equipment of equal efficiency to prevent the release of organic contaminants into the atmosphere.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-905 renumbered without change as Section R18-2-905 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-905 renumbered from R18-2-805 effective November 15, 1993 (Supp. 93-4).

#### R18-2-906. Repealed

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-906 renumbered without change as Section R18-2-906 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

#### R18-2-907. Reserved

#### R18-2-908. Reserved

#### R18-2-909. Reserved

#### R18-2-910. Repealed

#### Historical Note

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-910 renumbered without change as Section R18-2-910 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

#### R18-2-911. Reserved

#### R18-2-912. Reserved

#### R18-2-913. Repealed

#### Historical Note

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-913 renumbered without change as Section R18-2-913 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

#### R18-2-914. Reserved

#### R18-2-915. Reserved

#### R18-2-916. Reserved

#### R18-2-917. Reserved

#### R18-2-918. Reserved

#### R18-2-919. Reserved

#### R18-2-920. Reserved

#### R18-2-921. Reserved

#### R18-2-922. Repealed

#### Historical Note

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-922 renumbered without change as Section R18-2-922 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

### ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE

#### R18-2-1001. Definitions

In this Article, unless the context otherwise requires:

1. Abbreviations and symbols are as follows:
  - a. "A/F" means air/fuel,
  - b. "CO" means carbon monoxide.
  - c. "CO<sub>2</sub>" means carbon dioxide.
  - d. "EGR" means exhaust gas recirculation.
  - e. "GVWR" means gross vehicle weight rating.
  - f. "HC" means hydrocarbon.
  - g. "HP" means horsepower.
  - h. "LNG" means liquefied natural gas.
  - i. "LPG" means liquid petroleum gas.
  - j. "MIL" means Malfunction Indicator Lamp.
  - k. "MPH" means miles per hour.
  - l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
  - m. "NDIR" means nondispersive infrared.
  - n. "NO<sub>x</sub>" means the sum of nitrogen oxide and nitrogen dioxide.
  - o. "%" means percent.
  - p. "OEM" means original equipment manufacturer.
  - q. "OBD" means On-Board Diagnostics.
  - r. "PCV" means positive crankcase ventilation.
  - s. "PPM" means parts per million by volume.
  - t. "RPM" means revolutions per minute.
  - u. "VIN" means vehicle identification number.
2. "Annual test" means any vehicle emissions test that is not a biennial test.
3. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
4. "Area A" has the meaning in A.R.S. § 49-541.
5. "Area A vehicle" means a motor vehicle subject to emissions inspection and that is:
  - a. Registered or to be registered within area A;
  - b. Owned by or leased to a person having a valid fleet permit and customarily kept in area A;
  - c. A government vehicle customarily kept in area A;
  - d. Used to commute to the driver's principal place of employment located in area A; or
  - e. Parked, will be parked, or is the subject of a parking permit application at an institution located in area A and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).
6. "Area B" has the meaning in A.R.S. § 49-541.
7. "Area B vehicle" means a motor vehicle subject to emissions inspection and that is:
  - a. Registered or to be registered within area B;
  - b. Owned by or leased to a person having a valid fleet permit and customarily kept in area B;
  - c. A government vehicle customarily kept in area B;
  - d. Used to commute to the driver's principal place of employment located in area B; or
  - e. Parked, will be parked, or is the subject of a parking permit application at an institution located in area B and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).
8. "Biennial test" means the transient loaded emissions test and evaporative system tests required under R18-2-1006(E)(2), or the OBD test for area A vehicles under R18-1006(E)(3).
9. "Calibration gas" means a gas with assigned concentrations of CO, hexane, or CO<sub>2</sub> that is used by a state inspector to check the accuracy of emissions analyzers.
10. "Certificate of compliance" means a serially numbered document issued by a state station at the time of a vehicle

- inspection indicating that the vehicle has met the emissions standards.
11. "Certificate of exemption" means a serially numbered document issued by the Director exempting a vehicle from inspection that is not available within the state for an inspection during the 90 days before the emissions compliance expiration date.
  12. "Certificate of inspection" means a serially numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
  13. "Certificate of waiver" means a serially numbered document issued by the Department or a fleet inspector other than an auto dealer licensed to sell used motor vehicles under A.R.S. Title 28, indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
  14. "Conditioning mode" means either a fast idle condition or a loaded condition as defined in this Section.
  15. "Constant 4-wheel drive vehicle" means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle's drive shafts.
  16. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
  17. "Contractor" means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.
  18. "Curb idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed  $\pm$  100 RPM but without pressure exerted on the accelerator.
  19. "Curb weight" means a vehicle's unloaded weight without fuel and oil plus 300 pounds.
  20. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer, used motor vehicle dealer, or motorcycle dealer.
  21. "Department" means the Department of Environmental Quality.
  22. "Director" means the Director of the Department of Environmental Quality.
  23. "Director's certificate" means a serially numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration or reregistration under R18-2-1019 or R18-2-1022.
  24. "Electrically-powered vehicle" means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
  25. "Emissions compliance expiration date" means:
    - a. Each registration expiration date for a vehicle subject to an annual test; and
    - b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
  26. "Emissions inspection station permit" means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
  27. "Exhaust emissions" means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
  28. "Exhaust pipe" means the pipe that attaches to the muffler and exits the vehicle.
  29. "Fast idle condition" means to operate a vehicle by running the engine at 2,500 RPM,  $\pm$  300 RPM, for up to 30 seconds, with the transmission in neutral, to prepare the vehicle for a subsequent curb idle test.
  30. "Fast pass or fast fail algorithm" means a procedure in a vehicle emissions testing system that logically determines whether a vehicle will pass or fail the transient loaded emissions test under R18-2-1006(E)(2) before the test is over.
  31. "Fleet emissions inspection station" or "fleet station" means any vehicle emissions inspection facility operated under a permit issued under A.R.S. § 49-546.
  32. "Fuel" means any material that is burned within the confines of a vehicle to propel the vehicle.
  33. "Four-stroke vehicle" means a vehicle equipped with an engine that requires two revolutions of the crankshaft for each piston power stroke.
  34. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, has an unladen weight less than 1,300 pounds, is designed to be and is operated at not more than 15 MPH, and is designed to carry golf equipment and persons.
  35. "Government vehicle" means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
  36. "Gross vehicle weight rating" (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
  37. "Inspection" means the mandatory vehicle emissions inspection including the tampering inspection.
  38. "Inspection sticker" means a self-adhesive, serially numbered rectangular sticker indicating a government vehicle has met Arizona emissions inspection requirements.
  39. "Loaded condition" means to condition a vehicle by running the vehicle on a chassis dynamometer at a specified speed and load for no more than 30 seconds to prepare the vehicle for a subsequent curb idle test.
  40. "Loaded cruise test" means an exhaust emissions test conducted on a chassis dynamometer under R18-2-1006(E)(1)(a) and (F)(2)(a).
  41. "Mass emissions measurement" means measurement of a vehicle's exhaust in mass units such as grams.
  42. "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
  43. "MOL percent" means the percent, by volume, that a particular gas occupies in a mixture of gases at a uniform temperature.
  44. "Motorcycle" means a motor vehicle, other than a tractor, having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground.
  45. "Motorhome" means a vehicle built on a truck or bus chassis and equipped as a self-contained traveling home.
  46. "New aftermarket catalytic converter" or "new aftermarket converter" means a catalytic converter, except for an OEM, that meets the standards under 40 CFR 86.
  47. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance to various locations within

- the state, for the purpose of conducting inspections under A.R.S. § 49-542.
48. “On-board diagnostics test” means a method of emissions testing using the on-board computer systems of a 1996 or newer vehicle, to diagnose and report on the status of the engine’s emissions systems by connecting a scan tool to the vehicle’s data link connector.
  49. “Opacity” means the degree of absorption of transmitted light.
  50. “Operational air pump” means an air injection system to supply additional air into the exhaust system to promote further oxidation of HC and CO gases and to assist in catalytic reaction.
  51. “Person” means the federal government, state, or any federal or state agency or institution, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.
  52. “Reconditioned OEM catalytic converter” or “reconditioned OEM converter” means a used OEM reconditioned equivalent or an OEM converter that has had the pellets replaced with new or used OEM equivalent pellets and that also meets the standards under 40 CFR 86.
  53. “Recognized repair facility” means a business with an Arizona transaction privilege tax license whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
  54. “Reconstructed vehicle” means:
    - a. A reconstructed special as identified by the code letters “SP” on the section of the vehicle’s Arizona registration card or Arizona certificate of title reserved for identification of the vehicle’s style; or
    - b. A vehicle in which the vehicle style is not shown on the Arizona registration card or certificate of title, and the original manufacturer of the complete vehicle cannot be identified from the body.
  55. “Standard gases” means gases maintained as a primary standard for determining the composition of working gases, calibration gases, or the accuracy of an emissions analyzer.
  56. “State inspector” means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
  57. “State station” means an official emissions inspection station operated by a contractor.
  58. “Tampering” means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured. For the purposes of this Article, defeating includes failure to repair any malfunctioning emission control system or device.
  59. “Two-stroke vehicle” means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
  60. “Unloaded fast idle test” means an exhaust emissions test conducted with the engine of the vehicle running at 2,500 RPM.
  61. “Vehicle” means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.
  62. “Vehicle emissions inspector” means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
  63. “Working gases” means gases maintained to perform periodic calibration of an emissions analyzer.
- Historical Note**
- Former Section R9-3-1001 repealed, new Section R9-3-1001 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1001 repealed, former Section R9-3-1002 renumbered and amended as Section R9-3-1001 effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1001 renumbered as Section R18-2-1001 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).
- R18-2-1002. Reserved**
- R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program**
- A.** The following vehicles shall be inspected according to this Article at a state station or a fleet station unless exempted by subsection (B):
1. A vehicle to be registered or reregistered within area A or area B for highway use. For the purposes of this Article, registration or reregistration within area A or area B shall be determined by the vehicle owner’s permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner’s permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner’s permanent and actual residence;
  2. Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles for highway use under A.R.S. Title 28 and whose place of business is located in area A or area B;
  3. Each vehicle registered outside area A and area B but used to commute to the driver’s principal place of employment located within area A or area B;
  4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
  5. An area A or area B vehicle located out-of-state for more than 90 days before vehicle registration expiration shall be emissions tested at an official emissions inspection testing center in the area where it is located. If no official emissions testing program is available in the area for that vehicle, the vehicle shall meet the testing requirements under this Article within 15 calendar days of returning to Arizona.
- B.** The following vehicles are exempt from the inspection requirements of this Article:
1. A vehicle manufactured in or before the 1966 model year;
  2. A vehicle leased to a person residing outside area A and area B by a leasing company whose place of business is in area A or area B, except as provided in subsection (A)(3);
  3. A vehicle sold between motor vehicle dealers;
  4. An electrically-powered vehicle;
  5. An apportioned vehicle;
  6. A golf cart;

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7. A vehicle with an engine displacement of less than 90 cubic centimeters;
  8. A vehicle registered at the time of change of name of ownership except when:
    - a. The change in registration is accompanied by the required fee for the year following expiration of the prior registration, or
    - b. The change results from the sale by a dealership whose place of business is located in area A or area B;
  9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
  10. A vehicle of a model year the same as, or newer than, the current calendar year and a vehicle of the prior four model years, except:
    - a. A reconstructed vehicle;
    - b. An alternative fuel vehicle, as defined in A.R.S. § 43-1086, and
    - c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543.
  11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215.
- C.** Government vehicles operated in area A or area B and not exempted by this Article shall be emissions inspected according to R18-2-1017.

**Historical Note**

Former Section R9-3-1003 repealed, new Section R9-3-1003 adopted effective January 13, 1976; Amended as an emergency effective January 19, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1003 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1003 renumbered as Section R18-2-1003 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**R18-2-1004. Repealed****Historical Note**

Former Section R9-3-1004 repealed, new Section R9-3-1004 adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1004 renumbered as Section R18-2-1004 and amended effective August 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

**R18-2-1005. Time of Inspection**

- A.** Area A vehicles subject to an annual test, all area B vehicles, and vehicles sold or offered for sale by dealers required to be inspected under R18-2-1003, shall be inspected at the following times:

1. For a vehicle not covered by a fleet station permit, within 90 days before each registration expiration date;
  2. For a vehicle sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in area A or area B, before delivery of the vehicle to the retail purchaser;
  3. For a consignment vehicle offered for sale by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 whose place of business is located in area A or area B, before delivery of the vehicle to the retail purchaser. The consignment vehicle shall be inspected at a state station according to R18-2-1006;
  4. For government vehicles:
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection and;
    - c. A vehicle is subject to testing on the anniversary of its date of acquisition;
  5. For a vehicle owned by or leased to a person having a valid fleet station permit, at least once within each 12-month period following any original registration or reregistration;
  6. For a vehicle to be registered in area A or area B under conditions not specified in subsection (1) through (5), within 90 days before registration;
  7. For a vehicle registered outside area A and area B and used to commute to the driver's principal place of work located in area A or area B, upon vehicle registration or reregistration;
  8. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(C) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in area A or area B and annually thereafter; and
  9. For a vehicle issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document from the out-of-state emissions inspection station is submitted with the request for exemption.
- B.** An area A vehicle subject to a biennial test shall be inspected at the following times:
1. For a vehicle not covered by a fleet station permit, within 90 days before the vehicle's emissions compliance expiration date.
  2. For a government vehicle;
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity, and biennially thereafter, on or before the anniversary date of the previous inspection;
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and biennially thereafter, on or before the anniversary date of the previous inspection; and
    - c. The vehicle becomes subject to testing on the anniversary of its date of acquisition;
  3. For a vehicle owned by or leased to a person having a valid fleet station permit, at least once within each successive 24-month period following original registration;
  4. For a vehicle registered outside area A but used to commute to the driver's principal place of work located in area A, upon vehicle registration and biennially thereafter;

5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(C) or 15-1627(G), within 30 days following the date of initial registration at the institution located in area A and biennially thereafter;
  6. For a vehicle to be registered as area A vehicles under conditions not specified in subsections (1) through (5), upon initial registration and within 90 days before the vehicle's emissions compliance expiration date thereafter and;
  7. For a vehicle issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document indicating compliance with the emissions requirements from the out-of-state emissions inspection station is submitted with the request for exemption.
- C.** A used vehicle not registered as an area A or area B vehicle shall be inspected according to this Article before registration as an area A or area B vehicle unless exempted by R18-2-1003(B).
- D.** An area B vehicle being registered in area A is subject to the appropriate annual or biennial test from area A before registration even if the emissions compliance period for area B has not yet expired.
- E.** A new vehicle that is exempt from emissions testing under R18-2-1003(B)(10), and subject to either an annual or biennial test, shall be tested before registration in the calendar year that exceeds the vehicle's model year by five years.
- F.** Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
1. The initial test is accomplished before the emissions compliance expiration date, and
  2. The registration renewal is received by MVD within 30 days of the initial test.
- G.** An owner of a vehicle subject to subsection (A)(1), (A)(6), (B)(1), or (B)(6) may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration or reregistration testing requirement under R18-2-1003.

#### Historical Note

Former Section R9-3-1005 repealed, new Section R9-3-1005 adopted effective January 31, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective February 20, 1980 (Supp. 80-1).  
 Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-2). Former Section R9-3-1005 as amended effective February 20, 1980 and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1005 renumbered as Section R18-2-1005 and subsections (A) and (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### R18-2-1006. Emissions Test Procedures

- A.** Each vehicle inspected at a state station shall be visually inspected before the emissions test for the following unsafe or untestable conditions:
1. A fuel leak that causes wetness or pooling of fuel;
  2. A continuous engine or transmission oil leak onto the floor;
  3. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
  4. A vehicle with a tire on a driving wheel with less than 2/32-inch tread, with metal protuberances, unmatched tire size, with obviously low tire pressure as determined by visual inspection, or any other condition that precludes a loaded test for reasons of personnel, equipment, or vehicle safety;
  5. An exhaust pipe that does not exit the rear or side of the vehicle to allow for safe exhaust probe insertion;
  6. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
  7. Improperly operating brakes;
  8. Any vehicle modification or mechanical condition that prevents dynamometer operation; and
  9. Any other condition deemed unsafe or untestable by the inspector, including loud internal engine noise or an obvious exhaust leak.
- B.** A vehicle emissions inspection shall not be performed by an official emissions inspection station on any vehicle towing a heavily loaded trailer, carrying a heavy load, loaded with explosives, or loaded with any hazardous material not used as fuel for the vehicle.
- C.** Any vehicle unsafe or otherwise untestable as determined by the visual inspection shall be rejected without an emissions test. The inspector shall notify the vehicle owner or operator of all unsafe conditions found on rejected vehicles. The state station shall not charge a fee if the vehicle is rejected. The contractor shall not conduct an emissions test on a vehicle rejected for a safety reason or any other untestable condition until the cause for rejection is repaired.
- D.** When conducting the emissions test required by this Section, the vehicle emissions inspector shall meet all of the following requirements:
1. The vehicle shall be tested in the condition presented, unless rejected under subsection (A), (B), or (C). The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator. All of the vehicle's accessories shall be turned off during testing.
  2. A vehicle designed to operate with more than one fuel shall be tested on the fuel in use when the vehicle is presented for inspection, except alternative fuel vehicles, as defined in A.R.S. § 43-1086. The inspector shall test the alternative fuel vehicle on each fuel for which it is intended to operate, using the appropriate emissions test procedure and standards for that vehicle. The alternative fuel vehicle shall:
    - a. Be operated a minimum of 30 seconds before testing, after switching fuels;
    - b. Be rejected if it is not able to operate on both fuels; and
    - c. Be rejected if the vehicle operator cannot switch fuels.
  3. A vehicle operated exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the gas cap and evaporative pressure testing described in subsection (E)(6)(b)(ii), (E)(7)(a), and (F)(7)(a).

- E. In area A, the inspection test procedures for a vehicle other than a diesel-powered vehicle or a vehicle held for resale by a fleet-licensed motor vehicle dealer shall consist of the following:
1. A vehicle manufactured with a model year of 1967 through 1980, a nonexempt vehicle with a GVWR greater than 8,500 pounds, and a reconstructed vehicle, except a motorcycle and a constant 4-wheel drive vehicle, is required to annually take and pass a loaded cruise test and a curb idle test, as follows:
    - a. Loaded cruise test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1 of this Article, in drive for automatic transmission or second or higher gear for manual transmission. Overdrive shall not be used for testing. All vehicles shall be driven by the inspector during testing. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. After exhaust emissions are recorded, engine speed shall be returned to idle for a curb idle test.
    - b. Curb idle test. The test shall be performed with the vehicle in neutral for 1981 and newer vehicles. For 1980 and older vehicles, the test shall be performed in neutral, except that if the vehicle has an automatic transmission, drive shall be used. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity. A CO<sub>2</sub> plus CO reading of less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired, except when tested at a fleet emissions inspection station.
    - c. Exhaust sampling for a vehicle required to take an annual emissions test under subsection (E)(1) shall comply with subsection (F)(8).
  2. A vehicle with a 1981 or newer model year and a GVWR of 8,500 pounds or less, except a motorcycle, a reconstructed vehicle, a 1996 or newer OBD-equipped vehicle or a constant 4-wheel drive vehicle, is required to biennially take and pass a transient loaded emissions test and an evaporative system pressure test as follows:
    - a. The transient loaded emissions test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4. The 147 second sequence may be ended earlier using a fast pass or fast fail algorithm. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, up to two additional tests may be performed on a failing vehicle. Drive shall be used for automatic transmissions and first gear shall be used to begin for manual transmissions. Exhaust emissions concentrations in grams per mile for HC, CO, NO<sub>x</sub> and CO<sub>2</sub> shall be recorded continuously beginning with the first second. The inspector shall reject a vehicle with an audible or visible exhaust leak from emissions testing.
    - b. The evaporative system pressure test shall consist of the following steps in sequence:
      - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck. The gas cap shall be checked to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge;
      - ii. Pressurize the system to  $14 \pm 0.5$  inches of water without exceeding 26 inches of water system pressure;
      - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for no more than two minutes.
    - c. For a vehicle requiring a transient loaded emissions test under subsection (E)(2)(a), all testing and test equipment shall conform to "IM240 & Evap Technical Guidance," EPA420-R-98-010, EPA, August 1998, incorporated by reference, and no future editions or amendments, except that the transient driving cycle in Table 4 of this Article shall be used. A copy of the incorporated material is on file with the Department and the Secretary of State, and may be obtained at EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105-2498.
  3. A vehicle with a 1996 or newer model year and a GVWR of 8500 pounds or less, except a motorcycle or a reconstructed vehicle, is required to biennially take and pass an OBD test and a functional gas cap test as follows:
    - a. The OBD test shall consist of:
      - i. A visual inspection of the MIL function; and
      - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and presence of diagnostic trouble codes.
    - b. The OBD test and test equipment shall conform to "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001, incorporated by reference, and no future editions or amendments. A copy of this incorporated material is on file with the Department and the Secretary of State, and may be obtained at the EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105-2498; and
    - c. The functional gas cap test shall comply with subsection (E)(7)(a).
  4. A motorcycle, or a constant 4-wheel drive vehicle except one requiring an OBD emissions test under subsection (E)(3), shall take and pass only a curb idle test according to subsection (F)(1). An all-terrain vehicle (ATV), as defined in A.R.S. § 28-101, shall be tested as a motorcycle.
  5. A vehicle with a 1975 or newer model year is required to take and pass a liquid fuel leak inspection annually or biennially according to subsections (E)(1) or (2) as follows:
    - a. For purposes of this subsection, "liquid fuel leak" means any fuel emanating from a vehicle's fuel delivery, metering or evaporation systems in liquid form that has created a visible drop or more of fuel



- on, around, or under a component of a vehicle's fuel delivery, metering, or evaporation system.
- b. With the engine running, the vehicle emissions inspector shall visually inspect the following components of the vehicle, if they are exposed and visually accessible, for liquid fuel leaks:
    - i. Gasoline fuel tanks;
    - ii. Gasoline fill pipes, associated hoses and fuel tank connections;
    - iii. Gas caps;
    - iv. External fuel pumps;
    - v. Fuel delivery and return lines and hoses;
    - vi. Fuel filters;
    - vii. Carburetors;
    - viii. Fuel injectors;
    - ix. Fuel pressure regulators;
    - x. Charcoal canisters; and
    - xi. Fuel vapor hoses.
    - xii. Any valves connected to any other fuel evaporative component.
  - c. The liquid fuel leak inspection required by this subsection is a visual inspection only. The vehicle emissions inspector is not required to perform any disassembly of the vehicle to inspect for liquid fuel leaks. No special tools or equipment, other than a flashlight and mirror, are required and no raising, hoisting, or lifting of the vehicle is required.
  - d. The vehicle emissions inspector shall indicate on the vehicle inspection report the location of any liquid fuel leak.
  - e. Nothing in this subsection shall prohibit a vehicle emissions inspector from refusing to inspect a vehicle under subsections (A), (B), or (C) or from terminating an inspection if a liquid fuel leak presents a safety hazard.
  - f. A vehicle operated exclusively by compressed natural gas (CNG), liquid natural gas (LNG), or liquid petroleum gas (LPG) shall be exempt from the liquid fuel leak inspection.
6. The emissions pass-fail determination for a vehicle tested under subsection (E) shall be made as follows:
- a. A vehicle tested under subsection (E)(1), that does not exceed the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2 for the vehicle, complies with the emissions standards in Table 2. The loaded cruise test standards in Table 2 apply to a fleet vehicle tested with the 2,500 RPM unloaded fast idle test under R18-2-1019(E).
  - b. A vehicle tested under subsection (E)(2) shall meet the standards in Table 3 and pass the evaporative system pressure test as follows:
    - i. Table 3 Standards. A vehicle shall meet either the composite standard for the whole test or the phase 2 standard for seconds 65 to 146. The Department may implement a testing algorithm for fast pass, fast fail, or both, provided that the algorithm is reliable in accurately predicting the final outcome of the entire cycle. A vehicle not meeting either the composite or phase 2 standard shall fail the emissions test.
    - ii. Evaporative System Pressure Test. A vehicle fails the emissions test if the evaporative system cannot maintain a system pressure above eight inches of water for at least two minutes after being pressurized to  $14 \pm 0.5$  inches of water. Additionally, a vehicle fails the evaporative test if the canister is missing or damaged, if a hose or electrical connection is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label, or if the gas cap is missing.
  - c. A vehicle that operates on natural gas complies with HC emissions standards if the HC emissions value does not exceed the applicable standard in subsection (E)(6)(a) or (b), if:
    - i. Multiplied by 0.19, when using an analyzer with a flame ionization detector, or
    - ii. Multiplied by 0.61, when using an NDIR analyzer.
  - d. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (E)(3), that does not exceed the curb idle mode HC and CO emissions standards listed in Table 2 on either the first curb idle test or the second curb idle test passes the emissions test.
  - e. A vehicle tested under subsection (E)(3) shall:
    - i. Fail if the data link connector is missing, tampered, or otherwise inoperable during any OBD test;
    - ii. Fail if the MIL does not illuminate at all when the ignition key is turned to the key on, engine off position, or does not illuminate briefly during engine start during any OBD test;
    - iii. Fail if the MIL illuminates continuously or flashes after the engine has been started during any OBD test;
    - iv. Fail if a diagnostic trouble code is present and the MIL status, as indicated by the scan tool, is commanded on during any OBD test.
    - v. Be rejected from an initial OBD test and required to take and pass a transient loaded test under subsection (E)(2) if the number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle.
    - vi. Be rejected from an OBD retest if the number of unset readiness indicators, excluding continuous indicators, exceeds the number allowed in subsection (v).
    - vii. Fail the functional gas cap test if the gas cap does not comply with subsection (E)(7)(a).
  - f. A vehicle tested under subsection (E)(5) shall fail the inspection if a vehicle emissions inspector detects a liquid fuel leak.
  - g. A vehicle that exceeds the applicable emissions standards for the tests described in subsections (E)(1) and (E)(2)(a), or fails the OBD test described in subsection (E)(3), fails the emissions test and shall not be reinspected until a low-emissions tune-up is performed as described in R18-2-1010. A vehicle that fails the evaporative system pressure test described in subsection (E)(2)(b) shall not be reinspected until repaired as required in R18-2-1010(D)(1) and (2). A vehicle that fails the functional gas cap test described in subsection (E)(7)(a) shall not be reinspected until repaired as required in R18-2-1009(B). A vehicle that fails the liquid fuel leak test described in subsection (E)(5) shall not be reinspected until repaired as required in R18-2-1010(E).

7. A vehicle required to take an annual emissions test in area A shall, at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emissions system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label. A vehicle that fails any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection unless the owner provides the written statement required in R18-2-1008(B). "Original configuration" for a foreign-manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:
  - a. Any vehicle emissions tested, except one with a vented fuel system, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. A vehicle with a vented fuel system shall be checked for the presence of a properly fitting fuel cap.
  - b. For a 1975 and newer model year vehicle:
    - i. A visual inspection to determine the presence and proper installation of each required catalytic converter, if applicable;
    - ii. An examination to determine the presence of an operational air pump, if applicable; and
    - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system and evaporative control system, if applicable.
- F. In area B, the inspection test procedures for a vehicle other than a diesel-powered vehicle shall consist of the following:
  1. An area B vehicle with a model year of 1967 through 1980 shall take and pass only a curb idle test. The curb idle test shall be performed with the vehicle in drive for automatic transmissions or in neutral for manual transmissions. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity. A CO<sub>2</sub> plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired, except when tested at a fleet emissions inspection station. If the vehicle fails the curb idle test, and if permitted by the vehicle operator, the vehicle shall be conditioned according to one of the following conditioning procedures:
    - a. Fast-idle conditioning procedure. The vehicle shall be conditioned by increasing engine speed to 2,500,  $\pm 300$  RPM, for up to 30 seconds with the transmission in neutral. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning procedure standards in Table 2 are for diagnostic and advisory information only. After exhaust emissions are recorded, the engine speed shall be returned to curb idle for a second idle test. The fast-idle conditioning procedure may be used on a vehicle at a state station instead of the loaded conditioning procedure if any of the following occurs:
      - i. The vehicle has a tire on a driving wheel with less than 2/32-inch tread, with metal protrusions, with visibly low tire pressure as determined by visual inspection, or any other condition that precludes loaded conditioning for reasons of personnel, equipment, or vehicle safety;
      - ii. The vehicle is driven by a person who, because of physical incapacity, is unable to yield the driver's seat to the vehicle emissions inspector;
      - iii. The driver refuses to yield the driver's seat to the vehicle emissions inspector; or
      - iv. The vehicle cannot be tested according to Table 1 because of the vehicle's inability to attain the speeds specified.
    - b. Loaded conditioning procedure. For a vehicle other than a motorcycle or a constant 4-wheel drive vehicle, the vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission, or second or higher gear for manual transmission. All front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning procedure standards in Table 2 are for diagnostic and advisory information only. After exhaust emissions are recorded, engine speed shall be returned to curb idle for a second idle test.
    - c. Following one of the conditioning procedures in subsection (F)(1)(a) or (b), the vehicle shall be retested according to the curb idle test procedure in subsection (F)(1).
  2. An area B vehicle with a 1981 or newer model year, except a motorcycle, a constant 4-wheel drive vehicle, or a 1996 and newer vehicle equipped with OBD, shall take and pass a loaded cruise test and curb idle test, as follows:
    - a. Loaded Cruise Test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission or second or higher gear for manual transmission. Overdrive shall not be used. All front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. After exhaust emissions are recorded, engine speed shall be returned to idle for a curb idle test.
    - b. Curb Idle Test. The test shall be performed with the vehicle in neutral. Engine RPM shall be within  $\pm 100$  RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO<sub>2</sub> plus CO reading of 6% or greater shall be registered to establish test validity, except when tested at a fleet inspection station. A CO<sub>2</sub> plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection until repaired.
  3. A vehicle with a model year of 1996 or newer and a GVWR of 8500 pounds or less, except a motorcycle or a reconstructed vehicle, is required to annually take and pass an OBD test and a functional gas cap test as follows:
    - a. The OBD test shall consist of:
      - i. A visual inspection of the MIL function; and

- ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and presence of diagnostic trouble codes;
  - b. The OBD test and test equipment shall conform to "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001, incorporated by reference, and no future editions or amendments. A copy of this incorporated material is on file with the Department and the Secretary of State and may be obtained at the EPA's National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105-2498; and
  - c. The functional gas cap test shall comply with subsection (F)(7)(a).
4. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (F)(3), shall take and pass only a curb idle test according to subsection (F)(1). An all-terrain vehicle (ATV), as defined in A.R.S. § 28-101, shall be tested as a motorcycle. If the vehicle fails the curb idle test, and if permitted by the vehicle operator, the vehicle shall be conditioned according to the fast idle conditioning procedure required in subsection (F)(1)(a). Following conditioning, the vehicle shall be retested according to the curb idle test procedure in subsection (F)(1).
5. A vehicle with a 1975 or newer model year and annually tested under subsections (F)(1) or (2) is required to take and pass a liquid fuel leak inspection according to subsections (E)(5)(a) through (f).
6. The emissions pass-fail determination shall be made as follows:
- a. A vehicle with a model year of 1967 through 1980, except a motorcycle or a constant 4-wheel drive vehicle, that does not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the first or second curb idle test, complies with the minimum emissions standards contained in Table 2.
  - b. A vehicle with a 1981 or newer model year, except a motorcycle or a constant 4-wheel drive vehicle, that does not exceed the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2, complies with the minimum emissions standards in Table 2. The loaded cruise test standards specified in Table 2 shall apply to fleet vehicles tested with the 2,500 RPM unloaded fast idle test.
  - c. A vehicle that operates on natural gas complies with HC emissions standards if the HC emissions value, as determined by an NDIR analyzer, multiplied by 0.61 does not exceed the applicable standard in subsection (F)(6)(a) or (b).
  - d. A motorcycle or a constant 4-wheel drive vehicle, except one requiring an OBD emissions test under subsection (F)(3), that does not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the first or second curb idle test complies with the minimum emissions standards in Table 2.
  - e. A vehicle that exceeds the applicable emissions standards, or fails the OBD test described in subsection (F)(3), fails the emissions test and shall have a low emissions tune-up as described in R18-2-1010 before reinspection. A vehicle that fails the functional gas cap test described in subsection (F)(3)(c) shall not be reinspected until repaired as required in R18-2-1009(B).
- f. A vehicle tested under subsection (F)(3) shall:
- i. Fail if the data link connector is missing, tampered, or otherwise inoperable during any OBD test;
  - ii. Fail if the MIL does not illuminate at all when the ignition key is turned to the key on, engine off position, or does not illuminate briefly during engine start during any OBD test;
  - iii. Fail if the MIL illuminates continuously or flashes after the engine has been started during any OBD test;
  - iv. Fail if a diagnostic trouble code is present and the MIL status, as indicated by the scan tool, is commanded on during any OBD test;
  - v. Be rejected from an initial OBD test and required to take and pass a loaded cruise test and curb idle test under subsection (F)(2) if the number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
  - vi. Be rejected from an OBD retest if the number of unset readiness indicators, excluding continuous indicators, exceeds the number allowed in subsection (v); and
  - vii. Fail the functional gas cap test if the gas cap does not comply with subsection (F)(7)(a).
- g. A vehicle tested under subsection (F)(5) shall fail the inspection if a vehicle emissions inspector detects a liquid fuel leak. A vehicle that fails the liquid fuel leak test shall not be reinspected until repaired as required in R18-2-1010(E).
7. A vehicle required to take an emissions test in area B, except a vehicle required to take an OBD test as described in subsection (F)(3), shall at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emissions system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label. A vehicle that fails any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection unless the owner provides the written statement required in R18-2-1008(B). "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The tampering inspection shall consist of the following:
- a. Any vehicle emissions tested, except one with a vented fuel system, shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
  - b. For a 1975 or newer model year vehicle:
    - i. A visual inspection to determine the presence and proper installation of each required catalytic converter, if applicable; and
    - ii. An examination to determine the presence of an operational air pump, if applicable.
8. Exhaust sampling in area B shall comply with the following:

- a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
  - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a NDIR analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
  - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
    - i. Collect separate samples from each exhaust pipe and use the average concentration to determine the test result;
    - ii. Use manifold exhaust probes to simultaneously sample approximately equal volumes from each pipe; or
    - iii. Use manifold exhaust pipe adapters to collect approximately equal volume samples from each pipe.
- G.** The following apply to all testing under subsection (E) or (F):
- 1. A rotary piston engine shall be inspected as a 4-stroke engine with four cylinders or less;
  - 2. A turbine engine shall be inspected as a 4-stroke engine with more than four cylinders; and
  - 3. A vehicle in which a diesel engine has been replaced with a gas engine shall be inspected as a gas-powered vehicle of the same vehicle model year. The vehicle shall not pass the inspection unless each catalytic converter, air pump, gas cap, and other emissions control device applicable to the vehicle model year and the same or more recent year engine configuration is properly installed and in operating condition.
- H.** In area A, the inspection test procedure for a diesel-powered vehicle is as follows:
- 1. A diesel-powered vehicle with a GVWR greater than 8,500 pounds shall be tested with a procedure that conforms to Society of Automotive Engineers standard J1667, February 1996, incorporated by reference and on file with the Department and the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy of this referenced material may be obtained at Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001. The procedure shall utilize the corrections for ambient test conditions in Appendix B of J1667 for all tests. The test results shall be reported as the percentage of smoke opacity. Emissions pass-fail determinations are as follows:
    - a. A vehicle powered by a 1991 or later model year diesel engine fails if the J1667 final test result is greater than 40%, unless the engine family is exempted from the 40% standard under subsection (H)(1)(e);
    - b. A vehicle powered by a pre-1991 model year diesel engine fails if the J1667 final test result is greater than 55%, unless the engine family is exempted from the 55% standard under subsection (H)(1)(e);
    - c. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection;
    - d. A vehicle that exceeds the opacity standard in subsection (H)(1)(a) or (b) fails the emissions test.
- Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010(H);
- e. The Director shall exempt any engine family from the standards in subsections (H)(1)(a) or (b) if the engine manufacturer demonstrates either of the following:
    - i. The engine family exhibits smoke opacity greater than the standard when in good operating condition and adjusted to the manufacturer's specifications. The Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications; or
    - ii. The engine family is exempted from an equivalent standard based on J1667 by the executive officer of the California Air Resources Board (CARB). The Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB; and
  - f. A demonstration under subsection (H)(1)(e)(i) shall be based on data from at least three vehicles. Data from official inspections under subsection (H)(1) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
2. A diesel-powered vehicle with a GVWR greater than 4,000 pounds and less than or equal to 8,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP,  $\pm$  2 HP, while operated at 50 MPH. A diesel-powered vehicle with a GVWR of 4,000 pounds or less shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH. For all diesel-powered vehicles with a GVWR less than or equal to 8,500 pounds:
- a. The emissions pass-fail determination shall be made as follows:
    - i. The opacity reading for a period of 10 consecutive seconds with the engine under applicable loading shall be compared to the opacity standard in R18-2-1030(B). A vehicle that does not exceed the applicable opacity standard in R18-2-1030(B) complies with the minimum emissions standards.
    - ii. A vehicle that exceeds the applicable opacity standard fails the emissions test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010.
  - b. Exhaust sampling shall comply with the following:
    - i. For a diesel-powered vehicle equipped with multiple pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the applicable emissions standard.
    - ii. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within  $\pm$  5% of filter value.

- I. In area B, the inspection test procedure for a diesel-powered vehicle is as follows:
1. A diesel-powered vehicle with a GVWR greater than 26,000 pounds or having tandem axles shall be tested according to one of the following methods:
    - a. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
    - b. If a chassis dynamometer is not available, the vehicle shall be tested by being lugged by its own brakes by selecting a gear ratio that produces a maximum speed of 10-15 MPH at governed engine RPM or maximum rated RPM and then loading the engine by applying the brakes until the engine RPM is lugged down to 80% of the governed or maximum rated RPM at wide-open throttle position. If the vehicle does not have a tachometer, the vehicle may be loaded to 80% of governed or maximum rated speed.
  2. A diesel-powered vehicle without tandem axles and having a GVWR greater than 10,500 pounds and less than or equal to 26,000 pounds shall be tested according to one of the following methods:
    - a. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until such loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of governed speed, whichever is greater. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer;
    - b. The vehicle shall be tested by applying a single load of 30 HP,  $\pm$  2 HP, while operated at 50 MPH; or
    - c. The vehicle shall be tested by being lugged by its own brakes by selecting a gear ratio that produces a maximum speed of 10-15 MPH at governed engine RPM or maximum rated RPM and then loading the engine by applying the brakes until the engine RPM is lugged down to 80% of the governed or maximum rated RPM at wide-open throttle position. If the vehicle does not have a tachometer, the vehicle may be loaded to 80% of governed or maximum rated speed.
  3. A diesel-powered vehicle with a GVWR of greater than 4,000 pounds and less than or equal to 10,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP,  $\pm$  2 HP, while operated at 50 MPH.
  4. A diesel-powered vehicle with a GVWR of 4,000 pounds or less shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
  5. The emissions pass-fail determination shall be performed:
    - a. The opacity reading during a period of 10 consecutive seconds with the engine under applicable loading specified in subsections (I)(1) through (4) shall be compared to the opacity standard specified in R18-2-1030(B). A vehicle that does not exceed the opacity standard in R18-2-1030(B) complies with the minimum emissions standards.
    - b. A vehicle that exceeds the standard in R18-2-1030(B) fails the emissions test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010.
  6. Exhaust sampling shall comply with the following:
    - a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
    - b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within  $\pm$  5% of filter value.
- J. All diesel-powered vehicles shall undergo a tampering inspection under subsection (E)(7).

#### Historical Note

Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective November 1, 1976 (Supp. 76-5).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1006 as amended effective February 20, 1980 repealed and a new Section R9-3-1006 adopted as an emergency effective January 2, 1981 now adopted and amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6).  
 Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1006 renumbered as Section R18-2-1006 and subsections (A), (C) and (D) amended effective August 1, 1988 (Supp. 88-3).  
 Amended effective September 19, 1990 (Supp. 90-3).  
 Amended effective November 14, 1994 (Supp. 94-4).  
 Amended effective October 15, 1998 (Supp. 98-4).  
 Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000

(Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3).

#### **R18-2-1007. Evidence of Meeting State Inspection Requirements**

- A. Vehicles required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless waived under R18-2-1008.
- B. The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
- C. If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents, when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
  - 1. Certificate of compliance,
  - 2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
  - 3. Certificate of exemption, or
  - 4. Director's certificate,
  - 5. The upper section of the vehicle inspection report with "PASS" in the final results block.
- D. A complete certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false. A certificate corrected according to R18-2-1019(F)(1)(a) shall be accepted by the MVD or its agent.
- E. Documents listed in subsection (C) and originating in area B are not acceptable for meeting the inspection requirements in area A.
- F. Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

#### **Historical Note**

Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 3, 1977 (Supp. 77-1). Amended effective February 20, 1980 (Supp. 80-1). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1007 renumbered without change as Section R18-2-1007 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1008. Procedure for Issuing Certificates of Waiver**

- A. Unless prohibited under subsection (C), (D), or (E), a certificate of waiver shall be issued subsequent to reinspection by a state inspector at a state or Department station to a vehicle that failed the emissions inspection or the emissions and tampering inspections when it is determined by repair receipts, emissions test results, evidence of repairs performed, underhood verification, or similar evidence that the requirements of R18-2-1009 and R18-2-1010 have been met, or for emissions failures only, any further repairs within the repair cost limit would be ineffective. A waiver may be denied if a waiver request is based upon repair estimates and the state inspector demonstrates that

a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.

- B. A certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to the Director a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the Department. The Department may deny a certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver for tampered vehicles may be issued conditionally for a specified period, not to exceed 90 days, that allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the Director proof of purchase and installation of the device. The Department shall track all issued conditional certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the Director shall forward to the Department of Motor Vehicles an order to cancel the vehicle's registration.
- C. The Director shall not issue a waiver to a vehicle that has failed the emissions test due to the catalytic converter system. A vehicle shall have failed the emissions test due to the catalytic converter system if:
  - 1. The converter's oxidation efficiency, as measured by the Catalyst Efficiency Test Procedure in R18-2-1031(A), is less than 75%; and
  - 2. No engine or fuel system malfunctions exist that would prevent the proper operation of a catalytic converter.
- D. The Director shall not issue a waiver to a vehicle failing the emission test with an HC, CO, NO<sub>x</sub>, or opacity emission level greater than two times the pass-fail standard in R18-2-1006, unless the vehicle is repaired so that each emission level is less than two times the pass-fail standard.
- E. After January 1, 1997, the Director shall not issue a certificate of waiver to the same vehicle more than once.
- F. The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable directly to the Department of Environmental Quality at the time the certificate of waiver is issued.

#### **Historical Note**

Former Section R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 13, 1976 (Supp. 76-1). Former R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1008 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) and added subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1008 renumbered as Section R18-2-1008 and amended effective August 1, 1988 (Supp. 88-3).

Amended effective November 14, 1994 (Supp. 94-4).  
Amended by final rulemaking at 6 A.A.R. 382, effective  
December 20, 1999 (Supp. 99-4).

#### **R18-2-1009. Tampering Repair Requirements**

- A.** If a vehicle fails the visual inspection for properly installed catalytic converters, the converters shall be replaced with new or reconditioned OEM converters or equivalent new aftermarket converters. The Department shall provide names of acceptable aftermarket converters at the time of inspection on the repair requirement list.
- B.** If a vehicle fails the functional gas cap pressure test described in R18-2-1006(E)(7)(a) or (F)(7)(a), the gas cap shall be replaced with one that meets those specifications. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, a properly fitting gas cap shall be installed on the vehicle.
- C.** If a vehicle fails the visual inspection for the presence of an operational air pump, a new, used, or reconditioned, operational air pump shall be properly installed on the vehicle.
- D.** If a vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the system shall be repaired or replaced with OEM or equivalent aftermarket parts.
- E.** If a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the system shall be repaired or replaced with OEM or equivalent aftermarket parts.

#### **Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
Repealed effective January 3, 1977 (Supp. 77-1). New  
Section R9-3-1009 adopted effective January 1, 1986  
(Supp. 85-6). Amended effective January 1, 1987, filed  
December 31, 1986 (Supp. 86-6). Former Section R9-3-  
1009 renumbered without change as Section R18-2-1009  
(Supp. 88-3). Amended effective November 14, 1994  
(Supp. 94-4). Amended by final rulemaking at 6 A.A.R.  
382, effective December 20, 1999 (Supp. 99-4).  
Amended by final rulemaking at 8 A.A.R. 90, effective  
January 1, 2002 (Supp. 01-4). Amended by final  
rulemaking at 14 A.A.R. 2834, effective July 1, 2008  
(Supp. 08-3).

#### **R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair**

- A.** A low emissions tune-up on a nondiesel-powered vehicle consists of the following procedures:
  1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board-diagnostics shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
    - a. Tachometer;
    - b. Timing light;
    - c. Engine analyzer or oscilloscope, and
    - d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
  2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.
  3. Inspection of Air Cleaner, Choke, and Air Intake System. A dirty or plugged air cleaner, stuck choke, or restricted

air intake system shall be replaced or repaired as required.

4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and adjusted, if necessary, according to manufacturer's specifications.
5. Inspection of PCV Valve. The PCV valve shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be verified. Repair or replace as required.
6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. Repair or replace as required.
7. Perform a visual inspection for leaking fuel lines or system components. Repair or replace as required.
8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and adjusted according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.
- B.** A vehicle that fails reinspection does not qualify for a waiver unless a low emissions tune-up and diagnosis is performed on the vehicle.
- C.** If the maximum required repair cost in subsection (F) or (G) is not exceeded after a low emissions tune-up described in subsection (A), then the following procedures apply:
  1. CO failure.
    - a. If a vehicle fails CO only, the vehicle shall be checked for:
      - i. Proper canister purge system operation,
      - ii. High float setting,
      - iii. Leaky power valve, and
      - iv. Faulty or worn needles, seats, jets or improper jet size.
    - b. If applicable, the following shall also be checked:
      - i. Computer,
      - ii. Engine and computer sensors,
      - iii. Engine solenoids,
      - iv. Engine thermostats,
      - v. Engine switches,
      - vi. Coolant switches,
      - vii. Throttle body or port fuel injection system,
      - viii. Fuel injectors,
      - ix. Fuel line routing and integrity,
      - x. Air in fuel system including line and pump,
      - xi. Fuel return system,
      - xii. Injection pump,
      - xiii. Fuel injection timing,
      - xiv. Routing of vacuum hoses, and
      - xv. Electrical connections.
    - c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
  2. HC, or HC and CO failure.
    - a. If a vehicle fails HC, or HC and CO, the vehicle shall be checked for:
      - i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
      - ii. Distributor module;
      - iii. Vacuum hose routing and electrical connections;
      - iv. Distributor component malfunctions including vacuum advance;
      - v. Faulty points or condenser;
      - vi. Distributor cap crossfire;
      - vii. Catalytic converter efficiency air supply;

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- viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
    - b. The items in subsection (C)(2)(a) shall be repaired or replaced as required.
  - 3. NO<sub>x</sub> failure.
    - a. If a vehicle fails NO<sub>x</sub>, the vehicle shall be checked for:
      - i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
      - ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
      - iii. Above normal engine operating temperature;
      - iv. Proper air management;
      - v. Lean A/F mixture;
      - vi. Catalytic converter efficiency; and
      - vii. Over-advanced off-idle timing.
    - b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
  - 4. OBD failure. If the vehicle fails the OBD test, the vehicle shall be repaired for the items indicated on the Vehicle Emissions Report as causing the failure. If the failure results from Diagnostic Trouble Codes (DTCs) that caused the Malfunction Indicator Lamp (MIL) to be illuminated, the components or systems causing the DTCs shall be repaired or replaced. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.
- D.** For Evaporative System Failures, the following procedures apply:
- 1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
  - 2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, misrouted or plugged hoses, and damaged or missing purge valves. Repair or replace as necessary.
- E.** If a vehicle fails the liquid fuel leak inspection, the vehicle shall be checked for leaking or disconnected fuel delivery, metering, or evaporation system components including those listed in R18-2-1006(E)(5)(b). Repair or replace as necessary.
- F.** The maximum required repair cost for a vehicle in area A, not including cost to repair the vehicle for failing an evaporative system pressure test due to tampering, or other tampering repair cost, is:
- 1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$500; and
  - 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$200;
    - b. Manufactured in the 1975 through 1979 model years: \$300; and
    - c. Manufactured in or after the 1980 model year: \$450.
  - 3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- G.** The maximum required repair cost for vehicles in area B, not including tampering repair cost, is:
- 1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$300; and
  - 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$50;
    - b. Manufactured in the 1975 through 1979 model years: \$200; and
    - c. Manufactured in or after the 1980 model year: \$300.
  - 3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- H.** A low emissions tune-up on a diesel-powered vehicle consists of the following procedures:
- 1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
  - 2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.
  - 3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
  - 4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.
  - 5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.
- I.** Any available warranty coverage for a vehicle shall be used to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1010 repealed, new Section R9-3-1010 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1010 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1010 renumbered as Section R18-2-1010 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3).

**R18-2-1011. Vehicle Inspection Report**



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- A.** A vehicle inspected at a state station shall be provided a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information:
1. License plate number;
  2. Vehicle identification number;
  3. Model year of vehicle;
  4. Make of vehicle;
  5. Style of vehicle;
  6. Type of fuel;
  7. Odometer reading to the nearest 1000 miles, truncated;
  8. Emissions standards for idle and loaded cruise modes, if applicable;
  9. Emissions measurements during idle and loaded cruise modes, if applicable;
  10. Opacity measurements and standards, if applicable;
  11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
  12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
  13. Tampering inspection results;
  14. Liquid fuel leak inspection results;
  15. Repair requirements;
  16. Final test results;
  17. Repairs performed;
  18. Cost of emissions-related repairs;
  19. Cost of tampering-related repairs;
  20. Name, address, and telephone number of the business or person making repairs;
  21. Signature and certification number of person certifying repairs;
  22. Date of inspection;
  23. Test results of the previous inspection if the inspection is a reinspection;
  24. Inspection station, lane locators; and
  25. Test number and time of test.
- B.** A vehicle failing the initial inspection shall receive an inspection report supplement approved by the Department containing, at a minimum, the following:
1. Diagnostic and tampering information including acceptable replacement units, and
  2. Applicable maximum repair costs.
- C.** The inspection report shall provide a 3-inch by 5-inch tear-out section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable.
1. The tear-out section shall be a certificate of compliance when the word “compliance” appears in the appropriate location on the printout.
  2. The tear-out section shall be a certificate of waiver when the word “waiver” appears in the appropriate location on the printout.
  3. The tear-out section shall contain all of the following information:
    - a. License plate number,
    - b. Vehicle identification number,
    - c. Final results,
    - d. Serial number of the inspection report,
    - e. Date of inspection,
    - f. Model year,
    - g. Make,
    - h. Date of initial inspection, and
    - i. Inspection fee.
- D.** At the time of registration or reregistration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1011 repealed, new Section R9-3-1011 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1011 as amended effective January 3, 1979, and as amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1011 renumbered as Section R18-2-1011 and amended by removing subsection (E) effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3).

**R18-2-1012. Inspection Procedures and Fee**

- A.** A vehicle that is inspected by a state station must be accompanied by a document such as a registration renewal notice, registration, certificate of title, or bill of sale that identifies the vehicle by make, model year, identification number, and license plate if applicable.
- B.** If the vehicle inspection report from the previous test is used, it shall be retained by the test lane inspector.
- C.** The fees for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable directly to the contractor at the time and place of inspection in cash or by check approved by the contractor. The amount collected by the contractor to defray the cost of the inspection shall be retained by the contractor. The amount collected to defray the cost of the administration, implementation, and enforcement of the vehicle emissions inspection program shall be remitted to the Department. Amounts collected shall be recorded and reported to the Department monthly. The contractor shall submit to the state of Arizona on a monthly basis, by the 10th day of each month, a report showing the number of inspections performed and the amount of fees collected.
- D.** Each subsequent inspection, if needed, shall be treated by the state and the contractor in the same manner as an initial inspection and reinspection, providing for a free reinspection according to R18-2-1013, if needed, following a paid inspection. The fee for each paid reinspection shall be the full fee as provided for in the contract with the contractor.
- E.** A state station emissions inspector shall not recommend repairs or repair facilities.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1012 repealed, new Section R9-3-1012 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S.

§ 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1012 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended subsections (A) and (D) effective November 9, 1982 (Supp. 82-6). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1012 renumbered as Section R18-2-1012 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1013. Reinspections**

- A.** A vehicle failing the initial inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection, if the vehicle operator presents the vehicle inspection report from the previous inspection, indicating the itemization of the repairs performed.
  2. Emissions-related repairs or adjustments and any tampering repairs have been made.
  3. The vehicle is accompanied by the entire vehicle inspection report from the initial or subsequent inspection with the following information filled in on the reverse side:
    - a. Emissions-related and tampering-related repairs made;
    - b. Cost of emissions related and tampering related repairs as reflected by receipts or bills;
    - c. Name, address, telephone number, and type of facility making repairs;
    - d. Signature of person certifying the repairs;
    - e. Date of repairs; and
    - f. The state certification number of the technician making repairs, if applicable.
- B.** A vehicle shall be retested after repair for any portion of the inspection the vehicle failed on the previous test to determine if the repairs are effective. To the extent that repair to correct a previous failure could cause failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest.
- C.** A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.

#### **Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1013 repealed, new Section R9-3-1013 adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1013 adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1013 renumbered as Section R18-2-1013 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

#### **R18-2-1014. Repealed**

#### **Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1015. Repealed**

#### **Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1016. Licensing of Inspectors**

- A.** The Department shall license a person as a vehicle emissions inspector if the applicant passes a practical and a written examination with a score equal to or greater than 80% in the following areas:
1. For nondiesel-powered fleet vehicle emissions inspectors:
    - a. Equipment used in the inspection and the control of emissions;
    - b. Types of emission inspection failures;
    - c. Corrective procedures for excessive HC emissions;
    - d. Corrective procedures for excessive CO emissions;
    - e. Corrective procedures for excessive NO<sub>x</sub> emissions, for inspectors in area A;
    - f. Proper fuel system adjustment procedures;
    - g. Computerized engine control systems; and
    - h. Regulations governing fleet stations;
  2. For diesel-powered fleet vehicle emissions inspectors:
    - a. Equipment used in the inspection and the control of opacity and emissions;
    - b. Corrective procedures for excessive opacity;
    - c. Proper fuel injection system adjustment procedures;
    - d. Proper use of tools required by the vehicle manufacturer for field setting of fuel injectors, inlet and exhaust valve clearance, governors, and throttle controls;
    - e. Computerized engine control systems; and
    - f. Regulations governing fleet stations;
  3. For state station vehicle emission inspectors:
    - a. Air pollution causes and effects;
    - b. Purpose, function, and goals of the inspection program;
    - c. State inspection regulations;
    - d. Test procedures and rationale for their design;
    - e. Emission control devices, configuration, and inspection;
    - f. Test equipment operation, calibration, and maintenance;
    - g. Proficiency in driving the transient test cycle in Table 4;
    - h. Quality control procedures;
    - i. Public relations; and
    - j. Safety and health issues related to the inspection process.
  4. For the practical portion of the examination an applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, to pass. If an inspector fails to demonstrate such ability in an audit, either covert or overt, the inspector's license shall be suspended. The suspended licensee shall demonstrate to the Department the skills required by this subsection within 30 days of suspension or such license shall be revoked.

- B. If an applicant for a nondiesel-powered vehicle emissions inspector license fails the written examination, the applicant shall successfully complete the vehicle emissions inspector state training program before reexamination for licensure.
- C. Applications may be obtained from the Department. The application shall contain the following:
  1. The type of license requested;
  2. The applicant's name;
  3. The applicant's home address;
  4. The applicant's phone number;
  5. The name of the applicant's employer;
  6. The phone number of the applicant's employer;
  7. The applicant's signature; and
  8. The date of the license request.
- D. All completed applications shall be returned to the Department.
- E. Licenses issued to vehicle emissions inspectors shall be renewed annually on or before the expiration date. An inspector whose license has expired may not inspect vehicles.
- F. Applications for renewal of vehicle emissions fleet inspector's licenses shall be submitted within 30 days before the current license expiration date.
- G. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article or fails to continue to demonstrate proficiency to the Department as required in subsection (A).
- H. A vehicle emissions inspector shall notify the Department of any change in employment status, due to retirement, resignation or termination, within seven days of the change. The notification shall include the name and license number of the emissions inspector, a statement declaring the employment change, and the effective date of the employment change.
- I. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.

#### Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1016 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1016 renumbered as Section R18-2-1016 and subsection (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### R18-2-1017. Inspection of Government Vehicles

- A. Inspection of government vehicles operated in areas A and B shall be conducted as follows:
  1. At a licensed fleet station operated by the government entity;
  2. At a state station upon payment of the fee;
  3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.
- B. A government vehicle except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR

85.1703, shall be inspected according to this Article and shall have a Government Vehicle Certificate of Inspection affixed to the vehicle if in compliance with state inspection requirements.

1. The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the Government Vehicle Certificate of Inspection to designate date of the vehicle's next annual or biennial inspection. The vehicle emissions inspector, at the time of inspection, shall record the serial number of the Government Vehicle Certificate of Inspection on the vehicle inspection report. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector, at the time of inspection, shall record the serial number in the block labeled "Certificate of Inspection No." on the "Fleet Vehicle Inspection Report/Monthly Summary." Each Government Vehicle Certificate of Inspection shall be used in serial number order. Presence of a current Government Vehicle Certificate of Inspection indicates a government vehicle has met the state of Arizona emissions inspection requirements.
  2. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the Government Vehicle Certificate of Inspection affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the Government Vehicle Certificate of Inspection shall be affixed to the lower left corner of the windshield as determined from the driver's position.
  3. A government motorcycle shall have the Government Vehicle Certificate of Inspection affixed to the lower left-hand corner of the windscreen as determined from the driver's position. If the Government Vehicle Certificate of Inspection cannot be affixed to the lower left-hand corner of the windscreen, the Government Vehicle Certificate of Inspection may be affixed to a visible position on the front or left side of the left front fork of the motorcycle. The fork shall be determined from the driver's position.
- C. The Government Vehicle Certificate of Inspection shall be purchased from the Department in lots of 25.
    1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
    2. Only the Department may sell or otherwise transfer certificates of inspection.
  - D. All Government Vehicle Certificates of Inspection shall be designed, issued, and administered to ensure compliance with this Article. The Department shall be the only source of supply for Government Vehicle Certificates of Inspection.
  - E. Government entity fleet stations shall inspect the fleet vehicles according to R18-2-1019 except that a government vehicle certificate of inspection shall only be used for government vehicles.
  - F. A government entity fleet station shall send a quarterly statement identifying vehicles and test results to the Department within 10 business days following the end of the quarter.

#### Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).

Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1017 renumbered as Section R18-2-1017 and subsection (E) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1018. Certificate of Inspection**

- A.** A fleet station other than a government entity fleet station shall use completed certificates of inspection as evidence that its vehicles meet the requirements of this Article unless inspection data is electronically transmitted to MVD under A.R.S. § 49-542(Q). If a fleet vehicle is inspected at a state station, the vehicle inspection report provided under R18-2-1011 shall be used.
- B.** A certificate of inspection shall contain the following information:
  - 1. VIN,
  - 2. Model year,
  - 3. License number,
  - 4. If applicable, a statement that the inspection meets area A requirements,
  - 5. Owner of vehicle,
  - 6. Date of expiration, according to R18-2-1019(F)(1)(b),
  - 7. Fleet station permit number, and
  - 8. Inspector's signature and license number.
- C.** A certificate of inspection issued to a fleet vehicle is transferable to an auctioneer licensed as a used motor vehicle dealer to sell the vehicle. The certificate of inspection is valid for a period not to exceed 180 days after the transfer unless the vehicle is reregistered with a new owner, in which case the vehicle shall be inspected according to this Article before the reregistration.
- D.** A certificate of inspection, complete or incomplete, is not transferable except as provided in subsection (C) or except when submitted to MVD for the purpose of vehicle registration.
- E.** Only a person who meets the requirements of R18-2-1019(D)(4) is authorized to purchase certificates of inspection, certificates of waiver, or Government Vehicle Certificates of Inspection.

#### **Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1018 renumbered as Section R18-2-1018 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1019. Fleet Station Procedures and Permits**

- A.** The following requirements apply to issuance of fleet station permits:
  - 1. An owner or lessee of a fleet of 25 or more nonexempt vehicles whose place of business is located in area A or B may apply to the Director for a permit to establish a fleet station. A dealer's business inventory of vehicles held for resale, counted cumulatively over the previous 12 months at the time of application review by the Department shall be used to determine compliance with this subsection. A

newly established dealer shall certify that it will comply with the 25 nonexempt vehicles requirement.

- 2. An application form for a fleet station permit shall be obtained from the Department. All completed applications shall be submitted to the Department. An application shall be considered administratively complete when:
  - a. The Department receives a completed application form and fleet agent designation form;
  - b. The applicant or designated employee successfully completes the fleet agent examination; and
  - c. The Department conducts a site inspection.
- 3. Before an application for a fleet station permit may be approved, a state inspector shall inspect the premises to determine compliance with subsections (B) and (C).
- 4. A fleet station permit shall not expire.
- 5. A fleet station permit shall only be applicable to the fleet's inspection facility located at the address shown on the fleet station permit. If a fleet owner or lessee requests a permit for inspection facilities at more than one address, the fleet owner or lessee shall apply for a permit for each facility.
- 6. A fleet station permit issued by the Director is non-transferable.
- 7. If the name or address of the permitted fleet facility changes and the name or address change does not involve a change of ownership, the permit shall be returned to the Department for cancellation and a new permit application shall be submitted. The Director shall cancel the returned permit and issue a new permit.
- 8. In the event of loss, destruction, or mutilation of the permit, the person to whom it was issued may obtain a duplicate upon furnishing satisfactory proof of loss, destruction, or mutilation. If a fleet owner or lessee obtains a duplicate permit and then finds the original, the fleet owner or lessee shall immediately surrender the original permit to the Department.
- B.** A fleet station permit applicant or fleet station permit holder, or its employees, shall own or lease the following equipment for testing and repair of a fleet vehicle, and maintain the equipment in good working condition:
  - 1. If the permit is for the inspection of a vehicle required to take an idle only, or an idle plus 2500 RPM unloaded test:
    - a. An NDIR CO and HC emissions analyzer that complies with the requirements of R18-2-1006(F)(8) to conduct the emissions inspection;
    - b. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a); and
    - c. An ignition-operated tachometer.
  - 2. If the permit is for the inspection of a vehicle required to take a steady-state loaded test:
    - a. An NDIR CO and HC emissions analyzer that complies with the requirements of R18-2-1006(F)(8) to conduct the emissions inspection;
    - b. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a);
    - c. A dynamometer to operate the vehicle under load; and
    - d. An ignition-operated tachometer.
  - 3. If the permit is for the inspection of a vehicle required to take a transient loaded test:
    - a. Equipment to perform a transient loaded emissions test as required in R18-2-1006(E)(2);
    - b. Equipment to perform the evaporative system pressure test as required in R18-2-1006(E)(2)(b);

- c. Equipment to perform the maintenance and quality control requirements of R18-2-1006(E)(2) and “IM240 and Evap Technical Guidance;” and
  - d. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a).
- 4. If the permit is for the inspection of a vehicle required to take an OBD test:
  - a. A scan tool used to perform the OBD test that complies with the Society of Automotive Engineers Recommended Practice J1979, September 1997, incorporated by reference and no future editions or amendments. A copy of this referenced material is on file with the Department and the Secretary of State and may be obtained at Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001; and
  - b. Pressure test equipment for the functional gas cap test that complies with the requirements of R18-2-1006(E)(7)(a).
- 5. If the permit is for the inspection of a vehicle required to take a diesel test:
  - a. Opacity meter: A meter used in area A shall comply with the requirements of R18-2-1006(H) for the applicable test procedure. A meter used in area B shall comply with the requirements of R18-2-1006(I)(6)(b); and
  - b. A dynamometer for testing any light-duty diesel vehicle in area A or for testing any diesel vehicle in area B.
- C. A fleet’s inspection facility shall comply with the following requirements:
  - 1. The facility shall include space devoted principally to maintaining or repairing the fleet’s motor vehicles. The space shall be large enough to conduct maintenance or repair of at least one fleet motor vehicle.
  - 2. The facility shall be exclusively rented, leased, or owned by the permit applicant or permit holder.
- D. A fleet owner or lessee shall employ the following personnel:
  - 1. If the facility is for the repair of nondiesel-powered vehicles, at least one person to perform tune-ups of engines and replacement or repair of fuel system and ignition components.
  - 2. If the facility is for the repair of diesel-powered vehicles, at least one person to perform tune-ups and replacement or repair of diesel fuel systems in the vehicle fleet.
  - 3. A licensed vehicle emissions inspector who will perform the necessary inspections. This inspector may be the same person required by subsection (D)(1) or (2).
  - 4. A fleet agent, who shall be in charge of the day-to-day operation of the fleet and who demonstrates proficiency by passing a Department-administered examination annually, with a score equal to or greater than 80%, on the statutes and rules governing the operation and administration of a fleet emissions inspection station. The fleet owner or lessee shall designate the fleet agent on a form obtained from the Department.
- E. Unless inspected at a state station, a vehicle owned by or leased to a holder of a fleet emissions inspection station permit shall be inspected according to R18-2-1006(D) through (J), except as follows:
  - 1. A dealer fleet vehicle in area A held for resale and an area B fleet vehicle, with a model year of 1981 or newer, and other than diesel-powered, shall be required to take and pass both the curb idle test specified in R18-2-1006(F)(2)(b) and a 2,500 RPM unloaded fast idle test as follows:
    - a. The vehicle’s engine shall be operated at 2,500, ± 300 RPM, for no more than 30 seconds with the transmission in neutral.
    - b. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 30 seconds, whichever occurs first, and compared to the loaded cruise standards in Table 2. The curb idle test standards in Table 2 shall apply for the idle test.
  - 2. A dealer fleet vehicle in area A held for resale, and an area B vehicle, with a model year of 1980 or older and other than diesel-powered, shall be required to take and pass a curb idle test as specified in R18-2-1006(F)(1). The curb idle test standards in Table 2 shall apply.
  - 3. A dealer fleet vehicle in area A held for resale with a model year of 1975 or newer and other than diesel-powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(E)(7).
  - 4. A dealer fleet vehicle in area B held for resale with a model year of 1975 or newer and other than diesel-powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(F)(7).
  - 5. A consignment vehicle shall be tested at a state inspection station according to R18-2-1005(A)(3).
- F. The vehicle emissions inspector shall complete and process the forms for vehicle inspection as follows, except a government entity fleet shall issue and process each government vehicle certificate of inspection under R18-2-1017:
  - 1. A certificate of inspection shall be processed as follows:
    - a. A certificate of inspection shall be completed and signed by the vehicle emissions inspector performing the inspection at the time the vehicle passes inspection. The vehicle emissions inspector who performed the inspection may correct a certificate by drawing a single line through the mistake, writing the correct information directly above the mistake, and initialing and dating the correction. Each certificate shall be issued in numerical order;
    - b. For an inspection that does not include a biennial test, the expiration date shall be one year from the date the vehicle passes the mandatory vehicle emissions inspection. For a vehicle required to pass a biennial test, the expiration date shall be two years after the pass date;
    - c. All copies of a certificate of inspection shall be legible;
    - d. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to MVD for processing the vehicle’s application for title and registration or the Arizona registration card. MVD may accept a signed certificate of inspection as evidence that the vehicle is a fleet-inspected vehicle and meets the inspection requirements of this Article;
    - e. The vehicle emissions inspector shall forward the second copy of each completed certificate of inspection, along with the second copy of the “Fleet Vehicle Inspection Report/Monthly Summary,” to the Department monthly, not later than two weeks after the last day of the month in which the inspection is conducted;
    - f. The third copy of each completed certificate of inspection, along with the original “Fleet Vehicle

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- Inspection Report/Monthly Summary,” shall be retained for two years from the date of inspection;
- g. Vehicle emissions certificates shall be purchased from the Department in lots of 25. Excess certificates may be returned to the Department for refund or may be used in subsequent years;
  - h. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director’s estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of a certificate of inspection. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
  - i. Only the Department shall sell or otherwise transfer a certificate of inspection. This subsection does not apply to the submission of a certificate of inspection to MVD for the purpose of vehicle registration;
  - j. The fleet station owner shall be responsible for the security and accountability of the fleet’s certificates and fleet vehicle emissions inspection records. Certificates and fleet vehicle emissions inspection records shall be maintained at the fleet station and shall be made available for review by a state inspector during normal business hours of the fleet station;
  - k. If any certificate is discovered lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours, indicating the number of certificates lost or stolen and each serial number. The Department may revoke a fleet station permit for refusal or failure to report a lost or stolen certificate within 24 hours;
  - l. In the event of loss, destruction, or mutilation of an original completed certificate of inspection, a Director’s certificate may be obtained from the Department by hand-delivery of the following:
    - i. The second or third copy of the lost, destroyed, or mutilated certificate of inspection;
    - ii. The original of the “Fleet Vehicle Inspection Report/Monthly Summary;”
    - iii. A cover letter from the fleet agent explaining the situation that caused the loss, destruction, or mutilation of the original certificate of inspection; and
    - iv. Payment of a fee to cover the cost of issuance of the Director’s certificate. The fee for a Director’s certificate shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director’s estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a Director’s certificate. Checks shall be made payable to the Department of Environmental Quality; and
    - m. If an original certificate of inspection is voided by a fleet station, the original of the voided certificate shall be matched to the corresponding third copy of the certificate and retained at the fleet station for two years from the date of inspection.
2. The fleet agent or vehicle emissions inspector shall obtain the “Fleet Vehicle Inspection Report/Monthly Summary” form from the Department. The vehicle emissions inspector performing the inspection shall record the following information on the form at the time of inspection:
    - a. The VIN of the vehicle passing inspection;
    - b. The vehicle’s license number, if applicable;
    - c. The HC content of the undiluted exhaust recorded at idle, if applicable;
    - d. The CO content of the undiluted exhaust recorded at idle, if applicable;
    - e. The HC content of the undiluted exhaust recorded at 2,500 rpm, if applicable;
    - f. The CO content of the undiluted exhaust recorded at 2,500 rpm, if applicable;
    - g. Results of a tampering check, if applicable;
    - h. Liquid fuel leak inspection results;
    - i. The vehicle model year;
    - j. The vehicle make;
    - k. The GVWR for a vehicle certified under federal truck standards;
    - l. The date of inspection;
    - m. The license number of the vehicle emissions inspector conducting the inspection;
    - n. The signature of the inspector making the entry;
    - o. The serial number of the certificate of inspection, recorded in numerical order;
    - p. For a vehicle required to take the transient loaded emissions test, the inspector shall record the total HC, CO, CO<sub>2</sub> and NO<sub>x</sub> measured in grams/mile, and the evaporative system pressure test result, if applicable;
    - q. The registration number of the registered analyzer or opacity meter used to perform the inspection;
    - r. For a light-duty diesel vehicle, the inspector shall record opacity rather than undiluted HC and CO;
    - s. For a heavy-duty diesel vehicle, instead of undiluted HC and CO:
      - i. The time of the inspection;
      - ii. The ambient temperature;
      - iii. The corrected barometric pressure;
      - iv. The relative humidity at the time of inspection;
      - v. The engine year and cubic inch or liter displacement;
      - vi. The GVWR;
      - vii. The diameter of the exhaust stack; and
      - viii. The corrected opacity reading.
    - t. For a vehicle required to take an OBD test, the inspector shall record the OBD results rather than HC, CO, and NO<sub>x</sub>.
  3. A certificate of waiver may be issued by a fleet vehicle emissions inspector unless the fleet owner or lessee is an auto dealer licensed to sell used motor vehicles under A.R.S. Title 28. The certificate of waiver may be issued according to the following procedure if the requirements of R18-2-1008(A), R18-2-1009, and R18-2-1010 are met:
    - a. A certificate of waiver shall be completed and signed by the vehicle emissions inspector performing the inspection after completion of a fleet inspection waiver report. The report shall be forwarded to the Department within three business days from the date of issuance of the certificate of waiver. A fleet inspection waiver report shall be provided by the Department with the purchase of each certificate of waiver. The report shall contain a description of the vehicle, test results, and repairs performed.
    - b. The expiration date of the certificate of waiver shall be two years from the date that the waiver is issued for a vehicle required to take the transient loaded emissions test, and one year for all other vehicles.
    - c. All information required on the certificate of waiver shall be legible.

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- d. The vehicle emissions inspector issuing the certificate of waiver shall initial all corrections.
- e. Only the vehicle emissions inspector performing the inspection may sign or initial a certificate of waiver.
- f. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to MVD for processing of either the vehicle's application for title and registration or the Arizona registration card. MVD may accept the signed certificate of waiver as evidence that the vehicle is a fleet inspected vehicle and meets the inspection requirements of this Article if the certificate is complete and the expiration date has not passed.
- g. The second copy of each completed certificate of waiver shall accompany the completed fleet inspection waiver report.
- h. The third copy of each completed certificate of waiver, along with a copy of the fleet inspection waiver report, shall be retained by the fleet station owner for two years from the date of inspection.
- i. The fee for a certificate of waiver shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a certificate of waiver. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
- j. Only the Department shall sell or otherwise transfer a certificate of waiver. This subsection does not apply to the submission of a certificate of waiver to MVD for the purpose of vehicle registration.
- k. The fleet station owner shall be responsible for the security and accountability of the fleet's certificates.
- l. If a certificate is discovered lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours and indicate the number of certificates lost or stolen and each serial number. The Department may revoke a fleet station permit for refusal or failure to report a lost or stolen certificate within 24 hours of discovery.
- m. In the event of loss, destruction, or mutilation of an original completed certificate of waiver, a Director's certificate may be obtained from the Department by hand delivery of the following:
  - i. The second or third copy of the lost, destroyed, or mutilated certificate of waiver;
  - ii. The original of the "Fleet Vehicle Inspection Report/Monthly Summary;"
  - iii. A cover letter from the fleet agent explaining the situation that caused the loss, destruction, or mutilation of the original certificate of waiver; and
  - iv. Payment of a fee to cover the cost of issuance of the Director's certificate. The fee for a Director's certificate shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated cost to the state of administering and enforcing the provisions of this Article as they apply to issuance of a Director's certificate. Checks shall be made payable to the Department of Environmental Quality.
- n. In the event an original certificate of waiver is voided by a fleet station, the original of the voided certificate shall be matched to the corresponding third copy of the certificate and retained by the fleet for two years from the date of inspection.
- 4. Upon request, a state inspector shall be allowed access to and shall be permitted to photocopy, on or off the premises, any original "Fleet Vehicle Inspection Report/Monthly Summary," the second copy of a certificate of inspection, and any other related documents.
- G. The fleet shall comply with the following general operating requirements:
  - 1. The fleet station permit and the licenses of all inspectors employed at the station shall be prominently displayed at the fleet's inspection facility.
  - 2. A fleet station shall only certify a vehicle owned by or leased to the holder of the fleet station permit.
  - 3. The inspection equipment shall be operated, calibrated, and maintained as follows:
    - a. All test equipment and instrumentation shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instructions and recommendations of the instrument or equipment manufacturer. An NDIR emissions analyzer shall be registered and calibrated according to R18-2-1027. Calibration records for each instrument, except an NDIR emissions analyzer, shall be maintained by the fleet station. The calibration records shall be signed and dated by the technician performing each calibration.
    - b. The instrument calibration records shall be available for review by the Department.
    - c. Working gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
    - d. Fleet station equipment shall be subject to both scheduled and unscheduled checks for accuracy and condition by the Department.
  - 4. A fleet emissions inspection station that is unable to test at least 25 vehicles according to R18-2-1006 and subsection (A) shall surrender its permit.
  - 5. A motor vehicle dealer with a fleet station permit shall comply with A.R.S. § 49-542.03.
  - 6. If a fleet station fails to meet any requirement of subsection (B), (C), or (D), it shall immediately cease operating as a fleet station until the requirement is met. If the fleet is cited for failure to have the necessary equipment under subsection (B), it shall not resume operation as a fleet emissions inspection station until compliance is verified by the Department.
  - 7. A fleet station shall notify the Department in writing within seven days of the end or start of employment of any vehicle emissions inspector. The written notification shall include the name and license number of the vehicle emissions inspector, a statement declaring the employment change, and the effective date of the employment change. A fleet station that does not employ a vehicle emissions inspector shall immediately cease operating as a fleet station and notify the Department immediately by telephone and within seven days in writing. All unused vehicle certificates of inspection shall be returned to the Department for a refund within seven days after operations cease.
  - 8. A fleet station that does not employ a fleet agent, as described in subsection (D)(4), shall immediately cease

operating as a fleet station and shall notify the Department immediately by telephone and within seven days in writing. The written notification shall include the name and license number of the fleet agent, a statement declaring the employment change, and the effective date of the employment change. The fleet station may resume fleet station operation after the permit applicant or other designated employee takes and passes the examination required in subsection (D)(4), if the responsibility of the day-to-day operation of the fleet station and a fleet agent designation form has been filed with the Department.

- H.** A fleet's activities shall be governed by the following compliance and enforcement rules:
- Subsections (B) through (G) apply at all times after the issuance of a fleet station permit. In addition, subsections (B), (C), and (D) apply before a permit can be issued or removed from suspension.
  - The Director may suspend or revoke a fleet station permit according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
    - Violates any provision of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
    - Misrepresents a material fact in obtaining a permit;
    - Fails to make, keep, and submit to the Department records for a vehicle tested as a permittee; or
    - Does not provide a state inspector access to the information required by this Article.
  - If a fleet station permit is surrendered, suspended or revoked, all unused vehicle certificates of inspection shall be returned to the Department for a refund.
  - A fleet vehicle is subject to inspection by a state inspector.
  - Surrender of a permit under subsection (A)(8) or (G)(4) shall not prevent the Department from carrying out an investigative or disciplinary proceeding against the permit holder for a violation before surrender.

#### Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective February 20, 1980 (Supp. 80-1).  
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1019 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1019 renumbered as Section R18-2-1019 and amended effective August 1, 1988 (Supp. 88-3).  
 Amended effective September 19, 1990 (Supp. 90-3).  
 Amended effective February 4, 1993 (Supp. 93-1).  
 Amended effective November 14, 1994 (Supp. 94-4).  
 Amended effective October 15, 1998 (Supp. 98-4).  
 Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3).

#### **R18-2-1020. Licensing of Third Party Agents; Issuing Alternative Fuel Certificates**

- A.** Licensing of Third Party Agents. The Department shall accept an application for a third party agent license to issue Alternative Fuel Certificates from any person who demonstrates all of the following:
- The applicant has knowledge of all laws and rules governing the inspection of alternative fuel vehicles;
  - The applicant has training or experience in inspecting alternative fuel vehicles; and
  - The applicant agrees to conduct inspections in accordance with the laws and rules for the inspection of alternative fuel vehicles.
- B.** A third party agent license is valid for a period of five years.
- C.** Issuing Alternative Fuel Certificates. The Department or its agent shall issue an Alternative Fuel Certificate according to A.R.S. § 28-2416 if the vehicle is currently powered by an alternative fuel as defined in A.R.S. § 1-215(4).

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1021. Reserved**

#### **R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties**

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

#### Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective January 1, 1986 (Supp. 85-6).  
 Former Section R9-3-1022 renumbered without change as Section R18-2-1022 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

#### **R18-2-1023. Certificate of Exemption for Out-of-State Vehicles**

- A.** If a vehicle being registered or reregistered in area A or area B requires an emission test and will not be available for inspection within the state during the 90-day period before the emissions compliance expiration date, and an emissions inspection is not available for that class of vehicle at an official inspection station in the area where the vehicle is located, the owner or owner's agent may apply in writing to the Department for a certificate of exemption.
- B.** The owner or owner's agent shall complete the owner portion of the certificate of exemption form, and a law enforcement official shall complete the vehicle verification portion. The owner or owner's agent shall submit the completed form to the Department.
- C.** The Department shall issue a certificate of exemption:
- For a vehicle that meets the requirements of subsection (A) as indicated by the form completed under subsection (B).
  - For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the government entity conducting the inspection program.



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- D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates. Checks shall be made payable to the Department of Environmental Quality.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1023 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1023 renumbered without change as Section R18-2-1023 (Supp. 88-3). Amended effective February 4, 1993 (Supp. 93-1). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

**R18-2-1024. Expired****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 84, effective December 14, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1128, effective April 30, 2008 (Supp. 09-2).

**R18-2-1025. Inspection of Contractor's Equipment and Personnel**

- A. State stations shall be inspected by state inspectors as follows:
1. In Area A:
    - a. Automated emission analyzers, calibrated and maintained according to "IM240 and Evap Technical Guidance," shall be inspected using state station field calibration gases at least once every other month.
    - b. Opacity meters shall be inspected for accuracy using a neutral density filter at least once each month.
    - c. During audits, a check shall be made for equipment tampering, worn instrumentation, blocked filters, and other conditions that would impair accurate sampling.
  2. In Area B:
    - a. Automated emission analyzers shall be inspected using state station field calibration gases at least two times each month.
    - b. Opacity meters shall be inspected for accuracy using a neutral density filter at least two times each month.
    - c. During audits, a check shall be made for tampering, worn instrumentation, blocked filters, and other conditions that would impair accurate sampling.
    - d. Functional checks of dynamometer accuracy including roll speed and power absorption shall be performed at least quarterly.
- B. Equipment used to perform a transient loaded emissions test, shall be audited at least twice a year for all of the following:
1. Constant volume sampler critical flow and calibration;
  2. Optimization of the flame ionization detector fuel to air ratio using methane;
  3. Proper dynamometer coast down, roll distance, and inertia weight;

4. Ability to detect background pollutant concentrations;
5. Evaporative pressure test system for accuracy, response time, and other criteria consistent with "IM240 and Evap Technical Guidance;" and
6. Functional gas cap analysis equipment.

- C. If an equipment audit of an inspection lane in either area A or area B indicates that a state station analyzer is not operating within contractually specified tolerance, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the second audit, the inspector shall immediately notify the station manager. The station manager shall either replace or repair the failing equipment or close the affected lane until the equipment is repaired and its accuracy verified. The state inspector shall provide a copy of the analyzer's failing results to the station manager.
- D. A state station analyzer removed by the contractor may be returned to service upon its repair and written verification of a passing calibration audit. The contractor shall immediately notify the Department in writing of the analyzer's return to service. The contractor's calibration audit of the analyzer shall be provided to the Department within seven calendar days after the analyzer's return to service.
- E. State inspectors shall conduct performance audits to determine whether vehicle emissions inspectors are correctly performing all inspections and functions related to inspections as follows:
1. Overt audits at least two times each year for each inspection lane:
    - a. Check for proper document security;
    - b. Check for required recordkeeping including vehicle emissions inspector licenses; and
    - c. Observation and written evaluation of each vehicle emissions inspector's ability to perform an inspection.
  2. State station and vehicle emissions inspector records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.
  3. If a vehicle emissions inspector fails an audit under subsection (E)(1) or (E)(2), the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).
- F. On-road emissions analyzers shall be inspected by a state inspector at least monthly using dry-gas analysis equipment.
- G. If an equipment audit indicates that an on-road emissions analyzer is not operating within contractually specified tolerance, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the second audit, the inspector shall immediately notify the contractor and the contractor shall repair or replace the equipment according to subsections (C) and (D).

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1025 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1025 renumbered as Section R18-2-1025 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

#### **R18-2-1026. Inspection of Fleet Stations**

- A.** Equipment used by fleet stations shall be inspected by state inspectors for accuracy as follows:
  1. Emission analyzers shall be inspected using field calibration gases at least quarterly.
  2. Opacity meters shall be inspected using a neutral density filter at least quarterly.
  3. Equipment for transient loaded emissions tests shall be inspected according to R18-2-1025(A) and (B).
- B.** A fleet station's emissions analyzer shall not be used for an official emissions inspection if:
  1. The state's field calibration gases are not read within the tolerances prescribed by subsection (J);
  2. There is a leak in the sampling systems or the calibration port; or
  3. The sample handling system is restricted.
- C.** The fleet station is responsible for calibration of the fleet station emission analyzer.
- D.** A state inspector may, at the inspector's discretion, allow a fleet station employee, or someone authorized by the fleet station, to calibrate the analyzer utilizing the state's field calibration gases.
- E.** The Department shall assign HC and CO concentrations to a calibration gas submitted by a fleet station emission analyzer technician and purchased from a private source.
- F.** A state inspector shall tag a fleet station emission analyzer if the analyzer does not meet the requirements of this Section. The fleet vehicle emissions inspector shall not use the analyzer for inspection until the tag is removed by a state inspector or an analyzer repair person certified under R18-2-1028. The tag shall be in the form of a U.S. postcard and contain the information listed in R18-2-1027(E).
- G.** An analyzer tagged under subsection (F) shall not be returned to service until its accuracy is verified by a state inspector or an emissions analyzer repair person certified under R18-2-1028.
- H.** A fleet station is responsible for periodic maintenance and calibrations of its emissions analyzers. Repair and maintenance requirements are prescribed in R18-2-1019.
- I.** If a state inspector has approved its use, a fleet station may lease or borrow an emission analyzer for official inspections for up to six months while the station's approved analyzer is being repaired.
- J.** Fleet station analyzers used for transient loaded tests shall comply with and be quality control checked according to "IM240 and Evap Technical Guidance." All other fleet station emission analyzers used for emissions inspections are required to read the calibration gases within the following tolerances:
  1. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;
  2. Within plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;
  3. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and
  4. Within plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 PPM HC when read as N-HEXANE.
- K.** A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within  $\pm 5\%$  opacity at any point in the range of the meter.
- L.** A state inspector shall conduct performance audits to determine whether a vehicle emissions inspector is correctly per-

forming inspections and functions related to inspections as follows:

1. Overt audits at least two times each year for each facility:
  - a. Check for proper document security;
  - b. Check for required recordkeeping including vehicle emissions inspector licenses; and
  - c. Observe and make a written evaluation of each vehicle emissions inspector's ability to perform an inspection.
2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.

#### **Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1).  
 Amended effective January 1, 1986 (Supp. 85-6).  
 Amended subsections (A) and (J) and added subsection (K) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1026 renumbered as Section R18-2-1026 and subsections (B), (F), (G) and (H) amended effective August 1, 1988 (Supp. 88-3).  
 Amended effective November 14, 1994 (Supp. 94-4).  
 Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

#### **R18-2-1027. Registration and Inspection of Emissions Analyzers and Opacity Meters**

- A.** An automotive repair facility may apply to the Department at no charge for registration of NDIR HC and CO analyzers, and opacity meters. NDIR emission analyzers and opacity meters used by fleet inspection stations shall be registered for the fleet station permit approval. Application forms for analyzer or opacity meter registration are available from the Department. Completed application forms shall be submitted to the Department. For purposes of 18 A.A.C. 1, the application components for registration of an analyzer or opacity meter are:
  1. The Department receives a completed application form;
  2. The applicant or employee successfully completes the "Certified Technician" examination described in R18-2-1028(A)(2); and
  3. The Department inspects the analyzer.
- B.** A registered analyzer shall be calibrated at least monthly, by a certified technician, with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.
- C.** A registered analyzer shall meet the requirements of R18-2-1006(F)(8)(a). Calibration shall be verified by a state inspector before the analyzer is registered. The analyzer shall read the value of the calibration gases within the following tolerances:
  1. Plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;
  2. Plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;
  3. Plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and
  4. Plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 PPM HC when read as N-HEXANE.
- D.** Each registered opacity meter and analyzer shall have a unique registration number assigned by the Department. The technician shall maintain a repair and calibration log for each registered opacity meter and analyzer on a form provided by the Department. The log shall be made available to a state inspector on request.
- E.** A state inspector shall tag a registered opacity meter or analyzer if the opacity meter or analyzer does not meet the

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requirements of this Section. A tagged opacity meter or analyzer shall not be used for the purposes of R18-2-1010 or R18-2-1019 until the tag is removed by a state inspector or an emission analyzer repair person certified under R18-2-1028 after accuracy is verified.

1. The tag shall be in the form of a U.S. postcard and contain the following information:
    - a. Analyzer registration number or opacity meter registration number,
    - b. Brief statement that the analyzer does not meet state operating requirements for registered analyzers,
    - c. Reason for tagging,
    - d. Date the analyzer was tagged and the signature of state inspector issuing the tag,
    - e. Details of repairs performed to correct the failure,
    - f. CO and HC concentrations of calibration gases used to verify analyzer accuracy,
    - g. Analyzer readings when gases were introduced into the analyzer sampling probe, and
    - h. Repair person's certificate number and signature or signature of state inspector removing the tag and date accuracy is verified.
  2. The tag shall be returned to the Department within two business days after accuracy is verified.
- F. An owner of a registered emission analyzer or opacity meter shall notify the Department within seven business days of the retirement, resignation, or termination of any licensed vehicle emissions inspector or certified technician. The Department shall revoke the registration of an emission analyzer or opacity meter if the owner of the analyzer or meter does not employ an inspector licensed under R18-2-1019 or a technician certified under R18-2-1028.

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1027 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1027 renumbered as Section R18-2-1027 and subsections (B), (D), (F) and (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3).

**R18-2-1028. Certification of Users of Registered Analyzers and Analyzer Repair Persons**

- A. A person may be certified to use a registered analyzer and opacity meter if:
1. The person completes the application form and submits it to the Department; and
  2. The person demonstrates proficiency by scoring 80% or higher on a Department-administered examination in the following areas:
    - a. Equipment used in the inspection and control of emissions;
    - b. Types of emissions inspection failures;

- c. Correction procedures for excessive HC emissions;
- d. Correction procedures for excessive CO emissions;
- e. Proper carburetor adjustment procedures; and
- f. Diesel fuel injection systems.

- B. Certification under subsection (A) shall be valid for one year from date of issue and may be renewed, under the conditions of subsection (A), by submitting a renewal application to the Department 30 days before the current certification expiration date.
- C. A person certified under subsection (A) shall notify the Department within seven business days of the person's retirement, resignation, or termination from employment.
- D. A person may be certified to repair and remove tags from an emission analyzer under R18-2-1027 if:
1. Application is made to the Department;
  2. The person demonstrates proficiency by scoring 80% or higher on a Department-administered examination in the following areas:
    - a. State and federal regulations governing emissions analyzers,
    - b. Fundamentals of emission analyzer operation, repair and preventive maintenance,
    - c. Theory of operation of vehicle emissions control devices.
- E. Certification under subsection (D) shall be valid for one year from date of issue and may be renewed, under the conditions of subsection (D), by submitting a renewal application to the Department 30 days before the current certification expiration date.
- F. Each person certified under this Section shall receive a unique nontransferable certification number.
- G. The Department may suspend, revoke or refuse to renew the certification issued under subsection (A) if:
1. The person's actions demonstrate a lack of proficiency in the areas listed under subsection (A)(2); or
  2. The person has willfully violated any provision of this Article.
- H. The Department may suspend, revoke, or refuse to renew the certification issued under subsection (D) if:
1. The person's actions demonstrate a lack of proficiency in the areas listed under subsection (D)(2); or
  2. The person has willfully violated any provision of this Article.

**Historical Note**

Adopted effective January 1, 1986 (Supp. 85-6).  
 Amended subsections (A) and (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1028 renumbered as Section R18-2-1028 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

**R18-2-1029. Vehicle Emission Control Devices**

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent after-market replacement parts or devices.

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1029 renumbered as Section R18-2-1029 and amended effective August 1, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective

January 14, 2000 (Supp. 00-1).

**R18-2-1030. Visible Emissions; Mobile Sources**

- A. A vehicle other than a diesel-powered vehicle or 2-stroke vehicle that emits any visible emissions for 10 consecutive seconds or more is “excessive” for the purposes of A.R.S. § 28-955(C).
- B. A diesel-powered vehicle shall not emit any visible emissions in excess of:
  - 1. Twenty percent visual opacity for 10 consecutive seconds or more at or below 2,000 feet elevation;
  - 2. Thirty percent visual opacity for 10 consecutive seconds or more above 2,000 feet and at or below 4,000 feet elevation; and
  - 3. Forty percent visual opacity for 10 consecutive seconds above 4,000 feet elevation.
- C. A vehicle that exceeds the standards in subsection (B) fails the inspection under R18-2-1006 and is considered to have “excessive” emissions under A.R.S. § 28-955(C).

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1030 as adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (C) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1030 renumbered as Section R18-2-1030 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

**R18-2-1031. Standards for Evaluating the Oxidation Efficiency of a Catalytic Converter**

- A. Except for a vehicle requiring an Idle-Only Inspection, a gasoline-powered vehicle requiring a catalytic converter test under R18-2-1008(C) shall be tested using the following Catalyst Efficiency Test Procedure:
  - 1. Immediately after a vehicle completes an Inspection and Maintenance (I/M) test in the waiver lane, the exhaust sampling cone shall be removed from the tailpipe. The vehicle shall remain on the dynamometer with the engine idling and the transmission in neutral. The vehicle engine must be at normal operating temperature.
  - 2. For the catalyst test, the dynamometer and the constant volume sampler shall remain at the settings used for the vehicle's I/M test.
  - 3. The inspector shall insert the sampling tube for the A/F analyzer into the tailpipe of the vehicle.
  - 4. The inspector shall accelerate the vehicle to  $40 \pm 2.5$  MPH and maintain a steady-state operating mode for the duration of the test. Once the vehicle obtains the test speed, the test shall begin.
  - 5. Once the test begins, a two-minute stabilization period shall take place, during which the inspector shall monitor the A/F analyzer to ensure that the A/F is 14.0 or greater. If the mean A/F is less than 14.0, the inspector shall abort the test.
  - 6. If the A/F is 14.0 or greater, the exhaust sampling cone shall be repositioned for exhaust sampling.
  - 7. After the stabilization period ends, the total hydrocarbon and methane concentrations and the A/F ratio shall be continuously recorded for two minutes.
  - 8. At the end of the two-minute sampling period, the inspector shall stop the vehicle, remove the exhaust sampling

cone and the A/F analyzer sampling probe from the tailpipe, and remove the vehicle from the dynamometer.

- 9. The mean total hydrocarbon concentration shall be divided by the mean methane concentration for the recorded values of the test, to produce a ratio (R) of total hydrocarbon to methane. The ratio, R, shall be applied to the formula: Catalyst Efficiency (%) =  $-3(R) + 100$ .
- 10. A vehicle passes the test if the Catalyst Efficiency (%) is 75% or greater.
- 11. The test result for a non-passing vehicle with a mean A/F equal to, or less than, 14.3 shall be inconclusive.
- 12. A vehicle fails the Catalyst Efficiency Test Procedure if the A/F is greater than 14.3 and the Catalyst Efficiency (%) is less than 75%. The failing vehicle cannot be granted a waiver according to R18-2-1008(C)(1).
- B. Analytical equipment required to perform the Catalyst Efficiency Test Procedure shall meet the following requirements:
  - 1. Analyzer Specifications:
    - a. An analyzer shall meet performance specifications of 40 CFR 86 subparts B, D, and N with respect to accuracy, precision, drift, interference, and noise. 40 CFR, subparts B, D, and N, adopted as of July 1, 1998, are incorporated by reference and on file with the Department and the Secretary of State. This incorporation contains no future editions or amendments. A copy of this referenced material may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.
    - b. Total hydrocarbon analysis shall be determined by a flame ionization detector. The analyzer shall be single range with a calibration curve covering at least 0 to 300 ppm carbon.
    - c. Methane analysis shall be determined by a flame ionization detector equipped with a non-methane cutter capable of oxidizing 98% of the hydrocarbons (except methane) while more than 90% of the methane remains unchanged. The analyzer shall be single range with a calibration curve covering at least 0 to 30 ppm.
    - d. Engine A/F mixture analysis shall be determined by a Universal Exhaust Gas Oxygen Sensor. The range shall be 8.0 to 25.5 A/F for gasoline with an accuracy of  $\pm 2\%$  of point and a response time of less than 150 milliseconds.
  - 2. Analyzer Performance Verification and Calibration:
    - a. The operator of an analyzer under this Section shall verify analyzer performance according to manufacturer recommendations.
    - b. Upon initial installation, and monthly thereafter, the operator of an analyzer under this Section shall generate a 10-point calibration curve for each total hydrocarbon and methane analyzer. A gas divider employing equally spaced points may be used to generate the calibration curve.
      - i. Each calibration curve generated shall fit the data within  $\pm 2.0\%$  at each calibration point.
      - ii. Each calibration curve shall be verified for each analyzer with a confirming calibration standard between 15-80% of full scale that is not used for curve generation. Each confirming standard shall be measured by the curve within  $\pm 2.5\%$ .

**Historical Note**

Adopted effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1031 renumbered as Section R18-2-1031 and amended effective August 1,

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1988 (Supp. 88-3). Amended effective November 14, 1994  
(Supp. 94-4). Amended by final rulemaking at 6 A.A.R.  
382, effective December 20, 1999 (Supp. 99-4).

**Table 1. Dynamometer Loading Table - Annual Tests**

Gross Vehicle Weight			
Rating (Pounds)	Engine Size	Speed (MPH)	Load (HP)

**Gross Vehicle Weight**

8500 or less	4 cyl. or less	22-25	2.8-4.1
8500 or less	5 or 6 cyl.	29-32	6.4-8.4
8500 or less	8 cyl. or more	32-35	8.4-10.8
8501 or more	All	37-40	12.7-15.8

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4).

**Table 2. Emissions Standards - Annual Tests****MAXIMUM ALLOWABLE****Motorcycles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	N/A	N/A
4-Stroke	All	All	500	5.00	1,800	5.50	N/A	N/A

**Reconstructed Vehicles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
4-Stroke	1967-1980	All	700	5.25	1,200	7.50	1,200	5.60
4-Stroke	1980 & Newer	All	700	5.25	1,200	7.50	700	5.25

**Light-Duty Vehicles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

**Light-Duty Truck 1 (0-6000 lbs GVWR)**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

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**Light-Duty Truck 2 (6001 - 8500 lbs GVWR)**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

**Heavy-Duty Truck (8501 lbs or greater GVWR)**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979 & newer	All	300	3.00	300	4.00	300	3.00

**Historical Note**

Renumbered from R18-2-1006 and amended effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**Table 3. Emissions Standards - Transient Loaded Emissions Tests**  
FINAL STANDARDS (Standards are in grams per mile)

## (i) Light Duty Vehicles

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1982	3.0	2.5	25.0	21.8	3.5	3.4
1983-1985	2.4	2.0	20.0	17.3	3.5	3.4
1986-1989	1.6	1.4	15.0	12.8	2.5	2.4
1990-1993	1.0	0.8	12.0	10.1	2.5	2.4
1994+	0.8	0.7	12.0	10.1	2.0	1.9

## (ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.0	3.4	40.0	35.3	5.5	5.4
1986-1989	3.0	2.5	25.0	21.8	4.5	4.4
1990-1993	2.0	1.7	20.0	17.3	4.0	3.9
1994+	1.6	1.4	20.0	17.3	3.0	2.9

## (iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.4	3.7	48.0	42.5	7.0	6.9
1986-1987	4.0	3.4	40.0	35.3	5.5	5.4
1988-1989	3.0	2.5	25.0	21.8	5.5	5.4
1990-1993	3.0	2.5	25.0	21.8	5.0	4.9
1994+	2.4	2.0	25.0	21.8	4.0	3.9

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table heading amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**Table 4. Transient Driving Cycle**

Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph
0	0	30	20.7	60	26	90	51.5	120	54.9
1	0	31	21.7	61	26	91	52.2	121	55.4
2	0	32	22.4	62	25.7	92	53.2	122	55.6
3	0	33	22.5	63	26.1	93	54.1	123	56
4	0	34	22.1	64	26.5	94	54.6	124	56
5	3.3	35	21.5	65	27.3	95	54.9	125	55.8
6	6.6	36	20.9	66	30.5	96	55	126	55.2
7	9.9	37	20.4	67	33.5	97	54.9	127	54.5
8	13.2	38	19.8	68	36.2	98	54.6	128	53.6
9	16.5	39	17	69	37.3	99	54.6	129	52.5
10	19.8	40	17.1	70	39.3	100	54.8	130	51.5
11	22.2	41	15.8	71	40.5	101	55.1	131	50.8
12	24.3	42	15.8	72	42.1	102	55.5	132	48
13	25.8	43	17.7	73	43.5	103	55.7	133	44.5
14	26.4	44	19.8	74	45.1	104	56.1	134	41
15	25.7	45	21.6	75	46	105	56.3	135	37.5
16	25.1	46	22.2	76	46.8	106	56.6	136	34
17	24.7	47	24.5	77	47.5	107	56.7	137	30.5
18	25.2	48	24.7	78	47.5	108	56.7	138	27
19	25.4	49	24.8	79	47.3	109	56.3	139	23.5
20	27.2	50	24.7	80	47.2	110	56	140	20
21	26.5	51	24.6	81	47.2	111	55	141	16.5

Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph
22	24	52	24.6	82	47.4	112	53.4	142	13
23	22.7	53	25.1	83	47.9	113	51.6	143	9.5
24	19.4	54	25.6	84	48.5	114	51.8	144	6
25	17.7	55	25.7	85	49.1	115	52.1	145	2.5
26	17.2	56	25.4	86	49.5	116	52.5	146	0
27	18.1	57	24.9	87	50	117	53		
28	18.6	58	25	88	50.6	118	53.5		
29	20	59	25.4	89	51	119	54		

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

**Table 5. Tolerances**

	Range	State Station	Fleet Station
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4 & 2 stroke vehicles:			
CO in MOL percent	0 to 2.0%	±0.1%	±0.25%
	2 to 10.0%	±0.25%	±0.5%
4-stroke vehicles:			
HC as N-hexane in PPM	0 to 500 PPM	±15 PPM	±30 PPM
	500 to 2000 PPM	±50 PPM	±100 PPM
2-stroke vehicles:			
HC as propane in PPM	0 to 25,000 PPM	±1250 PPM	±1250 PPM

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4).

**Table 6. Repealed****Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table 6 repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS****R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)**

- A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of June 28, 2013, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.
1. Subpart A - General Provisions.
  2. Subpart B - Radon Emissions from Underground Uranium Mines.
  3. Subpart C - Beryllium.
  4. Subpart D - Beryllium Rocket Motor Firing.
  5. Subpart E - Mercury.
  6. Subpart F - Vinyl Chloride.

7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.
9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
12. Subpart M - Asbestos.
13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
15. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
16. Subpart Q - Radon Emissions from Department of Energy Facilities.
17. Subpart R - Radon Emissions from Phosphogypsum Stacks.
18. Subpart T - Radon Emissions from the Disposal of Uranium Mill Tailings.
19. Subpart V - Equipment Leaks (Fugitive Emission Sources).
20. Subpart W - Radon Emissions from Operating Mill Tailings.
21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
23. Subpart FF - Benzene Waste Operations.



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- B. Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of June 28, 2013, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.
1. Subpart A - General Provisions.
  2. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
  3. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
  4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
  5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
  6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
  7. Subpart L - National Emission Standards for Coke Oven Batteries.
  8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
  9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
  10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
  11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
  12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
  13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
  14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
  15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
  16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
  17. Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations.
  18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
  19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
  20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
  21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
  22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
  23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
  24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
  25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
  26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
  27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
  28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semi-chemical Pulp Mills.
  29. Subpart OO - National Emission Standards for Tanks - Level 1.
  30. Subpart PP - National Emission Standards for Containers.
  31. Subpart QQ - National Emission Standards for Surface Impoundments.
  32. Subpart RR - National Emission Standards for Individual Drain Systems.
  33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
  34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
  35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
  36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
  37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
  38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
  39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
  40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
  41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
  42. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
  43. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
  44. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
  45. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
  46. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
  47. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
  48. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
  49. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
  50. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.

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51. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
52. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
53. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
54. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
55. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
56. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
57. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferrous Alloys Production: Ferromanganese and Silicomanganese.
58. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
59. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
60. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
61. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
62. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
64. Subpart HHHH - National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
65. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
66. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
67. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
68. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
69. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
70. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
71. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
72. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
73. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
74. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
75. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
76. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
77. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
78. Subpart WWWW - National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
79. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
80. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
83. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
84. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
85. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
86. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
87. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
88. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
89. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
90. Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
91. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
92. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
93. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
94. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
95. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
96. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Standards.
97. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
98. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
99. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
100. Subpart TTTTT - National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
101. Subpart WWWW - National Emission Standards for Hospital Ethylene Oxide Sterilizers.

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102. Subpart YYYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.
103. Subpart ZZZZZZ - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.
104. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.
105. Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.
106. Subpart DDDDDD - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.
107. Subpart EEEEEEE - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
108. Subpart FFFFFFF - National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.
109. Subpart GGGGGG - National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources-Zinc, Cadmium, and Beryllium.
110. Subpart HHHHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.
111. Subpart JJJJJJ - National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers Area Sources.
112. Subpart LLLLLL - National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.
113. Subpart MMMMMM - National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.
114. Subpart NNNNNN - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.
115. Subpart OOOOOO - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.
116. Subpart PPPPPP - National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.
117. Subpart QQQQQQ - National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.
118. Subpart RRRRRR - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.
119. Subpart SSSSSS - National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.
120. Subpart TTTTTT - National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.
121. Subpart VVVVVV - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.
122. Subpart WWWWWW - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.
123. Subpart XXXXXX - National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.
124. Subpart YYYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.
125. Subpart ZZZZZZ - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and other Nonferrous Foundries.
126. Subpart AAAAAA - National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.
127. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.
128. Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.
129. Subpart DDDDDD - National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.
130. Subpart EEEEEEE - National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.
131. Subpart HHHHHHH - National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

**Historical Note**

Former Section R18-2-1101 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1101 renumbered from R18-2-901 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expediated rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

**R18-2-1102. General Provisions**

- A. When used in 40 CFR 61 or 63, “Administrator” means the Director of the Arizona Department of Environmental Quality except that the Director shall not be authorized to approve alternate or equivalent test methods or alternate standards or work practices, except as specifically provided in Part 63, Subpart B.
- B. From the general standards identified in R18-2-1101(A), delete 40 CFR 61.04. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.

- C. The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section 112(h)(3) of the Act.

#### Historical Note

Former Section R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1102 renumbered from R18-2-902 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4).

### ARTICLE 12. EMISSIONS BANK

#### R18-2-1201. Definitions

In addition to the definitions contained in Article 1 of this Chapter, and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. "Certified credit" means an emission reduction credit that meets the criteria under R18-2-1205.
2. "Conditional credit" means an emission reduction credit that is in the review process before qualifying for certification under R18-2-1205.
3. "Credit generation" means the process by which a source obtains emission reduction credits for eventual listing in the registry.
4. "Credit retirement" means a person's purchase of a banked emission reduction credit for the purpose of permanent removal from the emissions bank.
5. "Credit utilization" means the use of a certified emission reduction credit.
6. "Credit withdrawal" means the removal of an emission reduction credit from the bank by the source originally depositing the emission reduction credit.
7. "Emission reduction credit" or "credit" means a certified unit that may be banked, sold, transferred, withdrawn, or retired.
8. "Permitting authority" means the state or county that has jurisdiction over a source under A.R.S. § 49-402 and may review, issue, revise, administer, and enforce a permit; and certify a credit under this Article.
9. "Registry" means the location where emission reduction credits are posted for the purpose of public notice, allowing a person to determine the availability of credits for related market transactions.
10. "Surplus" means the amount of a permitted source's emission reduction that is not required by federal, state, or local law.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1202. Applicability

The provisions of this Article apply to permitted sources emitting particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds. The provisions of this Article shall not apply to sources granted authority to operate under 18 A.A.C. 2, Article 5.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1203. Emissions Bank Administration

- A. The Director shall place an emission reduction credit in the emissions bank credit registry upon conditional certification, certification, pending use, and final disposition. For each credit, the Director shall place in the registry:

1. Source's contact name and information;
2. Source name and information;
3. Amount and type of pollutant;
4. Date of emission reduction and credit status.

- B. The Director shall issue a certificate of deposit to the reducing source for each certified credit deposited in the bank, and issue a certificate of retirement to a person for each certified credit permanently retired.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1204. Credit Generation

- A. A source wanting to generate an emission reduction for deposit into the bank shall submit a Credit Generation Application (CGA) to the Director on a form prescribed by the Director. The CGA shall contain:

1. The company name;
  2. The company mailing address;
  3. The owner, co-owner, or partner;
  4. The contact person name, title, and telephone number;
  5. The permitted source name, location, permit number, and industry code;
  6. The pollutant;
  7. The attainment status of the area where the source is located;
  8. The amount of actual emissions reduced;
  9. The date of emission reduction to be credited;
  10. The description of emission reduction credit generation activity;
  11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17);
  12. The name, title, and telephone number of the responsible official.
- The source shall submit a copy of the CGA to the permitting authority with an application to revise the permit or request to terminate the permit.

- B. Upon receipt by the Director of the CGA with a check for the administrative fee specified in R18-2-1208(A), the Director shall list each conditional credit in the registry.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1205. Credit Certification

- A. A permitting authority may certify an emission credit if the permitting authority verifies the credit is based on:

1. A reduction in actual emissions that occurred after August 17, 1999;
2. A quantifiable reduction in actual emissions;
3. A permanent reduction in actual emissions;
4. An enforceable reduction in actual emissions; and
5. A surplus reduction in actual emissions occurring in addition to any other required emission reduction.

- B. The source must notify the permitting authority when the reduction occurs.

- C. In order for an emission reduction to be quantifiable under this Section:

1. The emission reduction must be quantifiable under R18-2-301(14); and
2. The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.

- D. The permitting authority shall certify one emission reduction credit for each ton per year of particulate matter, sulfur diox-

ide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.

- E. At the time of deposit in the emissions bank, the Director shall discount by 10 percent the certified credit total. The 10 percent of certified credit total shall be permanently retired to the bank.
- F. A banked credit does not expire.
- G. The permitting authority shall notify the source and the Director that a credit is certified. Upon receipt of the notice, the Director shall issue a certificate for each certified credit to the applicant identified in R18-2-1204, and list the certified credit in the registry.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1206. Credit Utilization

- A. A source may use a certified emission reduction credit in the same nonattainment area, maintenance area, or modeling domain in which the emission reduction occurred by submitting a Credit Utilization Application (CUA) to the Director on a form prescribed by the Director. The CUA shall contain:
  1. The name and mailing address of the source that generated the credit;
  2. The owner, co-owner, or partner of the source that generated the credit;
  3. The contact person name, title, telephone number of the source that generated the credit;
  4. The name and mailing address of the source utilizing the credit;
  5. The owner, co-owner, or partner of the source utilizing the credit;
  6. The contact person name, title, telephone number of the source utilizing the credit;
  7. The purpose of the utilization;
  8. The pollutant;
  9. The amount of emission reduction credit to be utilized;
  10. Each emission reduction credit certificate number;
  11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17); and
  12. The name, title, and telephone number of the responsible official.

The source shall submit a copy of the CUA to the permitting authority at the time the source submits an application for a permit or permit revision.
- B. Upon receipt by the Director of the CUA with a check for the administrative fee specified in R18-2-1208(B), the Director shall list the pending sale in the registry.
- C. The Director shall not list the final sale in the registry until:
  1. The permitting authority evaluates and verifies the authenticity of the credit with the emissions bank;
  2. The permitting authority determines that there will be no adverse impact on air quality; and
  3. The permitting authority completes the permitting action and submits the credit certificate to the Director.
- D. After the permitting authority notifies the Director that the requirements of this Section have been met, the Director shall delist the credits in the registry.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1207. Credit Withdrawal

Any party purchasing certified credits listed in the emissions bank for the purpose of credit retirement, or any source withdrawing its

own credits from the emissions bank, shall submit a CUA specified in R18-2-1204(A) with the surrendered certificates to the Director. Upon receipt of the CUA and surrendered certificates, the Director shall delist the credits in the registry.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### R18-2-1208. Fees

- A. A source generating a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CGA. This fee is in addition to the fees specified in R18-2-326.
- B. A source utilizing a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CUA. This fee is in addition to the fees specified in R18-2-326.
- C. The Director shall not assess an administrative fee to a person:
  1. Purchasing a credit for retirement;
  2. Amending ownership information contained in the registry; or
  3. Withdrawing a credit from the bank.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

#### ARTICLE 13. EXPIRED

*Article 13, consisting of Sections R18-2-1301 through R18-2-1307, rules expired under A.R.S. § 41-1056(J), effective April 30, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R18-2-1301 through R18-2-1307, made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2).*

#### R18-2-1301. Expired

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### R18-2-1302. Expired

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### R18-2-1303. Expired

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### R18-2-1304. Expired

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### R18-2-1305. Expired

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 1295,

effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### **R18-2-1306. Expired**

##### **Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### **R18-2-1307. Expired**

##### **Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

### **ARTICLE 14. CONFORMITY DETERMINATIONS**

#### **R18-2-1401. Definitions**

Terms used in this Article but not defined in this Article, Article 1 of this Chapter, or A.R.S. § 49-401.01 shall have the meaning given them by the CAA, Titles 23 and 40 U.S.C., other EPA regulations, or other USDOT regulations, in that order of priority. The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. § 49-401.01 shall apply to this Article:

1. “ADEQ” means the Arizona Department of Environmental Quality.
2. “ADOT” means the Arizona Department of Transportation.
3. “Applicable implementation plan” is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.
4. “CAA” means the Clean Air Act, as amended.
5. “Cause or contribute to a new violation” for a project means either of the following:
  - a. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented.
  - b. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.
6. “Consultation” means that one party confers with another identified party, provides access to all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds in accordance with the procedures established in R18-2-1405.
7. “Control strategy implementation plan revision” is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).
8. “Control strategy period” with respect to particulate matter less than 10 microns in diameter (PM<sub>10</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM<sub>10</sub>, NO<sub>2</sub>, CO, or ozone, as appropriate. This period ends when the state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.
9. “Design concept” means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.
10. “Design scope” means the design aspects of a facility which will affect the proposed facility’s impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
11. “EPA” means the United States Environmental Protection Agency.
12. “FHWA” means the Federal Highway Administration of USDOT.
13. “FHWA or FTA project” means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.
14. “FTA” means the Federal Transit Administration of USDOT.
15. “Forecast period” with respect to a transportation plan means the period covered by the transportation plan pursuant to 23 CFR 450.
16. “Highway project” means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:
  - a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
  - b. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
  - c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
17. “Horizon year” means a year for which the transportation plan describes the envisioned transportation system in accordance with R18-2-1406.
18. “Hot-spot analysis” means an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially

- affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.
19. “Incomplete data area” means any ozone nonattainment area which EPA has classified, in 40 CFR 81, as an incomplete data area.
  20. “Increase the frequency or severity of a violation” means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.
  21. “ISTEA” means the Intermodal Surface Transportation Efficiency Act of 1991.
  22. “Local transportation agency” means a city, town, or county.
  23. “Maintenance area” means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA.
  24. “Maintenance period” with respect to a pollutant or pollutant precursor means that period of time beginning when a state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.
  25. “Metropolitan planning organization (MPO)” means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.
  26. “Milestone” means an emissions level and the date on which it is required to be achieved as described in § 182(g)(1) and § 189(c) of the CAA.
  27. “Motor vehicle emissions budget” means that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or Director of ADEQ, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen ( $\text{NO}_x$ ) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this  $\text{NO}_x$  budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a  $\text{NO}_x$  budget if  $\text{NO}_x$  reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.
  28. “National ambient air quality standards (NAAQS)” means those standards established pursuant to § 109 of the CAA.
  29. “NEPA” means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).
  30. “NEPA process completion” with respect to FHWA or FTA, means the point at which there is a specific action to do any of the following:
    - a. Make a formal final determination that a project is categorically excluded.
    - b. Make a Finding of No Significant Impact.
    - c. Issue a record of decision on a Final Environmental Impact Statement under NEPA.
  31. “Nonattainment area” means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.
  32. “Not classified area” means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.
  33. “Phase II of the interim period” with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following:
    1. Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or the Director of ADEQ and have been subject to a public hearing.
    2. The date that the CAA requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the state’s failure to submit any such plans and the state, MPO, and USDOT have received notice of such finding of the state’s failure to submit any such plans.
  34. “Project” means a highway project or transit project.
  35. “Recipient of funds designated under 23 U.S.C. or the Federal Transit Act” means any agency at any level of state, county, or city government, including any political subdivision or MPO, that routinely receives 23 U.S.C. or Federal Transit Act funds to construct FHWA or FTA projects, operate FHWA or FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.
  36. “Regional transportation agency” means a regional transit authority established pursuant to A.R.S. Title 28, Chapter 20 or Chapter 24, or a formal association of political subdivisions involved in regional transportation issues.
  37. “Regionally significant transportation project” means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area’s transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.
  38. “Rural transport ozone nonattainment area” means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under CAA § 182(h) as a rural transport area.
  39. “Standard” means a national ambient air quality standard.

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40. “Statewide transportation improvement program (STIP)” means a staged, multi-year, intermodal program of transportation projects covering the state, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR 450.
41. “Statewide transportation plan” means the official intermodal statewide transportation plan that is developed through the statewide planning process for the state, developed pursuant to 23 CFR 450.
42. “Submarginal area” means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR 81.
43. “Transit” is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.
44. “Transit project” means an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:
  - a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
  - b. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made.
  - c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
45. “Transitional area” means any ozone nonattainment area which EPA has classified as transitional in 40 CFR 81.
46. “Transitional period” with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor or Director of ADEQ and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in R18-2-1428.
47. “Transportation control measure (TCM)” means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule.
48. “Transportation improvement program (TIP)” means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and developed pursuant to 23 CFR 450.
49. “Transportation plan” means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR 450.
50. “Transportation project” means a highway project or a transit project.
51. “USDOT” means the United States Department of Transportation.
52. “VMT” means the number of vehicle miles traveled.

**Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

**R18-2-1402. Applicability**

- A. Except as provided for in subsection (F) or R18-2-1434, conformity determinations are required for all of the following:
  1. The adoption, acceptance, approval, or support of transportation plans developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
  2. The adoption, acceptance, approval, or support of TIPs developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
  3. The approval, funding, or implementation of FHWA or FTA projects.
- B. Conformity determinations are not required under this Article for individual projects which are not FHWA or FTA projects. However, R18-2-1429 applies to such projects if they are regionally significant.
- C. The provisions of this Article shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
- D. The provisions of this Article apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).
- E. The provisions of this Article apply with respect to emissions of the following precursor pollutants:
  1. Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under § 182(f) of the CAA that additional reductions of NO<sub>x</sub> would not contribute to attainment).
  2. Nitrogen oxides in nitrogen dioxide areas.
  3. Volatile organic compounds, nitrogen oxides, and PM<sub>10</sub> in PM<sub>10</sub> areas if either of the following apply:
    - a. During the interim period, the EPA Regional Administrator or the Director of ADEQ has made a finding (including a finding in an applicable implementation plan or a submitted implementation plan revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified ADOT or the MPO where one exists and USDOT.
    - b. During the transitional, control strategy, and maintenance periods, the applicable implementation plan or implementation plan submission establishes a budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy.
- F. Projects subject to this Article for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications, and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the



purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

- G.** A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three-year period.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1403. Priority

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1404. Frequency of Conformity Determinations

- A.** Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA or FTA projects shall be made according to the requirements of this Section and the applicable implementation plan.
- B.** Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by USDOT.
- C.** All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by the MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification provisions contained in R18-2-1405. The conformity determination shall be based on the transportation plan and the revision taken as a whole.
- D.** An existing conformity determination shall lapse unless conformity of existing transportation plans is redetermined:
- By May 25, 1995, unless previously redetermined consistent with 40 CFR 51, subpart T.
  - Within 18 months after EPA approval of an implementation plan revision which either:
    - Establishes or revises a transportation-related emissions budget (as required by CAA §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide); or
    - Adds, deletes, or changes TCMs.
  - Within 18 months after EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.
- E.** In any case, conformity determinations shall be made no less frequently than every three years, or the existing conformity determination will lapse.
- F.** A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by USDOT.
- G.** A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification procedures under R18-2-1405.
- H.** After an MPO adopts a new or revised transportation plan, TIP conformity shall be redetermined by the MPO and USDOT within six months from the date of adoption of the plan, unless

the new or revised plan merely adds or deletes exempt projects listed in R18-2-1434. Otherwise, the existing conformity determination for the TIP shall lapse.

- I.** In any case, TIP conformity determinations shall be made no less frequently than every three years or the existing TIP conformity determination shall lapse.
- J.** FHWA or FTA projects shall be found to conform before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA or FTA project if none of the following major steps has occurred within the most recent three-year period:
- NEPA process completion,
  - Start of final design,
  - Acquisition of a significant portion of the right-of-way,
  - Approval of the plans, specifications, and estimates.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1405. Consultation

- A.** Consultation procedures as described in this Section shall be undertaken by all of the following entities and shall include the public and affected local and regional transportation agencies in preparing for and making conformity determinations and in developing applicable implementation plans:
- An MPO where one exists.
  - The Arizona Department of Transportation (ADOT).
  - The United States Department of Transportation (USDOT).
  - The Arizona Department of Environmental Quality (ADEQ).
  - The county air pollution control agency established pursuant to A.R.S. Title 49 where one exists.
  - The United States Environmental Protection Agency (EPA).
- B.** The following elements shall be used to implement the consultation processes under subsection (M), with the exception of subsection (M)(8), and under subsection (N), with the exception of subsections (N)(2) and (N)(3), and shall include all affected agencies and interested members of the public, and may be conducted at separate times or in combination:
- Providing to the affected agencies and interested members of the public information describing the upcoming decision process,
  - Distributing or providing access to draft documents,
  - Providing an opportunity for informal question and answer on the draft document or proposed decision,
  - Providing an opportunity for formal written comment,
  - Writing and distributing both a response to comments and the final document or decision.
- C.** An MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, and any local transportation agency shall undertake a consultation process in accordance with this Section with each other, with the local or regional offices of EPA, FHWA and FTA, with affected regional transportation agencies, and with the public on the development of the following as described in subsections (D) through (G):
- The implementation plan, including the emission budget and list of TCMs in the applicable implementation plan;
  - The unified planning work program under 23 CFR § 450.314;
  - The transportation plan and TIP;
  - The statewide transportation plan and STIP;
  - Any revisions to the preceding documents;
  - All transportation conformity determinations.

- D.** ADEQ, or the MPO in a county having a population greater than 250,000 persons, shall be the lead agency responsible for preparing an implementation plan, the associated emission budgets, and the list of TCMs in the plan. The lead agency shall also be responsible for assuring the adequacy of the consultation process. The concurrence of ADEQ on each implementation plan is required before ADEQ adopts the plan and transmits it to EPA for inclusion in the state implementation plan pursuant to A.R.S. § 49-406.
- E.** ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the transportation plan and the TIP. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the unified planning work program under 23 CFR 450.314.
- F.** ADOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the statewide transportation plan and the STIP.
- G.** ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to determinations of transportation conformity, except that the entity authorized to adopt or approve a project shall be the lead agency responsible for project-level conformity determinations for projects outside of the transportation plan or TIP and shall assure the adequacy of the consultation process.
- H.** Each lead agency described in subsections (D) through (G) shall:
1. Confer with all other agencies having an interest in the document or decision to be developed;
  2. Provide access to all information needed for meaningful input;
  3. Solicit early and continuing input from those agencies;
  4. Conduct the public consultation process described in subsection (P);
  5. Assure policy-level contact with agencies;
  6. With the exception of notifications pursuant to subsection (M)(8), prior to taking any action required pursuant to subsections (D) through (G), consider the views of each agency and the public and respond to significant comments in a timely, substantive written manner prior to taking any final action and assure that such views and written response are made part of the record of any action.
- I.** FHWA and FTA shall be responsible for assuring timely action on final findings of conformity for transportation plans, TIPs, and federally funded projects, including the basis for those findings, after consulting with other agencies as provided in this Section. FHWA and FTA shall also be responsible for providing guidance on conformity and the transportation planning process to agencies in consultation. FHWA and FTA may rely on the consultation process initiated by ADOT or the MPO where one exists and shall not be required to duplicate that process.
- J.** EPA shall be responsible for reviewing and approving updated motor vehicle emissions factors and providing guidance on conformity criteria and procedures to agencies in consultation.
- K.** Each lead agency subject to a consultation process under this Section, including any federal agency, shall provide or notice the availability of each final document that is the product of the consultation process, together with all supporting information, to each other agency and members of the public that have participated in the consultation process within 15 days of adopting or approving the document or making the determination. An agency may supply a checklist of available supporting information, which other participating agencies or the public may use to request all or part of the supporting information, in lieu of generally distributing all supporting information.
- L.** A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.
- M.** A consultation process involving an MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public shall be undertaken for the following:
1. Evaluating and choosing each model and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses including vehicle miles traveled (VMT) forecasting. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
  2. Determining whether the responsible agency identified in R18-2-1433 has demonstrated that the requirements of R18-2-1416, R18-2-1418 and R18-2-1419 are satisfied without a particular mitigation or control measure. The consultation process pursuant to this subsection shall be initiated by the responsible agency.
  3. Making a determination, as required by R18-2-1429(C)(2), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for making a determination, as required by R18-2-1429(C)(2), whether a project that is outside of a TIP is included in the regional emissions analysis, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
  4. Determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis.
  5. Evaluating whether exempt projects as described in R18-2-1434 and R18-2-1435 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

6. Making a determination, as required by R18-2-1413, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or to substitute TCMs or other emission reduction measures. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
  7. Identifying, as required by R18-2-1431, projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
  8. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in R18-2-1434. Notice shall be provided by the MPO and need not be provided prior to final action. Notice shall be provided by ADOT for revisions and amendments affecting the state transportation plan and the state TIP. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
  9. Project-level conformity determinations pursuant to R18-2-1416. The consultation process pursuant to this subsection shall be initiated by the recipient of the funds designated under 23 U.S.C. or the Federal Transit Act.
- N.** A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, appropriate political subdivisions, regional transportation agencies, if any, and the public shall be undertaken for the following:
1. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in R18-2-1404 and including any changes in planning assumptions that may trigger a new conformity determination. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
  2. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
  3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a consultation process involving the MPO and ADOT for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area. The consultation process pursuant to this subsection shall be initiated by ADOT. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
  4. The design, schedule, and funding of research and data collection efforts and regional transportation model development. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
- O.** The following consultation processes involve recipients of funds designated under 23 U.S.C. or the Federal Transit Act:
1. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act and any agency created under state law that sponsors or approves transportation projects shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA or FTA projects, including projects for which alternative locations, design concept or scope, or the no-build option are still being considered, are disclosed as soon as practicable to ADOT or the MPO where one exists, so as to assure that any significant changes to the design concept or scope of those plans are disclosed as soon as practicable. The political subdivision having authority to adopt or approve a regionally significant transportation project, and any agency that becomes aware of any such project through applications for approval, permitting, funding, or otherwise shall disclose such project to ADOT or the MPO if one exists as soon as practicable. To help assure timely disclosure, the political subdivision having authority to adopt or approve any potential regionally significant transportation project shall disclose to ADOT or the MPO on a schedule prescribed by ADOT or the MPO, whichever is appropriate, each project for which alternatives have been identified through the NEPA process and, in particular, any preferred alternative that may be a regionally significant project. The consultation process shall include assuming the location, design concept, and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow ADOT or the MPO to perform a regional emissions analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
  2. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act, any agency created under state law that sponsors or approves transportation projects, and the public shall be undertaken for the development of procedures as described in R18-2-1429. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
- P.** Public involvement processes shall be conducted according to the requirements of this subsection.
1. ADOT or the MPO, where one exists, when making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, that meets the following minimum requirements:
    - a. Includes a process that provides complete information, timely public notice, full public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs.

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- b. Requires a minimum public comment period of 45 days before the public involvement process is initially adopted or revised.
  - c. Provides timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects, including but not limited to central city and other local jurisdiction concerns.
  - d. Provides reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the federal-aid highway and transit programs are being considered.
  - e. Requires adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs and approval of changes in plans and TIPs. In nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP, and major amendments. Public notice shall include mailing of notice to a list of all persons who have requested notice of actions covered by this Article.
  - f. Demonstrates explicit consideration and response to public input received during the planning and program development processes.
  - g. Seeks out and considers the needs of those traditionally underserved by existing transportation systems, including but not limited to low-income and minority households.
  - h. When significant written and oral comments are received on a draft transportation plan or TIP, including the financial plan, as a result of the public involvement process or the consultation process required by this Section, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP.
  - i. If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and it raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available.
  - j. ADOT or the MPO where one exists shall specifically address in writing all public comments that known plans for a regionally significant transportation project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.
  - k. Public involvement processes shall be periodically reviewed by ADOT or the MPO in terms of their effectiveness in assuring that the process provides full and open access to all.
  - l. These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decisionmaking processes.
  - m. Metropolitan public involvement processes shall be coordinated with statewide public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and to reduce redundancies and costs.
2. Local and regional transportation agencies when making conformity determinations on regionally significant transportation projects shall establish and implement a public involvement process which meets, at a minimum, the following requirements:
    - a. Provides to the affected agencies and interested members of the public information describing the upcoming decision process.
    - b. Distributes or provides access to draft documents and all information needed for meaningful input.
    - c. Solicits early and continuing input from interested agencies and the public.
    - d. Provides an opportunity for informal question and answer on the draft document or proposed decision.
    - e. Provides an opportunity for formal written comment.
    - f. Provides for writing and distributing both a response to comments and the final document or decision. The response to comments shall consider the views of each agency and the public. The response to comments shall be made in a timely, substantive written manner prior to taking any final action and shall be made part of the record of any action.
- Q.** Any conflict among state agencies or between state agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the directors of the involved agencies. In the first instance, such entities shall make every effort to resolve any differences, including personal meetings between the directors of such entities or their policy-level representatives, to the extent possible. Within 14 calendar days after ADOT or the MPO has notified ADEQ of its decision, ADEQ may appeal a proposed determination of conformity, or other policy decision under this Article, to the Governor. ADEQ must provide notice of any appeal under this subsection to ADOT or the MPO. If ADEQ does not appeal to the Governor within 14 days, ADOT or the MPO may proceed with the final determination or decision. If ADEQ appeals to the Governor, the final conformity determination or policy decision shall have the concurrence of the Governor. The Governor may delegate to another official or agency within the state the role of hearing any appeal under this subsection and of deciding whether to concur in the determination or decision but may not delegate these functions to the director or staff of ADEQ, to any local air quality agency, to ADOT, to any state transportation commission or board, to an MPO, or to any agency that has responsibility for any of these functions.
- R.** The following procedures shall govern the consultation process regarding regionally significant transportation projects as defined in R18-2-1401(37):
1. By September 1, 1995, ADOT or the MPO where one exists shall develop and make available, for each nonattainment or maintenance area, consistent with A.R.S. § 49-408(A), the following:
    - a. A map of the highway or transit facilities in the nonattainment or maintenance area that serve regional transportation needs.
    - b. Guidance on which undertakings to implement or modify a highway facility are not transportation projects as defined in this Article, because they are not of sufficient length to address environmental matters on a broad scope.

- c. Guidance on which types of transportation projects are normally included in the regional transportation model.
- 2. The map and guidance described in subsection (R)(1) shall be produced only after consultation with ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, and the public. The map developed pursuant to subsection (R)(1) shall be updated prior to the commencement of the next TIP or STIP development cycle, unless no changes have occurred. The guidance developed pursuant to subsection (R)(3) shall be revised as necessary to reflect changes in the regional transportation model.
- 3. ADOT or the MPO where one exists shall develop and initiate the consultation process described in subsection (H) for a proposed list of transportation projects to be considered regionally significant. The consultation process shall include the MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public. The list shall include information supporting the proposed classification.
- 4. In determining whether a facility serves regional transportation needs, ADOT or the MPO where one exists shall consider at a minimum whether the facility:
  - a. Would be classified as a principal arterial based on average daily traffic or other factors, if not for limitations that the USDOT places on the percentage of streets that can be so classified.
  - b. For all other roadways, whether the facility:
    - i. Serves regional mobility needs, as opposed to local access.
    - ii. Carries regional traffic from one principal arterial to another.
    - iii. Is a modification that expands a facility such that it would serve regional transportation needs.
- 5. For the purposes of this Article, a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region, does not serve regional transportation needs.
- 6. None of the following attributes, by itself, shall require a transportation project to be included in the modeling of a metropolitan area's transportation network:
  - a. The connection of a facility that does not serve regional transportation needs to a facility that does serve regional transportation needs.
  - b. The addition or modification of a lane other than a through lane.
- S. An agency having a role or responsibility under this Section may delegate that role or responsibility to another entity pursuant to the applicable state law but shall notify all other parties to the consultation process of this fact when the delegation occurs and shall also provide to the other parties the name, address, and telephone number of one or more contact persons representing the entity that is accepting the delegated role or responsibility.
- T. The provisions of this Section apply only to TIP and STIP planning cycles beginning with the cycles next following the effective date of this Section. The provisions of 40 CFR 51, Subpart T, continue to apply to all TIP and STIP planning cycles in progress at the time of the effective date of this Section. The provisions of this Section apply to consultation on

projects and TIP amendments as of the effective date of this Section.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1406. Content of Transportation Plans

- A. For transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas, the following shall apply:
  - 1. The transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.
  - 2. The agency or organization developing the transportation plan, after consultation pursuant to R18-2-1405, may choose any years to be horizon years, subject to the following restrictions:
    - a. Horizon years may be no more than 10 years apart.
    - b. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
    - c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.
    - d. The last horizon year shall be the last year of the transportation plan's forecast period.
  - 3. For these horizon years all of the following apply:
    - a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land-use forecasts, in accordance with implementation plan provisions and R18-2-1405.
    - b. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system.
    - c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.
- B. Ozone or CO nonattainment areas which are reclassified from moderate to serious shall meet the requirements of subsection (A) within two years from the date of reclassification.
- C. Transportation plans for other areas shall meet the requirements of subsection (A) at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall

describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of R18-2-1409 through R18-2-1427.

- D. The requirements of this Section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1407. Relationship of Transportation Plan and TIP Conformity with the NEPA Process

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in R18-2-1409 through R18-2-1427 for projects not from a TIP before NEPA process completion.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1408. Fiscal Constraints for Transportation Plans and TIPs

Transportation plans and TIPs shall demonstrate that they are fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR 450 in order to be found in conformity.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1409. Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General

- A. In order to be found to conform, each transportation plan, program, and FHWA or FTA project shall satisfy the applicable criteria and procedures in R18-2-1410 through R18-2-1427 as listed in Table 1 of this Section and shall comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA or FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.
- B. The following table indicates the criteria and procedures in R18-2-1410 through R18-2-1427 which apply for each action in each time period:

**Table 1. Conformity Criteria**

DURING ALL PERIODS	
Action	Criteria
Transportation Plan	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(B)
TIP	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(C)
Project (from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1414, R18-2-1415, R18-2-1416, R18-2-1417
Project (not from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(D), R18-2-1414, R18-2-1416, R18-2-1417

#### PHASE II OF THE INTERIM PERIOD

Action	Criteria
Transportation Plan	R18-2-1422, R18-2-1425
TIP	R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1421, R18-2-1424, R18-2-1427

#### TRANSITIONAL PERIOD

Action	Criteria
Transportation Plan	R18-2-1418, R18-2-1422, R18-2-1425
TIP	R18-2-1419, R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1420, R18-2-1421, R18-2-1424, R18-2-1427

#### CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	R18-2-1418
TIP	R18-2-1419
Project (from a conforming plan and TIP)	No additional criteria
Project (not from a conforming plan and TIP)	R18-2-1420

- R18-2-1410. The conformity determination must be based on the latest planning assumptions.
- R18-2-1411. The conformity determination must be based on the latest emission estimation model available.
- R18-2-1412. The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by 40 CFR 51.396.
- R18-2-1413. The transportation plan, TIP, or FHWA or FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- R18-2-1414. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- R18-2-1415. The project must come from a conforming transportation plan and program.
- R18-2-1416. The FHWA or FTA project must not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas.
- R18-2-1417. The FHWA or FTA project must comply with PM<sub>10</sub> control measures in the applicable implementation plan.
- R18-2-1418. The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1419. The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1420. The project which is not from a conforming transportation plan and conforming TIP must be consistent with the

motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

- R18-2-1421. The FHWA or FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- R18-2-1422. The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1423. The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1424. The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1425. The transportation plan must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas.
- R18-2-1426. The TIP must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas.
- R18-2-1427. The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1410. Criteria and Procedures: Latest Planning Assumptions

- A. During all periods the conformity determination, with respect to all other applicable criteria in R18-2-1411 through R18-2-1427, shall be based upon the most recent complete planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of subsections (B) through (F).
- B. Assumptions, including vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth shall be derived from the estimates of current and future population, employment, travel, and congestion most recently used by ADOT or the MPO where one exists. Population estimates shall be consistent with the estimates developed by the Arizona Department of Economic Security pursuant to A.R.S. § 41-1954(A). The conformity determination shall also be based on the latest assumptions about current and future background concentrations.
- C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.
- F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by R18-2-1405.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1411. Criteria and Procedures: Latest Emissions Model

- A. During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle

emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by EPA before they are used in the conformity analysis.

- B. Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model, or during any grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1412. Criteria and Procedures: Consultation

All conformity determinations shall be made according to the consultation procedures in R18-2-1405. This criterion applies during all periods. Until the implementation plan revision required by 40 CFR 51.396 is approved by EPA, the conformity determination shall be made according to the procedures in R18-2-1405. Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1413. Criteria and Procedures: Timely Implementation of TCMs

- A. During all periods the transportation plan, TIP, or FHWA, or FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan.
- B. For transportation plans, this criterion is satisfied if the following two conditions are met:
  1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.
  2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- C. For TIPs, this criterion is satisfied if all of the following conditions are met:
  1. An examination of the specific steps and funding source needed to fully implement each TCM indicates that TCMs which are eligible for funding under 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs

includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.

2. If federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs, (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under ISTEAs Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, the TIP cannot be found to conform.
  3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.
- D. For FHWA or FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1414. Criteria and Procedures: Currently Conforming Transportation Plan and TIP

During all periods there shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and USDOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by USDOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of R18-2-1404.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1415. Criteria and Procedures: Projects from a Plan and TIP

- A. During all periods the project shall come from a conforming transportation plan and program. Otherwise, the project shall satisfy all criteria in Table 1 of R18-2-1409 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (B) and from a conforming program if it meets the requirements of subsection (C).
- B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:
  1. For projects which are required to be identified in the transportation plan in order to satisfy R18-2-1406, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility.
  2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- C. A project is considered to be from a conforming program if all of the following conditions are met:
  1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to deter-

mine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility.

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures shall be obtained from the project sponsor or operator as required by R18-2-1433 in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1416. Criteria and Procedures: Localized CO and PM<sub>10</sub> Violations (Hot Spots)

- A. During all periods any FHWA or FTA project shall not cause or contribute to any new localized CO or PM<sub>10</sub> violations or increase the frequency or severity of any existing CO or PM<sub>10</sub> violations in CO and PM<sub>10</sub> nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
- B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.
- C. For projects which are not of the type identified by R18-2-1431(A) or R18-2-1431(D), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration shall be performed according to the requirements of R18-2-1431(B).

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1417. Criteria and Procedures: Compliance with PM<sub>10</sub> Control Measures

During all periods any FHWA or FTA project shall comply with PM<sub>10</sub> control measures in the applicable implementation plan. This condition is satisfied if control measures (for the purpose of limiting PM<sub>10</sub> emissions from the construction activities or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1418. Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan)

- A. The transportation plan shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met:
- B. A regional emissions analysis shall be performed as follows:
  1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for



which the applicable implementation plan or implementation plan submission establishes an emissions budget:

- a. VOC as an ozone precursor.
  - b. NO<sub>x</sub> as an ozone precursor, unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment.
  - c. CO.
  - d. PM<sub>10</sub> (and its precursors VOC or NO<sub>x</sub> if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM<sub>10</sub> nonattainment problem or establishes a budget for such emissions).
  - e. NO<sub>x</sub> (in NO<sub>2</sub> nonattainment or maintenance areas).
2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant transportation projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
  3. The emissions analysis methodology shall meet the requirements of R18-2-1430.
  4. For areas with a transportation plan that meets the content requirements of R18-2-1406(A), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation.
  5. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), the emissions analysis shall be performed for all of the following:
    - a. The last year of the plan's forecast period.
    - b. The attainment year, if the attainment year is in the time span of the transportation plan.
    - c. Any other years in the time span of the transportation plan such that there is not a gap of more than 10 years between analysis years. Emissions in milestone years which are between these analysis years may be determined by interpolation.
- C. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in subsection (B)(1) the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:
1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year.
  2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year.
  3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year.

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1419. Criteria and Procedures: Motor Vehicle Emissions Budget (TIP)

- A. The TIP shall be consistent with the motor vehicle emissions budgets in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met.
- B. For areas with a conforming transportation plan that fully meets the content requirements of R18-2-1406(A), this criterion may be satisfied without additional regional emissions analysis if:
1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state or local matching funds and funds for state or local funding-only projects are consistent with the revenue sources expected over the same period; and
  2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
    - a. The TIP contains all projects which shall be started in the TIP's time-frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
    - b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
    - c. The design concept and scope of each regionally significant transportation project in the TIP is not significantly different from that described in the transportation plan.
  3. If the requirements in subsections (B)(1) and (B)(2) are not met, then either:
    - a. The TIP may be modified to meet those requirements; or
    - b. The transportation plan shall be revised so that the requirements in subsections (B)(1) and (B)(2) are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subsections (B)(1) and (B)(2).
- C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall meet all of the following requirements:
1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
  2. The analysis methodology shall meet the requirements of R18-2-1430(C).
  3. The regional emissions analysis shall satisfy the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-2-1418(C).

**Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

**R18-2-1420. Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not from a Plan and TIP)**

- A. The project which is not from a conforming transportation plan and a conforming TIP shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant transportation projects expected in the area, do not exceed the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.
- B. For areas with a conforming transportation plan that meets the content requirements of R18-2-1406(A):
  1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that all of the following apply:
    - a. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years.
    - b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years.
    - c. The design concept and scope of the project is not significantly different from that described in the transportation plan.
  2. If the requirements in subsection (B)(1) are not met, a regional emissions analysis shall be performed as follows:
    - a. The analysis methodology shall meet the requirements of R18-2-1430.
    - b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan. The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP.
    - c. The regional emissions analysis shall meet the requirements of R18-2-1418(B)(1), R18-2-1418(B)(4) and R18-2-1418(C).
- C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant transportation projects expected in the nonattainment or maintenance area. This criterion may be satisfied if all of the following apply:
  1. The analysis methodology meets the requirements of R18-2-1430(C).
  2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.

3. The regional emissions analysis satisfies the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-2-1418(C).

**Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

**R18-2-1421. Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim and Transitional Periods**

- A. Each FHWA or FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
- B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.
- C. For projects which are not of the type identified by R18-2-1431(A), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of R18-2-1431(B).

**Historical Note**

Adopted effective June 15, 1995 (Supp. 95-2).

**R18-2-1422. Criteria and Procedures: Interim and Transitional Period Reductions in Ozone and CO Areas (Transportation Plan)**

- A. A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).
- B. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- C. Define the Baseline scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
  1. All in-place regionally significant highway and transit facilities, services and activities.
  2. All ongoing travel demand management or transportation system management activities.
  3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan or TIP; or have completed the NEPA process. For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the Baseline

scenario and shall be included in the Action scenario as described in subsection (D), if one of the following major steps has not occurred within the most recent three-year period:

- a. NEPA process completion;
- b. Start of final design;
- c. Acquisition of a significant portion of the right-of-way;
- d. Approval of the plans, specifications and estimates.

**D.** Define the Action scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant transportation projects in the nonattainment area. The Action scenario will include all of the following except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All facilities, services, and activities in the Baseline scenario;
2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

**E.** Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference in regional VOC and NO<sub>x</sub> emissions (unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between the analysis years may be determined by interpolation.

**F.** This criterion is met if the regional VOC and NO<sub>x</sub> emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be

true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1423. Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP)

**A.** A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).

**B.** Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than 10 years apart. The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

**C.** Define the Baseline scenario as the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All in-place regionally significant highway and transit facilities, services, and activities.
2. All ongoing travel demand management or transportation system management activities.
3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition, except for hardship acquisition and protective buying; come from the first three years of the previously conforming TIP; or have completed the NEPA process. For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the Baseline scenario if one of the following major steps has not occurred within the most recent three-year period:
  - a. NEPA process completion.
  - b. Start of final design.
  - c. Acquisition of a significant portion of the right-of-way.
  - d. Approval of the plans, specifications, and estimates. Such a project shall be included in the Action scenario, as described in subsection (D).

**D.** Define the Action scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant transportation projects in the nonattainment area in the time-frame of the transportation plan. It will include all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All facilities, services, and activities in the Baseline scenario;
2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the

enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
  4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
  5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
  6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios, and determine the difference in regional VOC and NO<sub>x</sub> emissions (unless the Administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between analysis years may be determined by interpolation.
- F. This criterion is met if the regional VOC and NO<sub>x</sub> emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1424. Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP)

A transportation project shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of R18-2-1422 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1425. Criteria and Procedures: Interim Period Reductions for PM<sub>10</sub> and NO<sub>2</sub> Areas (Transportation Plan)

- A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either subsections (B) or (C) are met.
- B. Demonstrate that implementation of the plan and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area, and of each transportation-related precursor of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and USDOT, and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area, by performing a regional emissions analysis as follows:
  1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO<sub>2</sub> areas) or four years and six months following the date of designation (for PM<sub>10</sub> areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
  2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1422(C), and the Action scenario, as defined in R18-2-1422(D).
  3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference between the two scenarios in regional PM<sub>10</sub> emissions in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified ADOT, the MPO where one exists and USDOT) and in NO<sub>x</sub> emissions in an NO<sub>2</sub> nonattainment area. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. The analysis shall address the periods between the analysis years and the periods between 1990, the first milestone year if any, and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.
  4. Demonstrate that the regional PM<sub>10</sub> emissions and PM<sub>10</sub> precursor emissions, where applicable, (for PM<sub>10</sub> nonattainment areas) and NO<sub>x</sub> emissions (for NO<sub>2</sub> nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.
- C. Demonstrate that when the projects in the transportation plan and all other regionally significant transportation projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has

made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and USDOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

1. Determine the baseline regional emissions of PM<sub>10</sub> and PM<sub>10</sub> precursors, where applicable (for PM<sub>10</sub> nonattainment areas) and NO<sub>x</sub> (for NO<sub>2</sub> nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the control strategy implementation plan for that area includes a baseline emissions inventory for a different year.
2. Estimate the emissions of the applicable pollutant or pollutants from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant transportation projects in the nonattainment area, according to the requirements of R18-2-1430. Emissions shall be estimated for analysis years which are no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO<sub>2</sub> areas) or four years and six months following the date of designation (for PM<sub>10</sub> areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
3. Demonstrate that for each analysis year the emissions estimated in subsection (C)(2) are no greater than baseline emissions of PM<sub>10</sub> and PM<sub>10</sub> precursors, where applicable (for PM<sub>10</sub> nonattainment areas) or NO<sub>x</sub> (for NO<sub>2</sub> nonattainment areas) from highway and transit sources.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1426. Criteria and Procedures: Interim Period Reductions for PM<sub>10</sub> and NO<sub>2</sub> Areas (TIP)

- A. A TIP shall contribute to emission reductions or shall not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either subsection (B) or subsection (C) are met.
- B. Demonstrate that implementation of the plan and TIP and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and USDOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area, by performing a regional emissions analysis as follows:
  1. Determine the analysis years for which emissions are to be estimated, according to the requirements of R18-2-1425(B)(1).
  2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1423(C), and the Action scenario, as defined in R18-2-1423(D).
  3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by

the Baseline and Action scenarios as required by R18-2-1425(B)(3), and make the demonstration required by R18-2-1425(B)(4).

- C. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant transportation projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area (and transportation-related precursors of PM<sub>10</sub> in PM<sub>10</sub> nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and USDOT) and of NO<sub>x</sub> in an NO<sub>2</sub> nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by R18-2-1425(C).

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1427. Criteria and Procedures: Interim Period Reductions for PM<sub>10</sub> and NO<sub>2</sub> Areas (Project Not from a Plan and TIP)

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of R18-2-1425 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and R18-2-1425(B) is used to demonstrate satisfaction of this criterion, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1428. Transition from the Interim Period to the Control Strategy Period

- A. For areas which submit a control strategy implementation plan revision after November 24, 1993:
  1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by one year from the date the CAA requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.
    - a. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in subsection (A)(1) and such transportation plans and TIPs are consistent with the motor vehicle emissions budget in the applicable implementation plan or any previously submitted control strategy implementation plan revision.
    - b. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, the MPO where one exists, and USDOT, which initiates the sanction process under CAA §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
  3. Notwithstanding subsection (A)(2), if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- B.** For areas which have not submitted a control strategy implementation plan revision:
1. For areas whose CAA deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the state, the MPO where one exists, and USDOT of the state's failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m) all of the following shall apply:
    - a. No new transportation plans or TIPs may be found to conform beginning 120 days after the CAA deadline.
    - b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
  2. For areas whose CAA deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
    - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- C.** For areas which have not submitted a complete control strategy implementation plan revision:
1. For areas where EPA notifies the state, the MPO where one exists, and USDOT after November 24, 1993, that the control strategy implementation plan revision submitted by the state is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - a. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding.
    - b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
    - c. Notwithstanding subsections (C)(1)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
  2. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
    - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
    - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
    - c. Notwithstanding subsections (C)(2)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- D.** For areas which submitted a control strategy implementation plan before November 24, 1993:
1. The transportation plan and TIP shall have been demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made. From and after February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
  2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

3. Notwithstanding subsection (D)(2), if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply until November 25, 1994. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- E. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of subsections (E)(1) and (2) shall be met.
  1. Before a FHWA or FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, ADEQ shall be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the Action scenario, as required by R18-2-1422 through R18-2-1427, compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
  2. In the event of unresolved disputes on such project-level conformity determinations, ADEQ may escalate the issue to the governor consistent with the procedure in R18-2-1405, which applies for ADEQ comments on a conformity determination.
- F. Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures:
  1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by subsections (A)(1) and (D)(1)) does not require new emissions analysis and does not have to satisfy the requirements of R18-2-1410 and R18-2-1411 if all of the following are met:
    - a. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions.
    - b. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
  2. A redetermination of conformity as described in subsection (F)(1) is not considered a conformity determination for the purposes of R18-2-1404(E) or R18-2-1404(I) regarding the maximum intervals between conformity determinations. Conformity shall be determined according to all the applicable criteria and procedures of R18-2-1409 within three years of the last determination which did not rely on subsection (F)(1).
- G. Ozone nonattainment areas:
  1. The requirements of subsection (B)(1) apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which CAA §§ 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which CAA § 182(b)(1) requires to be submitted to EPA November 15, 1993.
  2. The requirements of subsection (B)(1) apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by CAA § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of subsection (B)(1) apply in this case even if the area has submitted the 15% emission reduction demonstration required by CAA § 182(b)(1).
  3. The requirements of subsection (A) apply when the implementation plan revisions required by CAA §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.
- H. Nonattainment areas which are not required to demonstrate reasonable further progress and attainment. If an area listed in R18-2-1436 submits a control strategy implementation plan revision, the requirements of subsections (A) and (E) apply. Because the areas listed in R18-2-1436 are not required to demonstrate reasonable further progress and attainment and therefore have no CAA deadline, the provisions of subsection (B) do not apply to these areas at any time.
- I. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by CAA § 175A is submitted to EPA, the requirements of subsection (A) or (D) apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.
- J. This Section does not become effective until June 1, 1996.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1429. Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under 23 U.S.C. or the Federal Transit Act

- A. This Section shall not apply to any of the following:
  1. A transportation project that is a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region.
  2. An exempt project listed in R18-2-1434.
- B. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a transportation project, regardless of funding source, without first determining whether the transportation project is regionally significant. In making this determination, the recipient shall not take any action that is inconsistent with the procedures developed by ADOT or the MPO pursuant to R18-2-1405(R).
- C. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless both of the following apply:
  1. There is a currently conforming transportation plan and TIP consistent with the requirements of R18-2-1414.
  2. The requirements of one of the following are met:
    - a. The project comes from a conforming plan and program consistent with the requirements of R18-2-1415.
    - b. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
    - c. During the control strategy or maintenance period, the project is consistent with the motor vehicle emis-

sions budget in the applicable implementation plan consistent with the requirements of R18-2-1420.

- d. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of R18-2-1424 (in ozone and CO nonattainment areas) or R18-2-1427 (in PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas).
  - e. During the transitional period, the project satisfies the requirements of both subsections (1)(2)(c) and (d).
- D. Pursuant to the consultation process established in R18-2-1405(O), ADOT or the MPO where one exists shall, not later than September 1, 1995, develop and make available the procedures to be used by any recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act to comply with subsections (B) and (C). These procedures may be revised periodically, as needed, using the same consultation process. At a minimum, such procedures shall provide for the following:
1. The minimum information required by the recipient to make determinations in compliance with subsections (B) and (C);
  2. The time-frames for action to be taken by the recipient;
  3. For transportation projects determined to be regionally significant, the documentation necessary to demonstrate that the requirements of 23 CFR 450.324(e), (g), and (h) have been met.
- E. After a transportation project is adopted or approved, no subsequent act defined as adoption or approval under this Section or under procedures developed to implement this Section shall be subject to subsection (B) or (C), unless project's design concept or scope have changed significantly since the project was first adopted or approved.
- F. A regionally significant transportation project found to be in conformity, either as a result of a TIP or a separate project analysis, shall retain such conformity finding, irrespective of subsequent analysis, unless the project fails to meet the conditions of its approval or undergoes a significant change in scope. In any event, a conformity determination shall lapse after three years in the absence of a redetermination; except that a project undergoing NEPA approval shall retain its conformity determination, unless none of the following major steps has occurred within the most recent three-year period:
1. NEPA process completion;
  2. Start of final design;
  3. Acquisition of a significant portion of the right-of-way;
  4. Approval of the plans, specifications, and estimates.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1430. Procedures for Determining Regional Transportation-related Emissions

- A. The following are general requirements for determining regional transportation-related emissions:
1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant transportation projects expected in the nonattainment or maintenance area, including FHWA or FTA projects proposed in the transportation plan and TIP and all other regionally significant transportation projects which are disclosed to ADOT or the MPO as required by R18-2-1405. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects shall be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not region-

ally significant may also be estimated in accordance with reasonable professional practice.

2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
  3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the CAA requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
  4. Notwithstanding subsection (A)(3), during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in R18-2-1418 through R18-2-1420, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of R18-2-1418 through R18-2-1420 are satisfied.
  5. A regional emissions analysis for the purpose of satisfying the requirements of R18-2-1422 through R18-2-1424 may account for the programs in subsection (A)(4), but the same assumptions about these programs shall be used for both the Baseline and Action scenarios.
  6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to R18-2-1405 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- B. For serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in subsections (B)(1) through (5).
1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall be used to estimate travel within the



- metropolitan planning area of the nonattainment area. Such a model shall possess all of the following attributes:
- a. The modeling methods and the functional relationships used in the model shall in all respects be in accordance with acceptable professional practice and reasonable for purposes of emission estimation.
  - b. The network-based model shall be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year.
  - c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used.
  - d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits.
  - e. Free-flow speeds on network links shall be based on empirical observations.
  - f. Peak and off-peak travel demand and travel times shall be provided.
  - g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available.
  - h. The model shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged.
  - i. A dependence of trip generation on the accessibility of destinations via the transportation system, including pricing, is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
  - j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
  - k. Consideration of emissions increases from construction-related congestion is not specifically required.
2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor or factors shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of USDOT and EPA.
  3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area and on roadways outside the urban transportation planning area.
  4. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
- C. For areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995:
    1. Procedures which satisfy some or all of the requirements of subsection (A) shall be used in all areas not subject to subsection (A) in which those procedures have been the previous practice of the MPO.
    2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods shall account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods shall also consider future economic activity, transit alternatives, and transportation system policies.
  - D. This subsection applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).
    1. Conformity demonstrations for projects in these areas may satisfy the requirements of R18-2-1420, R18-2-1424, and R18-2-1427 with one regional emissions analysis which includes all the regionally significant transportation projects in the nonattainment or maintenance area or portion thereof.
    2. The requirements of R18-2-1420 shall be satisfied according to the procedures in R18-2-1420(C), with references to the "transportation plan" taken to mean the statewide transportation plan.
    3. The requirements of R18-2-1424 and R18-2-1427 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area or portion thereof.
    4. The requirement of R18-2-1429(A)(2) shall be satisfied if all of the following are met:
      - a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area or portion thereof and supports the most recent conformity determination made according to the requirements of R18-2-1420, R18-2-1424 or R18-2-1427 (as modified by subsections (D)(2) and (D)(3)), as appropriate for the time period and pollutant.
      - b. The project's design concept and scope have not changed significantly from those which were

included in the regional emissions analysis or in a manner which would significantly impact use of the facility.

- E. For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub> as a contributor to the non-attainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.
- F. In PM<sub>10</sub> nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions analysis shall consider construction-related fugitive PM<sub>10</sub> and shall account for the level of construction activity, the fugitive PM<sub>10</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1431. Procedures for Determining Localized CO and PM<sub>10</sub> Concentrations (Hot-spot Analysis)

- A. In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W (“Guideline on Air Quality Models (Revised)” (1988), supplement (A) (1987) and supplement (B) (1993), EPA publication no. 450/2-78-027R, incorporated by reference and on file with the Department and with the Secretary of State), unless, after the interagency consultation process described in R18-2-1405 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:
  1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
  2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
  3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
  4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service;
  5. Where use of the “Guideline” models is practicable and reasonable given the potential for violations.
- B. In cases other than those described in subsection (A), other quantitative methods may be used if they represent reasonable and common professional practice.
- C. CO hot-spot analyses shall include the entire project and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration may be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.
- D. PM<sub>10</sub> hot-spot analysis shall be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM<sub>10</sub> hot-spot analysis shall be determined through the interagency consultation pro-

cess required in R18-2-1405. In PM<sub>10</sub> nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this subsection for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

- E. Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
- F. PM<sub>10</sub> or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are enforceable written commitments from the project sponsor or operator to the implementation of such measures, as required by R18-2-1433(A).
- G. CO and PM<sub>10</sub> hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established “Guideline” methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1432. Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan or Implementation Plan Submission

- A. In interpreting an applicable implementation plan or implementation plan submission with respect to its motor vehicle emissions budget, ADOT or the MPO where one exists and USDOT may not infer additions to the budget that are not explicitly intended by the implementation plan or submission. Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to ADOT or the MPO and USDOT in the emission budget for conformity purposes, ADOT or the MPO may not interpret the budget to be higher than the implementation plan’s estimate of future emissions. This applies in particular to applicable implementation plans or submissions which demonstrate that after implementation of control measures in the implementation plan any of the following apply:
  1. Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone.
  2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment.
  3. Emissions will be lower than needed to provide for continued maintenance.
- B. If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that “safety margin,” the state may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the governor and has been subject to a public

hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

- C. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan or implementation plan submission allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.
- D. If the applicable implementation plan or implementation plan submission estimates future emissions by geographic subarea of the nonattainment area, ADOT or the MPO where one exists and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan or implementation plan submission explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- E. If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination for the entire nonattainment area.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1433. Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures

- A. Prior to determining that a transportation project is in conformity, ADOT, the MPO where one exists, other recipient of funds designated under 23 U.S.C. or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM<sub>10</sub> or CO impacts. Before making conformity determinations enforceable written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by R18-2-1418 through R18-2-1420 and R18-2-1422 through R18-2-1424 or used in the project-level hot-spot analysis required by R18-2-1416 and R18-2-1421.
- B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and comply with the obligations of such commitments.
- C. Enforceable written commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and that project sponsors shall comply with such commitments.
- D. During the control strategy and maintenance periods, if ADOT, the MPO, or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of R18-2-1416, R18-2-1418, and R18-2-1419 are satisfied without the mitigation or control measure and so notifies the agencies involved in the inter-agency consultation process required under R18-2-1405. ADOT or the MPO where one exists and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of R18-2-1418 and R18-2-1419 and that the project still satisfies the requirements of R18-2-1416, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1434. Exempt Projects

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if ADOT or the MPO where one exists in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.

Table 2.

#### Exempt Projects SAFETY

1. Railroad or highway crossing.
2. Hazard elimination program.
3. Safer non-federal-aid system roads.
4. Shoulder improvements.
5. Increasing sight distance.
6. Safety improvement program.
7. Traffic control devices and operating assistance other than signalization projects.
8. Railroad or highway crossing warning devices.
9. Guardrails, median barriers, crash cushions.
10. Pavement resurfacing or rehabilitation.
11. Pavement marking demonstration.
12. Emergency relief (23 U.S.C. 125).
13. Fencing.
14. Skid treatments.
15. Safety roadside rest areas.
16. Adding medians.
17. Truck climbing lanes outside the urbanized area.
18. Lighting improvements.
19. Widening narrow pavements or reconstructing bridges (no additional travel lanes).
20. Emergency truck pullovers.

#### MASS TRANSIT

1. Operating assistance to transit agencies.
2. Purchase of support vehicles.
3. Rehabilitation of transit vehicles. (In PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)
4. Purchase of office, shop, and operating equipment for existing facilities.
5. Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
6. Construction or renovation of power, signal, and communications systems.
7. Construction of small passenger shelters and information kiosks.
8. Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
9. Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
10. Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet. (In PM<sub>10</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)

11. Construction of new bus or rail storage or maintenance facilities categorically excluded in 23 CFR 771.

#### AIR QUALITY

1. Continuation of ride-sharing and van-pooling promotion activities at current levels.
2. Bicycle and pedestrian facilities.

#### OTHER

1. Specific activities which do not involve or lead directly to construction, such as:
  - a. Planning and technical studies.
  - b. Grants for training and research programs.
  - c. Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
  - d. Federal-aid systems revisions.
2. Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action.
3. Noise attenuation.
4. Advance land acquisitions (23 CFR 712 or 23 CFR 771).
5. Acquisition of scenic easements.
6. Plantings, landscaping, etc.
7. Sign removal.
8. Directional and informational signs.
9. Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
10. Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1435. Projects Exempt from Regional Emissions Analyses

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM<sub>10</sub> concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

**Table 3**

#### Projects Exempt From Regional Emissions Analyses

1. Intersection channelization projects.
2. Intersection signalization projects at individual intersections.
3. Interchange reconfiguration projects.
4. Changes in vertical and horizontal alignment.
5. Truck size and weight inspection stations.
6. Bus terminals and transfer points.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1436. Special Provisions for Nonattainment Areas Which are Not Required to Demonstrate Reasonable Further Progress and Attainment

- A. This Section applies in the following areas:
  1. Rural transport ozone nonattainment areas,
  2. Marginal ozone areas,
  3. Submarginal ozone areas,
  4. Transitional ozone areas,

5. Incomplete data ozone areas,
6. Moderate CO areas with a design value of 12.7 ppm or less,
7. Not classified CO areas.

- B. The criteria and procedures in R18-2-1422 through R18-2-1424 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in R18-2-1418 through R18-2-1420, except as otherwise provided in subsection (C).

- C. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in R18-2-1418 through R18-2-1420 apply in lieu of the procedures in R18-2-1422 through R18-2-1424.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R18-2-1437. Reserved

#### R18-2-1438. General Conformity for Federal Actions

The following subparts of 40 CFR 93, Determining Conformity of Federal Actions to State or Federal Implementation Plans, and all accompanying appendices, adopted as of July 1, 1994, and no future editions, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans (58 FR 63253, November 30, 1993).

#### Historical Note

Adopted effective January 31, 1995 (Supp. 95-1).

### ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

#### R18-2-1501. Definitions

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

1. "Activity fuels" means those fuels created by human activities such as thinning or logging.
2. "ADEQ" means the Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Burn plan" means the ADEQ form that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
5. "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
6. "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
7. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
8. "Emission reduction techniques (ERT)" means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.

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9. “Federal land manager (FLM)” means any department, agency, or agent of the federal government, including the following:
  - a. United States Forest Service,
  - b. United States Fish and Wildlife Service,
  - c. National Park Service,
  - d. Bureau of Land Management,
  - e. Bureau of Reclamation,
  - f. Department of Defense,
  - g. Bureau of Indian Affairs, and
  - h. Natural Resources Conservation Service.
10. “F/SLM” means a federal land manager or a state land manager.
11. “Local fire management officer” means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. “Mop-up” means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.
13. “National Wildfire Coordinating Group” means the national inter-agency group of federal and state land managers that shares similar wildfire suppression programs and has established standardized inter-agency training courses and qualifications for fire management positions.
14. “Non-burning alternatives to fire” means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
15. “Planned resource management objectives” means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
16. “Prescribed burning” means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction or residential burning under R18-2-602.
17. “Prescribed fire manager” means a person designated by a F/SLM as responsible for prescribed burning for that land manager.
18. “Smoke management prescription” means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
19. “Smoke management techniques (SMT)” means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.
20. “Smoke management unit” means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.
21. “State land manager (SLM)” means any department, agency, or political subdivision of the state government including the following:
  - a. State Land Department,
  - b. Department of Transportation,
  - c. Department of Game and Fish, and
  - d. Parks Department.
22. “Wildfire” means an unplanned wildland fire subject to appropriate control measures. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.
23. “Wildland fire use” means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning.

**Historical Note**

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

**R18-2-1502. Applicability**

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. A private or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.
- C. The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- D. Notwithstanding subsection (C), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.
- E. ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.

**Historical Note**

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

**R18-2-1503. Annual Registration, Program Evaluation and Planning**

- A. Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.
- B. Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year.
- C. A F/SLM shall include the following information on the registration form:
  1. The F/SLM’s name, address, and business telephone number;
  2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;
  3. All prescribed burn projects and potential wildland fire use areas planned for the next year;
  4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to

- support the annual emissions goal for each prescribed burn project;
  - 5. Planned use of any smoke management techniques for each prescribed burn project;
  - 6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use;
  - 7. A list of all burn projects that were completed during the previous year;
  - 8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and
  - 9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas.
- D.** After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.
- E.** A F/SLM may amend a registration at any time with a written submission to ADEQ.
- F.** ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.
- G.** ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLMs to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.
- H.** At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.
- 4. The number of acres to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
  - 5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
  - 6. A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
  - 7. Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
  - 8. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
  - 9. After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1505. Prescribed Burn Requests and Authorization

- A.** Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the “Daily Burn Request” form supplied by ADEQ. The Daily Burn Request form shall include:
- 1. The contact information of the F/SLM conducting the burn;
  - 2. Each day of the burn;
  - 3. The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;
  - 4. Projected smoke impacts; and
  - 5. Any local conditions or circumstances known to the F/SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.
- B.** After consultation with the F/SLM, ADEQ may request additional information related to the burn, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process.
- C.** The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.
- D.** An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:
- 1. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal.
  - 2. If ADEQ fails to address a Burn Request by 10:00 p.m. of the business day on which the request is submitted, the Burn Request is approved by default after the burner

#### R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the “Burn Plan” form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. Revisions to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. To facilitate the Daily Burn authorization process under R18-2-1505, the F/SLM shall include on the Burn Plan form:

- 1. An emergency telephone number that is answered 24 hours a day, seven days a week;
- 2. Burn prescription;
- 3. Smoke management prescription;

makes a good faith effort to contact ADEQ to confirm that the Burn Request was received.

3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.
- E. If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public when necessary. After consultation with ADEQ, the smoke management prescription or burn plan may be modified.
- F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).  
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under R18-2-1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active wildland fire use incidents, and active multiple-day burns, and consideration of potential long-term emissions estimates;
3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;
9. Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Act and 40 CFR 51.309;
10. Assessment of duration and intensity of smoke emissions to minimize cumulative impacts;
11. Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon monoxide non-attainment areas, or other smoke-sensitive areas; and
12. Protection of the National Ambient Air Quality Standards.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).  
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

- A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2:00 p.m. of the business day following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:
  1. Any known conditions or circumstances that could impact the Daily Burn decision process;

2. The date, location, fuel type, fuel loading, and acreage accomplishments;
3. The ERTs and SMTs described in R18-2-1509 and R18-2-1510, respectively, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.
- B. The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.
- C. ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.
- D. The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).  
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting

- A. In order for ADEQ to participate in the wildland fire use decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.
- B. For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such designation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:
  1. An emergency telephone number that is answered 24 hours a day, seven days a week;
  2. Anticipated burn prescription;
  3. Anticipated smoke management prescription;
  4. The estimated daily number of acres, quantity, and type of fuel to be burned;
  5. The anticipated maximum allowable perimeter or size with map;
  6. Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;
  7. The anticipated duration of the wildland fire use incident;
  8. The anticipated long-range weather trends for the site;
  9. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and
  10. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.

- C. ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.
- D. The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.
- E. The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.
- F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.
- 9. Using a backing fire in grass fuels;
- 10. Burning fuels with an air curtain destructor, as defined in R18-2-101, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
- 11. Extinguishing or mopping-up of smoldering fuels;
- 12. Chunking of piles and other consolidations of burning material to enhance flaming and fuel consumption, and to minimize smoke production;
- 13. Burning before litter fall;
- 14. Burning before green-up of fuels;
- 15. Burning before recently cut large fuels cure in areas with activity; and
- 16. Burning just before precipitation to reduce fuel smoldering and consumption.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).  
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1510. Smoke Management Techniques

- A. Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B. Smoke management techniques include:
  - 1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
  - 2. Igniting burns under good-to-excellent ventilation conditions;
  - 3. Suspending operations under poor smoke dispersion conditions;
  - 4. Considering smoke impacts on local community activities and land users;
  - 5. Burning piles when other burns are not feasible, such as when snow or rain is present;
  - 6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;
  - 7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
  - 8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
  - 9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
  - 10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
  - 11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1510 renumbered to R18-2-1511; new R18-2-1510 made by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1511. Monitoring

- A. ADEQ may require a F/SLM to monitor air quality before or during a prescribed burn or a wildland fire use incident if necessary to assess smoke impacts. Air quality monitoring may be

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).  
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1509. Emission Reduction Techniques

- A. Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B. Emission Reduction Techniques include:
  - 1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales, or public firewood access, when economically feasible;
  - 2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
  - 3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
  - 4. Burning only fuels essential to meet resource management objectives;
  - 5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
  - 6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
  - 7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
  - 8. Burning fuels in piles;



conducted using both federal and non-federal reference method as well as other techniques.

- B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long-term established remote automated weather station.
- C. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other smoke-sensitive area:
  1. Smoke plume measurements, using a format supplied by ADEQ; and
  2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.
- D. An F/SLM shall make monitoring information required under subsection (C) available to ADEQ on the business day following the burn ignition.
- E. The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1511 renumbered to R18-2-1512; new R18-2-1511 renumbered from R18-2-1510 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1512. Burner Qualifications

- A. All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.
- B. A Prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following:
  1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management; or
  2. Attendance at an ADEQ-approved smoke management workshop.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1512 renumbered to R18-2-1513; new R18-2-1512 renumbered from R18-2-1511 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1513. Public Notification and Awareness Program; Regional Coordination

- A. The Director shall conduct a public education and awareness program in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. The program shall include

smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.

- B. ADEQ shall make annual registration, prescribed burn approval, and wildfire and wildland fire use activity information readily available to the public and to facilitate regional coordination efforts and public notification.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1513 renumbered to R18-2-1514; new R18-2-1513 renumbered from R18-2-1512 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1514. Surveillance and Enforcement

- A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with actual conditions, smoke dispersion, and air quality impacts. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.
- B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation under A.R.S. § 49-463.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1514 repealed; new R18-2-1514 renumbered from R18-2-1513 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

#### R18-2-1515. Forms; Electronic Copies; Information Transfers

- A. ADEQ shall make available on paper and in electronically readable format any form required to be developed by ADEQ and completed by a F/SLM.
- B. After consultation with an F/SLM, ADEQ may require the F/SLM to provide data in a manner that facilitates electronic transfers of information.

#### Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

### ARTICLE 16. VISIBILITY; REGIONAL HAZE

*Article 16, consisting of Sections R18-2-1601 through R18-2-1606, made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).*

#### R18-2-1601. Definitions

In addition to the definitions contained in Articles 1 and 4 of this Chapter and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. "Best available retrofit technology (BART)" means an emission limitation based on the degree of reduction achievable through the application of the best system of

continuous emission reduction for each pollutant emitted by an existing stationary facility. The emission limitation is established on a case-by-case basis under R18-2-1605.

2. "Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation before August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. A person who determines potential to emit shall count fugitive emissions to the extent quantifiable.
  - a. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
  - b. Coal cleaning plants (thermal dryers);
  - c. Kraft pulp mills;
  - d. Portland cement plants;
  - e. Primary zinc smelters;
  - f. Iron and steel mill plants;
  - g. Primary aluminum ore reduction plants;
  - h. Primary copper smelters;
  - i. Municipal incinerators capable of charging more than 250 tons of refuse per day;
  - j. Hydrofluoric, sulfuric, and nitric acid plants;
  - k. Petroleum refineries;
  - l. Lime plants;
  - m. Phosphate rock processing plants;
  - n. Coke oven batteries;
  - o. Sulfur recovery plants;
  - p. Carbon black plants (furnace process);
  - q. Primary lead smelters;
  - r. Fuel conversion plants;
  - s. Sintering plants;
  - t. Secondary metal production facilities;
  - u. Chemical process plants;
  - v. Fossil-fuel boilers of more than 250 million British thermal units per hour heat input;
  - w. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;
  - x. Taconite ore processing facilities;
  - y. Glass fiber processing plants; and
  - z. Charcoal production facilities.
3. "Federal Land Manager" means the secretary of the department, or the secretary's designee, with authority over the Federal Class I area.
4. "Mandatory Federal Class I Area" means any area identified in 40 CFR 81.400 through 81.436.
5. "Reasonably attributable" means ascribable by visual observation or other techniques described in R18-2-1604.
6. "Reasonably attributable visibility impairment" means visibility impairment that is caused by the emission of air pollutants from one source, or a small group of sources.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

#### R18-2-1602. Applicability

This Article applies to any existing stationary source located in the state that may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Federal Class I area identified in 40 CFR 81.401 through 81.436. Mandatory Federal Class I areas within Arizona are: Chiricahua National Monument Wilderness, Chiricahua Wilderness, Galiuro Wilderness, Grand Canyon National Park, Mazatzal Wilderness, Mount Baldy Wilderness, Petrified Forest National Park, Pine Mountain Wilderness, Saguaro Wilderness, Sierra Ancha Wilderness, Superstition Wilderness, and Sycamore Canyon Wilderness.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

#### R18-2-1603. Certification of Impairment

- A. A Federal Land Manager with authority over a mandatory Federal Class I area may certify to the Director, at any time, that a reasonably attributable visibility impairment exists in a mandatory Federal Class I area. The Director may also certify that reasonably attributable visibility impairment exists in any mandatory Federal Class I area to assure reasonable progress under section 169A(b)(2) of the Clean Air Act.
- B. Documentation that supports the Federal Land Manager or Director's certification shall include:
  1. The mandatory Federal Class I area for which visibility impairment is being certified,
  2. Any information documenting the basis for the certification of impairment.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

#### R18-2-1604. Attribution Analysis; Finding

- A. If a mandatory Federal Class I area is certified as having reasonably attributable visibility impairment, the Director shall conduct an attribution analysis to identify each existing stationary source that may be reasonably anticipated to cause or contribute to visibility impairment. The Director shall notify the Federal Land Manager, affected source or small group of sources, and local air pollution control officer of the intent to conduct an attribution analysis. The attribution analysis shall be based on the following:
  1. Monitoring information obtained through the Arizona Class I Visibility Monitoring Network or special studies approved by ADEQ to ascertain:
    - a. The times visibility impairment occurred, and
    - b. The pollutants contributing to the visibility impairment;
  2. Transport analysis or air quality modeling based upon meteorological records to ascertain whether the pollutants were transported to the mandatory Federal Class I area;
  3. Other available studies, modeling analyses, and emissions inventories of point, area, and mobile source emissions to ascertain:
    - a. The pollutant causing the impairment, and
    - b. The source, or a small group of sources, emitting the pollutant;
  4. Other relevant supporting documentation provided by the Federal Land Manager or Director used to make the draft attribution analysis finding; and
  5. Consideration of any documentation provided by the source, a small group of sources, or other interested parties.
- B. In conducting the attribution analysis, the Director shall use monitoring information, meteorological records, and emissions inventories that represent times and locations reasonably concurrent with the visibility impairment.
- C. The Director shall issue a draft attribution finding that impairment has or has not occurred, and provide public notice of the draft attribution finding. The Director shall publish notice of the draft attribution finding in a newspaper of general circulation in each county containing the mandatory Federal Class I area and the affected source. The Director shall provide at least 30 days from the date of the notice for public comment. Written comments to the Director shall include the name of the person and the person's agent or attorney, if any, and shall clearly set forth reasons why the Director should review the draft attri-

bution finding. The Director shall issue a final attribution finding after the public comment period. If the Director finds existing stationary sources cause or contribute to visibility impairment in a mandatory Federal Class I area, the source shall be subject to a BART Control Analysis under R18-2-1605.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

#### R18-2-1605. BART Control Analysis; Finding

- A. The Director shall analyze for BART controls each existing stationary source for which a final attribution finding is made under R18-2-1604(C). The Director shall consider the following factors:
1. Available control technology;
  2. New source performance standards (NSPS) in Article 9;
  3. Alternative control systems if retrofitting to comply with applicable NSPS standards in Article 9 is infeasible;
  4. Cost of compliance;
  5. Energy and non-air quality environmental impacts of compliance;
  6. Existing pollution control technology in use at the source or small group of sources;
  7. Remaining useful life of the source or small group of sources;
  8. Net environmental impact associated with the proposed emission control system;
  9. Economic impacts associated with installing and operating the proposed emission control system; and
  10. Degree of improvement in visibility anticipated to result from application of the proposed emission control system.
- B. The Director shall issue a draft BART finding, and provide public notice of the draft BART finding. The Director shall publish notice of the draft BART finding in a newspaper of general circulation in each county containing the mandatory Federal Class I area and the affected source. The Director shall provide at least 30 days from the date of the notice for public comment. Written comments to the Director shall include the name of the person and the person's agent or attorney, and shall clearly set forth reasons why the Director should review the draft BART finding. The Director shall issue a final BART finding after the public comment period.
1. The Director shall submit each final BART finding to the Administrator as a revision to the SIP.
  2. The Director shall require that each existing stationary source meet BART as expeditiously as practicable but in no case later than five years after EPA approval of the SIP revision.
- C. If the Director determines that technological or economic limitations on the applicability of measurement methodology to a particular existing stationary source would make the imposition of an emission standard infeasible, the Director may, as part of the finding under subsection (B), prescribe a design, equipment, work practice, operational standard, or combination of design, equipment, work practice, or operational standard. The standard, to the degree possible, shall set forth the emission reduction to be achieved by implementation of the design, equipment, work practice, or operation, and shall provide for compliance by means that achieve equivalent results.
- D. The Director shall make a finding that the attributable source satisfies the BART requirement if the attributable source:
1. Voluntarily applies best available retrofit technology;
  2. Previously applied emission control standards equivalent to BART; or

3. Agrees to shutdown or curtail operations at the attributable source within five years of the finding. An attributable source that does not shutdown or curtail operations shall meet BART as expeditiously as practicable, but in no case later than five years after EPA's approval of the revision to the SIP.

- E. If the Director determines that the imposition of BART or a standard under subsection (C) is infeasible at the time of the finding, the Director shall require the attributable source to install and operate BART at a later date when the Director determines that BART or equivalent controls are feasible.
- F. The Director shall provide for a BART control analysis of any existing stationary source that might cause or contribute to impairment of visibility in any mandatory Federal Class I area identified under this Article at such time as the Administrator determines new control technology for the pollutant becomes reasonably available:
1. The pollutant is emitted by that existing stationary source,
  2. Controls representing BART for the pollutant have not previously been required under this Article, and
  3. The impairment of visibility in any mandatory Federal Class I area is reasonably attributable to the emissions of that pollutant.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

#### R18-2-1606. Exemption from BART

Any existing stationary source required to install, operate, and maintain BART under this Article, may apply to the Administrator for an exemption from that requirement according to 40 CFR 51.303. The existing stationary source shall obtain the Director's written concurrence before sending the application for exemption to the Administrator.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

#### R18-2-1607. Reserved

#### R18-2-1608. Reserved

#### R18-2-1609. Reserved

#### R18-2-1610. Expired

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### R18-2-1611. Expired

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

#### R18-2-1612. Expired

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 386,

effective December 20, 2004 (Supp. 04-4). Section heading corrected at request of the Department, Office File No. M12-134, filed April 5, 2012 (Supp. 11-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

**R18-2-1613. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

**ARTICLE 17. EXPIRED****R18-2-1701. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**Table 1. Expired****Historical Note**

Table 1 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 1 expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1702. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

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

Table 2 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 2 expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1703. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1704. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1705. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1706. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1707. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1708. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

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

Table 3 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 3 expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**R18-2-1709. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

**ARTICLE 18. REPEALED****R18-2-1801. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1802. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1803. Repealed**

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1804. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1805. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1806. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1807. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1808. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1809. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1810. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1811. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**R18-2-1812. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R.

2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

**APPENDIX 1. STANDARD PERMIT APPLICATION FORM AND FILING INSTRUCTIONS****FILING INSTRUCTIONS**

No application shall be considered complete until the Director has determined that all information required by this application form and the applicable statutes and regulations has been submitted. The Director may waive certain application requirements for specific source types, pursuant to R18-2-304(B). For permit revisions, the applicant need only supply information which directly pertains to the revision. The Director shall develop special guidance documents and forms to assist certain sources requiring Class 2 permits in completing the application form and filing instructions. Guidance documents can be requested by contacting the Office of Air Quality at the address and phone number given on the "Standard Permit Application Form."

In addition to the information required on the application form, the applicant shall supply the following:

1. Description of the process to be carried out in each unit (include Source Classification Code, if known).
2. Description of product.
3. Description of alternate operating scenario, if desired by applicant (include Source Classification Code).
4. Description of alternate operating scenario product, if applicable.
5. A flow diagram for all processes.
6. A material balance for all processes (optional, only if emission calculations are based on a material balance).
7. Emissions Related Information:
  - a. The source shall submit the potential emissions of regulated air pollutants as defined in R18-2-101 for all emission sources. Emissions shall be expressed in pounds per hour, tons per year, and such other terms as may be requested. Emissions shall be submitted using the standard "Emission Sources" portion of the "Standard Permit Application Form." Emissions information shall include fugitive emissions in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.
  - b. The source shall identify and describe all points of emissions and to submit additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable to the source and sufficient to determine any fees under this Chapter.
8. Citation and description of all applicable requirements as defined in R18-2-101 including voluntarily accepted limits pursuant to R18-2-306.01.
9. An explanation of any proposed exemptions from otherwise applicable requirements.
10. The following information to the extent it is needed to determine or regulate emissions or to comply with the requirements of R18-2-306.01:
  - a. Maximum annual process rate for each piece of equipment which generates air emissions.
  - b. Maximum annual process rate for the whole plant.
  - c. Maximum rated hourly process rate for each piece of equipment which generates air emissions.
  - d. Maximum rated hourly process rate for the whole plant.

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- e. For all fuel burning equipment including generators, a description of fuel use, including the type used, the quantity used per year, the maximum and average quantity used per hour, the percent used for process heat, and higher heating value of the fuel. For solid fuels and fuel oils, state the potential sulfur and ash content.
- f. A description of all raw materials used and the maximum annual and hourly, monthly, or quarterly quantities of each material used.
- g. Anticipated Operating Schedules
  - i. Percent of annual production by season.
  - ii. Days of the week normally in operation.
  - iii. Shifts or hours of the day normally in operation.
  - iv. Number of days per year in operation.
- h. Limitations on source operations and any work practice standards affecting emissions.
- 11. A description of all process and control equipment for which permits are required including:
  - a. Name.
  - b. Make (if available).
  - c. Model (if available).
  - d. Serial number (if available).
  - e. Date of manufacture (if available).
  - f. Size/production capacity.
  - g. Type.
- 12. Stack Information:
  - a. Identification.
  - b. Description.
  - c. Building Dimensions.
  - d. Exit Gas Temperature.
  - e. Exit Gas Velocity.
  - f. Height.
  - g. Inside Dimensions.
- 13. Site diagram which includes:
  - a. Property boundaries.
  - b. Adjacent streets or roads.
  - c. Directional arrow.
  - d. Elevation.
  - e. Closest distance between equipment and property boundary.
  - f. Equipment layout.
  - g. Relative location of emission sources or points.
  - h. Location of emission points and non-point emission areas.
  - i. Location of air pollution control equipment.
- 14. Air Pollution Control Information:
  - a. Description of or reference to any applicable test method for determining compliance with each applicable requirement.
  - b. Identification, description and location of air pollution control equipment, including spray nozzles and hoods, and compliance monitoring devices or activities.
  - c. The rated and operating efficiency of air pollution control equipment.
  - d. Data necessary to establish required efficiency for air pollution control equipment (e.g. air to cloth ratio for baghouses, pressure drop for scrubbers, and warranty information).
  - e. Evidence that operation of the new or modified pollution control equipment will not violate any ambient air quality standards, or maximum allowable increases under R18-2-218.
- 15. Equipment manufacturer's bulletins or shop drawings are acceptable for the purposes of supplying the information required by any item in numbers 11, 12, or 14 of this Appendix.
- 16. Compliance Plan:
  - a. A description of the compliance status of the source with respect to all applicable requirements including, but not limited to:
    - i. A demonstration that the source or modification will comply with the applicable requirements contained in Article 6.
    - ii. A demonstration that the source or modification will comply with the applicable requirements contained in Article 7.
    - iii. A demonstration that the source or modification will comply with the applicable requirements contained in Article 8.
    - iv. A demonstration that the source or modification will comply with the applicable requirements contained in Article 9.
    - v. A demonstration that the source or modification will comply with the applicable requirements contained in Article 11 and in rules promulgated pursuant to A.R.S. § 49-426.03.
    - vi. A demonstration that the source or modification will comply with the applicable requirements contained in Article 17.
    - vii. A demonstration that the source or modification will comply with any voluntarily accepted limitations pursuant to R18-2-306.01.
  - b. A compliance schedule as follows:
    - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements
    - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
    - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
  - c. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.
  - d. The compliance plan content requirements specified in this subsection shall apply and be included in the

- acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act and incorporated pursuant to R18-2-333 with regard to the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.
17. Compliance Certification: A certification of compliance with all applicable requirements including voluntarily accepted limitations pursuant to R18-2-306.01 by a responsible official consistent with R18-2-309(A)(5). The certification shall include:
    - a. Identification of the applicable requirements which are the basis of the certification;
    - b. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
    - c. A schedule for submission of compliance certifications during the permit term to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and
    - d. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements.
    - e. A certification of truth, accuracy, and completeness pursuant to R18-2-304(H).
  18. Acid Rain Program Compliance Plan: Sources subject to the Federal acid rain regulations shall use nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act and incorporated pursuant to R18-2-333.
  19. A new major source as defined in R18-2-401 or a major modification shall submit all information required in this Appendix and information necessary to show compliance with Article 4 including, but not limited to:
    - a. For sources located in a Non-Attainment Area:
      - i. In the case of a new major source as defined in R18-2-401 or a major modification subject to an emission limitation which is LAER (Lowest Achievable Emission Rate) for that source or facility, the application shall contain a determination of LAER that is consistent with the requirements of the definition of LAER contained in R18-2-401. The demonstration shall contain the data and information relied upon by the applicant in determining the emission limitation that is LAER for the source or facility for which a permit is sought.
      - ii. In the case of a new major source as defined in R18-2-401 or a major modification subject to the demonstration requirement of R18-2-403(A)(2), the applicant shall submit such demonstration in a form that lists and describes all existing major sources owned or operated by the applicant and a statement of compliance with all conditions contained in the permits or conditional orders of each of the sources.
    - iii. In the case of a new major source as defined in R18-2-401 or a major modification subject to the offset requirements described in R18-2-403(A)(3), the applicant shall demonstrate the manner in which the new major source or major modification meets the requirements of R18-2-404.
    - iv. An applicant for a new major source as defined in R18-2-401 or a major modification for volatile organic compounds or carbon monoxide (or both) which will be located in a nonattainment area for photochemical oxidants or carbon monoxide (or both) shall submit the analysis described in R18-2-403(B).
  - b. For sources located in an Attainment Area:
    - i. A demonstration of the manner in which a new major source or major modification which will be located in an attainment area for a pollutant for which the source is classified as a major source as defined in R18-2-401 or the modification is classified as a major modification will meet the requirements of R18-2-406.
    - ii. In the case of a new major source as defined in R18-2-401 or major modification subject to an emission limitation which is BACT (Best Available Control Technology) for that source or facility, the application shall contain a determination of BACT that is consistent with the requirements of the definition of BACT contained in R18-2-101. The demonstration shall contain the data and information relied upon by the applicant in determining the emission limitation that is BACT for the source or facility for which a permit is sought.
    - iii. In the case of a new major source as defined in R18-2-401 or major modification required to perform and submit an air impact analysis in the form prescribed in R18-2-407, such an analysis shall meet the requirements of R18-2-406. Unless otherwise exempted in writing by the Director, the air impact analysis shall include all of the information and data specified in R18-2-407.
    - iv. If an applicant seeks an exemption from any or all of the requirements of R18-2-406, the applicant shall provide sufficient information and data in the application to demonstrate compliance with the requirements of the subsection(s) under which an exemption is sought.
20. Calculations on which all information requested in this Appendix is based.

## Department of Environmental Quality – Air Pollution Control

## STANDARD PERMIT APPLICATION FORM

(As required by A.R.S. § 49-426, and A.A.C. Title 18, Chapter 2, Article 3)

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF AIR QUALITY

P.O. Box 600 • Phoenix, AZ 85001-0600 • Phone: (602) 207-2338

1. Permit to be issued to: (Business license name of organization that is to receive permit) \_\_\_\_\_
2. Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_
3. Plant Name (if different item #1 above): \_\_\_\_\_
4. Name (or names) of Owner or Operator: \_\_\_\_\_ Phone: \_\_\_\_\_
5. Name of Owner's Agent: \_\_\_\_\_ Phone: \_\_\_\_\_
6. Plant/Site Manager or Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_
7. Proposed Equipment/Plant Location Address: \_\_\_\_\_  
City: \_\_\_\_\_ County: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Indian Reservation (if applicable): \_\_\_\_\_  
Section/Township/Range, Latitude/Longitude, Elevation: \_\_\_\_\_
8. General Nature of Business: \_\_\_\_\_  
Standard Industrial Classification Code: \_\_\_\_\_
9. Type of Organization:  
☐ Corporation ☐ Individual Owner  
☐ Partnership ☐ Government Entity (Government Facility Code: \_\_\_\_\_)  
☐ Other \_\_\_\_\_
10. Permit Application Basis: ☐ New Source ☐ Revision ☐ Renewal of Existing Permit  
☐ Portable Source ☐ General Permit (Check all that apply.)  
For renewal or modification, include existing permit number: \_\_\_\_\_  
Date of Commencement of Construction or Modification: \_\_\_\_\_  
Is **any** of the equipment to be leased to another individual or entity? ☐ Yes ☐ No
11. Signature of Responsible Official of Organization: \_\_\_\_\_  
Official Title of Signer: \_\_\_\_\_
12. Typed or Printed Name of Signer: \_\_\_\_\_  
Date: \_\_\_\_\_ Telephone Number: \_\_\_\_\_



1. Identify each emission point with a unique number for this plant site, consistent with emission point identification used on plot plan, previous permits, and Emissions Inventory Questionnaire. Include fugitive emissions. Limit emission point number to eight (8) character spaces. For each emission point use as many lines as necessary to list regulated air pollutant data. Typical emission point names are: heater, vent, boiler, tank, reactor, separator, baghouse, fugitive, etc. Abbreviations are O.K.
2. Components to be listed include regulated air pollutants as defined in R18-2-101. Examples of typical component names are: Carbon Monoxide (CO), Nitrogen Oxides (NOx), Sulfur Dioxide (SO<sub>2</sub>), Volatile Organic Compounds (VOC), particulate matter (PM), particulate less than 10 microns (PM<sub>10</sub>), etc. Abbreviations are O.K.

**PAGE 2 OF 2**

Former Appendix 1 repealed, new Appendix 1 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended effective December 1, 1988 (Supp. 88-4). Appendix 1 repealed, new Appendix 1 adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). The reference to R18-2-101(80) amended to reference R18-2-101(84) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

**APPENDIX 2. TEST METHODS AND PROTOCOLS**

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as applicable requirements revised as of June 28, 2013, and no future editions or amendments. These standards are on file with the Department, and are also available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

- A. 40 CFR 50;
  - B. 40 CFR 50, all appendices;
  - C. 40 CFR 51, Appendix M, Section IV of Appendix S, and Appendix W;
  - D. 40 CFR 52, Appendices D and E;
  - E. 40 CFR 53;
  - F. 40 CFR 58;
  - G. 40 CFR 58, all appendices;
  - H. 40 CFR 60, all appendices;
  - I. 40 CFR 61, all appendices;
  - J. 40 CFR 63, all appendices;
  - K. 40 CFR 75, all appendices.
  - L. 40 CFR 51.128, Appendix A(1)(B).
  - M. Silt Content Test Method. The purpose of this test method is to estimate the silt content of the trafficked parts of commercial farm roads, as defined in R18-2-610. The higher the silt content, the more fine dust particles that are released when cars and trucks drive on commercial farm roads.
1. Equipment:
    - a. A set of sieves with the following openings: 4 millimeters (mm), 2mm, 1 mm, 0.5 mm and 0.25 mm and a lid and collector pan
    - b. A small whisk broom or paintbrush with stiff bristles and dustpan 1 ft. in width. (The broom/brush should preferably have one, thin row of bristles no longer than 1.5 inches in length.)
    - c. A spatula without holes A small scale with half ounce increments (e.g. postal/package scale)
    - d. A shallow, lightweight container (e.g. plastic storage container)
    - e. A sturdy cardboard box or other rigid object with a level surface
    - f. Basic calculator
    - g. Cloth gloves (optional for handling metal sieves on hot, sunny days)
    - h. Sealable plastic bags (if sending samples to a laboratory)
    - i. Pencil/pen and paper
  2. Step 1: Look for a routinely-traveled surface, as evidenced by tire tracks. [Only collect samples from surfaces that are not wet or damp due to precipitation, dew or watering.] Use caution when taking samples to ensure personal safety with respect to passing vehicles. Gently press the edge of a dustpan (1 foot in width) into the surface four times to mark an area that is 1 square foot. Collect a sample of loose surface material using a whisk broom or brush and slowly sweep the material into the dustpan, minimizing escape of dust particles. Use a spatula to lift heavier elements such as gravel. Only collect dirt/gravel to an approximate depth of 3/8 inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is < 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface. In other words, you are only collecting a surface sample of loose material down to 1 cm. In order to confirm that samples are collected to 1 cm. in depth, a wooden dowel

or other similar narrow object at least one foot in length can be laid horizontally across the survey area while a metric ruler is held perpendicular to the dowel. At this point, you can choose to place the sample collected into a plastic bag or container and take it to an independent laboratory for silt content analysis. A reference to the procedure the laboratory is required to follow is in subsection (10) below.

3. Step 2: Place a scale on a level surface. Place a lightweight container on the scale. Zero the scale with the weight of the empty container on it. Transfer the entire sample collected in the dustpan to the container, minimizing escape of dust particles. Weigh the sample and record its weight.
4. Step 3: Stack a set of sieves in order according to the size openings specified above, beginning with the largest size opening (4 mm) at the top. Place a collector pan underneath the bottom (0.25 mm) sieve.  
Step 4: Carefully pour the sample into the sieve stack, minimizing escape of dust particles by slowly brushing material into the stack with a whisk broom or brush. (On windy days, use the trunk or door of a car as a wind barricade.) Cover the stack with a lid. Lift up the sieve stack and shake it vigorously up, down and sideways for at least 1 minute.
5. Step 5: Remove the lid from the stack and disassemble each sieve separately, beginning with the top sieve. As you remove each sieve, examine it to make sure that all of the material has been sifted to the finest sieve through which it can pass; e.g. material in each sieve (besides the top sieve that captures a range of larger elements) should look the same size. If this is not the case, re-stack the sieves and collector pan, cover the stack with the lid, and shake it again for at least 1 minute. (You only need to reassemble the sieve(s) that contain material which requires further sifting.)
6. Step 6: After disassembling the sieves and collector pan, slowly sweep the material from the collector pan into the empty container originally used to collect and weigh the entire sample. Take care to minimize escape of dust particles. You do not need to do anything with material captured in the sieves -- only the collector pan. Weigh the container with the material from the collector pan and record its weight.
7. Step 7: If the source is an unpaved road, multiply the resulting weight by 0.38. If the source is an unpaved parking lot, multiply the resulting weight by 0.55. The resulting number is the estimated silt loading. Then, divide by the total weight of the sample you recorded earlier in Step 2 and multiply by 100 to estimate the percent silt content.
8. Step 8: Select another two routinely-traveled portions of the unpaved road or unpaved parking lot and repeat this test method. Once you have calculated the silt loading and percent silt content of the 3 samples collected, average your results together.
9. Step 9: Examine Results. If the average silt loading is less than 0.33 oz/ft<sup>2</sup>, the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft<sup>2</sup>, then proceed to examine the average percent silt content. If the source is an unpaved road and the average percent silt content is 6% or less, the surface is STABLE. If the source is an unpaved parking lot and the average percent silt content is 8% or less, the surface is STABLE. If your field test results are within 2% of the standard (for example, 4%-8% silt content on an unpaved road), it is

recommended that you collect 3 additional samples from the source according to Step 1 and take them to an independent laboratory for silt content analysis.

10. Independent Laboratory Analysis: You may choose to collect 3 samples from the source, according to Step 1, and send them to an independent laboratory for silt content analysis rather than conduct the sieve field procedure. If so, the test method the laboratory is required to use comes from the following text: *Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples*, (Fifth Edition, Volume I, Appendix C.2.3 “Silt Analysis”, 1995), AP-42, Office of air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

#### Historical Note

Former Appendix 2 repealed, new Appendix 2 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended effective December 1, 1988 (Supp. 88-4). Repealed effective November 15, 1993 (Supp. 93-4). New Appendix 2 adopted effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

### APPENDIX 3. LOGGING

1. Each log entry required by a change under R18-2-317.02(B) shall include at least the following information:
  - a. A description of the change, including:
    - i. A description of any process change.
    - ii. A description of any equipment change, including both old and new equipment descriptions, model numbers and serial numbers, or any other unique equipment number.
    - iii. A description of any process material change.
  - b. The date and time that the change occurred.
  - c. The provision of R18-2-317.02(B) that authorizes the change to be made with logging.
  - d. The date the entry was made and the first and last name of the person making the entry.
2. Logs shall be kept for five years from the date created. Logging shall be performed in indelible ink in a bound log book with sequentially numbered pages, or in any other form, including electronic format, approved by the Director.

#### Historical Note

Appendix 3 adopted by final rulemaking at 5 A.A.R.

4074, effective September 22, 1999 (Supp. 99-3).

### APPENDIX 4. RESERVED

### APPENDIX 5. REPEALED

#### Historical Note

Appendix 5 repealed effective November 15, 1993 (Supp. 93-4).

### APPENDIX 6. REPEALED

#### Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Appendix 6 repealed, new Appendix 6 adopted effective July 7, 1978 (Supp. 78-4). Former Appendix 6 repealed effective May 14, 1979 (Supp. 79-1).

### APPENDIX 7. REPEALED

#### Historical Note

Adopted effective December 22, 1976 (Supp. 76-5). Former Appendix 7 repealed, new Appendix 7 adopted effective January 8, 1980 (Supp. 80-1). Editorial correction, Instructions for Schedule 2, paragraph (15) (Supp. 80-2). Repealed effective September 26, 1990 (Supp. 90-3).

### A8. APPENDIX 8

#### PROCEDURES FOR UTILIZING THE SULFUR BALANCE METHOD FOR DETERMINING SULFUR EMISSIONS

##### A8.1. Calculating Input Sulfur

Total sulfur input is the sum of the product of the weight of each sulfur bearing material introduced into the smelting process as calculated in A8.1.1. multiplied by the fraction of sulfur contained in that material as calculated in A8.1.2. plus the amount of sulfur contained in fuel utilized in the smelting process as calculated in A8.1.3.

##### A8.1.1. Material Weight

The owner or operator of a copper smelter shall weigh all sulfur-bearing materials, other than fuels, introduced into the smelting process. The weighing shall be subject to the following conditions:

A8.1.1.1. Weight shall be determined on a belt scale, rail or truck scales, or other weighing device.

A8.1.1.2. Weight shall be determined within an accuracy of  $\pm 5\%$ .

A8.1.1.3. All devices or scales used for weighing shall be calibrated to manufacturer's specifications at least once a month.

A8.1.1.4. Sulfur-bearing materials subject to being weighed include concentrate, cement copper, reverbs that are discarded and not part of the internal circulating load and precipitates. Materials such as limestone and silica flux that are mixed with a charge of sulfur bearing materials shall be weighed and reported by the owner or operator.

##### A8.1.2. Sulfur Content

The owner or operator shall calculate the sulfur content of all sulfur-bearing materials introduced into the smelting process using the following steps or an alternative method approved according to A8.4.1.

##### A8.1.2.1. Sampling

The procedures followed by the owner or operator in sampling are dependent upon the input vehicles for the sulfur-bearing material.

##### A8.1.2.1.1. Beltfeed

The smelter owner or operator shall collect a five-pound sample each hour. The owner or operator shall combine hourly samples for a total daily sample.

##### A8.1.2.1.2. Railcar

The smelter owner or operator shall collect a 24-pound sample from each car by the auger method at a minimum of four locations. The owner or operator shall combine each car sample with all other car samples for a total lot sample.

A8.1.2.1.3. Truck

The owner or operator shall collect a 12-pound sample from each truck load. The owner or operator shall take samples at two locations during unloading. If more than one truck delivers a single lot, the samples from each truck shall be combined for a total lot sample.

A8.1.2.2. Sample Preparation

The owner or operator shall prepare each total sample for analysis in the following manner:

A8.1.2.2.1. The sample shall be crushed to minus  $\frac{1}{4}$  inch particles.

A8.1.2.2.2. 2000 gm of the sample shall be split out using a Jones Riffle Splitter or similar device.

A8.1.2.2.3. The 2000 gm sample shall be pulverized to minus 150 mesh.

A8.1.2.2.4. The pulverized mass shall be mixed using a rolling cloth.

A8.1.2.2.5. 500 gm shall be split out for sample analysis.

A8.1.2.3. Sample Analysis

A8.1.2.3.1. The owner or operator shall analyze the sample to determine sulfur content using the Barium Sulfate ( $\text{BaSO}_4$ ) Gravimetric Method according to A8.4.3. The analysis shall be accurate to within  $\pm 1\%$ .

A8.1.2.3.2. For purposes of comparison, the owner or operator shall analyze the sample for copper content using the Potassium Iodide (KI) Titration Method according to A8.4.3. The analysis shall be accurate to within  $\pm 1\%$ .

A8.1.3. Fuel Sulfur Content

The owner or operator shall calculate sulfur in fuels by multiplying the amount of fuel that enters the process by the fraction of sulfur in the fuel, as reported to the smelter operator by the fuel's supplier. The sulfur content determination shall be accurate to within  $\pm 5\%$ .

A8.2. Calculating Removed Sulfur

Total removed sulfur is the sum of the removed sulfur in each of the following products as determined by each process set forth below, or by other processes approved according to A8.4.1.

A8.2.1. Furnace and Converter Slags

A8.2.1.1. The owner or operator shall determine the weight of each slag using a scale with an accuracy within  $\pm 5\%$ .

A8.2.1.2. The owner or operator shall collect a five-pound sample from each slag pot during tapping operations.

A8.2.1.3. The owner or operator shall prepare the sample and determine the amount of sulfur and copper using the procedures specified in A8.1.2.2. and A8.1.2.3.

A8.2.2. Dust Collection Equipment Dusts

A8.2.2.1. After the owner or operator collects the dust and places it in a rail car or truck they shall weigh it using a scale with an accuracy within  $\pm 5\%$ .

A8.2.2.2. The owner or operator shall sample the dust and prepare and analyze a sample for sulfur and copper using the procedures specified in A8.1.2.1., A8.1.2.2., and A8.1.2.3.

A8.2.3. Strong Acids

A8.2.3.1. The owner or operator shall take an inventory of strong acids daily by means of a manometer or sight glass, and increase the inventory by the amounts of acid shipped or otherwise transferred during that day.

A8.2.3.2. The owner or operator shall ensure the daily inventory will be accurate to within  $\pm 5\%$ .

A8.2.3.3. The owner or operator shall take a sample of each batch of the inventoried acid and analyze the sample for sulfur, according to the procedures in A8.1.2.3.

A8.2.4. Weak Acids

A8.2.4.1. The owner or operator shall determine the amount of weak acid discharged from an acid plant and scrubber systems by a time volumetric method of measurement in gallons per minute and to an accuracy of within  $\pm 20\%$ .

A8.2.4.2. The owner or operator shall analyze a 500 ml sample of the weak acid daily for sulfur content according to the procedures in A8.1.2.3.

A8.2.5. Sulfur in Copper Production

A8.2.5.1. The owner or operator shall determine the weight of copper produced by weight of copper cast to an accuracy of within  $\pm 5\%$ .

A8.2.5.2. The owner or operator shall record the weight and number of castings.

A8.2.5.3. The owner or operator shall obtain a sample of the copper, either by the grab sample method while casting, or by the use of at least three drill holes on a representative casting from each charge.

A8.2.5.4. The owner or operator shall obtain at least one sample from each charge.

A8.2.5.5. The owner or operator shall analyze each sample for sulfur content using the Barium Sulfate ( $\text{BaSO}_4$ ) Gravimetric Method according to A8.4.3. The analysis shall be accurate to within  $\pm 50\%$ .

A8.2.6. Materials in Process

A8.2.6.1. The owner or operator shall determine the total tonnage of materials in process by physical inventory on the first or last day of each month.

A8.2.6.2. The owner or operator shall calculate a monthly change in in-process inventory for each material in process by taking the difference between the inventory from each material in process on the first or last day of the preceding month and multiplying that difference by the monthly composite sulfur assay for that material.

A8.2.6.3. The change in monthly in-process inventory shall be accurate to within  $\pm 50\%$ .

A8.3. Sulfur Dioxide Emissions Monitoring

A8.3.1. The sulfur dioxide emissions monitoring and recording system required under R18-2-715.01(K) through R18-2-715.01(N) shall meet the following specifications:

A8.3.1.1. The monitoring system shall be capable of continuously monitoring sulfur dioxide emissions with an accuracy of within  $\pm 20\%$  and a confidence level of 95%.

A8.3.1.2. The owner or operator shall operate and calibrate the sulfur dioxide emission monitoring and recording equipment according to manufacturer's specifications for the equipment except that calibration shall be done at least once every 24 hours.

A8.3.2. The sulfur removal equipment bypass monitoring required under R18-2-715.01(Q) shall consist of a detector and recorder system capable of producing a permanent record of all periods that the bypass is in operation.

A8.4. General Provisions

A8.4.1. For purposes of this Appendix, an approved alternative method, process, or procedure, must be approved in writing by the Director and the U.S. Environmental Protection Agency.

A8.4.2. The processes and procedures specified in this Appendix shall be available for inspection, review and verification by the Department at all reasonable times.

A8.4.3. The barium sulfate gravimetric test method and potassium iodide titration test method provided in *Standard Methods of Chemical Analysis*, Volume One, *The Elements*, Sixth Edition, N. Howell Furman (ed.), D. Van Nostrand Company, Inc.,

Princeton, New Jersey, 1962, pages 410-411, 1006-1011, and 1342-1343 (and no future editions or amendments) is incorporated by reference and available at the Department.

#### Historical Note

Adopted effective December 22, 1976 (Supp. 76-5). Correction, Appendix 8, A8-2-1.1 (Supp. 77-2). Amended effective May 28, 1982 (Supp. 82-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 2216, effective July 18, 2005 (Supp. 05-2).

## A9. APPENDIX 9

### MONITORING REQUIREMENTS

- A9.1. Unless otherwise approved by the Director or specified in applicable Sections, the requirements of this Appendix shall apply to all continuous monitoring systems required under applicable Sections.
- A9.2. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under rule R18-2-312. Verification of operational status shall, as a minimum, consist of the following:
- A9.2.1. For continuous monitoring systems referenced in A9.3.1. below, completion of the conditioning period specified by applicable requirements in the Arizona Testing Manual and 40 CFR 60.
- A9.2.2. For continuous monitoring systems referenced in A9.3.2. below, completion of seven days of operation.
- A9.2.3. For monitoring devices referenced in other applicable Sections, completions of the manufacturer's written requirements or recommendations for checking the operation or calibration of the device.
- A9.3. During any performance tests required under rule R18-2-312 or within 30 days thereafter and at such other times as may be required by the Director, the owner or operator of any affected facility shall conduct continuous monitoring system performance evaluations and furnish the Director within 60 days thereof, 2, or upon request, more copies of a written report of the results of such tests. The continuous monitoring system performance evaluations shall be conducted in accordance with the following specifications and procedures:
- A9.3.1. Continuous monitoring systems listed within this subsection, except as provided in A9.3.2. below shall be evaluated in accordance with the requirements and procedures contained in the applicable performance specification of the Arizona Testing Manual and 40 CFR 60.
- A9.3.1.1. Continuous monitoring systems for measuring opacity of emissions shall comply with Performance Specification 1.
- A9.3.1.2. Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with Performance Specification 2.
- A9.3.1.3. Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with Performance Specification 2.
- A9.3.1.4. Continuous monitoring systems for measuring the oxygen content or carbon dioxide content of effluent gases shall comply with Performance Specification 3.
- A9.3.2. An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components except as referenced by A9.3.2.3. below shall comply with the following requirements:
- A9.3.2.1. Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within  $\pm 20\%$ . The Calibration Error Test and associated calculation procedures set forth in Performance Specification 1 of 40 CFR 60, Appendix B shall be used for demonstrating compliance with this specification.
- A9.3.2.2. Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within  $\pm 20\%$  with a confidence level of 95%. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures set forth in Performance Specification 2 of 40 CFR 60, Appendix B shall be used for demonstrating compliance with this specification.
- A9.3.2.3. Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1975, are not required to conduct tests under A9.3.2.1. and/or A9.3.2.2. above unless requested by the Director.
- A9.3.3. All continuous monitoring systems referenced by A9.3.2. above shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and such improved systems shall be demonstrated to comply with applicable performance specifications under A9.3.1. above by September 11, 1979.
- A9.4. Owners or operators of all continuous monitoring systems installed in accordance with the provisions of these rules shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of such systems unless the manufacturer recommends adjustments at shorter intervals, in which case such recommendations shall be followed. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in 40 CFR 60, Appendix B are exceeded. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero or span drift adjustments except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4% opacity. Unless otherwise approved by the Director, the following procedures, as applicable, shall be followed:
- A9.4.1. For extractive continuous monitoring systems measuring gases, minimum procedures shall include introducing applicable zero and span gas mixtures into the measurement system as near the probe as practical. Span and zero gases certified by their manufacturer to be traceable to the National Bureau of Standards reference gases will be used whenever these reference gases are available. The span and zero gas mixtures shall be the same composition as specified in the 40 CFR 60, Appendix B. Every six months from date of manufacture, span and zero gases shall be re-analyzed by conducting triplicate analyses with Reference Methods 6 for SO<sub>2</sub>, 7 for NO<sub>x</sub> and 3 for O<sub>2</sub> and CO<sub>2</sub>, respectively. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.
- A9.4.2. For nonextractive continuous monitoring systems measuring gases, minimum procedures shall include upscale check(s) using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing a zero condition.
- A9.4.3. For continuous monitoring systems measuring opacity of emissions, minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

- A9.5. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under A9.4. above, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:
- A9.5.1. All continuous monitoring systems referenced by A9.3.1. and A9.3.2. above for measuring opacity of emissions shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 10-second period.
- A9.5.2. All continuous monitoring systems referenced by A9.3.1. above for measuring oxides of nitrogen, sulfur dioxide, carbon dioxide, or oxygen shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
- A9.5.3. All continuous monitoring systems referenced by A9.3.2. above, except opacity, shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive one-hour period.
- A9.6. All continuous monitoring systems for monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems contained in the applicable Performance Specifications of 40 CFR 60, Appendix B shall be used.
- A9.7. When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the Director.
- A9.8. Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages and for systems other than opacity to one-hour averages, respectively. Six minute opacity averages shall be calculated from 24 or more data points equally spaced over each six-minute period. For systems other than opacity, one-hour averages shall be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this subsection. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or nonreduced form (e.g. ppm pollutant and percent O<sub>2</sub> or lb/million Btu of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in subparts. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in these rules to specify the applicable standard (e.g., rounded to the nearest 1% opacity).
- A9.9. Upon written application by an owner or operator, the Director may approve alternatives to any monitoring procedures or requirements of these rules including, but not limited to the following:
- A9.9.1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by these rules would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.
- A9.9.2. Alternative monitoring requirements when the affected facility is infrequently operated.
- A9.9.3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.
- A9.9.4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.
- A9.9.5. Alternative methods of converting pollutant concentration measurements to units of the standards.
- A9.9.6. Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.
- A9.9.7. Alternatives to the ASTM test methods or sampling procedures specified by any subpart.
- A9.9.8. Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 in 40 CFR 60, Appendix B but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Director may require that such demonstration be performed for each affected facility.
- A9.9.9. Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.
- Historical Note**  
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective June 15, 1995 (Supp. 95-2).
- APPENDIX 10. REPEALED**
- Historical Note**  
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective June 19, 1981 (Supp. 81-3). Repealed by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).
- APPENDIX 11. REPEALED**
- Historical Note**  
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 11, 1983 (Supp. 83-5). Repealed by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).
- A12. APPENDIX 12**
- PROCEDURES FOR DETERMINING AMBIENT AIR CONCENTRATIONS FOR HAZARDOUS AIR POLLUTANTS**
- A12.1 The procedure described in this appendix shall be used to develop chronic ambient air concentrations (CAACs) and acute ambient air concentrations (AAACs) for hazardous air pollutants (HAPs) for the following:
- A12.1.1 Any HAP not included in Article 17, Table 3; and
- A12.1.2 Any compound included in a group of HAPs listed in Article 17, Table 3, other than those identified in the group listing as the “selected” compound.
- A12.2 Chronic Ambient Air Concentrations
- A12.2.1 The applicant shall review the following data sources and, except as otherwise provided, shall give them the priority indicated in the development of CAACs:

- A12.2.1.1 Tier 1 Data Sources: Reference Concentrations (RfCs) and air Unit Risk Factors (URFs) as presented in the Integrated Risk Information System (IRIS) of the United States Environmental Protection Agency (EPA).
- A12.2.1.2 Tier 2 Data Sources:
- A12.2.1.2.1 Preliminary Remediation Goals (PRGs) developed by Region 9 of EPA.
- A12.2.1.2.2 Risk-Based Concentrations (RBCs) developed by Region 3 of EPA.
- A12.2.1.3 Tier 3 Data Sources:
- A12.2.1.3.1 Minimal Risk Levels (MRLs) developed by the Agency for Toxic Substances and Disease Registry (ATSDR).
- A12.2.1.3.2 Reference Exposure Levels (RELs) and Unit Risk Factors (CalURFs) developed by the California Environmental Protection Agency.
- A12.2.2 Evaluation of Tier 1 Values
- A12.2.2.1 Calculation of Concentrations
- A12.2.2.1.1 RfCs shall be multiplied by 1.04 to reflect an assumed exposure of 350, rather than 365 days per year.
- A12.2.2.1.2 URFs shall be transformed into concentrations in milligrams per cubic meter (mg/m<sup>3</sup>) by applying the following equation:  

$$TR \times ATc / (EF \times IFA \text{ adj} \times [URF \times BW / IR])$$
 where: TR = 1E-06, ATc = 25,550 days, EF = 350 days/year, IFA adj = 11 m<sup>3</sup>-year/kg-day, BW = 70 kg, IR = 20 m<sup>3</sup>/day
- A12.2.2.2 Comparison to Tier 2 and Tier 3 Concentrations  
 The concentration developed in accordance with section A12.2.2.1 shall be compared to the Tier 2 and Tier 3 concentrations for the compound, if any. URF-based concentrations shall be compared only to concentrations based on CalURFs. RfC-based concentrations shall be compared to concentrations based on PRGs, RBCs, MRLs and RELs.
- A12.2.2.2.1 If there is reasonable agreement between the Tier 1 concentration and the other concentrations for the compound, the Tier 1 concentration shall be selected as the CAAC.
- A12.2.2.2.2 If the Tier 1 concentration is not in reasonable agreement with the other concentrations, and one of the other concentrations is based on more recent or relevant studies, that concentration shall be selected as the CAAC. Otherwise the Tier 1 concentration shall be selected.
- A12.2.2.3 If both an RfC-based and URF-based Tier 1 concentration is selected under section A12.2.2.2, the more stringent of the two shall be used as the CAAC.
- A12.2.2.4 If a Tier 1 value is selected in accordance with this section, no further evaluation of Tier 2 or Tier 3 concentrations is required.
- A12.2.3 Evaluation of Tier 2 Concentrations
- A12.2.3.1 Selection of Tier 2 Values for Further Evaluation
- A12.2.3.1.1 If there is only a PRG or RBC for the compound, it shall be selected for further evaluation in accordance with section A12.2.3.2.
- A12.2.3.1.2 If there is both a PRG and an RBC for the compound, the concentrations shall be compared. If the concentrations are similar, the PRG shall be selected for further evaluation. If the concentrations are not similar, and the RBC is based on more relevant or more recent studies, it shall be selected for further evaluation. Otherwise the PRG shall be selected.
- A12.2.3.2 Comparison to Tier 3 Concentrations  
 The concentration developed in accordance with section A12.2.3.1 shall be compared to the Tier 3 concentrations for the compound, if any. For purposes of this comparison, only MRL- or REL-based concentrations shall be considered.
- A12.2.3.2.1 If there is reasonable agreement between the Tier 2 concentration and the Tier 3 concentrations for the compound, the Tier 2 concentration shall be selected as the CAAC.
- A12.2.3.2.2 If the Tier 2 concentration is not in reasonable agreement with the Tier 3 concentrations, and one of the Tier 3 concentrations is based on more recent or relevant studies, that concentration shall be selected as the CAAC. Otherwise the Tier 2 concentration shall be selected.
- A12.2.3.3 If a Tier 2 concentration is selected in accordance with section A12.2.3, no further evaluation of Tier 3 concentrations is required.
- A12.2.4 Evaluation of Tier 3 Values
- A12.2.4.1 Calculation of Concentrations
- A12.2.4.1.1 MRLs and RELs shall be multiplied by 1.04 to reflect an assumed exposure of 350, rather than 365, days per year.
- A12.2.4.1.2 CalURFs shall be transformed into concentrations in milligrams per cubic meter (mg/m<sup>3</sup>) by applying the following equation:  

$$TR \times ATc / (EF \times IFA \text{ adj} \times [CalURF \times BW / IR])$$
 where: TR = 1E-06, ATc = 25,550 days, EF = 350 days/year, IFA adj = 11 m<sup>3</sup>-year/kg-day, BW = 70 kg, IR = 20 m<sup>3</sup>/day
- A12.2.4.2 Selection of Concentration
- A12.2.4.2.1 If both an MRL and an REL exist for the compound, the most appropriate shall be selected after considering the relevance and timing of the studies on which the levels are based.
- A12.2.4.2.2 If there is both a CalURF-based concentration and a concentration based on an MRL or REL for the compound, the more stringent of the two shall be selected.
- A12.2.5 No Available Data  
 If there is no data available in any of the sources identified in section A12.2.1 for the compound, the applicant must perform a Tier 4 Risk Management Analysis under R18-2-1708 or forego the Risk Management Analysis option.
- A12.3 Acute Ambient Air Concentrations
- A12.3.1 Selection of Concentration  
 The first concentration identified by evaluating the following data sources in the order listed shall be adjusted, where required, and used as the AAAC for the compound:
- A12.3.1.1 The level 2, four-hour average Acute Exposure Guideline Level developed by the EPA Office of Prevention, Pesticides and Toxic Substances.
- A12.3.1.2 The level 2 Emergency Response Planning Guideline (ERPG) developed by the American Industrial Hygiene Association. The AAAC shall be the ERPG divided by 2.
- A12.3.1.3 The level 2 Temporary Emergency Exposure Limit (TEEL) developed by the United States Department of Energy's Emergency Management Advisory Committee's Subcommittee on Consequence Assessment and Protective Action. The AAAC shall be the TEEL divided by 2.
- A12.3.2 No Available Data  
 If there is no data available in any of the sources identified in section A12.3.1, the applicant must perform a Tier 4 Risk Management Analysis under R18-2-1708 or forego the Risk Management Analysis option.

**Historical Note**

New Appendix 12 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

**APPENDIX 13. REPEALED****Historical Note**

New Appendix 13 made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Appendix repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 18. Environmental Quality**

### **Chapter 11. Department of Environmental Quality - Water Quality Standards**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R18-11-106, R18-11-109, R18-11-110, R18-11-112, R18-11-115, R18-11-121, Appendix A, B and C

REMOVE Supp. 08-4  
Pages: 1 - 77

REPLACE with Supp. 16-4  
Pages: 1 - 63

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

Agency: Department of Environmental Quality, Water Quality Division

Address: 1110 W. Washington St., Phoenix, AZ 85007

Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677

Fax: (602) 771-4834

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 18. ENVIRONMENTAL QUALITY****CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS****ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS**

*Tables in Article 1, Appendix A have been updated and now include historical notes (Supp. 16-4).*

*Article 1, consisting of Appendices A through C, repealed April 24, 1996 (Supp. 96-2).*

*Article 1, consisting of Section R18-11-103, reserved effective April 24, 1996 (Supp. 96-2).*

*Article 1, consisting of Sections R18-11-105 and R18-11-106, and Appendices A and B, adopted April 24, 1996 (Supp. 96-2).*

*Article 1, consisting of Sections R18-11-101 and R18-11-102, R18-11-104, R18-11-107 through R18-11-109, R18-11-111 through R18-11-113, R18-11-115, R18-11-117 and R18-11-118, R18-11-120 and R18-11-121, amended effective April 24, 1996 (Supp. 96-2).*

*Article 1, consisting of Sections R18-11-101 through R18-11-121 and Appendices A through C, adopted effective February 18, 1992 (Supp. 92-1).*

*Article 1, consisting of Section R18-11-101, repealed effective February 18, 1992 (Supp. 92-1).*

*Article 1 consisting of Section R9-21-101 renumbered as Article 1, Section R18-11-101 (Supp. 87-3).*

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*Article 2, consisting of Sections R18-11-201 through R18-11-205, adopted effective February 18, 1992 (Supp. 92-1).*

*Article 2, consisting of Sections R18-11-201 through R18-11-214 and Appendices A and B, repealed effective February 18, 1992 (Supp. 92-1).*

*Article 2 consisting of Sections R9-21-201 through R9-21-214 and Appendices A and B renumbered as Article 2, Sections R18-11-201 through R18-11-214 and Appendices A and B (Supp. 87-3).*

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## Department of Environmental Quality – Water Quality Standards

**ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS**

*Article 3, consisting of Sections R18-11-301 through R18-11-309 and Table A, adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).*

*Article 3 heading repealed effective April 24, 1996 (Supp. 96-2).*

*Article 3, consisting of Sections R18-11-301 through R18-11-304 repealed effective February 18, 1992 (Supp. 92-1).*

*Article 3 consisting of Sections R9-21-301 through R9-21-304 renumbered as Article 3, Sections R18-11-301 through R18-11-304 (Supp. 87-3).*

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## ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

### R18-11-101. Definitions

The following terms apply to this Article:

1. “Acute toxicity” means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. “Agricultural irrigation (AgI)” means the use of a surface water for crop irrigation.
3. “Agricultural livestock watering (AgL)” means the use of a surface water as a water supply for consumption by livestock.
4. “Annual mean” is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. “Aquatic and wildlife (cold water) (A&Wc)” means the use of a surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. “Aquatic and wildlife (effluent-dependent water) (A&Wedw)” means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. “Aquatic and wildlife (ephemeral) (A&We)” means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. “Aquatic and wildlife (warm water) (A&Ww)” means the use of a surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. “Arizona Pollutant Discharge Elimination System (AZPDES)” means the point source discharge permitting program established under 18 A.A.C. 9, Article 9.
10. “Assimilative capacity” means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. “Clean Water Act” means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. “Criteria” means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
13. “Critical flow condition” means the lowest flow over seven consecutive days that has a probability of occurring once in 10 years (7 Q 10).
14. “Deep lake” means a lake or reservoir with an average depth of more than 6 meters.
15. “Designated use” means a use specified in Appendix B of this Article for a surface water.
16. “Domestic water source (DWS)” means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
17. “Effluent-dependent water (EDW)” means a surface water, classified under R18-11-113, that consists of a point source discharge of wastewater. An effluent-dependent water is a surface water that, without the point source discharge of wastewater, would be an ephemeral water.
18. “Ephemeral water” means a surface water that has a channel that is at all times above the water table and flows only in direct response to precipitation.
19. “Existing use” means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
20. “Fish consumption (FC)” means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
21. “Full-body contact (FBC)” means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
22. “Geometric mean” means the  $n$ th root of the product of  $n$  items or values. The geometric mean is calculated using the following formula:
 
$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3)\dots(Y_n)}$$
23. “Hardness” means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate ( $\text{CaCO}_3$ ) in milligrams per liter.
24. “Igneous lake” means a lake located in volcanic, basaltic, or granite geology and soils.
25. “Intermittent water” means a stream or reach that flows continuously only at certain times of the year, as when it receives water from a spring or from another surface source, such as melting snow.
26. “Mixing zone” means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
27. “Oil” means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
28. “Outstanding Arizona water (OAW)” means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
29. “Partial-body contact (PBC)” means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
30. “Perennial water” means a surface water that flows continuously throughout the year.
31. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. A.R.S. § 49-201(29)
32. “Practical quantitation limit” means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
33. “Reference condition” means a set of ecological measurements from a population of relatively undisturbed waterbodies within a region that establish a basis for making comparisons of biological condition among samples.

34. “Regional Administrator” means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
35. “Regulated discharge” means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
36. “Riffle habitat” means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
37. “Run habitat” means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
38. “Sedimentary lake” means a lake or reservoir in sedimentary or karst geology and soils.
39. “Shallow lake” means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
40. “Significant degradation” means:
  - a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
  - b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
41. “Surface water” means a water of the United States and includes the following:
  - a. A water that is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce;
  - b. An interstate water, including an interstate wetland;
  - c. All other waters, such as an intrastate lake, reservoir, natural pond, river, stream (including an intermittent or ephemeral stream), creek, wash, draw, mudflat, sandflat, wetland, slough, backwater, prairie pot-hole, wet meadow, or playa lake, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such water:
    - i. That is or could be used by interstate or foreign travelers for recreational or other purposes;
    - ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    - iii. That is used or could be used for industrial purposes by industries in interstate or foreign commerce;
  - d. An impoundment of a surface water as defined by this definition;
  - e. A tributary of a surface water identified in subsections (41)(a) through (d); and
  - f. A wetland adjacent to a surface water identified in subsections (41)(a) through (e).
42. “Total nitrogen” means the sum of the concentrations of ammonia (NH<sub>3</sub>), ammonium ion (NH<sub>4</sub><sup>+</sup>), nitrite (NO<sub>2</sub>), and nitrate (NO<sub>3</sub>), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
43. “Total phosphorus” means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
44. “Toxic” means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
45. “Urban lake” means a manmade lake within an urban landscape.
46. “Use attainability analysis” means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.
47. “Wadeable” means a surface water can be safely crossed on foot and sampled without a boat.
48. “Wastewater” does not mean:
  - a. Stormwater,
  - b. Discharges authorized under the De Minimus General Permit,
  - c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
  - d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
49. “Wetland” means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.
50. “Zone of passage” means a continuous water route of volume, cross-sectional area, and quality necessary to allow passage of free-swimming or drifting organisms with no acutely toxic effect produced on the organisms.

#### Historical Note

Former Section R9-21-101 repealed, new Section R9-21-101 adopted effective January 29, 1980 (Supp. 80-1).  
 Amended effective April 17, 1984 (Supp. 84-2).  
 Amended effective January 7, 1985 (Supp. 85-1).  
 Amended by adding subsection (C) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-101 renumbered without change as Section R18-11-101 (Supp. 87-3). Former Section R18-11-101 repealed, new Section R18-11-101 adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Deleted first definition to R18-11-101(32) “Navigable Water”, previously printed in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

#### R18-11-102. Applicability

- A. The water quality standards prescribed in this Article apply to surface waters.
- B. The water quality standards prescribed in this Article do not apply to the following:
  1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is a part of the waste treatment system;

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2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores that is not a surface water or is located in an area that once was a surface water but is no longer a surface water because it has been and remains legally converted, including:
  - a. A pit,
  - b. Pregnant leach solution pond,
  - c. Raffinate pond,
  - d. Tailing impoundment,
  - e. Decant pond,
  - f. Pond or a sump in a mine pit associated with dewatering activity,
  - g. Pond holding water that has come into contact with a process or product and that is being held for recycling,
  - h. Spill or upset catchment pond, or
  - i. A pond used for onsite remediation;
3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
4. A surface water located on tribal lands.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Amended effective April 24, 1996 (Supp. 96-2).

Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-103. Repealed****Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Repealed effective April 24, 1996 (Supp. 96-2).

**R18-11-104. Designated Uses**

- A. The Director shall adopt or remove a designated use or subcategory of a designated use by rule.
- B. Designated uses of a surface water may include full-body contact, partial-body contact, domestic water source, fish consumption, aquatic and wildlife (cold water), aquatic and wildlife (warm water), aquatic and wildlife (ephemeral), aquatic and wildlife (effluent-dependent water), agricultural irrigation, and agricultural livestock watering. The designated uses for specific surface waters are listed in Appendix B of this Article.
- C. Numeric water quality criteria to maintain and protect water quality for the designated uses are prescribed in Appendix A, R18-11-109, R18-11-110, and R18-11-112. Narrative water quality standards to protect all surface waters are prescribed in R18-11-108.
- D. If a surface water has more than one designated use listed in Appendix B, the most stringent water quality criterion applies.
- E. The Director shall revise the designated uses of a surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in Appendix B.
- F. In designating uses of a surface water and in establishing water quality criteria to protect the designated uses, the Director shall take into consideration the applicable water quality standards for downstream surface waters and shall ensure that the water quality standards that are established for an upstream surface water also provide for the attainment and maintenance of the water quality standards of downstream surface waters.
- G. A use attainability analysis shall be conducted prior to removal of a designated use or adoption of a subcategory of a designated use that requires less stringent water quality criteria.

- H. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria, provided the designated use is not an existing use and it is demonstrated through a use attainability analysis that attaining the designated use is not feasible for any of the following reasons:
  1. A naturally-occurring pollutant concentration prevents the attainment of the use;
  2. A natural, ephemeral, intermittent, or low-flow condition or water level prevents the attainment of the use;
  3. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
  4. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
  5. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use; or
  6. Controls more stringent than those required by § 301 (b) and § 306 of the Clean Water Act [33 U.S.C. § 1311 and § 1316] are necessary to attain the use and implementation of the controls would result in substantial and widespread economic and social impact.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Amended effective April 24, 1996 (Supp. 96-2).

Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

**R18-11-105. Tributaries; Designated Uses**

The following water quality standards apply to a surface water that is not listed in Appendix B but that is a tributary to a listed surface water.

1. The aquatic and wildlife (ephemeral) and partial-body contact standards apply to an unlisted tributary that is an ephemeral water.
2. The aquatic and wildlife (cold water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is above 5000 feet in elevation.
3. The aquatic and wildlife (warm water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is below 5000 feet in elevation.

**Historical Note**

Adopted effective April 24, 1996 (Supp. 96-2). Section heading amended per instructions of the Department of Environmental Quality, August 9, 1996 (Supp. 96-3).

Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

**R18-11-106. Net Ecological Benefit**

- A. The Director may, by rule, modify a water quality standard on the ground that there is a net ecological benefit associated with the discharge of effluent to support or create a riparian and aquatic habitat in an area where water resources are limited. The Director may modify a water quality standard for a pollutant if it is demonstrated that:
  1. The discharge of effluent creates or supports an ecologically valuable aquatic, wetland, or riparian ecosystem in an area where these resources are limited;

2. The ecological benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with the elimination of the discharge of effluent;
3. The cost of treatment to achieve compliance with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent to the surface water. The discharger shall demonstrate that it is feasible to eliminate the discharge of effluent that creates or supports the ecologically valuable aquatic, wetland, or riparian ecosystem;
4. The discharge of effluent to the surface water will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water;
5. All practicable point source discharge control programs, including local pretreatment, waste minimization, and source reduction programs are implemented; and
6. The discharge of effluent does not produce or contribute to the concentration of a pollutant in the tissues of aquatic organisms or wildlife that is likely to be harmful to humans or wildlife through food chain concentration.

- B.** The Director shall not modify a water quality criterion for a pollutant to be less stringent than a technology-based effluent limitation that applies to the discharge of that effluent. The discharge of effluent shall, at a minimum, comply with applicable technology-based effluent limitations.

#### Historical Note

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

#### R18-11-107. Antidegradation

- A.** The Director shall, using R18-11-107.01 and this Section, determine whether there is degradation of water quality in a surface water on a pollutant-by-pollutant basis.
- B.** Tier 1: The level of water quality necessary to support an existing use shall be maintained and protected. No degradation of existing water quality is permitted in a surface water where the existing water quality does not meet the applicable water quality standards.
- C.** Tier 2: Where existing water quality in a surface water is better than the applicable water quality standard the existing water quality shall be maintained and protected. The Director may allow degradation of existing water quality in the surface water, if the Director makes all of the following findings:
1. The water quality necessary for existing uses is fully protected and water quality is not lowered to a level that does not comply with applicable water quality standards,
  2. The highest statutory and regulatory requirements for new and existing point sources are achieved,
  3. All cost-effective and reasonable best management practices for nonpoint source pollution control are implemented, and
  4. Allowing lower water quality is necessary to accommodate important economic or social development in the area where the surface water is located.
- D.** Tier 3: Existing water quality shall be maintained and protected in a surface water that is classified as an OAW under R18-11-112. Degradation of an OAW under subsection (C) is prohibited.
- E.** The Director shall implement this Section in a manner consistent with § 316 of the Clean Water Act [33 U.S.C. 1326] if a potential water quality impairment associated with a thermal discharge is involved.

#### Historical Note

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

#### R18-11-107.01. Antidegradation Criteria

- A.** Tier 1 antidegradation protection.
1. Tier 1 antidegradation protection applies to the following surface waters:
    - a. A surface water listed on the 303(d) list for the pollutant that resulted in the listing,
    - b. An effluent dependent water,
    - c. An ephemeral water,
    - d. An intermittent water, and
    - e. A canal listed in Appendix B.
  2. A regulated discharge shall not cause a violation of a surface water quality standard or a wasteload allocation in a total maximum daily load approved by EPA.
  3. Except as provided in subsections (E) and (F), Tier 1 antidegradation review requirements are satisfied for a point-source discharge regulated under an individual AZPDES permit to an ephemeral water, effluent dependent water, intermittent water, or a canal listed in Appendix B, if water quality-based effluent limitations designed to achieve compliance with applicable surface water quality standards are established in the permit and technology-based requirements of the Clean Water Act for the point source discharge are met.
- B.** Tier 2 antidegradation protection.
1. Tier 2 antidegradation protection applies to a perennial water with existing water quality that is better than applicable water quality standards. A perennial water that is not listed in subsection (A)(1) nor classified as an OAW under A.A.C. R18-9-112(G) has Tier 2 antidegradation protection for all pollutants of concern.
  2. A regulated discharge that meets the following criteria, at critical flow conditions, does not cause significant degradation:
    - a. The regulated discharge consumes less than 20 percent of the available assimilative capacity for each pollutant of concern, and
    - b. At least 50 percent of the assimilative capacity for each pollutant of concern remains available in the surface water for each pollutant of concern.
  3. Antidegradation review. Any person proposing a new or expanded regulated discharge under an individual AZPDES permit that may cause significant degradation shall provide the Department with the following information:
    - a. Alternative analysis.
      - i. The person seeking authorization for the discharge shall prepare and submit a written analysis of alternatives to the discharge. The analysis shall provide information on all reasonable, cost-effective, less-degrading or non-degrading discharge alternatives. Alternatives may include wastewater treatment process changes or upgrades, pollution prevention measures, source reduction, water reclamation, alternative discharge locations, groundwater recharge, land application or treatment, local pretreatment programs, improved operation and maintenance of existing systems, seasonal or controlled discharge to avoid critical flow conditions, and zero discharge;



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- ii. The alternatives analysis shall include cost information on base pollution control measures associated with the regulated discharge and cost information for each alternative;
    - iii. The person shall implement the alternative that is cost-effective and reasonable, results in the least degradation, and is approved by the Director. An alternative is cost-effective and reasonable if treatment costs associated with the alternative are less than a 10 percent increase above the cost of base pollution control measures;
    - iv. For purposes of this subsection, “base pollution control measures” are water pollution control measures required to meet technology-based requirements of the Clean Water Act and water quality-based effluent limits designed to achieve compliance with applicable water quality standards;
  - b. Social and economic justification. The person shall demonstrate to the Director that significant degradation is necessary to accommodate important economic or social development in the local area. The person seeking authorization for the discharge shall prepare a written social and economic justification that includes a description of the following:
    - i. The geographic area where significant degradation of existing water quality will occur;
    - ii. The current baseline social and economic conditions in the local area;
    - iii. The net positive social and economic effects of development associated with the regulated discharge and allowing significant degradation;
    - iv. The negative social, environmental, and economic effects of allowing significant degradation of existing water quality; and
    - v. Alternatives to the regulated discharge that do not significantly degrade water quality yet may yield comparable social and economic benefits;
  - c. Baseline characterization. A person seeking authorization to discharge under an individual AZPDES permit to a perennial water shall provide baseline water quality data on pollutants of concern where no data exist or there are insufficient data to characterize baseline water quality and to determine available assimilative capacity. A discharger shall characterize baseline water quality at a location upstream of the proposed discharge location; and
  - 4. For purposes of this Section, the term “pollutant of concern” means a pollutant with either a numeric or narrative water quality standard.
  - 5. Public participation. The Director shall provide public notice and an opportunity to comment on an antidegradation review under subsection (B)(3) and shall provide an opportunity for a public hearing under A.A.C. R18-9-A908(B).
- C. Tier 3 antidegradation protection.**
- 1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G).
  - 2. A new or expanded point-source discharge directly to an OAW is prohibited.
  - 3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to the Department that the regulated discharge will not degrade existing water quality in the downstream OAW.
  - 4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires an individual § 401 water quality certification to ensure that existing water quality is maintained and protected and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less.
- D. Antidegradation review of a § 404 permit.** The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404 permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.
- E. Antidegradation review of an AZPDES stormwater permit.** An individual stormwater permit for a municipal separate storm sewer system (MS4) meets antidegradation requirements if the permittee complies with the permit, including developing a stormwater management plan containing controls that reduce the level of pollutants in stormwater discharges to the maximum extent practicable.
- F. Antidegradation review of a general permit.** The Director shall conduct the antidegradation review of a regulated discharge authorized by a general permit at the time the general permit is issued or renewed. A person seeking authorization to discharge under a general permit is not required to undergo an individual antidegradation review at the time the Notice of Intent is submitted unless the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108. Narrative Water Quality Standards**

- A.** A surface water shall not contain pollutants in amounts or combinations that:
- 1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
  - 2. Cause objectionable odor in the area in which the surface water is located;
  - 3. Cause off-taste or odor in drinking water;
  - 4. Cause off-flavor in aquatic organisms;
  - 5. Are toxic to humans, animals, plants, or other organisms;
  - 6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;
  - 7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or
  - 8. Change the color of the surface water from natural background levels of color.
- B.** A surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard.

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- C. A surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.
- D. A surface water shall not contain solid waste such as refuse, rubbish, demolition or construction debris, trash, garbage, motor vehicles, appliances, or tires.
- E. A wadeable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2).  
 Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108.01. Narrative Biological Criteria for Wadeable, Perennial Streams**

- A. The narrative biological criteria in this Section apply to a wadeable, perennial stream with either an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.
- B. The biological standard in R18-11-108(E) is met when a bioassessment result, as measured by the Arizona Index of Biological Integrity (IBI), for cold or warm water is:
  - 1. Greater than or equal to the 25th percentile of reference condition, or
  - 2. Greater than the 10th percentile of reference condition and less than the 25th percentile of reference condition and a verification bioassessment result is greater than or equal to the 25th percentile of reference condition.
- C. Arizona Index of Biological Integrity (IBI) scores:

Bioassessment Result	Index of Biological Integrity Scores	
	A&Wc	A&Ww
Greater than or equal to the 25th percentile of reference condition	≥52	≥50
Greater than the 10th and less than the 25th percentile of reference condition	46 - 51	40 - 49

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108.02. Narrative Bottom Deposit Criteria for Wadeable, Perennial Streams**

- A. The narrative bottom deposit criteria in this Section apply to wadeable, perennial streams with an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.
- B. The narrative water quality standard for bottom deposits at R18-11-108(A)(1) is met when:

- 1. The percentage of fine sediments in the riffle habitats of a wadeable, perennial stream with an A&Wc designated use, as determined by a riffle pebble count, is less than or equal to 30 percent.
- 2. The percentage of fine sediments in all stream habitats of a wadeable, perennial stream with an A&Ww designated use, as determined by a reach level pebble count, is equal to or less than 50 percent.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108.03. Narrative Nutrient Criteria for Lakes and Reservoirs**

- A. The narrative nutrient criteria in this Section apply to those lakes and reservoirs categorized in Appendix B.
- B. The narrative water quality standard for nutrients at R18-11-108(A)(6) is met when, based on a minimum of two lake sample events conducted during the peak season based on lake productivity, the results show an average chlorophyll-*a* value below the applicable threshold for designated use and lake and reservoir category in subsection (D).
  - 1. The mean chlorophyll-*a* concentration is less than the lower value in the target range chlorophyll-*a* for the lake and reservoir category, or
  - 2. The mean chlorophyll-*a* concentration is within the target range for the lake and reservoir category and:
    - a. The mean blue green algae count is at or below 20,000 per milliliter, and
    - b. The blue green algae count is less than 50 percent of the total algae count, and
    - c. There is no evidence of nutrient-related impairments such as:
      - i. An exceedance of dissolved oxygen or pH standards;
      - ii. A fish kill coincident with a dissolved oxygen or pH exceedance;
      - iii. A fish kill or other aquatic organism mortality coincident with algal toxicity;
      - iv. Secchi depth is less than the lower value prescribed for the lake and reservoir category;
      - v. A nuisance algal bloom is present in the limnetic portion of the lake or reservoir; or
      - vi. The concentration of total phosphorous, total nitrogen, or total Kjeldahl nitrogen (TKN) is greater than the upper value in the range prescribed for the lake and reservoir category; or
  - 3. For a shallow lake. In addition to meeting the mean chlorophyll-*a* concentrations in subsections (B)(1) or (2), submerged aquatic vegetation covers 50 percent or less of the lake bottom and there is less than a 5 mg/L swing in diel-dissolved oxygen concentration measured within the photic zone.
- C. The following threshold ranges apply during the peak season for lake productivity:
  - 1. Warm water lakes peak season, April – October;
  - 2. Cold water lakes peak season, May – September.

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D. The following table lists the numeric targets for lakes and reservoirs.

NUMERIC TARGETS FOR LAKES AND RESERVOIRS										
Designated Use	Lake Category	Chl- <i>a</i> (µg/L)	Secchi Depth (m)	Total Phosphorus (µg/L)	Total Nitrogen (mg/L)	Total Kjeldhal Nitrogen (TKN) (mg/L)	Blue-Green Algae (per ml)	Blue-Green Algae (% of total count)	Dissolved Oxygen (mg/L)	pH (SU)
FBC and PBC	Deep	10-15	1.5-2.5	70-90	1.2-1.4	1.0-1.1	20,000			6.5-9.0
	Shallow	10-15	1.5-2.0	70-90	1.2-1.4	1.0-1.1				
	Igneous	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
	Sedimentary	20-30	1.5-2.0	100-125	1.5-1.7	1.2-1.4				
	Urban	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
A&Wc	All	5-15	1.5-2.0	50-90	1.0-1.4	0.7-1.1		<50	7 (top m)	6.5-9.0
A&Ww	All (except urban lakes)	25-40	0.8-1.0	115-140	1.6-1.8	1.3-1.6			6 (top m)	
	Urban	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				6.5-9.0
A&Wedw	All	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				
DWS	All	10-20	0.5-1.5	70-100	1.2-1.5	1.0-1.2	20,000			5.0-9.0

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-109. Numeric Water Quality Standards**

A. *E. coli* bacteria. The following water quality standards for *Escherichia coli* (*E. coli*) are expressed in colony forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

<i>E. coli</i>	FBC	PBC
Geometric mean (minimum of four samples in 30 days)	126	126
Single sample maximum	235	575

B. pH. The following water quality standards for pH are expressed in standard units:

pH	DWS	FBC, PBC, A&W <sup>1</sup>	AgI	AgL
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww	A&Wedw	A&Wc
3.0° C	3.0° C	1.0° C

D. Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from a minimum of four samples collected at least seven days apart:

A&Wc	A&Ww
25	80

2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

E. Dissolved oxygen. A surface water meets the water quality standard for dissolved oxygen when either:

1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

Designated Use	Single sample minimum concentration in mg/L
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A&Ww 6.0

A&Wc 7.0

A&Wedw for a sample taken 3.0

from three hours after sunrise to sunset

A&Wedw for a sample taken 1.0

from sunset to three hours after sunrise

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

F. Nutrient criteria. The following are water quality standards for total phosphorus and total nitrogen (expressed in milligrams per liter (mg/L)) that apply to the surface waters listed below. A minimum of 10 samples, each taken at least 10 days apart in a consecutive 12-month period, are required to determine a 90th percentile. Not more than 10 percent of the samples may exceed the 90th percentile value listed below. The Director will apply these water quality standards for total phosphorus and total nitrogen to a surface water listed below, and to any source discharging to a tributary (ephemeral, intermittent, effluent dependent water or perennial) based on volume, frequency, magnitude and duration of the discharge and distance to the downstream surface water listed below:

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1. Verde River and its perennial tributaries from the Verde headwaters to Bartlett Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.30	1.00
Total nitrogen	1.00	1.50	3.00

2. Black River, Tonto Creek and their perennial tributaries for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.20	0.80
Total nitrogen	0.50	1.00	2.00

3. Salt River and its perennial tributaries above Roosevelt Lake for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.12	0.30	1.00
Total nitrogen	0.60	1.20	2.00

4. Salt River below Stewart Mountain Dam to its confluence with the Verde River:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.05	–	0.20
Total nitrogen	0.60	–	3.00

5. Little Colorado River and its perennial tributaries upstream from:

- The headwaters to River Reservoir,
- South Fork of Little Colorado River at 34°00'49"/109°24'18" to above South Fork Campground at 34°04'49"/109°24'18", and
- The headwaters of Water Canyon Creek to the Apache-Sitgreaves National Forest boundary:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.08	0.10	0.75
Total nitrogen	0.60	0.75	1.10

6. From the Little Colorado River and State Route 260 at 34°06'39"/109°18'55" to Lyman Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.20	0.30	0.75
Total nitrogen	0.70	1.20	1.50

7. Colorado River at the Northern International Boundary near Morelos Dam:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	–	0.33	–
Total nitrogen	–	2.50	–

8. Oak Creek from its headwaters at 35°01'30"/111°44'12" to its confluence with the Verde River and the West Fork of Oak Creek from its headwaters at 35°02'44"/111°54'48" to its confluence with Oak Creek.

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.1	0.25	0.30
Total nitrogen	1.00	1.50	2.50

9. No discharge of wastewater to Show Low Creek or its perennial tributaries upstream of and including Fools Hollow Lake shall exceed 0.16 mg/L total phosphates as P.

10. No discharge of wastewater to the San Francisco River or its perennial tributaries upstream of Luna Lake Dam shall exceed 1.0 mg/L total phosphates as P.

**G. Footnotes:**

1. "1" Includes A&Wc, A&Ww, A&Wedw, and A&We.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-110. Salinity Standards for the Colorado River**

- A.** The flow-weighted average annual salinity in the lower main stem of the Colorado River shall not exceed the following criteria:

Location	Total Dissolved Solids
Below Hoover Dam	723 mg/L
Below Parker Dam	747 mg/L
At Imperial Dam	879 mg/L

- B.** The plan of implementation contained in the "2014 Review, Water Quality Standards for Salinity, Colorado River System," approved October 2014, is incorporated by reference to preserve the basin-wide approach to salinity control developed by the Colorado River Basin Salinity Control Forum and to ensure compliance with the numeric criteria for salinity in subsection (A). This material does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the Colorado River Basin Salinity Control Forum, 106 West 500 South, Suite 101, Bountiful, Utah 84010-6232 or at <http://www.coloradoriversalinity.org/>.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-111. Analytical Methods**

- A.** A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610, 40 CFR 136.3, or an alternative analytical method approved under A.A.C. R9-14-610(C).

- B.** A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final

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rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-112. Outstanding Arizona Waters**

- A.** The Director shall classify a surface water as an outstanding Arizona water (OAW) by rule.
- B.** The Director may adopt, under R18-11-115, a site-specific standard to maintain and protect existing water quality in an OAW.
- C.** Any person may nominate a surface water for classification as an OAW by filing a nomination with the Director. The nomination shall include:
  1. A map and a description of the surface water;
  2. A written statement in support of the nomination, including specific reference to the applicable criteria for an OAW classification prescribed in subsection (D);
  3. Supporting evidence demonstrating that the criteria prescribed in subsection (D) are met; and
  4. Available water quality data relevant to establishing the baseline water quality of the proposed OAW.
- D.** The Director may classify a surface water as an OAW based upon the following criteria:
  1. The surface water is a perennial or intermittent water;
  2. The surface water is in a free-flowing condition. For purposes of this subsection, “in a free-flowing condition” means that a surface water does not have an impoundment, diversion, channelization, rip-rapping or other bank armor, or another hydrological modification within the reach nominated for an OAW classification;
  3. The surface water has good water quality. For purposes of this subsection, “good water quality” means that the surface water has water quality that meets or is better than applicable surface water quality standards. A surface water that is listed as impaired under R18-11-604(E) is ineligible for OAW classification; and
  4. The surface water meets one or both of the following conditions:
    - a. The surface water is of exceptional recreational or ecological significance because of its unique attributes, such as the geology, flora and fauna, water quality, aesthetic value, or the wilderness characteristic of the surface water;
    - b. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species' maintenance and propagation or the surface water provides critical habitat for the threatened or endangered species. An endangered or threatened species is identified in “Endangered and Threatened Wildlife,” 50 CFR 17.11 (revised 2005), and “Endangered and Threatened Plants,” 50 CFR 17.12 (revised 2005). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the National Archives and Records Administration at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>.
- E.** The Director shall hold at least one public meeting in the local area of a surface water that is nominated for classification as an OAW to solicit public comment on the nomination.
- F.** The Director shall consider the following factors when deciding whether to classify a surface water as an OAW:
  1. Whether there is the ability to manage the surface water and its watershed to maintain and protect existing water quality;
  2. The social and economic impact of Tier 3 antidegradation protection;
  3. The public comments in support of, or in opposition to, an OAW classification;
  4. The timing of the nomination relative to the triennial review of surface water quality standards;
  5. The consistency of an OAW classification with applicable water quality management plans; and
  6. Whether the nominated surface water is located within a national or state park, national monument, national recreation area, wilderness area, riparian conservation area, area of critical environmental concern, or it has another special use designation (for example, Wild and Scenic River).
- G.** The following surface waters are classified as OAWs:
  1. The West Fork of the Little Colorado River, from its headwaters to Government Springs (approximately 9.1 river miles);
  2. Oak Creek, from its headwaters to its confluence with the Verde River (approximately 50.3 river miles);
  3. West Fork of Oak Creek, from its headwaters to its confluence with Oak Creek (approximately 15.8 river miles);
  4. Peebles Canyon Creek, from its headwaters to its confluence with the Santa Maria River (approximately 8.1 river miles);
  5. Burro Creek, from its headwaters to its confluence with Boulder Creek (approximately 29.5 miles);
  6. Francis Creek, from its headwaters to its confluence with Burro Creek (approximately 22.9 river miles);
  7. Bonita Creek, from its boundary of the San Carlos Indian Reservation to its confluence with the Gila River (approximately 14.7 river miles);
  8. Cienega Creek, from its confluence with Gardner Canyon to the USGS gaging station (#09484600) (approximately 28.3 river miles);
  9. Aravaipa Creek, from its confluence with Stowe Gulch to the downstream boundary of the Aravaipa Canyon Wilderness Area (approximately 15.5 river miles);
  10. Cave Creek, from its headwaters to the Coronado National Forest boundary (approximately 10.4 river miles);
  11. South Fork of Cave Creek, from its headwaters to its confluence with Cave Creek (approximately 8.6 river miles);
  12. Buehman Canyon Creek, from its headwaters to its confluence with unnamed tributary at 32°24'31"/110°32'08" (approximately 9.8 river miles);
  13. Lee Valley Creek, from its headwaters to Lee Valley Reservoir (approximately 1.6 river miles);
  14. Bear Wallow Creek, from its headwaters to the boundary of the San Carlos Indian Reservation (approximately 4.25 river miles);
  15. North Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
  16. South Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
  17. Snake Creek, from its headwaters to its confluence with the Black River (approximately 6.2 river miles);
  18. Hay Creek, from its headwaters to its confluence with the West Fork of the Black River (approximately 5.5 river miles);

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19. Stinky Creek, from the White Mountain Apache Indian Reservation boundary to its confluence with the West Fork of the Black River (approximately 3.0 river miles);
20. KP Creek, from its headwaters to its confluence with the Blue River (approximately 12.7 river miles);
21. Davidson Canyon, from the unnamed spring at 31°59'00"/110°38'49" to its confluence with Cienega Creek; and
22. Fossil Creek, from its headwaters at the confluence of Sandrock and Calf Pen Canyons above Fossil Springs to its confluence with the Verde River (approximately 17.2 river miles).

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2). Added "water quality standards" to R18-11-112, previously omitted in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-113. Effluent-Dependent Waters**

- A. The Director shall classify a surface water as an effluent-dependent water by rule.
- B. The Director may adopt, under R18-11-115, a site-specific water quality standard for an effluent-dependent water.
- C. Any person may submit a petition for rule adoption requesting that the Director classify a surface water as an effluent-dependent water. The petition shall include:
  1. A map and a description of the surface water;
  2. Information that demonstrates that the surface water consists of a point source discharge of wastewater; and
  3. Information that demonstrates that, without a point source discharge of a wastewater, the receiving water is an ephemeral water.
- D. The Director shall use the water quality standards that apply to an effluent-dependent water to derive water quality-based effluent limits for a point source discharge of wastewater to an ephemeral water.
- E. The Director may use aquatic and wildlife (edw) acute standards only to derive water quality based effluent limits for a sporadic, infrequent, or emergency point source discharge to an ephemeral water or to an effluent-dependent water. The Director shall consider the following factors when deciding whether to apply A&Wedw (acute) standards:
  1. The amount, frequency, and duration of the discharge;
  2. The length of time water may be present in the receiving water;
  3. The distance to a downstream water with aquatic and wildlife chronic standards; and
  4. The likelihood of chronic exposure to pollutants.
- F. The Director may establish alternative water quality-based effluent limits in an AZPDES permit based on seasonal differences in the discharge.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective December 18, 1992 (Supp. 92-4).  
 Amended effective April 24, 1996 (Supp. 96-2).  
 Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-114. Mixing Zones**

- A. The Director may establish a mixing zone for a point source discharge to a surface water as a condition of an AZPDES per-

mit. A mixing zone is prohibited in an ephemeral water or where there is no water for dilution.

- B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director for a mixing zone as part of an application for an AZPDES permit. The request shall include:
  1. An identification of the pollutant for which the mixing zone is requested;
  2. A proposed outfall design;
  3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone means the location where the concentration of wastewater across a transect of the surface water differs by less than five percent; and
  4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions.
- C. The Director shall review the request for a mixing zone to determine whether the written request is complete. If the request is incomplete, the Director shall provide the applicant with a list of the additional information required.
- D. The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:
  1. The assimilative capacity of the receiving water;
  2. The likelihood of adverse human health effects;
  3. The location of drinking water plant intakes and public swimming areas;
  4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
  5. Bioaccumulation;
  6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
  7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
  8. The size of the mixing zone;
  9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
  10. The concentration gradient of the pollutant within the mixing zone;
  11. Sediment deposition;
  12. The potential for attracting aquatic life to the mixing zone; and
  13. The cumulative impacts of other mixing zones and other discharges to the surface water.
- E. Director determination.
  1. The Director shall deny a request to establish a mixing zone if a water quality standard will be violated outside the boundaries of the proposed mixing zone. The Director shall notify the owner or operator of the denial in writing and shall state the reason for the denial.
  2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.
- F. Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.
- G. The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.
- H. Mixing zone requirements.

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1. The length of a mixing zone shall not exceed 500 meters in a stream.
  2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
  3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
  4. A mixing zone shall provide for a zone of passage of not less than 50 percent of the cross-sectional area of a river or stream.
  5. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
  6. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution.
- I.** The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:
1. Chlordane,
  2. DDT and its metabolites (DDD and DDE),
  3. Dieldrin,
  4. Dioxin,
  5. Endrin,
  6. Endrin aldehyde,
  7. Heptachlor,
  8. Heptachlor epoxide,
  9. Lindane,
  10. Mercury,
  11. Polychlorinated biphenyls (PCBs), and
  12. Toxaphene.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2).  
 Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-115. Site-Specific Standards**

- A.** The Director shall adopt a site-specific standard by rule.
- B.** The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:
1. Local physical, chemical, or hydrological conditions of a surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
  2. The sensitivity of resident aquatic organisms that occur in a surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in Appendix A;
  3. Resident aquatic organisms that occur in a surface water represent a narrower mix of species than those in the dataset used by the Department to derive numeric water quality standards to protect aquatic life in Appendix A;
  4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in Appendix A. "Natural background" means the concentration of a pollutant in a surface water due only to non-anthropogenic sources.
  5. Natural adaptive processes have enabled a viable, balanced population of aquatic life to exist in a surface water where the level of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in Appendix A; or

6. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a surface water.

**C.** Site-specific standard by request. To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically-defensible procedure.

1. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:
  - a. Identifies the pollutant;
  - b. Describes the reach's boundaries;
  - c. Uses one of the following procedures, as defined by the most recent EPA guidance documents:
    - i. The recalculation procedure,
    - ii. The water effects ratio for metals,
    - iii. The streamlined water effects ratio, or
    - iv. The Biotic ligand model.
  - d. Demonstrates that all designated uses are protected.
2. Alternatively, a study outline submitted for the Director's approval must contain the following elements:
  - a. Identifies the pollutant;
  - b. Describes the reach's boundaries;
  - c. Describes the hydrologic regime of the waterbody;
  - d. Describes the scientifically-defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;
  - e. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
  - f. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
  - g. Demonstrates that all designated uses are protected; and
  - h. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration. Modeling approaches include Better Assessment Science Integrating Source and Nonpoint Sources (Basins), Hydrologic Simulation Program-Fortran (HSPF), and Hydrologic Engineering Center (HEC) programs developed by the U.S. Army Corps of Engineers.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2). Section repealed by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-116. Resource Management Agencies**

Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-117. Canals and Urban Park Lakes**

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- A. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified in Appendix B. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical, biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified in Appendix B.
- B. The discharge of lubricating oil associated with the start-up of well pumps that discharge to canals is not a violation of R18-11-108(B).

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Amended effective April 24, 1996 (Supp. 96-2).

Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-118. Dams and Flood Control Structures**

Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article. Nothing in this Article requires the release of water from a dam or a flood control structure.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Amended effective April 24, 1996 (Supp. 96-2).

Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-119. Natural background**

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is not caused by human activity but is due solely to naturally-occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

**R18-11-120. Enforcement**

- A. Any person who causes a violation of a water quality standard or any provision of this Article is subject to the enforcement provisions in A.R.S. Title 49, Chapter 2, Article 4.
- B. The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. In such cases, the water quality standard is enforceable at the practical quantitation limit.
- C. The Department shall determine compliance with acute aquatic and wildlife criteria from the analytical result of a grab sample. Compliance with chronic aquatic and wildlife criteria shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart.
- D. A person is not subject to penalties for violation of a water quality standard provided that the person is in compliance with the provisions of a compliance schedule issued under R18-11-121.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Amended effective April 24, 1996 (Supp. 96-2).

Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

**R18-11-121. Schedules of Compliance**

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve compliance. The permittee shall demonstrate that all requirements under § 301(b) and § 306 of the Clean Water Act [33 U.S.C. 1311(b) and 1316] are achieved and that the point source cannot

comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:

1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;
4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

Amended effective April 24, 1996 (Supp. 96-2).

Amended by final rulemaking at 8 A.A.R. 1264, effective

March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-122. Variances**

- A. The Director shall consider a variance from a water quality standard for a point source discharge if the discharger demonstrates that treatment more advanced than that required to comply with technology-based effluent limitations is necessary to comply with the water quality standard and:
  1. It is not technically feasible to achieve compliance within the next five years,
  2. The cost of the treatment would result in substantial and widespread economic and social impact, or
  3. Human-caused conditions or sources of pollution prevent attainment of the water quality standard and cannot be remedied within the next five years.
- B. If the Director grants a variance for a point source discharge:
  1. The Director shall issue the variance for a fixed term not to exceed five years,
  2. The variance shall apply only on a pollutant-specific basis. The point source discharge shall meet all other applicable water quality standards for which a variance is not granted, and
  3. The variance shall not modify a water quality standard. Other point source discharges to the surface water shall meet applicable water quality standards.
- C. Upon expiration of a variance, a point source discharger shall either comply with the water quality standard or apply for renewal of the variance. To renew a variance, the applicant shall demonstrate reasonable progress towards compliance with the water quality standard during the term of the variance.
- D. The Director shall reevaluate a variance upon the issuance, reissuance, or modification of the AZPDES permit for the point source discharge.
- E. A person who seeks a variance from a water quality standard shall submit a written request for a variance to the Director. A request for a variance shall include the following information:
  1. Identification of the specific pollutant and water quality standard for which a variance is sought;
  2. Identification of the receiving surface water;
  3. For an existing point source discharge, a detailed description of the existing discharge control technologies that are used to achieve compliance with applicable water quality standards. For a new point source discharge, a detailed



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- description of the proposed discharge control technologies that will be used to achieve compliance with applicable water quality standards;
4. Documentation that the existing or proposed discharge control technologies will comply with applicable technology-based effluent limitations and that more advanced treatment technology is necessary to achieve compliance with the water quality standard for which a variance is sought;
  5. A detailed discussion of the reasons why compliance with the water quality standard cannot be achieved;
  6. A detailed discussion of the discharge control technologies that are available for achieving compliance with the water quality standard for which a variance is sought;
  7. Documentation of one of the following:
    - a. That it is not technically feasible to install and operate any of the available discharge control technologies to achieve compliance with the water quality standard for which a variance is sought,
    - b. That installation and operation of each of the available discharge technologies to achieve compliance with the water quality standard would result in substantial and widespread economic and social impact, or
    - c. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and it is not possible to remedy the conditions or sources of pollution within the next five years,
  8. Documentation that the point source discharger has reduced, to the maximum extent practicable, the discharge of the pollutant for which a variance is sought through implementation of a local pretreatment, source reduction, or waste minimization program; and
  9. A detailed description of proposed interim discharge limitations that represent the highest level of treatment achievable by the point source discharger during the term of the variance.
- F.** The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
  2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
  3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
  4. The likelihood of adverse human health effects.
- G.** The Director shall issue a public notice and provide an opportunity for a public hearing on whether the request for a variance should be granted or denied under A.A.C. R18-9-A907 and A.A.C. R18-9-A908. An interested party may request a public hearing on a variance under A.A.C. R18-9-A908(B).
- H.** Any variance granted by the Director is subject to review and approval by the Regional Administrator.
- I.** Any person who is adversely affected by a decision of the Director to grant or deny a variance and who has exercised any right to comment on the decision may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.
- J.** The Director shall not grant a variance for a point source discharge to an OAW listed in R18-11-112(G).

**Historical Note**

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-123. Discharge Prohibitions**

- A.** The discharge of wastewater to the following surface waters is prohibited:
1. Sabino Canyon Creek;
  2. Vekol Wash, upstream of the Ak-Chin Indian Reservation; and
  3. Smith Wash, upstream of the Ak-Chin Indian Reservation.
- B.** The discharge to Lake Powell of human body wastes and the wastes from toilets and other receptacles intended to receive or retain wastes from a vessel is prohibited.

**Historical Note**

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

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## Appendix A. Numeric Water Quality Standards

Table 1. Water Quality Criteria By Designated Use (see f)

Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	AgI (µg/L)	AgL (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550	850	550			
Acrolein	107028	3.5	1.9	467	467	34	30	34	30	34	30			
Acrylonitrile	107131	0.06	0.2	3	37,333	3,800	250	3,800	250	3,800	250			
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170	2,500	170			
Aldrin	309002	0.002	0.00005	0.08	28	3		3		3		4.5	0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)												
Ammonia	7664417					See (e) & Table 11	See (e) & Table 12	See (e) & Table 11	See (e) & Table 12	See (e) & Table 11	See (e) & Table 12			
Anthracene	120127	2,100	74	280,000	280,000									
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D	1,000 D	600 D			
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	340 D	150 D	440 D	2,000 T	200 T
Asbestos	1332214	See (a)												
Atrazine	1912249	3		32,667	32,667									
Barium	7440393	2,000 T		98,000 T	98,000 T									
Benz(a)anthracene	56553	0.005	0.02	0.2	0.2									
Benzene	71432	5	140	93	3,733	2,700	180	2,700	180	8,800	560			
3, 4 Benzfluoranthene	205992	0.005	0.02	1.9	1.9									
Benzidine	92875	0.0002	0.0002	0.01	2,800	1,300	89	1,300	89	1,300	89	10,000	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.02	0.2	0.2									
Benzo(k)fluoranthene	207089	0.005	0.02	1.9	1.9									
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D	65 D	5.3 D			
Beta particles and photon emitters		4 millirems /year See (i)												
Bis(2-chloroethyl) ether	111444	0.03	0.5	1	1	120,000	6,700	120,000	6,700	120,000	6,700			
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333									
Boron	7440428	1,400 T		186,667 T	186,667 T								1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667									
p-Bromodiphenyl ether	101553				180	14	180	14	180	14				
Bromoform	75252	TTHM See (g)	133	180	18,667	15,000	10,000	15,000	10,000	15,000	10,000			
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360	5,500	360			
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130	1,700	130			
Cadmium	7440439	5 T	84 T	700 T	700 T	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	50	50
Carbofuran	1563662	40		4,667	4,667	650	50	650	50	650	50			
Carbon tetrachloride	56235	5	2	11	980	18,000	1,100	18,000	1,100	18,000	1,100			
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2	2.4	0.2	3.2		
Chlorine (total residual)	7782505	4,000		4,000	4,000	19	11	19	11	19	11			
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260	3,800	260			
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800	180,000	9,800			
Chloroform	67663	TTHM See (g)	470	230	9,333	14,000	900	14,000	900	14,000	900			
p-Chloro-m-cresol	59507					15	4.7	15	4.7	15	4.7	48,000		
Chloromethane	74873					270,000	15,000	270,000	15,000	270,000	15,000			
2-Chloronaphthalene	91587	560	317	74,667	74,667									
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150	2,200	150			
Chloropyrifos	2921882	21		2,800	2,800	0.08	0.04	0.08	0.04	0.08	0.04			
Chromium III	16065831		75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4		
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D	16 D	11 D	34 D		
Chromium (Total)	7440473	100 T											1,000	1,000
Chrysene	218019	0.005	0.02	19	19									
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T
Cyanide (as free cyanide)	57125	200 T	16,000 T	18,667 T	18,667 T	22 T	5.2 T	41 T	9.7 T	41 T	9.7 T	84 T		200 T
Dalapon	75990	200	8,000	28,000	28,000									
Dibenz (ah) anthracene	53703	0.005	0.02	1.9	1.9									
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667									
1,2-Dibromo-3-chloropropane	96128	0.2		2,800	2,800									
1,2-Dibromoethane	106934	0.05		8,400	8,400									
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35	470	35	1,100		
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470	1,200	470	5,900		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970	2,500	970			
1,4-Dichlorobenzene	106467	75	5,755	373,333	373,333	560	210	2,000	780	2,000	780	6,500		
3,3'-Dichlorobenzidine	91941	0.08	0.03	3	3									
p,p'-Dichlorodiphenyltri-chloroethane (DDT) and metabolites (DDD) and (DDE)	50293	0.1	0.0002	4	467	1.1	0.001	1.1	0.001	1.1	0.001	1.1	0.001	0.001
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000	59,000	41,000			
1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950	15,000	950			
1,2-cis-Dichloroethylene	156592	70		70	70									
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900	68,000	3,900			

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Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	AgI (µg/L)	AgL (µg/L)
Dichloromethane	75092	5	593	190	56,000	97,000	5,500	97,000	5,500	97,000	5,500			
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88	1,000	88			
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333									
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200	26,000	9,200			
1,3-Dichloropropene	542756	0.7	42	420	28,000	3,000	1,100	3,000	1,100	3,000	1,100			
Dieldrin	60571	0.002	0.00005	0.09	47	0.2	0.06	0.2	0.06	0.2	0.06	4	0.003	See (b)
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600	26,000	1,600			
Di (2-ethylhexyl) adipate	103231	400		560,000	560,000									
Di (2-ethylhexyl) phthalate	117817	6	3	100	18,667	400	360	400	360	400	360	3,100		
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310	1,000	310	150,000		
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000	17,000	1,000			
4,6-Dinitro-o-cresol	534521	28	582	3,733	3,733	310	24	310	24	310	24			
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2	110	9.2			
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860	14,000	860			
2,6-Dinitrotoluene	606202	0.05		2	3,733									
Di-n-octyl phthalate	117840	2,800		373,333	373,333									
Dinoseb	88857	7		933	933									
1,2-Diphenylhydrazine	122667	0.04	0.2	1.8	1.8	130	11	130	11	130	11			
Diquat	85007	20		2,053	2,053									
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endothall	145733	100		18,667	18,667									
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.09	0.04	0.7	0.004	0.004
Endrin aldehyde	7421933					0.09	0.04	0.09	0.04	0.09	0.04	0.7		
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400	23,000	1,400			
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600	2,000	1,600			
Fluorene	86737	280	1,067	37,333	37,333									
Fluoride	7782414	4,000		140,000	140,000									
Glyphosate	1071836	700	266,667	93,333	93,333									
Guthion	86500						0.01		0.01		0.01			
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7	6	3.7			
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2	45	8.2			
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7,467	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	560	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	1.8	280	280	1	0.08	1	0.28	1	0.61	11		
Hexachlorocyclopentadiene	77474	50	580	9,800	9,800	3.5	0.3	3.5	0.3	3.5	0.3			
Hexachloroethane	67721	2.5	3.3	100	933	490	350	490	350	490	350	850		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		2 See (c)			
Indeno (1,2,3-cd) pyrene	193395	0.05	0.49	1.9	1.9									
Iron	7439896						1,000 D		1,000 D		1,000 D			
Isophorone	78591	37	961	1,500	186,667	59,000	43,000	59,000	43,000	59,000	43,000			
Lead	7439971	15 T		15 T	15 T	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	See (d) & Table 6	10,000 T	100 T
Malathion	121755	140		18,667	18,667		0.1		0.1		0.1			
Manganese	7439965	980		130,667	130,667								10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D	2.4 D	0.01 D	5 D		10 T
Methoxychlor	72435	40		4,667	4,667		0.03		0.03		0.03			
Methylmercury			0.3 mg/kg											
Mirex	2385855	1		187	187		0.001		0.001		0.001			
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580	3,200	580			
Nickel	7440020	140 T	4,600 T	28,000 T	28,000 T	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7		
Nitrate	14797558	10,000		3,733,333	3,733,333									
Nitrite	14797650	1,000		233,333	233,333									
Nitrate + Nitrite		10,000												
Nitrobenzene	98953	3.5	138	467	467	1,300	850	1,300	850	1,300	850			
p-Nitrophenol	100027					4,100	3,000	4,100	3,000	4,100	3,000			
N-nitrosodimethylamine	62759	0.001	3	0.03	0.03									
N-nitrosodi-n-phenylamine	86306	7.1	6	290	290	2,900	200	2,900	200	2,900	200			
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667									
Oxamyl	23135220	200		23,333	23,333									
Parathion	56382					0.07	0.01	0.07	0.01	0.07	0.01			
Paraquat	1910425	32		4,200	4,200	100	54	100	54	100	54			
Pentachlorophenol	87865	1	1,000	12	28,000	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350		46,667	46,667	0.3	0.2	0.3	0.2	0.3	0.2			

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Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	AgI (µg/L)	AgL (µg/L)
Phenanthrene	85018					30	6.3	30	6.3	30	6.3			
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000	7,000	1,000	180,000		
Picloram	1918021	500	2,710	65,333	65,333									
Polychlorinated biphenyls (PCBs)	1336363	0.5	0.00006	19	19	2	0.01	2	0.02	2	0.02	11	0.001	0.001
Pyrene	129000	210	800	28,000	28,000									
Radium 226 + Radium 228		5 pCi/L												
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T		2 T	33 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		
Simazine	112349	4		4,667	4,667									
Strontium		8 pCi/L												
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370	5,600	370			
Sulfides												100		
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	5x10-9	0.00003	0.0009	0.01	0.005	0.01	0.005	0.01	0.005	0.1		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56,000	4,700	3,200	4,700	3,200	4,700	3,200			
Tetrachloroethylene	127184	5	261	9,333	9,333	2,600	280	6,500	680	6,500	680	15,000		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D	700 D	150 D			
Toluene	108883	1,000	201,000	280,000	280,000	8,700	180	8,700	180	8,700	180			
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.7	0.0002	11	0.005	0.005
Tributyltin						0.5	0.07	0.5	0.07	0.5	0.07			
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300	1,700	300			
1,1,1-Trichloroethane	71556	200	428,571	1,866,667	1,866,667	2,600	1,600	2,600	1,600	2,600	1,600	1,000		
1,1,2-Trichloroethane	79005	5	16	25	3,733	18,000	12,000	18,000	12,000	18,000	12,000			
Trichloroethylene	79016	5	29	280,000	280	20,000	1,300	20,000	1,300	20,000	1,300			
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25	160	25	3,000		
2,4,5-Trichlorophenoxy propionic acid (2,4,5-TP)	93721	50		7,467	7,467									
Trihalomethanes (T)		80												
Trilium		20,000 pCi/L												
Uranium	7440611	30 D		2,800	2,800									
Vinyl chloride	75014	2	5	2	2,800									
Xylenes (T)	1330207	10,000		186,667	186,667									
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	See (d) & Table 9	10,000 T	25,000 T

## Footnotes

- The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.
- The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.
- In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.
- Hardness, expressed as mg/L CaCO<sub>3</sub>, is determined according to the following criteria:
  - If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - If the receiving water has an A&Wedw or A&We designated use, then the hardness is based on the hardness of the effluent from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- pH is determined according to the following criteria:
  - If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - If the receiving water body has an A&Wedw or A&We designated use, then the pH is based on the pH of the effluent from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- Table 1 abbreviations.
  - µg/L = micrograms per liter,
  - mg/kg = milligrams per kilogram,
  - pCi/L = picocuries per liter,
  - D = dissolved,
  - T = total recoverable,
  - TTHM indicates that the chemical is a trihalomethane.

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- g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds 80 µg/L, as a rolling annual average.
- h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.
- i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.
- j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- k. Abbreviations for the mathematical equations are as follows:  
 $e$  = the base of the natural logarithm and is a mathematical constant equal to 2.71828  
 LN = is the natural logarithm  
 CMC = Criterion Maximum Concentration (acute)  
 CCC = Criterion Continuous Concentration (chronic)

**Historical Note**

Appendix A repealed; new Appendix A, Table 1 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 1 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 1 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 1 repealed; new Appendix A, Table 1 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 1 amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 2. Acute Water Quality Standards for Dissolved Cadmium**

Aquatic and Wildlife coldwater		Aquatic and Wildlife warmwater, and edw		Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	0.42	20	0.74	20	11.3
100	2.0	100	4.3	100	64.6
400	7.7	400	19.1	400	290
$e^{(1.0166 \cdot \text{LN}(\text{Hardness}) - 3.924)} \cdot (1.136672 - \text{LN}(\text{Hardness}) \cdot 0.041838)$		$e^{(1.128 \cdot \text{LN}(\text{Hardness}) - 3.6867)} \cdot (1.136672 - \text{LN}(\text{Hardness}) \cdot 0.041838)$		$e^{(1.128 \cdot \text{LN}(\text{Hardness}) - 0.9691)} \cdot (1.136672 - \text{LN}(\text{Hardness}) \cdot 0.041838)$	

**Historical Note**

Appendix A repealed; new Appendix A, Table 2 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 2 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 2 amended to correct references to footnotes (Supp. 02-4). Appendix A, Table 2 footnotes amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 2 repealed; new Appendix A, Table 2 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 2 repealed; new Table 2 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 3. Chronic Water Quality Standards for Dissolved Cadmium**

Aquatic and Wildlife coldwater		Aquatic and Wildlife warmwater, and edw	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	0.08	20	0.68
100	0.25	100	2.2
400	0.64	400	6.2
$e^{(0.7409 \cdot \text{LN}(\text{Hardness}) - 4.719)} \cdot (1.101672 - \text{LN}(\text{Hardness}) \cdot 0.041838)$		$e^{(0.7852 \cdot \text{LN}(\text{Hardness}) - 2.715)} \cdot (1.101672 - \text{LN}(\text{Hardness}) \cdot 0.041838)$	

**Historical Note**

Appendix A, Table 3 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 3 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 3 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 3 repealed; new Table 3 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 4. Water Quality Standards for Dissolved Chromium III**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	152	20	19.8	20	512
100	570	100	74.1	100	1912
400	1773	400	231	400	5950
$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 3.7256)} \cdot (0.316)$		$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 0.6848)} \cdot (0.86)$		$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 4.9361)} \cdot (0.316)$	

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**Historical Note**

Appendix A, Table 4 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 4 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 4 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 4 repealed; new Table 4 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 5. Water Quality Standards for Dissolved Copper**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	2.9	20	2.3	20	5.1
100	13.4	100	9.0	100	23.3
400	49.6	400	29.3	400	85.9
$e^{(0.9422*LN(Hardness)-1.702)*(0.96)}$		$e^{(0.8545*LN(Hardness)-1.702)*(0.96)}$		$e^{(0.9422*LN(Hardness)-1.1514)*(0.96)}$	

**Historical Note**

Appendix A, Table 5 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 5 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 5 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 5 repealed; new Table 5 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 6. Water Quality Standards for Dissolved Lead**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	10.8	20	0.4	20	22.8
100	64.6	100	2.5	100	136.3
400	281	400	10.9	400	592.7
$e^{(1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712))}$		$e^{(1.273*LN(Hardness)-4.705)*(1.46203-(LN(Hardness))*(0.145712))}$		$e^{(1.273*LN(Hardness)-0.7131)*(1.46203-(LN(Hardness))*(0.145712))}$	

**Historical Note**

Appendix A, Table 6 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 6 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 6 renumbered to Table 9; new Table 6 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 6 repealed; new Table 6 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 7. Water Quality Standards for Dissolved Nickel**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	120.0	20	13.3	20	1066
100	468	100	52.0	100	4158
400	1513	400	168	400	13436
$e^{(0.846*LN(Hardness)+2.255)*(0.998)}$		$e^{(0.846*LN(Hardness)+0.0584)*(0.997)}$		$e^{(0.846*LN(Hardness)+4.4389)*(0.998)}$	

**Historical Note**

Appendix A, Table 7 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 7 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 7 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 7 repealed; new Table 7 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 8. Water Quality Standards for Dissolved Silver**

Acute Aquatic and Wildlife coldwater, warmwater, edw, and ephemeral	
Hard. mg/L	Std. µg/L
20	0.20
100	3.2
400	34.9
$e^{(1.72*LN(Hardness)-6.59)*(0.85)}$	

**Historical Note**

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Appendix A, Table 8 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 8 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 8 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 8 repealed; new Table 8 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 9. Water Quality Standards for Dissolved Zinc**

Acute and Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	30.0	20	284
100	117	100	1112
400	379	400	3599
$e^{(0.8473 \cdot \text{LN}(\text{Hardness}) + 0.884)} \cdot (0.978)$		$e^{(0.8473 \cdot \text{LN}(\text{Hardness}) + 3.1342)} \cdot (0.978)$	

**Historical Note**

Appendix A, Table 9 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 9 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 9 renumbered to Table 11; new Table 9 renumbered from Table 6 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 9 repealed; new Table 9 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 10. Water Quality Standards for Pentachlorophenol**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
pH	µg/L	pH	µg/L	pH	µg/L
3	0.16	3	0.1	3	0.66
6	3.3	6	2.1	6	13.5
9	67.7	9	42.7	9	274
$e^{(1.005 \cdot (\text{pH}) - 4.83)}$		$e^{(1.005 \cdot (\text{pH}) - 5.29)}$		$e^{(1.005 \cdot (\text{pH}) - 3.4306)}$	

**Historical Note**

Appendix A, Table 10 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 10 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 10 renumbered to Table 12; new Table 10 renumbered from Table 11 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 10 repealed; new Table 10 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 11. Acute Criteria for Total Ammonia (in mg/L as N) Aquatic and Wildlife coldwater, warmwater, and edw**

pH	A&Wc	A&Ww and A&W edw
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.7	14.4
7.8	8.1	12.1
7.9	6.8	10.1
8.0	5.6	8.4
8.1	4.6	7.0
8.2	3.8	5.7
8.3	3.2	4.7
8.4	2.6	3.9

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8.5	2.1					3.2				
8.6	1.8					2.7				
8.7	1.5					2.2				
8.8	1.2					1.8				
8.9	1.0					1.6				
9.0	0.9					1.3				
Formula:	CMC	=	0.275	+	39.0	CMC	=	0.411	+	58.4
			$1+10^{7.204-pH}$		$1+10^{pH-7.204}$			$1+10^{7.204-pH}$		$1+10^{pH-7.204}$

**Historical Note**

Appendix A, Table 11 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 11 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 11 renumbered to Table 10; new Table 11 renumbered from Table 9 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 11 repealed; new Table 11 renumbered from Table 25 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 12. Chronic Criteria for Total Ammonia (mg/L as N) Aquatic and Wildlife coldwater, warmwater, and edw**

pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.7	6.7	6.1	5.3	4.7	4.1	3.6	3.2	2.8	2.5
6.6	6.6	6.6	6.0	5.3	4.6	4.1	3.6	3.1	2.8	2.4
6.7	6.4	6.4	5.9	5.2	4.5	4.0	3.5	3.1	2.7	2.4
6.8	6.3	6.3	5.7	5.0	4.4	3.9	3.4	3.0	2.6	2.3
6.9	6.1	6.1	5.6	4.9	4.3	3.8	3.3	2.9	2.6	2.3
7.0	5.9	5.9	5.4	4.7	4.2	3.6	3.2	2.8	2.5	2.2
7.1	5.7	5.7	5.2	4.5	4.0	3.5	3.1	2.7	2.4	2.1
7.2	5.4	5.4	4.9	4.3	3.8	3.3	2.9	2.6	2.3	2.0
7.3	5.1	5.1	4.6	4.1	3.6	3.1	2.8	2.4	2.1	1.9
7.4	4.7	4.7	4.3	3.8	3.3	2.9	2.6	2.3	2.0	1.7
7.5	4.4	4.4	4.0	3.5	3.1	2.7	2.4	2.1	1.8	1.6
7.6	4.0	4.0	3.6	3.2	2.8	2.5	2.2	1.9	1.7	1.5
7.7	3.6	3.6	3.3	2.9	2.5	2.2	1.9	1.7	1.5	1.3
7.8	3.1	3.2	2.9	2.5	2.2	2.0	1.7	1.5	1.3	1.2
7.9	2.8	2.8	2.5	2.2	2.0	1.7	1.5	1.3	1.2	1.0
8.0	2.4	2.4	2.2	1.9	1.7	1.5	1.3	1.2	1.0	0.90
8.1	2.1	2.1	1.9	1.7	1.5	1.3	1.1	1.0	0.88	0.77
8.2	1.8	1.8	1.6	1.4	1.3	1.1	0.97	0.86	0.75	0.66
8.3	1.5	1.5	1.4	1.2	1.1	0.94	0.83	0.73	0.64	0.56
8.4	1.3	1.3	1.2	1.0	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.1	1.1	1.0	0.90	0.77	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.74	0.65	0.57	0.50	0.44	0.37	0.34
8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.57	0.57	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.39	0.34	0.30	0.26	0.23	0.20	0.18
$CCC = \left( \frac{0.0577}{1+10^{7.688-pH}} + \frac{2.487}{1+10^{pH-7.204}} \right) - \text{MIN}(2.85, 1.45 \cdot 10^{0.028 \cdot (25-T)})$										

**Historical Note**

Appendix A, Table 12 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 12 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 12 renumbered to Table 18; new Table 12 renumbered from Table 10 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 12 repealed; new Table 12 renumbered from Table 26 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 13. Repealed****Historical Note**

Appendix A, Table 13 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).



Appendix A, Table 13 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 13 renumbered to Table 15; new Table 13 renumbered from Table 14 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 13 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 14. Repealed****Historical Note**

Appendix A, Table 14 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 14 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 14 renumbered to Table 13; new Table 14 renumbered from Table 15 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 14 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 15. Repealed****Historical Note**

Appendix A, Table 15 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 15 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 15 renumbered to Table 14; new Table 15 renumbered from Table 13 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 15 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 16. Repealed****Historical Note**

Appendix A, Table 16 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 16 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 16 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 16 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 17. Repealed****Historical Note**

Appendix A, Table 17 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 17 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 17 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 17 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 18. Repealed****Historical Note**

Appendix A, Table 18 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 18 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 18 repealed; new Table 18 renumbered from Table 12 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix

A, Table 18 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 19. Repealed****Historical Note**

Appendix A, Table 19 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 19 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 19 renumbered to Table 21; new Table 19 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 19 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 20. Repealed****Historical Note**

Appendix A, Table 20 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 20 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 20 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 20 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 21. Repealed****Historical Note**

Appendix A, Table 21 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 21 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 21 renumbered to Table 22; new Table 21 renumbered from Table 19 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 21 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 22. Repealed****Historical Note**

Appendix A, Table 22 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 22 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 22 renumbered to Table 23; new Table 22 renumbered from Table 21 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 22 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 23. Repealed****Historical Note**

Appendix A, Table 23 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 23 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 23 renumbered to Table 24; new Table 23 renumbered from Table 22 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 23 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 24. Repealed**

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**Historical Note**

Appendix A, Table 24 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 24 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 24 renumbered to Table 25; new Table 24 renumbered from Table 23 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 24 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 25. Renumbered****Historical Note**

Appendix A, Table 25 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

Appendix A, Table 25 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 25 renumbered to Table 26; new Table 25 renumbered from Table 24 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 25 renumbered to Table 11 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 26. Renumbered****Historical Note**

Appendix A, Table 26 renumbered from Table 25 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 26 renumbered to Table 12 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Appendix B. Surface Waters and Designated Uses**

(Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Appendix B table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.)

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wedw	FBC	PBC	DWS	FC	AgI	AgL
BW	Alamo Lake	34°14'06"/113°35'00"	Deep		A&Ww			FBC			FC		AgL
BW	Big Sandy River	Headwaters to Alamo Lake			A&Ww			FBC			FC		AgL
BW	Bill Williams River	Alamo Lake to confluence with Colorado River			A&Ww			FBC			FC		AgL
BW	Blue Tank	34°40'14"/112°58'17"			A&Ww			FBC			FC		AgL
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"		A&Wc				FBC			FC		AgL
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Carter Tank	34°52'27"/112°57'31"			A&Ww			FBC			FC		AgL
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"		A&Wc				FBC			FC		AgL
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/112°35'33"		A&Wc				FBC			FC		AgL
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash				A&We			PBC				AgL
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring		A&Wc				FBC			FC		AgL
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Smith Canyon			A&Ww			FBC			FC		AgL
BW	Date Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek			A&Ww			FBC		DWS	FC	AgI	AgL
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC	AgI	AgL
BW	Knight Creek	Headwaters to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Peeples Canyon (OAW)	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Red Lake	35°12'18"/113°03'57"	Sedimentary		A&Ww			FBC			FC		AgL
BW	Santa Maria River	Headwaters to Alamo Lake			A&Ww			FBC			FC	AgI	AgL
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"		A&Wc				FBC			FC		AgL
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek			A&Ww			FBC			FC		AgL
CG	Agate Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River '			A&Ww			FBC			FC		AgL
CG	Big Springs Tank	36°36'08"/112°21'01"		A&Wc				FBC			FC		AgL
CG	Boucher Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek		A&Wc				FBC			FC		
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"				A&We			PBC				
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash					A&Wedw		PBC				AgL

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Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural		
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek				A&We		PBC				
CG	Cataract Creek	Headwaters to Santa Fe Reservoir		A&Wc			FBC		DWS	FC	AgI	AgL
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"		A&Wc			FBC			FC	AgI	AgL
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream				A&Wedw		PBC				
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary				A&We		PBC				AgL
CG	Cataract Lake	35°15'04"/112°12'58"	Igneous	A&Wc			FBC		DWS	FC		AgL
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"		A&Wc			FBC			FC		
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River			A&Ww		FBC			FC		
CG	City Reservoir	35°13'57"/112°11'25"	Igneous	A&Wc			FBC		DWS	FC		
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"		A&Wc			FBC			FC		
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC		
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream				A&Wedw		PBC				
CG	Colorado River	Lake Powell to Lake Mead		A&Wc			FBC		DWS	FC	AgI	AgL
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"		A&Wc			FBC			FC		AgL
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC		AgL
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"		A&Wc			FBC			FC		
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC		
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"		A&Wc			FBC			FC		
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC		
CG	Detrital Wash	Headwaters to Lake Mead				A&We		PBC				
CG	Dogtown Reservoir	35°12'40"/112°07'54"	Igneous	A&Wc			FBC		DWS	FC	AgI	AgL
CG	Dragon Creek	Headwaters to confluence with Milk Creek		A&Wc			FBC			FC		
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek			A&Ww		FBC			FC		
CG	Garden Creek	Headwaters to confluence with Pipe Creek			A&Ww		FBC			FC		
CG	Gonzalez Lake	35°15'26"/112°12'09"	Shallow	A&Ww			FBC			FC	AgI	AgL
CG	Grand Wash	Headwaters to Lake Mead				A&We		PBC				
CG	Grapevine Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Grapevine Wash	Headwaters to Lake Mead				A&We		PBC				
CG	Hakatai Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Hance Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Havas Canyon Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"		A&Wc			FBC			FC		
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Horn Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Hualapai Wash	Headwaters to Lake Mead				A&We		PBC				
CG	Jacob Lake	36°42'27"/112°13'50"	Sedimentary	A&Wc			FBC			FC		
CG	Kaibab Lake	35°17'04"/112°09'32"	Igneous	A&Wc			FBC		DWS	FC	AgI	AgL
CG	Kanab Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC		DWS	FC		AgL
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"		A&Wc			FBC			FC		
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Lake Mead	36°06'18"/114°26'33"	Deep	A&Wc			FBC		DWS	FC	AgI	AgL
CG	Lake Powell	36°59'53"/111°08'17"	Deep	A&Wc			FBC		DWS	FC	AgI	AgL
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Monument Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		

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Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
CG	Nankoweap Creek	Headwaters to confluence with unnamed tributary at 36°15'29"/111°57'26"		A&Wc			FBC			FC	
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC	
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"			A&Ww		FBC			FC	
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"		A&Wc			FBC			FC	
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC	
CG	Olo Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"		A&Wc			FBC			FC	
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Paria River	Utah border to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"		A&Wc			FBC			FC	
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek			A&Ww		FBC			FC	
CG	Pipe Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '			A&Ww		FBC			FC	
CG	Red Lake	35°40'03"/114°04'07"			A&Ww		FBC			FC	AgL
CG	Roaring Springs	36°11'45"/112°02'06"		A&Wc			FBC		DWS	FC	
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek		A&Wc			FBC			FC	
CG	Rock Canyon	Headwaters to confluence with Truxton Wash				A&We		PBC			
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Ruby Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Russell Tank	35°52'21"/111°52'45"		A&Wc			FBC			FC	AgL
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"		A&Wc			FBC			FC	
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC	
CG	Santa Fe Reservoir	35°14'31"/112°11'10"	Igneous	A&Wc			FBC		DWS	FC	
CG	Sapphire Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Serpentine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"		A&Wc			FBC			FC	
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Short Creek	Headwaters to confluence with the Virgin River				A&We		PBC			
CG	Slate Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Stone Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Tapeats Creek	Headwaters to confluence with the Colorado River		A&Wc			FBC			FC	
CG	Thunder River	Headwaters to confluence with Tapeats Creek		A&Wc			FBC			FC	
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"				A&We		PBC			
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream				A&Wedw		PBC			
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek				A&We		PBC			
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Truxton Wash	Headwaters to Red Lake				A&We		PBC			
CG	Turquoise Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC	
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River			A&Ww		FBC			FC	
CG	Unnamed Wash (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon				A&Wedw		PBC			

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Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural		
CG	Unnamed Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash				A&Wedw		PBC				
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"		A&Wc			FBC			FC		
CG	Virgin River	Headwaters to confluence with the Colorado River		A&Ww			FBC			FC	AgI	AgL
CG	Vishnu Creek	Headwaters to confluence with the Colorado River		A&Ww			FBC			FC		
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River		A&Ww			FBC			FC		
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek		A&Wc			FBC			FC		AgL
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"		A&Wc			FBC			FC		
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River		A&Ww			FBC			FC		
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"		A&Wc			FBC			FC		AgL
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash		A&Ww			FBC			FC		AgL
CL	A10 Backwater	33°31'45"/114°33'19"	Shallow	A&Ww			FBC			FC		
CL	A7 Backwater	33°34'27"/114°32'04"	Shallow	A&Ww			FBC			FC		
CL	Adobe Lake	33°02'36"/114°39'26"	Shallow	A&Ww			FBC			FC		
CL	Cibola Lake	33°14'01"/114°40'31"	Shallow	A&Ww			FBC			FC		
CL	Clear Lake	33°01'59"/114°31'19"	Shallow	A&Ww			FBC			FC		
CL	Columbus Wash	Headwaters to confluence with the Gila River			A&We			PBC				
CL	Colorado River	Lake Mead to Topock Marsh		A&Wc			FBC		DWS	FC	AgI	AgL
CL	Colorado River	Topock Marsh to Morelos Dam		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Gila River	Painted Rock Dam to confluence with the Colorado River		A&Ww			FBC			FC	AgI	AgL
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"			A&We			PBC				
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream				A&Wedw		PBC				
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash			A&We			PBC				
CL	Hunter's Hole Backwater	' 32°31'13"/114°48'07"	Shallow	A&Ww			FBC			FC		AgL
CL	Imperial Reservoir	' 32°53'02"/114°27'54"	Shallow	A&Ww			FBC		DWS	FC	AgI	AgL
CL	Island Lake	' 33°01'44"/114°36'42"	Shallow	A&Ww			FBC			FC		
CL	Laguna Reservoir	32°51'35"/114°28'29"	Shallow	A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Havasu	34°35'18"/114°25'47"	Deep	A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Mohave	35°26'58"/114°38'30"	Deep	A&Wc			FBC		DWS	FC	AgI	AgL
CL	Martinez Lake	32°58'49"/114°28'09"	Shallow	A&Ww			FBC			FC	AgI	AgL
CL	Mittry Lake	32°49'17"/114°27'54"	Shallow	A&Ww			FBC			FC		
CL	Mohave Wash	Headwaters to Lake Havasu			A&We			PBC				
CL	Nortons Lake	33°02'30"/114°37'59"	Shallow	A&Ww			FBC			FC		
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"	Sedimentary	A&Ww			FBC			FC	AgI	AgL
CL	Pretty Water Lake	33°19'51"/114°42'19"	Shallow	A&Ww			FBC			FC		
CL	Quigley Ponds	32°43'40"/113°57'44"	Shallow	A&Ww			FBC			FC		
CL	Redondo Lake	32°44'32"/114°29'03"	Shallow	A&Ww			FBC			FC		
CL	Sacramento Wash	Headwaters to Topock Marsh			A&We			PBC				
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"		A&Ww			FBC			FC		AgL
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash			A&We			PBC				AgL
CL	Topock Marsh	34°43'27"/114°28'59"	Shallow	A&Ww			FBC		DWS	FC	AgI	AgL
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/114°13'10" to 1 km downstream				A&Wedw		PBC				
CL	Wellton Canal	Wellton-Mohawk Irrigation District							DWS		AgI	AgL
CL	Wellton Ponds	32°40'32"/114°00'26"		A&Ww			FBC			FC		
CL	YPG Pond	32°50'58"/114°26'14"		A&Ww			FBC			FC		
CL	Yuma Area Canals	Above municipal water treatment plant intakes							DWS		AgI	AgL
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains									AgI	AgL
LC	Als Lake	35°02'10"/111°25'17"	Igneous	A&Ww			FBC			FC		AgL
LC	Ashurst Lake	35°01'06"/111°24'18"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Atcheson Reservoir	33°59'59"/109°20'43"	Igneous	A&Ww			FBC			FC	AgI	AgL
LC	Auger Creek	Headwaters to confluence with Nutrioso Creek		A&Wc			FBC			FC		AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc			FBC		FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon		A&Wc			FBC		FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc			FBC		FC		AgL
LC	Bear Canyon Lake	34°24'00"/111°00'06"	Sedimentary	A&Wc			FBC		FC	AgI	AgL
LC	Becker Lake	34°09'11"/109°18'23"	Shallow	A&Wc			FBC		FC		AgL
LC	Billy Creek	Headwaters to confluence with Show Low Creek		A&Wc			FBC		FC		AgL
LC	Black Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc			FBC		FC	AgI	AgL
LC	Black Canyon Lake	34°20'32"/110°40'13"	Sedimentary	A&Wc			FBC	DWS	FC	AgI	AgL
LC	Blue Ridge Reservoir	34°32'40"/111°11'33"	Deep	A&Wc			FBC		FC	AgI	AgL
LC	Boot Lake	34°58'54"/111°20'11"	Igneous	A&Wc			FBC		FC		AgL
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag			A&We			PBC			
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek		A&Wc			FBC		FC		AgL
LC	Bunch Reservoir	34°02'20"/109°26'48"	Igneous	A&Wc			FBC		FC	AgI	AgL
LC	Camilo Tank	34°55'03"/111°22'40"	Igneous		A&Ww		FBC		FC		AgL
LC	Carnero Lake	34°06'57"/109°31'42"	Shallow	A&Wc			FBC		FC		AgL
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"	Sedimentary	A&Wc			FBC		FC	AgI	AgL
LC	Chevelon Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC		FC	AgI	AgL
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek		A&Wc			FBC		FC		AgL
LC	Chilson Tank	34°51'43"/111°22'54"	Igneous		A&Ww		FBC		FC		AgL
LC	Clear Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC	DWS	FC		AgL
LC	Clear Creek Reservoir	34°57'09"/110°39'14"	Shallow	A&Wc			FBC	DWS	FC	AgI	AgL
LC	Coconino Reservoir	35°00'05"/111°24'10"	Igneous	A&Wc			FBC		FC	AgI	AgL
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek		A&Wc			FBC		FC		AgL
LC	Colter Reservoir	33°56'39"/109°28'53"	Shallow	A&Wc			FBC		FC		AgL
LC	Concho Creek	Headwaters to confluence with Carrizo Wash		A&Wc			FBC		FC		AgL
LC	Concho Lake	34°26'37"/109°37'40"	Shallow	A&Wc			FBC		FC	AgI	AgL
LC	Cow Lake	34°53'14"/111°18'51"	Igneous		A&Ww		FBC		FC		AgL
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC		FC	AgI	AgL
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"			A&Ww		FBC		FC		AgL
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc			FBC		FC		AgL
LC	Daves Tank	34°44'22"/111°17'15"			A&Ww		FBC		FC		AgL
LC	Deep Lake	35°03'34"/111°25'00"	Igneous		A&Ww		FBC		FC		AgL
LC	Dry Lake (EDW)	34°38'02"/110°23'40"	EDW			A&Wedw		PBC			
LC	Ducksnest Lake	34°59'14"/111°23'57"			A&Ww		FBC		FC		AgL
LC	East Clear Creek	Headwaters to confluence with Clear Creek		A&Wc			FBC		FC	AgI	AgL
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"	Igneous		A&Ww		FBC		FC	AgI	AgL
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"	EDW			A&Wedw		PBC			
LC	Fish Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC		FC		AgL
LC	Fool's Hollow Lake	34°16'30"/110°03'43"	Igneous	A&Wc			FBC		FC		AgL
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc			FBC		FC		AgL
LC	Geneva Reservoir	34°01'45"/109°31'46"	Igneous		A&Ww		FBC		FC		AgL
LC	Hall Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC		FC	AgI	AgL
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc			FBC		FC		AgL
LC	Hay Lake	34°00'11"/109°25'57"	Igneous	A&Wc			FBC		FC		AgL
LC	Hog Wallow Lake	33°58'57"/109°25'39"	Igneous	A&Wc			FBC		FC	AgI	AgL
LC	Horse Lake	35°03'55"/111°27'50"			A&Ww		FBC		FC		AgL
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek		A&Wc			FBC		FC		AgL
LC	Hulsey Lake	33°55'58"/109°09'40"	Sedimentary	A&Wc			FBC		FC		AgL
LC	Indian Lake	35°00'39"/111°22'41"			A&Ww		FBC		FC		AgL
LC	Jack's Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC		FC	AgI	AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
LC	Jarvis Lake	33°58'59"/109°12'36"	Sedimentary		A&Ww			FBC			FC		AgL
LC	Kinnikinick Lake	34°53'53"/111°18'18"	Igneous	A&Wc				FBC			FC		AgL
LC	Knoll Lake	34°25'38"/111°05'13"	Sedimentary	A&Wc				FBC			FC		AgL
LC	Lake Humphreys (EDW)	35°11'51"/111°35'19"	EDW				A&Wedw		PBC				
LC	Lake Mary, Lower	35°06'21"/111°34'38"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake Mary, Upper	35°03'23"/111°28'34"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake of the Woods	34°09'40"/109°58'47"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir		A&Wc				FBC			FC		
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Lee Valley Reservoir	33°56'29"/109°30'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork		A&Wc				FBC			FC		AgL
LC	Lily Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Little Colorado River	Headwaters to Lyman Reservoir		A&Wc				FBC			FC	AgI	AgL
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River		A&Wc				FBC		DWS	FC	AgI	AgL
LC	Little Colorado River	Below confluence with the Puerco River to the Navajo Nation Reservation boundary			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs		A&Wc				FBC			FC		
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little George Reservoir	34°00'37"/109°19'15"	Igneous		A&Ww			FBC			FC	AgI	
LC	Little Mormon Lake	34°17'00"/109°58'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Little Ortega Lake	34°22'47"/109°40'06"	Igneous	A&Wc				FBC			FC		
LC	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Long Lake, Upper	35°00'08"/111°21'23"	Igneous	A&Wc				FBC			FC		AgL
LC	Long Tom Tank	34°20'35"/110°49'22"		A&Wc				FBC			FC		AgL
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"	EDW				A&Wedw		PBC				
LC	Lyman Reservoir	34°21'21"/109°21'35"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Mamie Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Marshall Lake	35°07'18"/111°32'07"	Igneous	A&Wc				FBC			FC		AgL
LC	McKay Reservoir	34°01'27"/109°13'48"		A&Wc				FBC			FC	AgI	AgL
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL
LC	Mexican Hay Lake	34°01'58"/109°21'25"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Milk Creek	Headwaters to confluence with Hulsey Creek		A&Wc				FBC			FC		AgL
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek		A&Wc				FBC			FC		AgL
LC	Mineral Creek	Headwaters to Little Ortega Lake		A&Wc				FBC			FC	AgI	AgL
LC	Mormon Lake	34°56'38"/111°27'25"	Shallow	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Morton Lake	34°53'37"/111°17'41"	Igneous	A&Wc				FBC			FC		AgL
LC	Mud Lake	34°55'19"/111°21'29"	Shallow		A&Ww			FBC			FC		AgL
LC	Ned Lake (EDW)	34°17'17"/110°03'22"	EDW				A&Wedw		PBC				
LC	Nelson Reservoir	34°02'52"/109°11'19"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Norton Reservoir	34°03'57"/109°31'27"	Igneous		A&Ww			FBC			FC		AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural		
LC	Nutrisio Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC	AgI	AgL
LC	Paddy Creek	Headwaters to confluence with Nutrisio Creek		A&Wc			FBC			FC		AgL
LC	Phoenix Park Wash	Headwaters to Dry Lake			A&We			PBC				
LC	Pierce Seep	34°23'39"/110°31'17"		A&Wc				PBC				
LC	Pine Tank	34°46'49"/111°17'21"	Igneous		A&Ww		FBC			FC		AgL
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"	EDW			A&Wedw		PBC				
LC	Porter Creek	Headwaters to confluence with Show Low Creek		A&Wc			FBC			FC		AgL
LC	Potato Lake	35°03'15"/111°24'13"	Igneous	A&Wc			FBC			FC		AgL
LC	Pratt Lake	34°01'32"/109°04'18"	Sedimentary	A&Wc			FBC			FC		
LC	Puerco River	Headwaters to confluence with the Little Colorado River			A&Ww		FBC		DWS	FC	AgI	AgL
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream				A&Wedw		PBC				
LC	Rainbow Lake	34°09'00"/109°59'09"	Shallow Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Reagan Reservoir	34°02'09"/109°08'41"	Igneous		A&Ww		FBC			FC		AgL
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"			A&We			PBC				
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash				A&Wedw		PBC				
LC	River Reservoir	34°02'01"/109°26'07"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Rogers Reservoir	33°56'30"/109°16'20"	Igneous		A&Ww		FBC			FC		AgL
LC	Rudd Creek	Headwaters to confluence with Nutrisio Creek		A&Wc			FBC			FC		AgL
LC	Russel Reservoir	33°59'29"/109°20'01"	Igneous		A&Ww		FBC			FC	AgI	AgL
LC	San Salvador Reservoir	33°58'51"/109°19'55"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Scott Reservoir	34°10'31"/109°57'31"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Show Low Creek	Headwaters to confluence with Silver Creek		A&Wc			FBC			FC	AgI	AgL
LC	Show Low Lake	34°11'36"/110°00'12"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Silver Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC	AgI	AgL
LC	Slade Reservoir	33°59'41"/109°20'26"	Igneous		A&Ww		FBC			FC	AgI	AgL
LC	Soldiers Annex Lake	34°47'15"/111°13'51"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Soldiers Lake	34°47'47"/111°14'04"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Spaulding Tank	34°30'17"/111°02'06"			A&Ww		FBC			FC		AgL
LC	Sponseller Lake	34°14'09"/109°50'45"	Igneous	A&Wc			FBC			FC		AgL
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"	Igneous		A&Ww		FBC			FC	AgI	AgL
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"	EDW			A&Wedw		PBC				
LC	Tremaine Lake	34°46'02"/111°13'51"	Igneous	A&Wc			FBC			FC		AgL
LC	Tunnel Reservoir	34°01'53"/109°26'34"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/110°38'13" to confluence with Black Canyon Creek				A&Wedw		PBC				
LC	Unnamed Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep				A&Wedw		PBC				
LC	Unnamed Wash (EDW)	Black Mesa Ranger Station WWTP outfall at 34°23'35"/110°33'36" to confluence of Oklahoma Flat Draw				A&Wedw		PBC				
LC	Vail Lake	35°05'23"/111°30'46"	Igneous	A&Wc			FBC			FC		AgL
LC	Walnut Creek	Headwaters to confluence with Billy Creek		A&Wc			FBC			FC		AgL
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC		AgL
LC	Water Canyon Reservoir	34°00'16"/109°20'05"	Igneous		A&Ww		FBC			FC	AgI	AgL
LC	Whale Lake (EDW)	35°11'13"/111°35'21"	EDW			A&Wedw		PBC				
LC	Whipple Lake	34°16'49"/109°58'29"	Igneous		A&Ww		FBC			FC		AgL
LC	White Mountain Lake	34°21'57"/109°59'21"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	White Mountain Reservoir	34°00'12"/109°30'39"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Willow Creek	Headwaters to confluence with Clear Creek		A&Wc			FBC			FC		AgL
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc			FBC			FC		AgL
LC	Willow Springs Lake	34°18'13"/110°52'16"	Sedimentary	A&Wc			FBC			FC	AgI	AgL



## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
LC	Woodland Reservoir	34°07'35"/109°57'01"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Woods Canyon Lake	34°20'09"/110°56'45"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Zuni River	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169					A&Wedw		PBC				AgL
MG	Agua Fria River	From State Route 169 to Lake Pleasant			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream					A&Wedw		PBC				
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"				A&We			PBC				
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River					A&Wedw		PBC				
MG	Alvord Park Lake	35th Avenue & Baseline Road, Phoenix at 33°22'23"/112°08'20"	Urban		A&Ww				PBC		FC		
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash				A&We			PBC				
MG	Antelope Creek	Headwaters to confluence with Martinez Creek			A&Ww			FBC			FC		AgL
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"											AgL
MG	Ash Creek	Headwaters to confluence with Tex Canyon		A&Wc				FBC			FC	AgI	AgL
MG	Ash Creek	Below confluence with Tex Canyon to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Beehive Tank	32°52'37"/111°02'20"			A&Ww			FBC			FC		AgL
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch		A&Wc				FBC			FC	AgI	AgL
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road, Phoenix at 33°31'24"/112°11'08"	Urban		A&Ww				PBC		FC		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/111°56'19"	Urban		A&Ww				PBC		FC		
MG	Cave Creek	Headwaters to the Cave Creek Dam			A&Ww			FBC			FC		AgL
MG	Cave Creek	Cave Creek Dam to the Arizona Canal				A&We			PBC				
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"				A&We			PBC				AgL
MG	Centennial Wash Ponds	33°54'52"/113°23'47"			A&Ww			FBC			FC		AgL
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"	Urban		A&Ww				PBC		FC	AgI	
MG	Cortez Park Lake	35th Avenue & Dunlap, Glendale at 33°34'13"/112°07'52"	Urban		A&Ww				PBC		FC	AgI	
MG	Desert Breeze Lake	Galaxy Drive, West Chandler at 33°18'47"/111°55'10"	Urban		A&Ww				PBC		FC		
MG	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww				FBC		FC		AgL
MG	Dobson Lake	Dobson Road & Los Lagos Vista Avenue, Mesa at 33°22'48"/111°52'35"	Urban		A&Ww				PBC		FC		
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary				A&We			PBS				AgL
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/111°54'53"	Urban		A&Ww				PBC		FC		
MG	Encanto Park Lake	15th Avenue & Encanto Blvd., Phoenix at 33°28'28"/112°05'18"	Urban		A&Ww				PBC		FC	AgI	
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/112°21'06"	Urban		A&Ww				PBC		FC		
MG	French Gulch	Headwaters to confluence with Hassayampa River			A&Ww				PBC				AgL
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River				A&We			PBC				AgL
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/111°57'35" to confluence with Cave Creek					A&Wedw		PBC				

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam			A&Ww		FBC		FC	AgI	AgL
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"			A&We		PBC				AgL
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road				A&Wedw	PBC				
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary			A&We		PBC				AgL
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam				A&Wedw	PBC		FC	AgI	AgL
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam			A&Ww		FBC		FC	AgI	AgL
MG	Granada Park Lake	6505 North 20th Street, Phoenix at 33°31'56"/112°02'16"	Urban		A&Ww		PBC		FC		
MG	Groom Creek	Headwaters to confluence with the Hassayampa River		A&Wc			FBC		DWS	FC	AgL
MG	Lower Lake Pleasant	33°50'32"/112°16'03"			A&Ww		FBC		FC	AgI	AgL
MG	Hassayampa Lake	34°25'45"/112°25'33"	Igneous	A&Wc			FBC		DWS	FC	
MG	Hassayampa River	Headwaters to confluence with unnamed tributary at 34°26'09"/112°30'32"		A&Wc			FBC		FC	AgI	AgL
MG	Hassayampa River	Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51'52"/112°39'56"			A&Ww		FBC		FC	AgI	AgL
MG	Hassayampa River	Below unnamed tributary to the Buckeye Irrigation Company Canal			A&We		PBC				AgL
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River			A&Ww		FBC		FC		AgL
MG	Horsethief Lake	34°09'42"/112°17'57"	Igneous	A&Wc			FBC		DWS	FC	AgL
MG	Indian Bend Wash	Headwaters to confluence with the Salt River			A&We		PBC				
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"	Urban		A&Ww		PBC		FC		
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"	Urban		A&Ww		PBC		FC		
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"	Urban		A&Ww		PBC		FC	AgI	
MG	Lake Pleasant	33°53'46"/112°16'29"	Deep		A&Ww		FBC		DWS	FC	AgI
MG	The Lake Tank	32°54'14"/111°04'15"			A&Ww		FBC		FC		AgL
MG	Lion Canyon	Headwaters to confluence with Weaver Creek			A&Ww		FBC		FC		AgL
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at			A&Ww		FBC		FC		AgL
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"		A&Wc			FBC		FC		AgL
MG	Lynx Creek	Below confluence with unnamed tributary to confluence with Agua Fria River			A&Ww		FBC		FC		AgL
MG	Lynx Lake	34°31'07"/112°23'07"	Deep	A&Wc			FBC		DWS	FC	AgI
MG	Maricopa Park Lake	33°35'28"/112°18'15"	Urban		A&Ww		PBC		FC		
MG	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww		FBC		FC		AgL
MG	Martinez Creek	Headwaters to confluence with the Hassayampa River			A&Ww		FBC		FC	AgI	AgL
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"	Urban		A&Ww		PBC		FC	AgI	
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/112°20'15" to confluence with Agua Fria River				A&Wedw	PBC				
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"			A&Ww		FBC		FC		AgL
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"					PBC				
MG	Mineral Creek	End of diversion channel to confluence with Gila River			A&Ww		FBC		FC		AgL
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River			A&Ww		FBC		FC		AgL
MG	Mountain Valley Park Ponds (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash	EDW			A&Wedw	PBC				
MG	New River	Headwaters to Interstate 17			A&Ww		FBC		FC	AgI	AgL
MG	New River	Below Interstate 17 to confluence with Agua Fria River			A&We		PBC				AgL
MG	Painted Rock Reservoir	33°04'23"/113°00'38"	Sedimentary		A&Ww		FBC		FC	AgI	AgL
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"	Urban		A&Ww		PBC		FC		
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"	Urban		A&Ww		PBC		FC		
MG	Perry Mesa Tank	34°11'03"/112°02'01"			A&Ww		FBC		FC		AgL
MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes						DWS		AgI	AgL
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations								AgI	AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
MG	Picacho Reservoir	32°51'10"/111°28'25"	Shallow		A&Ww			FBC			FC	AgI	AgL
MG	Poland Creek	Headwaters to confluence with Lorena Gulch		A&Wc				FBC			FC		AgL
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek			A&Ww			FBC			FC		AgL
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"			A&Ww				PBC				AgL
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon				A&Wedw			PBC				
MG	Queen Creek	Below Potts Canyon to ' Whitlow Dam			A&Ww			FBC			FC		AgL
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River				A&We			PBC				
MG	Riverview Park Lake	Dobson Road & 8th Street, Mesa at 33°25'50"/111°52'29"	Urban		A&Ww				PBC		FC		
MG	Roadrunner Park Lake	36th Street & Cactus, Phoenix at 33°35'56"/112°00'21"	Urban		A&Ww				PBC		FC		
MG	Salt River	Verde River to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"				A&We			PBC				
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake					A&Wedw		PBC				
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge				A&We			PBC				
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at . 33°24'44"/112°07'59"			A&Ww				PBC		FC		
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River					A&Wedw		PBC		FC	AgI	AgL
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream					A&Wedw		PBC				
MG	Sycamore Creek	Headwaters to confluence with Tank Canyon		A&Wc				FBC			FC		AgL
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"	Urban		A&Ww			FBC			FC		
MG	Tule Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"		A&Wc				FBC			FC	AgI	AgL
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek			A&Ww			FBC			FC	AgI	AgL
MG	Unnamed Wash (EDW)	Gila Bend WWTP outfall to confluence with the Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'00"/112°19'03" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	North Florence WWTP outfall at 33°03'50"/111°23'13" to confluence with Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at 34°35'16"/112°16'18" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/111°59'22" to confluence with Cave Creek					A&Wedw		PBC				
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream					A&Wedw		PBC				
MG	Vista Del Camino Park North	7700 East Roosevelt Street, Scottsdale at 33°27'33"/111°54'52"	Urban		A&Ww				PBC		FC		
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
MG	Weaver Creek	Headwaters to confluence with Antelope Creek			A&Ww			FBC			FC		AgL
MG	White Canyon Creek	Headwaters to confluence with Walnut Canyon Creek			A&Ww			FBC			FC		AgL
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/110°43'52"	Urban		A&Ww				PBC		FC		
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail			A&Ww			FBC			FC		AgL
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek				A&We			PBC				AgL
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"				A&We			PBC				
SC	Alambre Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alamo Wash	Headwaters to confluence with Rillito Creek				A&We			PBC				
SC	Altar Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"				A&We			PBC				AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"		A&Ww			FBC		FC		AgL
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek			A&We		PBC				AgL
SC	Arivaca Creek	Headwaters to confluence with Altar Wash		A&Ww			FBC		FC		AgL
SC	Arivaca Lake	31°31'52"/111°15'06"	Igneous	A&Ww			FBC		FC	AgL	AgL
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash			A&We		PBC				AgL
SC	Bear Grass Tank	31°33'01"/111°11'03"		A&Ww			FBC		FC		AgL
SC	Big Wash	Headwaters to confluence with Cañada del Oro			A&We		PBC				
SC	Black Wash (EDW)	Pima County WWM D Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash			A&Wedw		PBC				
SC	Bog Hole Tank	31°28'36"/110°37'09"		A&Ww			FBC		FC		AgL
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash			A&We		PBC				
SC	California Gulch	Headwaters To U.S./Mexico border		A&Ww			FBC		FC		AgL
SC	Cañada del Oro	Headwaters to State Route 77		A&Ww			FBC		FC	AgL	AgL
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River			A&We		PBC				AgL
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon		A&Ww			FBC		FC		AgL
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)		A&Ww			FBC		FC		AgL
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/110°38'49"			A&We		PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"		A&Ww			FBC		FC		AgL
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"			A&We		PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek		A&Ww			FBC		FC		AgL
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/110°38'17"			A&We		PBC				
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"		A&Ww			FBC		FC		
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/110°36'58"			A&We		PBC				AgL
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek		A&Ww			FBC		FC		
SC	Flux Canyon	Headwaters to confluence with Alum Canyon			A&We		PBC				AgL
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon	A&Wc				FBC		FC		
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek		A&Ww			FBC		FC		
SC	Greene Wash	Greene Reservoir at 32°37'09"/111°41'12" to the Tohono O'odham Indian Reservation boundary			A&We		PBC				
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/111°56'48"			A&We		PBC				
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at			A&We		PBC				AgL
SC	Hit Tank	32°43'57"/111°03'18"		A&Ww			FBC		FC		AgL
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border		A&Ww			FBC		FC		
SC	Huachuca Tank	31°21'11"/110°30'18"		A&Ww			FBC		FC		AgL
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River			A&We		PBC				
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/111°00'27"	Urban	A&Ww			PBC		FC		
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/110°49'00"	Urban	A&Ww			PBC		FC		
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"	A&Wc				FBC		FC		
SC	Lemmon Canyon Creek	Below unnamed tributary to confluence with Sabino Canyon Creek		A&Ww			FBC		FC		
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River			A&We		PBC				
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/110°52'51"	A&Wc				FBC		FC		AgL
SC	Madera Canyon Creek	Below unnamed tributary to confluence with the Santa Cruz River		A&Ww			FBC		FC		AgL
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek "		A&Ww			FBC		FC		AgL
SC	Nogales Wash	Headwaters to confluence with Potrero Creek		A&Ww			PBC		FC		
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek			A&We		PBC				

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
SC	Palisade Canyon Creek	Headwaters to confluence with unnamed tributary at 32°21'59"/110°46'16"		A&Wc			FBC		FC		
SC	Palisade Canyon Creek	Below unnamed tributary to confluence with Sabino Canyon Creek			A&Ww		FBC		FC		
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek				A&We		PBC			
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/110°28'47"		A&Wc			FBC		FC		
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border			A&Ww		FBC		FC		
SC	Parker Canyon Lake	31°25'35"/110°27'15"	Deep	A&Wc			FBC		FC	AgI	AgL
SC	Patagonia Lake	31°29'56"/110°50'49"	Deep		A&Ww		FBC		FC	AgI	AgL
SC	Peña Blanca Lake	31°24'15"/111°05'12"	Igneous		A&Ww		FBC		FC	AgI	AgL
SC	Potrero Creek	Headwaters to Interstate 19				A&We		PBC			AgL
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River			A&Ww		FBC		FC		AgL
SC	Puertocito Wash	Headwaters to confluence with Altar Wash				A&We		PBC			
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"			A&Ww		FBC		FC		AgL
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek			A&Ww		FBC		FC		
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River				A&We		PBC			AgL
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/110°50'39"		A&Wc			FBC		FC		
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash			A&Ww		FBC		FC		
SC	Rose Canyon Creek	Headwaters to Rose Canyon Lake		A&Wc			FBC		FC		
SC	Rose Canyon Lake	32°23'13"/110°42'38"	Igneous	A&Wc			FBC		FC		AgL
SC	Ruby Lakes	31°26'29"/111°14'22"	Igneous		A&Ww		FBC		FC		AgL
SC	Sabino Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'28"/110°47'03"		A&Wc			FBC		DWS	FC	AgI
SC	Sabino Canyon Creek	Below unnamed tributary to confluence with Tanque Verde River			A&Ww		FBC		DWS	FC	AgI
SC	Salero Ranch Tank	31°35'43"/110°53'25"			A&Ww		FBC		FC		AgL
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border			A&Ww		FBC		FC	AgI	AgL
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"			A&Ww		FBC		DWS	FC	AgI
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge				A&Wedw		PBC			AgL
SC	Santa Cruz River	Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"				A&We		PBC			AgL
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road				A&Wedw		PBC			
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River				A&We		PBC			AgL
SC	Santa Cruz Wash	Baumgartner Road to the Ak Chin Indian Reservation boundary				A&We		PBC			AgL
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"				A&We		PBC			
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream					A&Wedw	PBC			
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation				A&We		PBC			
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities WWTP outfall at 33°04'20"/112°01'47" to the Gila River Indian Reservation					A&Wedw	PBC			
SC	Soldier Lake	32°25'34"/110°44'43"		A&Wc			FBC		FC		AgL
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"				A&We		PBC			AgL
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall					A&Wedw	PBC			AgL
SC	Sonoita Creek	Below groundwater upwelling point to confluence with the Santa Cruz River			A&Ww		FBC		FC	AgI	AgL
SC	Split Tank	31°28'11"/111°05'12"			A&Ww		FBC		FC		AgL
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro			A&Ww		FBC		FC		
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"		A&Wc			FBC		FC		
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir			A&Ww		FBC		FC		

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
SC	Sycamore Canyon Creek	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Sycamore Reservoir	32°20'57"/110°47'38"		A&Wc				FBC			FC		AgL
SC	Tanque Verde Creek	Headwaters to Houghton Road			A&Ww			FBC			FC		AgL
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek			A&We				PBC				AgL
SC	Three R Canyon	Headwaters to 31°28'26"/110°46'04"			A&We				PBC				AgL
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15"			A&Ww			FBC			FC		AgL
SC	Three R Canyon	From 31°28'28"/110°47'15" to confluence with Sonoita Creek			A&We				PBC				AgL
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River			A&We				PBC				AgL
SC	Unnamed Wash (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/110°48'02" to 5 km downstream				A&Wedw			PBC				
SC	Unnamed Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash				A&Wedw			PBC				
SC	Unnamed Wash (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro				A&Wedw			PBC				
SC	Vekol Wash	Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations			A&We				PBC				
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/110°26'27"		A&Wc				FBC			FC		AgL
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"			A&Ww			FBC			FC		AgL
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River				A&We			PBC				AgL
SC	Williams Ranch Tanks	31°55'14"/110°25'31"			A&Ww			FBC			FC		AgL
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area			A&Ww			FBC			FC		AgL
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"			A&Ww			FBC			FC	AgL	AgL
SP	Babocomari River	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"		A&Wc				FBC			FC		AgL
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek			A&Ww			FBC			FC		AgL
SP	Bass Canyon Tank	32°24'00"/110°13'00"			A&Ww			FBC			FC		AgL
SP	Bear Creek	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon		A&Wc				FBC			FC		AgL
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°24'13"/110°17'23"			A&Ww			FBC			FC		
SP	Blackwater Draw	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Booger Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek				A&We			PBC				AgL
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"			A&Ww			FBC			FC		AgL
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River			A&Ww			FBC			FC		AgL
SP	Bull Tank	32°31'13"/110°12'52"			A&Ww			FBC			FC		AgL
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon			A&Ww			FBC			FC		AgL
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"		A&Wc				FBC			FC		AgL
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Copper Creek	Headwaters to confluence with Prospect Canyon			A&Ww			FBC			FC		AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River			A&We			PBC			AgL
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"		A&Wc			FBC			FC	AgL
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon			A&Ww		FBC			FC	AgL
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon			A&Ww		FBC			FC	
SP	Dry Canyon	Headwaters to confluence with Abbot Canyon			A&Ww		FBC			FC	AgL
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/110°19'44"	Sedimentary		A&Ww		FBC			FC	
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash			A&Ww		FBC			FC	AgL
SP	Fly Pond	Fort Huachuca Military Reservation at 31°32'53"/110°21'16"			A&Ww		FBC			FC	
SP	Fourmile Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"		A&Wc			FBC			FC	AgL
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek			A&Ww		FBC			FC	AgL
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon			A&Ww		FBC			FC	AgL
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw			A&Ww		FBC			FC	AgL
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"		A&Wc			FBC		DWS	FC	AgL
SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww		FBC		DWS	FC	AgL
SP	Glance Creek	Headwaters to confluence with Whitewater Draw			A&Ww		FBC			FC	AgL
SP	Gold Gulch	Headwaters to U.S./Mexico border			A&Ww		FBC			FC	AgL
SP	Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/110°18'52"	Sedimentary		A&Ww			PBC		FC	
SP	Goudy Canyon Creek	Headwaters to confluence with Grant Creek		A&Wc			FBC			FC	AgL
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"		A&Wc			FBC		DWS	FC	AgL
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww		FBC			FC	AgL
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/110°19'49"	Sedimentary		A&Ww		FBC			FC	
SP	Greenbrush Draw	From U.S./Mexico border to confluence with San Pedro River			A&We			PBC			
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/109°22'17"			A&Ww		FBC			FC	
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"		A&Wc			FBC			FC	AgL
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww		FBC			FC	AgL
SP	Horse Camp Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Hot Springs Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww		FBC			FC	AgL
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/109°43'32"			A&Ww		FBC			FC	AgL
SP	Lake Cochise (EDW)	South of Twin Lakes Municipal Golf Course at 32°13'50"/109°49'27"	EDW			A&Wedw		PBC			
SP	Leslie Canyon Creek	Headwaters to confluence with Whitewater Draw			A&Ww		FBC			FC	AgL
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/110°18'34"			A&Ww		FBC			FC	
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon			A&Ww		FBC			FC	AgL
SP	Miller Canyon Creek	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"		A&Wc			FBC		DWS	FC	AgL
SP	Miller Canyon Creek	Below Broken Arrow Ranch Road to confluence with the San Pedro River			A&Ww		FBC		DWS	FC	AgL
SP	Moonshine Creek	Headwaters to confluence with Post Creek		A&Wc			FBC			FC	AgL
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/109°54'02"			A&Ww			PBC		FC	
SP	Mule Gulch	The Lavender Pit to the Highway 80 bridge at 31°26'30"/109°49'28"			A&We			PBC			
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw			A&We			PBC			AgL
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek			A&Ww		FBC			FC	AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/110°21'37"	Sedimentary		A&Ww			PBC		FC	
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww		FBC			FC	AgL
SP	Parsons Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Pinery Creek	Headwaters to State Highway 181		A&Wc			FBC		DWS	FC	AgL
SP	Pinery Creek	Below State Highway 181 to terminus near Willcox Playa			A&Ww		FBC		DWS	FC	AgL
SP	Post Creek	Headwaters to confluence with Grant Creek		A&Wc			FBC			FC	AgL
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"		A&Wc			FBC			FC	AgL
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww		FBC			FC	AgL
SP	Rattlesnake Canyon	Headwaters to confluence with Brush Canyon		A&Wc			FBC			FC	AgL
SP	Rattlesnake Canyon	Below confluence with Brush Canyon to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Redfield Canyon Creek	Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"		A&Wc			FBC			FC	AgL
SP	Redfield Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww		FBC			FC	AgL
SP	Riggs Lake	32°42'28"/109°57'53"	Igneous	A&Wc			FBC			FC	AgL
SP	Rock Creek	Headwaters to confluence with Turkey Creek Alc					FBC			FC	AgL
SP	Rucker Canyon Creek	Headwaters to confluence with Whitewater Draw		A&Wc			FBC			FC	AgL
SP	Rucker Canyon Lake	31°46'46"/109°18'30"	Shallow	A&Wc			FBC			FC	AgL
SP	San Pedro River	U.S./ Mexico Border to Redington			A&Ww		FBC			FC	AgL
SP	San Pedro River	From Redington to confluence with the Gila River			A&Ww		FBC			FC	AgL
SP	Snow Flat Lake	32°39'10"/109°51'54"	Igneous	A&Wc			FBC			FC	AgL
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"		A&Wc			FBC			FC	AgL
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon			A&Ww		FBC			FC	AgL
SP	Swamp Springs Canyon Creek	Headwaters to confluence with Redfield Canyon			A&Ww		FBC			FC	AgL
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/110°26'11"	Sedimentary		A&Ww		FBC			FC	
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/110°26'10"	Sedimentary		A&Ww		FBC			FC	
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc			FBC			FC	AgL
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa			A&Ww		FBC			FC	AgL
SP	Unnamed Wash (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream				A&Wedw		PBC			
SP	Virgus Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww		FBC			FC	AgL
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"			A&We			PBC			
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash				A&Wedw		PBC			
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River			A&We			PBC			
SP	Ward Canyon Creek	Headwaters to confluence with Turkey Creek		A&Wc			FBC			FC	AgL
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"			A&We			PBC			AgL
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border			A&Ww		FBC			FC	AgL
SP	Willcox Playa	From 32°08'19"/109°50'59" in the Sulphur Springs Valley	Sedimentary		A&Ww		FBC			FC	AgL
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/110°20'12"	Igneous		A&Ww		FBC			FC	
SR	Ackre Lake	33°37'01"/109°20'40"		A&Wc			FBC			FC	AgL
SR	Apache Lake	33°37'23"/111°12'26"	Deep		A&Ww		FBC		DWS	FC	AgL
SR	Barnhardt Creek	Headwaters to confluence with unnamed tributary at 34°05'37"/111°26'40"		A&Wc			FBC			FC	AgL
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek			A&Ww		FBC			FC	AgL
SR	Basin Lake	33°55'00"/109°26'09"	Igneous		A&Ww		FBC			FC	AgL
SR	Bear Creek	Headwaters to confluence with the Black River		A&Wc			FBC			FC	AgL
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River		A&Wc			FBC			FC	AgL



## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Beaver Creek	Headwaters to confluence with Black River		A&Wc				FBC			FC	AgI	AgL
SR	Big Lake	33°52'36"/109°25'33"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River	Headwaters to confluence with Salt River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, North Fork of East Fork	Headwaters to confluence with Black River, East Fork		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, West Fork	Headwaters to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road				A&We			PBC				AgL
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash				A&We			PBC				
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC	AgI	AgL
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek			A&Ww			FBC			FC		
SR	Campaign Creek	Headwaters to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Canyon Lake	33°32'44"/111°26'19"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Centerfire Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"		A&Wc				FBC			FC	AgI	AgL
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Christopher Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"		A&Wc				FBC			FC		AgL
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Conklin Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"		A&Wc				FBC			FC		AgL
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		AgL
SR	Corduoy Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC	AgI	AgL
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Crescent Lake	33°54'38"/109°25'18"	Shallow	A&Wc				FBC			FC	AgI	AgL
SR	Deer Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC		AgL
SR	Del Shay Creek	Headwaters to confluence with Gun Creek			A&Ww			FBC			FC		AgL
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46"/110°52'35"		A&Wc				FBC			FC		AgL
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"	Igneous		A&Ww			FBC			FC		AgL
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC		AgL
SR	Fish Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Fish Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"		A&Wc				FBC			FC		AgL
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon		A&Wc				FBC			FC		AgL
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek			A&Ww			FBC			FC		AgL
SR	Greenback Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"		A&Wc				FBC			FC	AgI	AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural		
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww		FBC			FC	AgI	AgL
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek		A&Wc			FBC			FC		AgL
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc			FBC			FC		AgL
SR	Home Creek	Headwaters to confluence with the Black River, West Fork		A&Wc			FBC			FC		AgL
SR	Horse Creek	Headwaters to confluence with the Black River, West Fork		A&Wc			FBC			FC		AgL
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"		A&Wc			FBC			FC		AgL
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww		FBC			FC		AgL
SR	Horton Creek	Headwaters to confluence with Tonto Creek		A&Wc			FBC			FC	AgI	AgL
SR	Houston Creek	Headwaters to confluence with Tonto Creek			A&Ww		FBC			FC		AgL
SR	Hunter Creek	Headwaters to confluence with Christopher Creek		A&Wc			FBC			FC		AgL
SR	LaBarge Creek	Headwaters to Canyon Lake			A&Ww		FBC			FC		
SR	Lake Sierra Blanca	33°52'25"/109°16'05"		A&Wc			FBC			FC	AgI	AgL
SR	Miami Wash	Headwaters to confluence with Pinal Creek			A&We			PBC				
SR	Mule Creek	Headwaters to confluence with Canyon Creek		A&Wc			FBC		DWS	FC	AgI	AgL
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River		A&Wc			FBC			FC		AgL
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"		A&Wc			FBC			FC		AgL
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek			A&Ww		FBC			FC		AgL
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTW) at 33°25'29"/110°48'20"			A&We			PBC				AgL
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTW) to 33°26'55"/110°49'25"				A&Wedw		PBC				
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/110°51'55"			A&We			PBC				AgL
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"				A&Wedw		PBC				
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"			A&Ww		FBC					
SR	Pinal Creek	From unnamed tributary to confluence with Salt River			A&Ww		FBC			FC		
SR	Pine Creek	Headwaters to confluence with the Salt River			A&Ww		FBC			FC		
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"		A&Wc			FBC			FC	AgI	AgL
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww		FBC			FC	AgI	AgL
SR	Pool Corral Lake	33°30'38"/110°00'15"	Igneous		A&Ww		FBC			FC	AgI	AgL
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/110°51'37"		A&Wc			FBC			FC		AgL
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww		FBC			FC		AgL
SR	Reevis Creek	Headwaters to confluence with Pine Creek			A&Ww		FBC			FC		
SR	Reservation Creek	Headwaters to confluence with the Black River		A&Wc			FBC			FC		AgL
SR	Reynolds Creek	Headwaters to confluence with Workman Creek		A&Wc			FBC			FC		AgL
SR	Roosevelt Lake	33°52'17"/111°00'17"	Deep		A&Ww		FBC		DWS	FC	AgI	AgL
SR	Russell Gulch	From Headwaters to confluence with Miami Wash				A&We		PBC				
SR	Rye Creek	Headwaters to confluence with Tonto Creek			A&Ww		FBC			FC		AgL
SR	Saguaro Lake	33°33'44"/111°30'55"	Deep		A&Ww		FBC		DWS	FC	AgI	AgL
SR	Salome Creek	Headwaters to confluence with the Salt River			A&Ww		FBC			FC	AgI	AgL
SR	Salt House Lake	33°57'04"/109°20'11"	Igneous		A&Ww		FBC			FC		AgL
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam			A&Ww		FBC		DWS	FC	AgI	AgL
SR	Slate Creek	Headwaters to confluence with Tonto Creek			A&Ww		FBC			FC		AgL
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River		A&Wc			FBC			FC		AgL
SR	Spring Creek	Headwaters to confluence with Tonto Creek			A&Ww		FBC			FC		AgL
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc			FBC			FC		AgL
SR	Thomas Creek	Headwaters to confluence with Beaver Creek		A&Wc			FBC			FC		AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River		A&Wc			FBC		FC		AgL
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"		A&Wc			FBC		FC	AgI	AgL
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww		FBC		FC	AgI	AgL
SR	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc			FBC		FC		
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek		A&Wc			FBC		FC		AgL
SR	Willow Creek	Headwaters to confluence with Beaver Creek		A&Wc			FBC		FC		AgL
SR	Workman Creek	Headwaters to confluence with Reynolds Creek		A&Wc			FBC		FC	AgI	AgL
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek			A&Ww		FBC		FC	AgI	AgL
UG	Apache Creek	Headwaters to confluence with the Gila River			A&Ww		FBC		FC		AgL
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"		A&Wc			FBC		FC		AgL
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww		FBC		FC		AgL
UG	Bennett Wash	Headwaters to the Gila River			A&We			PBC			
UG	Bitter Creek	Headwaters to confluence with the Gila River			A&Ww		FBC		FC		
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"		A&Wc			FBC		FC	AgI	AgL
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River			A&Ww		FBC		FC	AgI	AgL
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River			A&Ww		FBC		DWS	FC	AgL
UG	Buckalou Creek	Headwaters to confluence with Castle Creek		A&Wc			FBC		FC		AgL
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River		A&Wc			FBC		FC		AgL
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc			FBC		FC		AgL
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek		A&Wc			FBC		FC	AgI	AgL
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary			A&Ww		FBC		FC	AgI	AgL
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border			A&Ww		FBC		FC	AgI	AgL
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek		A&Wc			FBC		FC	AgI	AgL
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine			A&Ww		FBC		FC		AgL
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River			A&We			PBC			
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek		A&Wc			FBC		FC		AgL
UG	Cima Creek	Headwaters to confluence with Cave Creek		A&Wc			FBC		FC		AgL
UG	Cluff Ranch Pond #1	32°48'55"/109°50'46"	Sedimentary		A&Ww		FBC		FC	AgI	AgL
UG	Cluff Ranch Pond #3	32°48'21"/109°51'46"	Sedimentary		A&Ww		FBC		FC	AgI	AgL
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc			FBC		FC		AgL
UG	Dankworth Lake	32°43'13"/109°42'17"	Sedimentary	A&Wc			FBC		FC		
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"		A&Wc			FBC		DWS	FC	AgL
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash			A&Ww		FBC		DWS	FC	AgL
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"		A&Wc			FBC		DWS	FC	AgI
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww		FBC		DWS	FC	AgI
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek		A&Wc			FBC		FC		AgL
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"		A&Wc			FBC		FC		AgL
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River			A&Ww		FBC		FC		AgL
UG	East Whitetail	Headwaters to terminus near San Simon River			A&Ww		FBC		FC		AgL
UG	Emigrant Canyon	Headwaters to terminus near San Simon River			A&Ww		FBC		FC		AgL
UG	Evans Pond #1	32°49'19"/109°51'12"	Sedimentary		A&Ww		FBC		FC	AgI	AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
UG	Evans Pond #2	32°49'14"/109°51'09"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Fishhook Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Foote Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir		A&Wc				FBC		DWS	FC		AgL
UG	Frye Canyon Creek	Highline CanalHeadwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"	Igneous	A&Wc				FBC		DWS	FC		
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek		A&Wc				FBC			FC		AgL
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary			A&Ww			FBC			FC	AgI	AgL
UG	Grant Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Judd Lake	33°51'15"/109°09'35"	Sedimentary	A&Wc				FBC			FC		
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Lanphier Canyon Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek			A&Ww			FBC			FC		AgL
UG	Little Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC		
UG	Lower George's Reservoir	33°51'24"/109°08'30"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Luna Lake	33°49'50"/109°05'06"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek		A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash			A&Ww			FBC			FC	AgI	AgL
UG	Markham Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Pigeon Creek	Headwaters to confluence with the Blue River			A&Ww			FBC			FC		AgL
UG	Raspberry Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Roper Lake	32°45'23"/109°42'14"	Sedimentary		A&Ww			FBC			FC		
UG	San Francisco River	Headwaters to the New Mexico border		A&Wc				FBC			FC	AgI	AgL
UG	San Francisco River	New Mexico border to confluence with the Gila River			A&Ww			FBC			FC	AgI	AgL
UG	San Simon River	Headwaters to confluence with the Gila River				A&We			PBC				AgL
UG	Sheep Tank	32°46'14"/109°48'09"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Smith Pond	32°49'15"/109°50'36"	Sedimentary		A&Ww			FBC			FC		
UG	Squaw Creek	Headwaters to confluence with Thomas Creek		A&Wc				FBC			FC		AgL
UG	Stone Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC	AgI	AgL
UG	Strayhorse Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek		A&Wc				FBC			FC		AgL
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River			A&Ww			FBC			FC		AgL
UG	Tinny Pond	33°47'49"/109°04'27"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"			A&Ww			FBC			FC	AgI	AgL
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River				A&Wedw			PBC				
VR	Apache Creek	Headwaters to confluence with Walnut Creek			A&Ww			FBC			FC		AgL
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Aspen Creek	Headwaters to confluence with Granite Creek			A&Ww			FBC			FC		
VR	Bar Cross Tank	35°00'41"/112°05'39"			A&Ww			FBC			FC		AgL
VR	Barrata Tank	35°02'43"/112°24'21"			A&Ww			FBC			FC		AgL
VR	Bartlett Lake	33°49'52"/111°37'44"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
VR	Beaver Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake				A&We			PBC				AgL
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"				A&We			PBC				AgL

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural		
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary				A&Wedw		PBC				AgL
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River			A&Ww		FBC			FC	AgI	AgL
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"		A&Wc			FBC			FC		AgL
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River			A&Ww		FBC			FC		AgL
VR	Bonita Creek	Headwaters to confluence with Ellison Creek		A&Wc			FBC			FC		
VR	Bray Creek	Headwaters to confluence with Webber Creek		A&Wc			FBC			FC		AgL
VR	Camp Creek	Headwaters to confluence with the Verde River			A&Ww		FBC			FC		AgL
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We		PBC				
VR	Chase Creek	Headwaters to confluence with the East Verde River		A&Wc			FBC		DWS	FC		
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek		A&Wc			FBC			FC		AgL
VR	Coffee Creek	Headwaters to confluence with Spring Creek			A&Ww		FBC			FC		AgL
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We		PBC				
VR	Dead Horse Lake	34°45'08"/112°00'42"	Shallow		A&Ww		FBC			FC		
VR	Deadman Creek	Headwaters to Horseshoe Reservoir			A&Ww		FBC			FC		AgL
VR	Del Monte Wash	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"				A&We		PBC				
VR	Del Monte Wash (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46" to confluence with Verde River				A&Wedw		PBC				
VR	Del Rio Dam Lake	34°48'55"/112°28'03"	Sedimentary		A&Ww		FBC			FC		AgL
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek			A&Ww		FBC			FC	AgI	AgL
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'02"/111°52'17" to 34°48'12"/111°52'48"				A&Wedw		PBC				
VR	Dude Creek	Headwaters to confluence with the East Verde River		A&Wc			FBC			FC	AgI	AgL
VR	East Verde River	Headwaters to confluence with Ellison Creek		A&Wc			FBC		DWS	FC	AgI	AgL
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River			A&Ww		FBC		DWS	FC	AgI	AgL
VR	Ellison Creek	Headwaters to confluence with the East Verde River		A&Wc			FBC			FC		AgL
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River			A&Ww		FBC			FC		AgL
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"			A&Ww		FBC		DWS	FC		
VR	Foxboro Lake	34°53'42"/111°39'55"			A&Ww		FBC			FC		AgL
VR	Fry Lake	35°03'45"/111°48'04"			A&Ww		FBC			FC		AgL
VR	Gap Creek	Headwaters to confluence with Government Spring		A&Wc			FBC			FC		AgL
VR	Gap Creek	Below Government Spring to confluence with the Verde River			A&Ww		FBC			FC		AgL
VR	Garrett Tank	35°18'57"/112°42'20"			A&Ww		FBC			FC		AgL
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"	Sedimentary	A&Wc			FBC		DWS	FC		
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"	Igneous	A&Wc			FBC		DWS	FC		
VR	Granite Basin Lake	34°37'01"/112°32'58"	Igneous	A&Wc			FBC			FC	AgI	AgL
VR	Granite Creek	Headwaters to Watson Lake		A&Wc			FBC			FC	AgI	AgL
VR	Granite Creek	Below Watson Lake to confluence with the Verde River			A&Ww		FBC			FC	AgI	AgL
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"	Urban			A&Wedw		PBC		FC		
VR	Heifer Tank	35°20'27"/112°32'59"			A&Ww		FBC			FC		AgL
VR	Hell Canyon Tank	35°04'59"/112°24'07"	Igneous		A&Ww		FBC			FC		AgL
VR	Homestead Tank	35°21'24"/112°41'36"	Igneous		A&Ww		FBC			FC		AgL
VR	Horse Park Tank	34°58'15"/111°36'32"			A&Ww		FBC			FC		AgL
VR	Horseshoe Reservoir	34°00'25"/111°43'36"	Sedimentary		A&Ww		FBC			FC	AgI	AgL
VR	Houston Creek	Headwaters to confluence with the Verde River			A&Ww		FBC			FC		AgL
VR	Huffer Tank	34°27'46"/111°23'11"			A&Ww		FBC			FC		AgL
VR	J.D. Dam Lake	35°04'02"/112°01'48"	Shallow	A&Wc			FBC			FC	AgI	AgL
VR	Jacks Canyon Wash	Headwaters to Big Park WWTP outfall at 34°45'46"/111°45'51"				A&We		PBC				
VR	Jacks Canyon Wash (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek				A&Wedw		PBC				

## Department of Environmental Quality – Water Quality Standards

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health			Agricultural	
VR	Lime Creek	Headwaters to Horseshoe Reservoir			A&Ww		FBC		FC		AgL
VR	McLellan Reservoir	35°13'09"/112°17'06"	Igneous		A&Ww		FBC		FC	AgI	AgL
VR	Meath Dam Tank	35°07'52"/112°27'35"			A&Ww		FBC		FC		AgL
VR	Mullican Place Tank	34°44'16"/111°36'10"	Igneous		A&Ww		FBC		FC		AgL
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"		A&Wc			FBC		DWS	FC	AgI
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River			A&Ww		FBC		DWS	FC	AgI
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek		A&Wc			FBC			FC	AgL
VR	Odell Lake	34°56'55"/111°37'53"	Igneous	A&Wc			FBC			FC	
VR	Peck's Lake	34°46'51"/112°02'01"	Shallow		A&Ww		FBC			FC	AgI
VR	Perkins Tank	35°06'42"/112°04'12"	Shallow	A&Wc			FBC			FC	AgL
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"		A&Wc			FBC		DWS	FC	AgI
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River			A&Ww		FBC		DWS	FC	AgI
VR	Red Creek	Headwaters to confluence with the Verde River			A&Ww		FBC			FC	AgL
VR	Reservoir #1	35°13'55"/111°50'09"	Igneous		A&Ww		FBC			FC	
VR	Reservoir #2	35°13'17"/111°50'39"	Igneous		A&Ww		FBC			FC	
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek			A&Ww		FBC			FC	AgL
VR	Scholz Lake	35°11'53"/112°00'37"	Igneous	A&Wc			FBC			FC	AgL
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"		A&Wc			FBC			FC	AgI
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek			A&Ww		FBC			FC	AgI
VR	Steel Dam Lake	35°13'36"/112°24'54"	Igneous	A&Wc			FBC			FC	AgL
VR	Stehr Lake	34°22'01"/111°40'02"	Sedimentary		A&Ww		FBC			FC	AgL
VR	Stone Dam Lake	35°13'32"/112°24'10"		A&Wc			FBC			FC	AgI
VR	Stoneman Lake	34°46'47"/111°31'14"	Shallow	A&Wc			FBC			FC	AgI
VR	Sullivan Lake	34°51'42"/112°27'51"			A&Ww		FBC			FC	AgI
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"		A&Wc			FBC			FC	AgI
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River			A&Ww		FBC			FC	AgI
VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"			A&Ww		FBC			FC	AgI
VR	Sycamore Creek	Headwaters to confluence with Verde River			A&Ww		FBC			FC	AgL
VR	Tangle Creek	Headwaters to confluence with Verde River			A&Ww		FBC			FC	AgI
VR	Trinity Tank	35°27'44"/112°48'01"			A&Ww		FBC			FC	AgL
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at '35°13'59"/111°48'35" to Volunteer Wash				A&Wedw		PBC			
VR	Verde River	From confluence of Chino Wash and Granite Creek to Bartlett Lake Dam			A&Ww		FBC			FC	AgI
VR	Verde River	Below Bartlett Lake Dam to Salt River			A&Ww		FBC		DWS	FC	AgI
VR	Walnut Creek	Headwaters to confluence with Big Chino Wash			A&Ww		FBC			FC	AgL
VR	Watson Lake	34°34'58"/112°25'26"	Igneous		A&Ww		FBC			FC	AgI
VR	Webber Creek	Headwaters to confluence with the East Verde River		A&Wc			FBC			FC	AgL
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon		A&Wc			FBC			FC	AgL
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River			A&Ww		FBC			FC	AgI
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/111°34'34"		A&Wc			FBC			FC	AgI
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek			A&Ww		FBC			FC	AgI
VR	Whitehorse Lake	35°06'59"/112°00'48"	Igneous	A&Wc			FBC		DWS	FC	AgI
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash			A&We			PBC			AgL
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream			A&Ww		FBC			FC	AgL
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash				A&We		PBC			AgL
VR	Williscraft Tank	35°11'22"/112°35'40"			A&Ww		FBC			FC	AgL
VR	Willow Creek	Above Willow Creek Reservoir		A&Wc			FBC			FC	AgL
VR	Willow Creek	Below Willow Creek Reservoir to confluence with Granite Creek			A&Ww		FBC			FC	AgL
VR	Willow Creek Reservoir	34°36'17"/112°26'19"	Shallow		A&Ww		FBC			FC	AgI
VR	Willow Valley Lake	34°41'08"/111°20'02"	Sedimentary		A&Ww		FBC			FC	AgL

**Watersheds**

BW = Bill Williams

CG = Colorado – Grand Canyon

CL = Colorado – Lower Gila

LC = Little Colorado

MG = Middle Gila

SC = Santa Cruz – Rio Magdalena – Rio Sonoyta

SP = San Pedro – Willcox Playa – Rio Yaqui

SR = Salt River

UG = Upper Gila

VR = Verde River

**Other Abbreviations**

WWTP = Wastewater Treatment Plant

Km = kilometers

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Appendix B repealed, new Appendix B adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Appendix C. Site-Specific Standards**

Watershed	Surface Water	Surface Water Description & Location	Parameter	Site-Specific Criterion
LC	Rio de Flag (EDW)	Flagstaff WWTP outfall to the confluence with San Francisco Wash at 35°14'04"/111°28'02.5"	Copper (D)	36 µg/L (A&Wedw)
CL	Yuma East Wetlands	From inlet culvert from Colorado River into restored channel to Ocean Bridge	Selenium (T)	2.2 mg/L (A&Ww chronic)
			Total residual chlorine	33 µg/L (A&Ww acute)
				20 µg/L (A&Ww chronic)
SR	Pinto Creek	From confluence of Ellis Ranch tributary at 33°19'26.7"/110°54'57.5" to the confluence of West Fork of Pinto Creek at 33°27'32.3"/111°00'19.7"	Copper (D)	34 µg/L (A&Ww acute for hardness values below 268 mg/L)
				34 µg/L (A&Ww chronic)
CG	Bright Angel Wash	South Rim Grand Canyon National Park WWTP at 36°02'59"/112°09'02" to Coconino Wash	Copper (D)	42.5 µg/L (A&W edw)
CG	Transept Canyon	North Rim Grand Canyon WWTP at 36°12'20"/112°03'35" to 1km downstream	Copper (D)	42.5 µg/L (A&W edw)

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Appendix C repealed effective April 24, 1996 (Supp. 96-2). New Appendix C made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**ARTICLE 2. REPEALED****R18-11-201. Repealed****Historical Note**

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection A. effective April 17, 1984 (Supp. 84-2). Former Section R9-21-201 repealed, former Section R9-21-203 renumbered as Section R9-21-201 and amended effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-201 renumbered without change as Section R18-11-201 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-202. Repealed****Historical Note**

Former Section R9-21-202 repealed, former Section R9-21-102 renumbered as Section R9-21-202 and amended effective January 7, 1985 (Supp. 85-1). Amended

subsections (B), (D), and (E) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-202 renumbered without change as Section R18-11-202 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2).

**R18-11-203. Repealed****Historical Note**

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection (B) by adding paragraphs (27) and (28) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-203 renumbered as Section R9-21-201, former Section R9-21-204 renumbered as Section R9-21-203 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-203 renumbered and amended as Section R9-21-204, new Section R9-21-203 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-203 renumbered without change as Section R18-11-203 (Supp. 87-3). Amended subsection

(B) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2).

#### **R18-11-204. Repealed**

##### **Historical Note**

Former Section R9-21-204 renumbered and amended as Section R9-21-207, former Section R9-21-206 renumbered and amended as Section R9-21-204 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-204 renumbered as Section R9-21-203, former Section R9-21-205 renumbered as Section R9-21-204 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-204 renumbered and amended as Section R9-21-205, former Section R9-21-203 renumbered and amended as Section R9-21-204 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-204 renumbered without change as Section R18-11-204 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-205. Repealed**

##### **Historical Note**

Former Section R9-21-205 repealed, new Section R9-21-205 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-205 renumbered as Section R9-21-204, former Section R9-21-206 renumbered as Section R9-21-205 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-205 renumbered and amended as Section R9-21-206, former Section R9-21-204 renumbered and amended as Section R9-21-205 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-205 renumbered without change as Section R18-11-205 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed April 24, 1996 (Supp. 96-2).

#### **R18-11-206. Repealed**

##### **Historical Note**

Former Section R9-21-206 renumbered and amended as Section R9-21-204, new Section R9-21-206 adopted effective January 29, 1980 (Supp. 80-1). Amended by adding subsection (B) effective October 14, 1981 (Supp. 81-5). Amended subsection (B) and Table 1 effective January 29, 1982 (Supp. 82-1). Amended subsection (B) and Table 1 effective August 13, 1982 (Supp. 82-4). Former Section R9-21-206 renumbered as Section R9-21-205, former Section R9-21-207 renumbered as Section R9-21-206 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-206 renumbered and amended as Section R9-21-207, former Section R9-21-205 renumbered and amended as Section R9-21-206 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-206 renumbered without change as Section R18-11-206 (Supp. 87-3).

#### **R18-11-207. Repealed**

##### **Historical Note**

Former Section R9-21-207 repealed, former Section R9-21-204 renumbered and amended as Section R9-21-207 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-207 renumbered as Section R9-21-206, former Section R9-21-208 renumbered as Section R9-21-207 and amended effective January 7,

1985 (Supp. 85-1). Former Section R9-21-207 renumbered without change as Section R9-21-208, former Section R9-21-206 renumbered and amended as Section R9-21-207 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-207 renumbered without change as Section R18-11-207 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-208. Repealed**

##### **Historical Note**

Former Section R9-21-208 repealed, new Section R9-21-208 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-208 renumbered as Section R9-21-207, Appendices 1 through 9 amended as Appendix A (now shown following R9-21-213), former Section R9-21-209 renumbered as R9-21-208 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-208 renumbered and amended as Section R9-21-209, former Section R9-21-207 renumbered without change as Section R9-21-208 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-208 renumbered without change as Section R18-11-208 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-209. Repealed**

##### **Historical Note**

Former Section R9-21-209 renumbered and amended as Section R9-21-210, new Section R9-21-209 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-209 renumbered as Section R9-21-208, Tables I and II amended as Appendix B (now shown following R9-21-213 and Appendix A), former Section R9-21-210 renumbered as Section R9-21-209 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-209 renumbered and amended as Section R9-21-210, former Section R9-21-208 renumbered and amended as Section R9-21-209 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-209 renumbered without change as Section R18-11-209 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-210. Repealed**

##### **Historical Note**

Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective January 29, 1980 (Supp. 80-1). Amended subsection (A) effective April 17, 1984 (Supp. 84-2). Former Section R9-21-210 renumbered as Section R9-21-209, former Section R9-21-211 renumbered as Section R9-21-210 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-210 renumbered without change as Section R18-11-210 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-211. Repealed**

##### **Historical Note**

Former Section R9-21-210 renumbered and amended as Section R9-21-211 effective January 29, 1980 (Supp. 80-1). Amended subsections (D), (G) three (I), and added (J)



effective October 14, 1981 (Supp. 81-5). Former Section R9-21-211 renumbered as Section R9-21-210, former Section R9-21-212 renumbered as Section R9-21-211 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-211 renumbered and amended as Section R9-21-212, former Section R9-21-210 renumbered and amended as Section R9-21-211 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-211 renumbered without change as Section R18-11-211 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-212. Repealed**

##### **Historical Note**

Adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-212 renumbered as Section R9-21-211, former Section R9-21-213 renumbered as Section R9-21-212 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-212 repealed, former Section R9-21-211 renumbered and amended as Section R9-21-212 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-212 renumbered without change as Section R18-11-212 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-213. Repealed**

##### **Historical Note**

Adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Former Section R9-21-213 renumbered as Section R9-21-212, former Section R9-21-103 renumbered as Section R9-21-213 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-213 renumbered without change as Section R9-21-214, new Section R9-21-213 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-213 renumbered without change as Section R18-11-213 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **R18-11-214. Repealed**

##### **Historical Note**

Former Section R9-21-213 renumbered without change as Section R9-21-214 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-214 renumbered without change as Section R18-11-214 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

#### **Appendix A. Repealed**

##### **Historical Note**

Former Section R9-21-208, Appendices 1 through 9 renumbered and amended as new Appendix A adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

#### **Appendix B. Repealed**

##### **Historical Note**

Former R9-21-209, Table 1 and Table 2 renumbered and amended as Appendix B adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

### **ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS**

#### **R18-11-301. Definitions**

The terms in this Article have the following meanings:

“Direct reuse” has the meaning prescribed in R18-9-701(1).

“Disinfection” means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

“Filtration” means a treatment process that removes particulate matter from wastewater by passage through porous media.

“Gray water” means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

“Industrial wastewater” means wastewater generated from an industrial process.

“Landscape impoundment” means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

“NTU” means nephelometric turbidity unit.

“On-site wastewater treatment facility” has the meaning prescribed in A.R.S. § 49-201(24).

“Open access” means that access to reclaimed water by the general public is uncontrolled.

“Reclaimed water” has the meaning prescribed in A.R.S. § 49-201(31).

“Recreational impoundment” means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

“Restricted access” means that access to reclaimed water by the general public is controlled.

“Secondary treatment” means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

“Sewage” means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

##### **Historical Note**

Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.C. 870, effective January 22, 2001 (Supp. 01-1).

#### **R18-11-302. Applicability**

This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

##### **Historical Note**

Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section

R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

### **R18-11-303. Class A+ Reclaimed Water**

- A.** Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.
- B.** An owner of a facility shall ensure that:
  - 1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
    - a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
    - b. The turbidity of filtered effluent does not exceed five NTUs at any time.
  - 2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
    - a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
    - c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
  - 3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.
- C.** An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.
- D.** Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

#### **Historical Note**

Adopted effective January 7, 1985 (Supp. 85-1).  
 Amended effective August 12, 1986 (Supp. 86-4).  
 Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

### **R18-11-304. Class A Reclaimed Water**

- A.** Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.
- B.** An owner of a facility shall ensure that:
  - 1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
    - a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
    - b. The turbidity of filtered effluent does not exceed five NTUs at any time.
  - 2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
    - a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
    - c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
- C.** An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) before discharge to a reclaimed water distribution system.
- D.** A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

#### **Historical Note**

Adopted effective January 7, 1985 (Supp. 85-1).  
 Amended effective August 12, 1986 (Supp. 86-4).  
 Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

### **R18-11-305. Class B+ Reclaimed Water**

- A.** Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.
- B.** An owner of a facility shall ensure that:
  - 1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
    - a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.

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- b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
- 2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.
- C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R.  
870, effective January 22, 2001 (Supp. 01-1).

**R18-11-306. Class B Reclaimed Water**

- A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.
- B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
  - 1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
  - 2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
- C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R.  
870, effective January 22, 2001 (Supp. 01-1).

**R18-11-307. Class C Reclaimed Water**

- A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.
- B. The owner of a facility shall ensure that:
  - 1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
  - 2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
    - a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.
- C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R.  
870, effective January 22, 2001 (Supp. 01-1).

**R18-11-308. Industrial Reuse**

- A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a

reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:

- 1. Direct reuse of industrial wastewater containing sewage.
- 2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.
- B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R.  
870, effective January 22, 2001 (Supp. 01-1).

**R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse**

- A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.
- B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.
- C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
  - 1. The risk to public health;
  - 2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
  - 3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;
  - 4. The level of treatment necessary to prevent nuisance conditions;
  - 5. Specific water quality requirements for the intended type of direct reuse;
  - 6. The means of application of the reclaimed water;
  - 7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
  - 8. The potential for improper or unintended use of the reclaimed water;
  - 9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
  - 10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R.  
870, effective January 22, 2001 (Supp. 01-1).

**Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse**

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A

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Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

**Historical Note**

New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**ARTICLE 4. AQUIFER WATER QUALITY STANDARDS****R18-11-401. Definitions**

In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. “Beta particle and photon radioactivity from man-made radionuclides” means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. “Dose equivalent” means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. “Drinking water protected use” means the protection and maintenance of aquifer water quality for human consumption.
4. “Gross alpha particle activity” means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

5. “Mg/l” means milligrams per liter.
6. “Millirem” means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. “Non-drinking water protected use” means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. “pCi” means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. “Total trihalomethanes” means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-402. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**R18-11-403. Analytical Methods**

Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-607(B).

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-404. Laboratories**

A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-405. Narrative Aquifer Water Quality Standards**

- A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.
- B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.
- C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use**

- A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.

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**B.** The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

**C.** The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Styrene	0.1
2,3,7,8-TCDD (Dioxin)	0.00000003
Tetrachloroethylene	0.005
Toluene	1
Trihalomethanes (Total)	0.10
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl Chloride	0.002
Xylenes (Total)	10

**D.** The following are the aquifer water quality standards for pesticides and polychlorinated biphenyls (PCBs):

Pollutant	(mg/L)
Alachlor	0.002
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
1,2-Dibromo-3-Chloropropane (DBCP)	0.0002
2,4,-Dichlorophenoxyacetic Acid(2,4-D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl	0.2
Picloram	0.5
Polychlorinated Biphenols (PCBs)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05

**E.** The following are the aquifer water quality standards for radionuclides:

1. The maximum concentration for gross alpha particle activity, including Radium-226 but excluding radon and uranium, shall not exceed 15 pCi/l.
2. The maximum concentration for combined Radium-226 and Radium-228 shall not exceed 5 pCi/l.
3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
4. Except for the radionuclides listed in this subsection, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a 2-liter-per-day drinking water intake using the 168-hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, National Bureau of Commerce, as amended August 1963 (and no future editions), incorporated herein by reference and on file with the Office of the Secretary of State and with the Department. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year. The following average annual concentrations are assumed to produce a total body or organ dose of 4 millirem/year:

Radionuclide	Critical Organ	pCi/l
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

**F.** The aquifer water quality standard for microbiological contaminants is based upon the presence or absence of total coli-

forms in a 100-milliliter sample. If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.

- G.** The following are the aquifer water quality standards for turbidity:
1. One nephelometric turbidity unit as determined by a monthly average except that five or fewer nephelometric turbidity units may be allowed if it can be determined that the higher turbidity does not interfere with disinfection, prevent maintenance of effective disinfectant agents in water supply distribution systems, or interfere with microbiological determinations.
  2. Five nephelometric turbidity units based on an average of two consecutive days.

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).  
Amended effective May 26, 1994 (Supp. 94-2).

#### **R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers**

- A.** All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a non-drinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.
- B.** Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C) of this Section.
- C.** The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223(D) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

#### **R18-11-408. Petition for Adoption of a Numeric Aquifer Water Quality Standard**

- A.** Any person may petition the Director to adopt, by rule, a numeric aquifer water quality standard for a pollutant for which no numeric aquifer water quality standard exists.
- B.** Petitions for adoption of a numeric aquifer water quality standard shall be filed with the Department and shall comply with the requirements applicable to petitions for rule adoption as provided by A.R.S. § 41-1033 and A.A.C. R18-1-302, except as otherwise provided by A.R.S. § 49-223 or this Section.
- C.** In addition to the requirements of A.A.C. R18-1-302, a petition for rule adoption to establish a numeric aquifer water quality standard shall include specific reference to:
1. Technical information that the pollutant is a toxic pollutant.
  2. Technical information upon which the Director reasonably may base the establishment of a numeric aquifer water quality standard.
  3. Evidence that the pollutant that is the subject of the petition is or may in the future be present in an aquifer or part of an aquifer that is classified for drinking water pro-

tected use. Evidence may include, but is not limited to, any of the following:

- a. A laboratory analysis of a water sample by a laboratory licensed by the Arizona Department of Health Services which indicates the presence of the pollutant in the aquifer.
  - b. A hydrogeological study which demonstrates that the pollutant that is the subject of the petition may be present in an aquifer in the future. The hydrogeological study shall include the following:
    - i. A description of the use that results in a discharge of the pollutant that is the subject of the petition.
    - ii. A description of the mobility of the pollutant in the vadose zone and in the aquifer.
    - iii. A description of the persistence of the pollutant in the vadose zone and in the aquifer.
- D.** Within 180 calendar days of the receipt of a complete petition for rule adoption to establish a numeric aquifer water quality standard, the Director shall make a written determination of whether the petition should be granted or denied. The Director shall give written notice by regular mail of the determination to the petitioner.
- E.** If the petition for rule adoption is granted, the Director shall initiate rulemaking proceedings to adopt a numeric aquifer water quality standard. The Director shall, within one year of the date that the petition for adoption of a numeric aquifer water quality standard is granted, either adopt a rule establishing a numeric aquifer water quality standard or publish a notice of termination of rulemaking in the Arizona Administrative Register.
- F.** If the petition for rule adoption is denied, the Director shall issue a denial letter to the petitioner which explains the reasons for the denial. The denial of a petition for rule adoption to establish a numeric aquifer water quality standard is not subject to judicial review.

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).

#### **Appendix 1. Repealed**

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

#### **Appendix 2. Repealed**

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

#### **Appendix 3. Repealed**

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

#### **Appendix 4. Repealed**

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

#### **Appendix 5. Repealed**

#### Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

#### **Appendix 6. Repealed**

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 7. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION****R18-11-501. Definitions**

In addition to the definitions contained in A.R.S. § 49-201, the words and phrases of this Article shall have the following meaning:

1. “Drinking water protected use” means the protection and maintenance of aquifer water quality for human consumption.
2. “Hardrock areas containing little or no water” means areas of igneous or metamorphic rock which do not yield usable quantities of water.
3. “Nondrinking water protected use” means the protection and maintenance of aquifer water quality for a use other than human consumption.
4. “Usable quantities” means five gallons of water per day.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-502. Aquifer boundaries**

- A. Except as provided in subsection (B) of this rule, aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.
- B. Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydrologic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.
- C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:
  1. The Department of Water Resources modifies the boundaries of its basins or subbasins.
  2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.
- D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-503. Petition for reclassification**

- A. Any person may petition the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C).
- B. A written petition for reclassification pursuant to A.R.S. § 49-224(C) or A.R.S. § 49-224(D) shall be filed with the Depart-

ment and shall include the following categories of information:

1. The proposed protected use for which the reclassification is being requested.
2. The pollutant and affected aquifer water quality standards for which the reclassification is being requested.
3. A hydrogeologic report which demonstrates that the aquifer proposed for reclassification is or will be hydrologically isolated, to the extent described in A.R.S. § 49-224(C)(1). This report and demonstration of hydrologic isolation for the area containing such aquifer, and immediate adjacent geologic units, shall include at least the following:
  - a. Hydrogeologic area maps and cross sections.
  - b. An analysis of subsurface geology, including geologic and hydrologic separation.
  - c. Water level elevation or piezometric level contour maps.
  - d. Analysis of hydrologic characteristics of the aquifer and the immediate adjacent geologic units.
  - e. Description of existing water quality and analysis of water chemistry.
  - f. Projected annual quantity of water to be withdrawn.
  - g. Identification of pumping centers, cones of depression and areas of recharge.
  - h. A water balance.
  - i. Existing flow direction and evaluation of the effects of seasonal and future pumping on flow.
  - j. An evaluation as to whether the reclassification will contribute to or cause a violation of aquifer water quality standards in other aquifers, or in parts of the aquifer not being proposed for reclassification.
4. Documentation demonstrating that water from the aquifer or part of the aquifer for which reclassification is proposed is not being used as drinking water. This documentation shall include at least the following:
  - a. A list of all wells or springs including their location, ownership and use within the aquifer or part of the aquifer being proposed for reclassification.
  - b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within the aquifer or part of the aquifer being proposed for reclassification.
  - c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.
5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-504. Agency action on petition**

- A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.
- B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council

pursuant to A.R.S. §§ 49-224(C) and 49-204, the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

- C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

#### Historical Note

Adopted effective October 22, 1987 (Supp. 87-4).

#### R18-11-505. Public participation

- A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.
- B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

#### Historical Note

Adopted effective June 29, 1989 (Supp. 89-2).

#### R18-11-506. Rescission of reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204.

#### Historical Note

Adopted effective October 22, 1987 (Supp. 87-4).

### ARTICLE 6. IMPAIRED WATER IDENTIFICATION

*Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).*

#### R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. “303(d) List” means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. “Attaining” means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. “AZPDES” means the Arizona Pollutant Elimination Discharge System.
4. “Credible and scientifically defensible data” means data submitted, collected, or analyzed using:
  - a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
  - b. Samples or analyses representative of water quality conditions at the time the data were collected;
  - c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
  - d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific

community as appropriate for use in assessing the condition of the water.

5. “Designated use” means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. “EPA” means the U.S. Environmental Protection Agency.
7. “Impaired water” means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. “Laboratory detection limit” means a “Method Reporting Limit” (MRL) or “Reporting Limit” (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. “Monitoring entity” means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. “Naturally occurring condition” means the condition of a surface water or segment that would have occurred in the absence of pollutant loadings as a result of human activity.
11. “Not attaining” means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
  - a. A TMDL is prepared and implemented for the surface water;
  - b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or
  - c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.
12. “NPDES” means National Pollutant Discharge Elimination System.
13. “Planning List” means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. “Pollution” means “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” 33 U.S.C. 1362(19).
16. “QAP” means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. “Sampling event” means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. “SAP” means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.



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19. “Spatially independent sample” means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
  - a. More than 200 meters apart from other samples, or
  - b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. “Temporally independent sample” means a sample that is collected at the same station or location more than seven days apart from other samples.
21. “Threatened” means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. “TMDL” means total maximum daily load.
23. “TMDL decision” means a decision by the Department to:
  - a. Prioritize an impaired water for TMDL development,
  - b. Develop a TMDL for an impaired water, or
  - c. Develop a TMDL implementation plan.
24. “Total maximum daily load” means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards. A.R.S. § 49-231(4).
25. “Water quality standard” means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.
26. “WQARF” means the water quality assurance revolving fund established under A.R.S. § 49-282.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-602. Credible Data**

- A. Data are credible and relevant to an impaired water identification or a TMDL decision when:
  1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    - a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    - b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
  - c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
    - i. Samples are spatially and temporally representative of the surface water,
    - ii. Samples are representative of water quality conditions at the time of sampling, and
    - iii. The monitoring is reproducible;
  - d. The following field sampling information to assure that samples meet data quality objectives:
    - i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis proposed for completion in the field or outside of a laboratory;
    - ii. Field and laboratory methods approved under subsection (A)(5);
    - iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;
    - iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;
    - v. Procedures for testing, inspecting, and maintaining field equipment;
    - vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;
    - vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;
    - viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;
  - e. Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:
    - i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;
    - ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name

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- of a laboratory contact person to assist the Department with quality assurance questions;
  - iii. Quality controls that describe the number and type of laboratory quality control samples for the project, including, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;
  - iv. Procedures for testing, inspecting, and maintaining laboratory equipment and facilities;
  - v. A schedule for calibrating laboratory instruments, a description of calibration methods, and a description of how calibration records are maintained; and
  - vi. Sample equipment decontamination procedures that outline specific methods for sample collection and preparation of equipment, identify the frequency of decontamination, and describe the procedures used to verify decontamination;
- f. Data review, management, and use that includes the following:
  - i. A description of the data handling process from field to laboratory, from laboratory to data review and validation, and from validation to data storage and use. Include the role and responsibility of each person for each step of the process, type of database or other storage used, and how laboratory and field data qualifiers are related to the laboratory result;
  - ii. Reports that describe the intended frequency, content, and distribution of final analysis reports and project status reports;
  - iii. Data review, validation, and verification that describes the procedure used to validate and verify data, the procedures used if errors are detected, and how data are accepted, rejected, or qualified; and
  - iv. Reconciliation with data quality objectives that describes the process used to determine whether the data collected meets the project objectives, which may include discarding data, setting limits on data use, or revising data quality objectives.
- 2. Sampling and analysis plan.
  - a. A monitoring entity shall develop a SAP that contains, at a minimum, the following elements:
    - i. The experimental design of the project, the project goals and objectives, and evaluation criteria for data results;
    - ii. The background or historical perspective of the project;
    - iii. Identification of target conditions, including a discussion of whether any weather, seasonal variations, stream flow, lake level, or site access may affect the project and the consideration of these factors;
    - iv. The data quality objectives for measurement of data that describe in quantitative and qualitative terms how the data meet the project objectives of precision, accuracy, completeness, comparability, and representativeness;
    - v. The types of samples scheduled for collection;
    - vi. The sampling frequency;
    - vii. The sampling periods;
    - viii. The sampling locations and rationale for the site selection, how site locations are bench-  
marked, including scaled maps indicating approximate location of sites; and
  - ix. A list of the field equipment, including tolerance range and any other manufacturer's specifications relating to accuracy and precision.
  - b. The Department may accept a SAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be samples, the type of surface water, and the purpose of the sampling.
- 3. The monitoring entity may include any of the following in the QAP or SAP:
  - a. The name, title, and role of each person and organization involved in the project, identifying specific roles and responsibilities for carrying out the procedures identified in the QAP and SAP;
  - b. A distribution list of each individual and organization receiving a copy of the approved QAP and SAP;
  - c. A table of contents;
  - d. A health and safety plan;
  - e. The inspection and acceptance requirements for supplies;
  - f. The data acquisition that describes types of data not obtained through this monitoring activity, but used in the project;
  - g. The audits and response actions that describe how field, laboratory, and data management activities and sampling personnel are evaluated to ensure data quality, including a description of how the project will correct any problems identified during these assessments; and
  - h. The waste disposal methods that identify wastes generated in sampling and methods for disposal of those wastes.
- 4. Exceptions. The Department may determine that the following data are also credible and relevant to an impaired water identification or TMDL decision when data were collected, provided the conditions in subsections (A)(5), (A)(6), and (B) are met, and where the data were collected in the surface water or segment being evaluated for impairment:
  - a. The data were collected before July 12, 2002 and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2);
  - b. The data were collected after July 12, 2002 as part of an ongoing monitoring effort by a governmental agency and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2); or
  - c. The instream water quality data were or are collected under the terms of a NPDES or AZPDES permit or a compliance order issued by the Department or EPA, a consent decree signed by the Department or EPA, or a sampling program approved by the Department or EPA under WQARF or CERCLA, and the Department determines that the data yield results of comparable reliability to data collected under subsections (A)(1) and (A)(2).
- 5. Data collection, preservation, and analytical procedures. The monitoring entity shall collect, preserve, and analyze data using methods of sample collection, preservation, and analysis established under A.A.C. R9-14-610.

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6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.
- B. Documentation for data submission.** The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
  2. The applicable dates of the QAP and SAP, including any revisions;
  3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
  4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
  5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
  6. The data reporting unit of measure;
  7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
  8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.
- C. Recordkeeping.** The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).
- R18-11-603. General Data Interpretation Requirements**
- A.** The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
    - a. When the analytical result is reported as <X, where X is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
      - i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
      - ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
    - b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;
  2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
  3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
  4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake samples are from multiple depths, use the following resultant value to represent the specific dataset:
    - a. The appropriate measure of central tendency for the dataset for:
      - i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
      - ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
      - iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
      - iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
      - v. The surface water quality standard for radiochemicals in R18-11-109(G); or
      - vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
    - b. The maximum value of the dataset for:
      - i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
      - ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
      - iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
      - iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
    - c. The worst case measurement of the dataset for:
      - i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
      - ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.

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- B.** The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
  2. Uncorrected data transcription errors or laboratory errors, and
  3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.
- C.** The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.
- D.** The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Non-point Sources (BASINS),
  2. Fundamental statistics, including regression analysis,
  3. Hydrologic Simulation Program-Fortran (HSPF),
  4. Spreadsheet modeling, and
  5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.
2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or
3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.
- D. Planning List.**
1. The Department shall:
    - a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
    - b. Provide the Planning List to EPA; and
    - c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in R18-11-605(D) to determine the source of the impairment.
  2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
    - a. A TMDL is completed for the pollutant and approved by EPA;
    - b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      - i. Does not meet the credible data requirements of R18-11-602, or
      - ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
    - c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      - i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      - ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
      - iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
      - iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
    - d. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act, but insufficient current or original monitoring data exist to determine whether the surface water or segment will meet current surface water quality standards;
    - e. Trend analysis using credible and scientifically defensible data indicate that surface water quality standards may be exceeded by the next assessment cycle;
    - f. The exceedance of surface water quality standards is due to pollution, but not a pollutant;
    - g. Existing data were analyzed using methods with laboratory detection limits above the numeric surface

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List**

- A.** The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:
    - a. The Planning List if it meets any of the criteria described in subsection (D), or
    - b. The 303(d) List if it meets the criteria for listing described in subsection (E).
  2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
  3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.
- B.** When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.
- C.** Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;

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water quality standard but analytical methods with lower laboratory detection limits are available;

- h. The surface water or segment is expected to attain its designated use by the next assessment as a result of existing or proposed technology-based effluent limitations or other pollution control requirements under local, state, or federal authority. The appropriate entity shall provide the Department with the following documentation to support placement on the Planning List:
  - i. Verification that discharge controls are required and enforceable;
  - ii. Controls are specific to the surface water or segment, and pollutant of concern;
  - iii. Controls are in place or scheduled for implementation; and
  - iv. There are assurances that the controls are sufficient to bring about attainment of water quality standards by the next 303(d) List submission; or
- i. The surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are no federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.

**E. 303(d) List.** The Department shall:

1. Place a surface water or segment on the 303(d) List if the Department determines:
  - a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
  - b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting**

- A.** The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.
- B. Weight-of-evidence approach.**
  1. The Department shall consider the following concepts when evaluating data:
    - a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
    - b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or sea-

sonal conditions, the Department may place the surface water or segment on the Planning List;

- c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and representativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:
  - i. The age of the measurements. Newer measurements are weighted heavier than older measurements, unless the older measurements are more representative of critical flow conditions;
  - ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or
  - iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.
2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:
  - a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);
  - b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);
  - c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:
    - i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;
    - ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and
    - iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.
  - d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.
  - e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indi-

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cates that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:

- i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;
  - ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or
  - iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.
3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.

## C. Planning List.

1. When evaluating a surface water or segment for placement on the Planning List.
  - a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and
  - b. Determine numeric water quality standards exceedances. The Department shall:
    - i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or
    - ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation:  $(X \geq x | n, p)$  where  $n$  = number of samples;  $p$  = exceedance probability of 0.1;  $x$  = smallest number of exceedances required for listing with “ $n$ ” samples; and confidence level  $\geq 80$  percent.

**Table 1. Minimum Number of Samples Exceeding the Numeric Standard**

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43
32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47
66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
  - a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
  - b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
  - c. The surface water quality standard for radiochemicals in R18-11-109(G);
  - d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
  - e. The surface water quality standard for pH under R18-11-109(B); or
  - f. The following surface water quality standards in R18-11-112:
    - i. Single sample maximum standards for nitrogen and phosphorus,
    - ii. All metals except chromium, or
    - iii. Turbidity.

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3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.

**D. 303(d) List.**

1. When evaluating a surface water or segment for placement on the 303(d) List.
  - a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
  - b. Determine numeric water quality standards exceedances. The Department shall:
    - i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of

exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or

- ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation:  $(X \geq x | n, p)$  where  $n$  = number of samples;  $p$  = exceedance probability of 0.1;  $x$  = smallest number of exceedances required for listing with “ $n$ ” samples; and confidence level  $\geq 90$  percent.

**Table 2. Minimum Number of Samples Exceeding the Numeric Standard**

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50
80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54
114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:

- a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
  - i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
  - ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
  - iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).

- b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.

3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).

**E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.**

1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
  - a. Monitoring activities indicate that:
    - i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment

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- on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
- ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
- b. All pollutants for the surface water or segment are delisted.
2. 303(d) List. The Department shall:
    - a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      - i. The Department developed, and EPA approved, a TMDL for the pollutant;
      - ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      - iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;
      - iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
      - v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
      - vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
    - b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
    - c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
    - d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
      - i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or
      - ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments**

- A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
  1. A change in a water quality standard;
  2. The date the surface water or segment was added to the 303(d) List;
  3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
  4. The complexity of the TMDL;
  5. State, federal, and tribal policies and priorities; and
  6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.
- B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
  1. Consider an impaired surface water or segment a high priority if:
    - a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      - i. The number and type of designated uses impaired;
      - ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      - iii. The pollutant causing the impairment, or
      - iv. The severity, magnitude, and duration the surface water quality standard was exceeded;
    - b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
    - c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
    - d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
    - e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
    - f. There is significant public interest and support for the development of a TMDL;
    - g. The surface water or segment has important recreational and economic significance to the public; or
    - h. The pollutant is listed for eight years or more.
  2. Consider an impaired surface water or segment a medium priority if:
    - a. The surface water or segment fails to meet more than one designated use;
    - b. The pollutant exceeds more than one surface water quality standard;
    - c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;



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- d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
  - e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
  - f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
3. Consider an impaired surface water or segment a low priority if:
- a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
  - b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
  - c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
    - i. Recently instituted treatment levels or best management practices in the drainage area,
    - ii. Discharges or activities related to the impairment have ceased, or
    - iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;
  - d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
  - e. The pollutant poses a low ecological and human health risk;
  - f. Insufficient data exist to determine the source of the pollutant load;
  - g. The uncertainty of timely coordination with national and international entities concerning international waters;
  - h. Naturally occurring conditions are a major contributor to the impairment; and
  - i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.
- C.** The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.
- D.** The Department may shift priority ranking of a surface water or segment for any of the following reasons:
- 1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
  - 2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
  - 3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;
  - 4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
  - 5. Reduction or increase in staff or budget involved in the TMDL development.
- E.** The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:
- 1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
  - 2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
  - 3. There is community involvement and interest in completing the TMDL, or
  - 4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 19. Alcohol, Dog and Horse Racing, Lottery and Gaming**

### **Chapter 3. Arizona State Lottery Commission**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R19-3-501, R19-3-505, R19-3-506, R19-3-508 through R19-3-510, R19-3-514, R19-3-517, R19-3-518, R19-3-520, R19-3-521, R19-3-523 through R19-3-528, R19-3-531 through R19-3-535, R19-3-544 through R19-3-547, R19-3-549, R19-3-553, R19-3-562 through R19-3-569

REMOVE Supp. 16-2  
Pages: 1 - 49

REPLACE with Supp. 16-4  
Pages: 1 - 49

*The agency's contact person who can answer questions about rules in Supp. 16-4:*

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*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING****CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

Authority: A.R.S. § 5-501 et seq.

19 A.A.C. 3, consisting of R19-3-101, R19-3-201 through R19-3-207, R19-3-301 through R19-3-381, R19-3-401, R19-3-501 through R19-3-549, and R19-3-601 recodified from 4 A.A.C. 37, consisting of R4-37-101, R4-37-201 through R4-37-207, R4-37-301 through R4-37-381, R4-37-401, R4-37-501 through R4-37-549, and R4-37-601, pursuant to R1-1-102 (Supp. 95-1).

**ARTICLE 1. EXPIRED**

Article 1, consisting of Section R19-3-101, expired under A.R.S. § 41-1056(E) at 17 A.A.R. 300, effective January 31, 2011 (Supp. 11-1).

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#### ARTICLE 5. PROCUREMENTS

*Article 5, consisting of Sections R4-37-501 through R4-37-549, adopted as permanent rules effective August 29, 1985.*

*Former Article 5, consisting of Sections R4-37-501 through R19-3-549, adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). R19-3-501 through R19-3-549 recodified from R4-37-501 through R4-37-549 (Supp. 95-1).*

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#### **ARTICLE 6. ANNUITY ASSIGNMENTS**

*Article 6, consisting of Section R19-3-601, made by final rulemaking at 11 A.A.R. 2028, effective July 2, 2005 (Supp. 05-2).*

*Article 6, consisting of Section R19-3-601, repealed effective June 17, 1997 (Supp. 97-1).*

*R19-3-601 recodified from R4-37-601 (Supp. 95-1).*

*Article 6, consisting of Section R4-37-601, adopted as a permanent rule effective February 25, 1987.*

*Article 6, consisting of Section R4-37-601, adopted as an emergency effective October 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days.*

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#### **ARTICLE 7. DESIGN AND OPERATION OF INSTANT GAMES**

*Article 7, consisting of Sections R19-3-701 through R19-3-709, adopted effective October 25, 1996 (Supp. 96-4).*

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*Article 10, consisting of Sections R19-3-1001 through R19-3-1008, adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1).*

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**ARTICLE 1. EXPIRED****R19-3-101. Expired****Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-101 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-3-101 recodified from R4-37-101 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 354, effective March 11, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 300, effective January 31, 2011 (Supp. 11-1).

**ARTICLE 2. RETAILERS****R19-3-201. Definitions**

In this Article, unless the context otherwise requires:

1. "Act" means A.R.S. Title 5, Chapter 5.1, Article 2.
2. "Activated" means the process taken by retailers to make a pack of instant scratch tickets valid for sale to the general public.
3. "Age-restricted retailer" means a licensed provider of sales and redemptions services for Lottery products that also holds a series 06 or 14 liquor license issued by the Arizona Department of Liquor Licenses and Control.
4. "Chapter" means Arizona Administrative Code, Title 19, Chapter 3.
5. "Charitable Organization" means an organization including not more than one auxiliary, to which the United States Internal Revenue Service has issued a letter of determination of the organization's tax-exempt status, and the organization has operated for charitable purposes in Arizona for at least two years.
6. "Controlling agent" means a stockholder, director, officer, managerial employee, or other person directly or indirectly controlling or operating the retailer's business.
7. "Controlling person" means a person at least 21 years of age accountable for the Lottery license.
8. "Corporate account retailer" means a group of stores in a retail chain utilizing one central bank account.
9. "Flare" means the board or placard that accompanies each package of instant tab tickets and that has printed on or affixed to it the following information:
  - a. Game name,
  - b. Serial number,
  - c. Ticket count,
  - d. Prize structure, and
  - e. Cost per play.
10. "Instant scratch ticket" means an instant game ticket where the protective covering is made of latex or another substance that is scratched off.
11. "Instant tab ticket" means an instant game ticket where the protective covering is a perforated paper tab that is opened. Instant tab ticket is the brand name for Arizona Lottery pull tabs.
12. "License" means:
  - a. "Full product license" means a license to sell the products authorized by the Lottery.
  - b. "Charitable organization license" means a license issued to a qualified charitable organization to sell only instant tab tickets.
  - c. "Instant tab license" means a license to sell only instant tab tickets.
  - d. "Limited license" means a license issued by the Lottery that restricts the duration of the license, the type of Lottery products sold, methods of selling, meth-

ods of validating Lottery products, or the type of applicant that qualifies for a Lottery license.

13. "Local premise manager" means a person who resides in Arizona that manages or is responsible for the operation of a premise or a number of premises.
14. "Minor" means an individual under the age of 18.
15. "On-line ticket" means a ticket purchased through a network of Lottery-authorized equipment linked to a central computer that records the wagers.
16. "Partial pack of tickets" means less than a complete pack of consecutively numbered and connected tickets.
17. "Premise manager" means the contact representative for a specific premise of a business or charitable organization.
18. "Pull tab" means an instant game ticket where the protective covering is a perforated paper tab that is opened to reveal the predetermined winning and non-winning symbols.
19. "Raffle" means the selling of numbered tickets, where each ticket has an equal chance of winning a prize in a random drawing held after the completion of all ticket sales.
20. "Retailer" means a licensed provider of sales and redemptions services for Lottery products. A retailer may hold a full product license, a charitable organization license, an instant tab license, a limited license, or a combination of licenses.
21. "Retailer bonus" means a sum of money credited to the retailer in addition to the retailer commission for specific actions or efforts in selling or validating Lottery products.
22. "Retailer commission" means a retailer incentive designed to maximize the sale of Lottery products by establishing a specific percent of the sales price of each ticket sold as payment for services in selling Lottery tickets.
23. "Retailer compensation" means all types of cash and non-cash compensation to the retailer for selling Lottery tickets.
24. "Retailer compensation profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all the fundamentals required by these rules for retailer compensation including commission, bonus, and incentive compensation to be credited to Lottery retailers.
25. "Retailer incentive" means cash and non-cash methods to motivate action by the Lottery retailer to stimulate sales.
26. "Sales benchmark" means sales objectives established by the Lottery based upon previous performance.
27. "Ticket" means one or more Lottery game plays.
28. "Validation" means confirmation of a winning Lottery ticket.

**Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-201 adopted effective August 17, 1981 (Supp. 81-4). Amended subsection (A) effective September 14, 1983 (Supp. 83-5). Amended subsection (E) and added subsection (F) effective January 6, 1987 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-201 recodified from R4-37-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-201 renumbered to R19-3-202; new R19-3-201 made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp.



10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

**R19-3-202. Retailer's Application for License**

All applicants shall provide the Director with the following to apply for a license to sell Lottery tickets:

1. A verified application on forms prescribed by the Director containing the following information:
  - a. The applicant's name, and if different, the trade name of the business premise, address of the physical location of the place of business, the mailing address if different, and phone number;
  - b. The applicant's current transaction privilege tax license number issued under A.R.S. § 42-5005 and federal taxpayer identification number issued by the Internal Revenue Service and recorded on Form W-9;
  - c. Certification that access to the applicant's business complies with the Americans with Disabilities Act;
  - d. Marketing and sales information on the forms provided by the Lottery. The information required includes the number of cash registers, hours of operation, products presently offered for sale, and the approximate daily volume of customers entering the place of business;
  - e. Evidence the applicant operates a business with other products or services unrelated to lottery products or services concerning lotteries;
  - f. Financial relationship and any outstanding debt owed to the state of Arizona, any of its political subdivisions, or the United States government;
  - g. Evidence the applicant for a license other than an instant tab license or charitable organization license is financially solvent. The evidence may include either of the following:
    - i. Evidence the applicant has established business credit, has a record of meeting its business debts as they became due for the three years immediately preceding the date of application, and does not have outstanding legal actions, judgments, or tax liens; or
    - ii. Personal guarantee, in writing, of applicant's Lottery account signed by a guarantor and the guarantor's spouse, if community property is being used to guarantee the account, or by the guarantor only, if guarantor provides proof that the guarantee is based on sole and separate property.
  - h. An Electronic Funds Transfer Authorization agreement showing a valid bank account number for the full product applicant from which the Lottery will withdraw any amounts due.
  - i. Proof of identification.
2. If the applicant does business as a sole proprietorship or partnership:
  - a. The name, home address, and home phone number of each owner or partner, including spouse if community property owner, unless applicant provides proof that the business is sole property separate from the community; and
  - b. Written authorization and tax identification number for the business entity and Social Security number of each applicant in order to obtain a credit check from a credit reporting agency.
3. If the applicant does business as a limited liability partnership ("LLP") or a limited liability company ("LLC"):
  - a. The name, home address, and home phone number of each partner or member, or the local premise manager if the partners or members are out of state; and
  - b. Written authorization and a tax identification number to perform a credit check.
4. If the applicant does business as a corporation:
  - a. The name, corporate address, and corporate phone number of each officer and director, and the name, home address, and home phone number of the responsible local premise manager who is the contact representative for the applicant's corporate location in Arizona; and
  - b. Written authorization and a tax identification number to perform a credit check.
5. If the applicant does business as a charitable organization:
  - a. A copy of the organization charter or formation, documentation of current membership status in the organization, and if applicable, the authorization of the auxiliary;
  - b. The name, home address, and home phone number of each officer and local premise manager, or if an auxiliary, of each officer and local premise manager of the auxiliary;
  - c. A letter of determination issued in the organization's name by the United States Internal Revenue Service verifying the organization's tax-exempt status; and
  - d. Evidence the charitable organization has maintained a premise within the state of Arizona for the two years immediately preceding the date of application.
6. If the Lottery licenses an applicant under subsection (1)(g)(ii), the guarantor shall provide a written authorization to perform a credit check. If the guarantee is based on community property, the guarantor and guarantor's spouse shall provide written authorization for the Lottery to perform a credit check.
7. An application fee of \$45.00, or if the applicant does business as a corporation, limited liability company, limited liability partnership, or partnership, an application fee of \$67 which includes a credit check fee.
8. If the applicant is a business with more than one currently licensed location, the application fee for the new location shall be pro-rated at \$1.25 per month from the application date until the date the other licenses are due for renewal under R19-3-202.04(B)(3).
9. If the applicant's personal information shows no history through a public records criminal background check, the Lottery may require a completed authorized fingerprint card and fee per A.R.S. § 41-1750(G)(2) and (J).

**Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-202 adopted effective August 17, 1981 (Supp. 81-4). Spelling correction, subsection (A) to adoption effective August 17, 1981 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-202 recodified from R4-37-202 (Supp. 95-1). Section repealed; new Section R19-3-202 renumbered from R19-3-203 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-202 renumbered to R19-3-203; new R19-3-202 renumbered from R19-3-201 and amended by final

rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 20 A.A.R. 964, effective June 1, 2014 (Supp. 14-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### **R19-3-202.01. Prerequisites to Issue or Renew a License**

- A.** Evidence the applicant is of good character and reputation. The Lottery may find that a person lacks good character and reputation if it determines the person has committed any act which, if committed by a licensed retailer, would be grounds for suspension or revocation of a license granted by the state of Arizona.
- B.** An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization shall not have had a business license required by statute in Arizona or any other state suspended or revoked within the last 12 months.
- C.** An applicant, a director or officer of a corporation, partner, or member of a limited liability company, or charitable organization shall not have had a Lottery license denied or revoked at the address and location of the applicant's place of business for reasons other than noncompliance with the Americans with Disabilities Act, and shall not have sold Lottery products without being licensed within one year of the person's date of application.
- D.** An applicant for a license other than an instant tab license or charitable organization license shall have demonstrated financial solvency based on the information obtained through the application, credit check, or pending litigation, if any, or tax liens, if any.
- E.** An applicant shall be one of the following to fulfill residency requirements:
  1. A resident of Arizona;
  2. A corporation incorporated in Arizona or authorized to do business in Arizona;
  3. A limited liability company authorized to do business in Arizona in which a member or manager resides in Arizona, or if none of the members or managers resides in Arizona, the applicant shall provide a personal guarantor who is an Arizona resident;
  4. A partnership in which at least one of the general partners resides in Arizona;
  5. A limited liability partnership in which at least one of the partners resides in Arizona; or
  6. A charitable organization authorized to do business in Arizona.
- F.** As a condition of licensure, each retailer shall agree to release, indemnify, defend, and hold harmless, the Lottery, its commissioners, officers, and employees, from and against any and all liability, damage, cost, claim, loss, or expense, including, without limitation, reasonable attorney's fees and disbursements, resulting from or arising by reason of loss of use, temporary or permanent cessation of Lottery equipment, or terminal operations. This should not be construed in any way to affect the rights of the retailer to recover for losses caused by any third party.

#### **Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### **R19-3-202.02. Time-frame for Licensure**

- A.** For the purpose of A.R.S. §§ 41-1072 through 41-1079, the Director establishes the time-frames for a license to sell Lottery tickets:
  1. Administrative completeness review time-frame: 15 days.
  2. Substantive review time-frame: 75 days.
  3. Overall time-frame: 90 days.
- B.** The Director shall finish an administrative completeness review within 15 days from the date of receipt of the application and fees prescribed in R19-3-202.
  1. The Director shall issue a notice of administrative completeness to the applicant if no deficiencies are found in the application.
  2. If the application is incomplete or the fee is not submitted, the Director shall provide the applicant with a written notice that includes a comprehensive list of the missing or deficient information.
  3. The 15-day time-frame for the administrative completeness review is suspended from the date the notice of incompleteness is sent until the applicant provides the Director with all missing information.
  4. If the Director does not provide the applicant with notice regarding administrative completeness, the application shall be deemed complete 15 days after receipt by the Director.
- C.** An applicant shall respond to a request for missing information within 20 days of notice of incompleteness.
- D.** If an applicant fails to submit a complete application within the time allowed, the Director may close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license shall apply again according to R19-3-202.
- E.** From the date on which the administrative completeness review of an application is finished, the Director shall complete a substantive review of the applicant's qualifications in no more than 75 days.
  1. If an applicant is found to be ineligible, the Director shall issue a written notice of denial to the applicant.
  2. If an applicant is found to be eligible for a license, the Director shall issue a license to the applicant permitting the applicant to engage in business as a retailer under the terms of this Chapter.
  3. If the Director finds deficiencies during the substantive review of an application, the Director shall issue a written request to the applicant for additional information.
  4. The 75-day time-frame for substantive review is suspended from the date of a written request for additional information until the date that all information is received.
  5. If the applicant and the Director mutually agree in writing, the 75-day substantive review time-frame may be extended once for no more than 18 days.
- F.** If the Director does not provide the applicant with written notice granting or denying a license within the overall time-frame, the Director shall refund the applicant's application fee within 30 days after the expiration of the overall time-frame or the time-frame extension.

#### **Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### **R19-3-202.03. Denial of License Application**

The Lottery shall not issue a license to an applicant if any of the following applies:

1. The applicant is a minor, a partnership or LLP in which one of the partners is a minor, an LLC in which one of the members or managers is a minor, or a corporation in

which a corporate officer, director, or manager of Lottery sales is a minor;

2. The organization is an adult-oriented business as defined in A.R.S. § 13-1422 or displays sexually explicit material in violation of A.R.S. § 13-3507;
3. The applicant has sold a Lottery product without a license, or operated gaming machines or equipment that are required to be licensed, without a license;
4. The applicant fails to have a controlling person at least 21 years of age; or
5. The organization is an age-restricted business that does not have a valid series 06 or 14 liquor license issued by the Arizona Department of Liquor Licenses and Control.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### R19-3-202.04. Duration and Renewal of License

- A. A license issued under this Chapter shall expire three years from the license issuance date by operation of law.
- B. A retailer may renew a license to sell Lottery tickets by submitting to the Director a verified application for license renewal on forms prescribed by the Director containing the information required in R19-3-202 and R19-3-202.01. By filing an application for renewal, a retailer holding a full product license or limited license authorizes the Lottery to collect a \$45.00 renewal fee by an electronic transfer of funds from the bank account from which the Lottery regularly bills the retailer. A retailer holding a charitable organization license or instant tab license shall submit cash, check, or a money order for \$45 with its renewal application.
  1. An application for renewal of a Lottery license received by the Director or deposited in the United States mail postage prepaid on or before the renewal date shall authorize the retailer to continue to operate until actual issuance of the renewal license.
  2. The Director may refuse to renew a license according to the provisions of R19-3-204.
  3. A retailer holding more than one license may elect to renew all licenses on the same date. If more than one license is renewed under this subsection, the application fee shall be pro-rated at \$1.25 per month from the license expiration date until the next renewal date of the other licenses held by the same retailer.
- C. A license issued under this Chapter is subject to termination by the Director according to the provisions of this Chapter.
- D. A retailer may voluntarily surrender a license unless an investigation or action has been initiated against the retailer.
- E. The Lottery may issue a license which is limited with regard to duration, type of products, methods of selling or validating products, or qualification requirements.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### R19-3-202.05. Display of License and Point-of-sale Material

- A. A retailer shall conspicuously display to the public that it is a licensed Lottery retailer. A retailer may do this by:
  1. Posting the Lottery license in a prominent place on the premises; or

2. Posting the authorized Lottery retailer decal in a prominent place in public view, and retaining a copy of the license on the premise, available upon request.
- B. A retailer shall prominently display the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number.
- C. A retailer holding a charitable organization license or instant tab license shall prominently display the flare for each instant tab game currently on sale at or near the point of sale.
- D. A violation of this subsection is grounds for disciplinary action according to the provisions of R19-3-204.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-202.06. Use of Lottery Logo and Trademark

- A. A retailer may not use the logos, trademarks, or other advertising materials of the Lottery without prior written permission or authorization of the Lottery, except for materials provided to the retailer by the Lottery.
- B. A retailer shall not display or publish on the licensed premises material which may be considered derogatory or adverse to the operation or dignity of the Lottery or the state of Arizona. A retailer shall remove any such materials from the licensed premise upon request of the Lottery.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-203. Direct and Promotional Sales

- A. The Lottery may sell Lottery tickets at its main office or any branch it establishes in the state.
- B. The Lottery may sell Lottery tickets at any promotional event.
- C. The Lottery may authorize a licensed retailer to sell Lottery tickets at an auxiliary premise for a promotional event.

#### Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R5-37-203 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-2-203 recodified from R4-37-203 (Supp. 95-1). R19-2-203 renumbered to R19-3-202; new Section R19-2-203 renumbered from R19-4-204 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 914, effective February 10, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-203 renumbered to R19-3-204; new R19-3-203 renumbered from R19-3-202 by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-204. Revocation, Suspension, or Renewal Denial of Retailer's License

- A. A license may be revoked, suspended, or denied renewal by the Director for any of the following reasons:
  1. The retailer violates a provision of the criminal laws of the state of Arizona or the United States, which could be punished by jail time or imprisonment;
  2. The retailer offers to sell a Lottery ticket, sells a Lottery ticket, or pays a prize on any winning Lottery ticket to a person under 21 years of age;
  3. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any

- public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
4. The retailer fails to maintain minimum sales requirements or does not follow the guidelines established by the Lottery. The Lottery shall provide minimum sales requirements to retailers at least 30 days prior to the effective change date;
  5. The retailer commits an act that impairs the retailer's reputation for honesty and integrity;
  6. The retailer sells a ticket at a price greater than face value;
  7. The retailer pays less than the full prize value of the ticket at validation;
  8. The retailer advises a player that a winning ticket presented for validation was not a prize winner;
  9. The retailer sells tickets not activated for sale on three or more occasions within any 12-month period;
  10. The retailer sells a ticket while license is suspended for insufficient funds;
  11. The retailer does not make purchase or redemption of Lottery tickets convenient and readily accessible to the public;
  12. The retailer provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, incomplete, or omits relevant information;
  13. The retailer's actions cause two payments to be returned to the Lottery for insufficient funds in a 12-month period;
  14. The retailer becomes insolvent, unable or unwilling to pay debts, or is declared bankrupt;
  15. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager of the retailer:
    - a. Is convicted of a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices; or
    - b. Is the subject of a civil order, judgment, or decree of a federal or state authority for misrepresentation, consumer fraud, or any other fraud.
  16. Facts are discovered which, if known at the time the retailer's license was issued or renewed, would have been grounds to deny licensure;
  17. The retailer adds a minor as an owner, partner, or officer of the business;
  18. The retailer, or an officer, employee, or agent of the retailer does any of the following:
    - a. Plays any Lottery game while working,
    - b. Fails to purchase or validate the ticket from another on-duty employee or through a Lottery product vending machine, or
    - c. Fails to pay for the ticket prior to playing the Lottery game.
  19. The retailer, or an officer, employee, or agent of the retailer sells any Lottery product for consideration other than U.S. currency, check, credit card, debit card or, if a player requests, the exchange of a winning Lottery ticket;
  20. The retailer, or an officer, employee, or agent of the retailer sells a Lottery ticket by telephone, mail, fax, on the internet, or on premises not authorized by the Lottery;
  21. The retailer, or an officer, employee, or agent of the retailer sells an altered Lottery ticket, an expired Lottery ticket, or a Lottery ticket after the announced end of the game;
  22. The retailer fails to display the Authorized Retailer Notice, which includes the Americans with Disabilities Act Notice and Arizona Problem Gambling Helpline toll-free telephone number;
  23. The retailer fails to report a change event defined in R19-3-210;
  24. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws, Lottery regulations, or denies access to Lottery personnel;
  25. The retailer holding a charitable organization license or instant tab license fails to prominently display the flare for each instant tab game currently on sale within public view near the point of sale;
  26. The retailer holding a charitable organization license no longer qualifies as a charitable organization or its letter of determination of tax-exempt status is suspended or revoked;
  27. The retailer fails to comply with the rules governing its license; or
  28. The age-restricted retailer violates a provision of the state of Arizona liquor laws under A.R.S. § 4-101, *et. seq.*
- B.** An investigation of a violation of Lottery rules may be initiated by action of the Director or by a written complaint of any person.
1. An investigation initiated by a written complaint shall be investigated within 30 days of receiving the complaint.
  2. During an investigation the Director may temporarily suspend a license under an emergency action, or impose specific conditions on a retailer.
- C.** An action to suspend or revoke a license shall be initiated by a notice of action to the retailer. Notice may be made by mail, hand-delivery, or electronic mail with a copy by regular mail. Notice to the retailer is effective notice if it is sent to the address in the application or the last address provided under R19-3-210.

#### Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-204 adopted effective August 17, 1981 (Supp. 81-4). Amended as an emergency effective June 26, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Correction, former emergency amendment shown effective June 26, 1983 should read effective June 10, 1983. Former emergency amendment now adopted as a permanent amendment without change effective September 14, 1983 (Supp. 83-5). Amended effective March 6, 1986 (Supp. 86-2). Amended subsection (B) effective January 6, 1987 (Supp. 87-1). Amended effective September 12, 1989 (Supp. 89-3). R19-3-204 recodified from R4-37-204 (Supp. 95-1). Section R19-3-204 renumbered to R19-3-203; new Section R19-3-204 renumbered from R19-3-205 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Former R19-3-204 repealed; new R19-3-204 renumbered from R19-3-203 and amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### R19-3-204.01. Procedure for Requesting a Hearing

- A.** A retailer may request a hearing on any notice to revoke or suspend a Lottery license.

- B. The hearing shall be held before the Office of Administrative Hearings. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- C. The Director may accept, modify, reject, or allow the recommended decision of the Administrative Law Judge to become final by expiration of time. This is a final administrative decision of the Lottery.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

**R19-3-204.02. Lottery Determination of Need for Emergency Action**

- A. The Director may determine the need for emergency action to disable a retailer's Lottery-issued equipment, suspend sales of Lottery games, or remove tickets if the public welfare is threatened pending a proceeding for revocation, suspension, or denial of renewal, in the following circumstances:
  1. The retailer's bank account has insufficient funds when the Lottery's regularly-scheduled electronic transfer of the retailer's account is returned by the bank as insufficient funds or closed account and the retailer does not immediately pay the insufficiency;
  2. The retailer fails to comply or cooperate with an investigation concerning Arizona state laws or Lottery regulations;
  3. The retailer, or officer, director, partner, LLC member or manager, controlling agent, or local premise manager is charged with a felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices;
  4. The retailer sells a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security;
  5. The retailer sells an altered or expired ticket;
  6. The retailer sells a ticket at a price greater than face value;
  7. The retailer pays less than the full prize value of the ticket at validation; or
  8. The age-restricted retailer violates a provision of the state of Arizona liquor laws under A.R.S. § 4-101 et. seq.
- B. A retailer who receives a Notice of Intent to Revoke a Retailer's License with a finding of emergency action shall:
  1. Immediately cease all sales of Lottery products, and
  2. Surrender the license and all other Lottery property and products upon request by the Director's representative.
- C. The Director shall notify the retailer in writing within five days of taking an emergency action that an expedited hearing or informal conference may be obtained before the Office of Administrative Hearings under A.A.C. R2-19-103 and A.A.C. R2-19-110.
- D. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take steps allowed by law to secure payment and return of Lottery property and products.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

**R19-3-204.03. Appealing a Final Administrative Decision of the Lottery**

- A. An optional motion for rehearing may be made to the Lottery Commission by filing a Notice of Appeal to the Lottery Commission within 10 days of receipt of the final administrative decision.
  1. The notice shall contain:
    - a. A copy of the Director's final administrative decision, and
    - b. The alleged factual or legal error in the final administrative decision from which the appeal is taken.
  2. A person appealing the decision of the Director may file a written brief stating the factual and legal position on the appeal within 30 days after receipt of the decision being appealed.
  3. The Lottery may file a response brief within 15 days after receipt of the appellant's brief.
  4. The Lottery Commission may rule based on the written briefs, or if requested, may provide for oral argument.
  5. The Lottery Commission shall make its ruling on the appeal on the record.
  6. A decision of the Lottery Commission is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
- B. A direct appeal of a final decision of the Director under R19-3-204.01(C) may be taken for judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

**R19-3-204.04. Surrender of Lottery Equipment and Property Upon Revocation**

- A. A retailer who receives a final administrative decision revoking the license shall:
  1. Immediately cease all sales of Lottery products; and
  2. Surrender the license and all other Lottery equipment, property, and products upon request of the Director's representative.
- B. If the retailer fails to settle the financial account and surrender the license and all other Lottery property and products, the Director shall take all steps allowed by law to secure payment and the return of Lottery property and products.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

**R19-3-205. Lottery-issued Equipment**

- A. Retailers holding only a charitable organization license or instant tab license shall not be issued Lottery terminal equipment to sell or validate Lottery products, but may use an authorized Lottery product vending machine in accordance with subsection (C).
- B. Retailers holding a full product or limited license shall only sell or validate Lottery products using authorized Lottery-issued equipment.
  1. A retailer shall locate the equipment at a site approved by the Lottery and shall not move the equipment from that site without prior approval from the Lottery.
  2. A retailer shall ensure electrical service to the equipment location is installed according to the specifications established by the Lottery. The cost of electrical service shall be the responsibility of the retailer.
  3. A retailer shall cooperate with the Lottery to the extent reasonable and practicable to accomplish any modifications to the equipment or systems in a timely and economical fashion.

4. The Lottery shall not be liable for damages of any kind due to interruption or failure of any Lottery-issued or authorized equipment.
  5. A retailer shall operate the Lottery-issued equipment and accessories only in the ordinary course of its Lottery business and only according to the requirements established by the Lottery.
  6. A retailer shall exercise diligence and care to prevent damage to the Lottery-issued equipment and other property of the Lottery, or property of Lottery contractors.
  7. A retailer shall maintain the Lottery-issued equipment and accessories in a clean and orderly condition.
  8. A retailer shall minimize equipment downtime by notifying the Lottery or its contractor immediately of any equipment failure, malfunction, damage, or accident.
  9. A retailer shall make the equipment available for repair, adjustment, or replacement at all times during the retailer's regular business hours.
  10. A retailer shall order and use equipment supplies exclusively from the Lottery or its designated contractor. The Lottery shall furnish equipment supplies, at no cost, to the retailer.
  11. A retailer shall install and use only approved Lottery paper stock specifically assigned to the retailer.
- C.** Retailers may sell tickets using an authorized Lottery product vending machine in accordance with the Act and this Chapter.
1. A retailer shall establish loss prevention policies to ensure Lottery product vending machines are not operated by persons under 21 years of age to purchase Lottery tickets.
  2. The Lottery product vending machine shall remain operational during the retailer's regular business hours and be placed in an area visible to retail personnel and easily accessible to players.
  3. A retailer shall maintain an adequate supply of instant scratch or instant tab tickets for the Lottery product vending machine.

#### Historical Note

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Sections R4-37-205 adopted effective August 17, 1981 (Supp. 81-4). Amended effective September 12, 1989 (Supp. 89-3). R19-3-205 recodified from R4-37-205 (Supp. 95-1). Section R19-3-205 renumbered to R19-3-204; new Section R19-3-205 renumbered from R19-3-206 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### R19-3-206. Retailer Training

- A.** A retailer holding a full product license shall participate in training provided by the Lottery in the operation of Lottery equipment and sale of Lottery products. Training may take place at a retailer's place of business.
- B.** A retailer holding a full product license shall ensure all employees selling Lottery products or operating Lottery equipment are properly trained in these areas and have access to all materials provided by the Lottery relating to the sales and pro-

motion of Lottery products and the operation of Lottery equipment.

- C.** A retailer holding a full product license shall be responsible for any compensation and other associated costs payable to employees for participation in Lottery training courses and instruction.
- D.** A retailer holding a full product license shall provide all employees operating Lottery equipment with copies of the procedures manual, bulletins, and technical materials furnished to the retailer by the Lottery or its contractors.
- E.** A retailer holding a charitable organization license or instant tab license shall ensure all employees or volunteers selling instant tab tickets are properly trained.

#### Historical Note

Adopted effective August 17, 1981 (Supp. 81-4). Amended subsection (B) as an emergency effective January 13, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-1). Subsection (B), amended as an emergency, now adopted as permanent with further amendment effective April 21, 1982 (Supp. 82-2). Amended subsection (A)(1), (3) and (4) as an emergency effective November 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former emergency amendment effective November 24, 1982 now adopted as permanent effective December 28, 1982 (Supp. 82-6). Amended as an emergency effective June 10, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-206 adopted as an emergency effective June 10, 1983, now adopted and amended as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsection (A)(4) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). R19-3-206 recodified from R4-37-206 (Supp. 95-1). R19-3-206 renumbered to R19-3-205; new Section R19-3-206 renumbered from R19-3-207 and amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-207. Compliance Investigations

- A.** A retailer shall comply with all provisions of the Act and this Chapter. The Lottery may conduct inspections to verify compliance and, if necessary, order an audit or investigation of the business.
- B.** A retailer shall allow investigations by authorized Lottery investigators during the retailer's regular business hours to determine whether the retailer is complying with the provisions of the Act and this Chapter.
- C.** A retailer shall keep all documentation relating to the purchase, sale, and validation of Lottery products that are kept in the normal course of business for tax purposes for three years. This documentation shall be easily accessible to the Lottery-authorized investigator for examination or audit.

#### Historical Note

Adopted as an emergency effective June 10, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-207 adopted as an emergency effective June 10, 1983, now adopted and amended as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsections (B) and (J) effective September 26, 1986 (Supp. 86-5). Amended effective September 12,

1989 (Supp. 89-3). R19-3-207 recodified from R4-37-207 (Supp. 95-1). R19-3-207 renumbered to R19-3-206; new Section R19-3-207 adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### **R19-3-208. Penalties**

- A.** The Director shall assess a civil penalty against a retailer for any of the following acts:
  1. Offering to sell or selling a Lottery ticket to any person who is under 21 years of age, or
  2. Selling a Lottery ticket in any transaction to a person using a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security.
- B.** The Director shall, on the written complaint of any person, or upon receipt of information indicating a retailer has committed an act listed in subsection (A), investigate the act or acts. The Director shall give notice to the retailer as provided in A.R.S. §§ 41-1092.03 and 41-1092.04 of imposition of a civil penalty if the Director finds the retailer has committed such an act. A violation of an act listed in subsection (A) is a civil penalty in the amount of:
  1. Up to \$300 for the first violation within a 12-month period;
  2. More than \$300 and up to \$500 for the second violation within a 12-month period; and
  3. More than \$500 and up to \$1,000 for the third violation within a 12-month period.
- C.** A retailer against whom a penalty is assessed shall pay the penalty to the Lottery by the 31st day after the retailer receives notice of imposition of the civil penalty, if the retailer does not request a hearing as provided in subsection (D).
- D.** A retailer may request a hearing regarding imposition of a civil penalty. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- E.** A decision of the Director accepting, modifying or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
  1. If the retailer decides not to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the retailer receives the Director's decision.
  2. If the retailer decides to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the Superior Court's decision.
  3. If the retailer decides to appeal the Superior Court's decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the decision on appeal.
  4. A retailer shall pay interest at the rate provided in A.R.S. § 44-1201 from the date final judgment assessing a civil penalty is entered until satisfaction of the judgment.

#### **Historical Note**

New Section made by final rulemaking at 7 A.A.R. 3043, effective June 19, 2001 (Supp. 01-2). Amended by final rulemaking at 10 A.A.R. 3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

August 7, 2012 (Supp. 12-2).

#### **R19-3-209. Notice and Service**

Service shall be deemed made by the Lottery for any notice, decision, order, subpoena, or other process when the document or a copy is delivered to the retailer, premise manager, guarantor, or the attorney of record, or is deposited as certified mail in the United States Postal Service, addressed to the retailer or guarantor at the address listed on the application for license or as reported as a change event under R19-3-210.

#### **Historical Note**

New Section made by final rulemaking at 10 A.A.R.

3073, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### **R19-3-210. Reportable Events**

- A.** A retailer shall report the following events to the Lottery in writing a minimum of 10 business days before the event:
  1. Change in business location of the licensed premise;
  2. Sale of ownership, merger, or acquisition of the licensed entity;
  3. Addition, removal, or change of address or phone number of the following persons:
    - a. A partner in a partnership or a limited liability partnership;
    - b. A member or manager in a limited liability company;
    - c. An officer holding the position or functional equivalent of president, secretary, or treasurer of a corporation; or
    - d. A controlling agent, local premise manager, or designated corporate contact representative.
  4. A charge of felony, felony theft that is designated as a misdemeanor, misdemeanor theft, embezzlement, or a crime involving gambling or fraudulent schemes and artifices that is brought against any person listed in subsection (3);
  5. Divorce or legal separation action filed by a sole proprietor or partner licensed as a retailer or retailer's spouse;
  6. Retailer or guarantor becomes insolvent, files bankruptcy, or a receivership is ordered;
  7. Change in bank account from which the Lottery's electronic funds transfers are made;
  8. Revocation, suspension, or other action against a charitable organization's letter of determination of tax-exempt status; or
  9. Change in the status of liquor license issued by the Arizona Department of Liquor Licenses and Control.
- B.** A retailer shall report to the Lottery in writing the death of a sole proprietor or partner licensed as a retailer within 10 business days after the death occurs.

#### **Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### **R19-3-211. Change of Ownership or Business Location**

A license is not assignable or transferable. A license authorizes the entity described in the application to sell Lottery tickets only at the specific premise authorized by the Lottery.

1. If there is a change of business location or ownership as reportable in R19-3-210(A)(1) through (3) or R19-3-210(B), a criminal charge as reportable in R19-3-210(A)(4), or a change in liquor license status as reportable in R19-3-210(9), the retailer shall:
  - a. Surrender the license to the Director on the date of the event,
  - b. Not sell any additional Lottery tickets, and
  - c. Not allow the sale of Lottery products under a sub-contract to avoid the repercussions of a change of status under this section.
2. If the retailer does not notify the Lottery of a change in ownership or business location at least 10 business days before the change, the retailer may not receive credit for any activated partial packs of tickets.
3. The new owner shall apply for a license according to R19-3-202.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3).  
Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### R19-3-212. Retailer Compensation

- A. Retailer compensation shall be set within the statutory limits by a retailer compensation profile ordered by the Lottery Commission. Each retail compensation profile shall contain the following information:
  1. Retailer compensation profile number;
  2. Specific type of retailer compensation: commission, bonus, or other incentive;
  3. The retailer group to which the retailer commission, bonus, or other incentive applies;
  4. Criteria required to qualify for the commission, bonus, or other incentive;
  5. Duration of the retailer commission, bonus, or other incentive;
  6. Targeted games, if any; and
  7. Special features, if any.
- B. The category of retailer commissions, bonuses, or other incentives shall be one or more of the following:
  1. Full product license basic commission rate,
  2. Limited license basic commission rate,
  3. Sales benchmark rate,
  4. Game product rate,
  5. Promotional incentive or bonus rate,
  6. Temporary incentive or bonus rate, or
  7. Alternate incentive or bonus rate.
- C. More than one retailer commission, bonus, or other incentive may run concurrently.
- D. Promotion bonuses or incentives may be held during a designated period, specific days of the week, specific hours of the day, or a combination thereof.
- E. The Commission shall approve and the Director shall distribute a schedule of available retailer compensation to licensed retailers at least 30 days prior to its effective date and shall post it on the Lottery web site. A technological problem or failure that either prevents the posting of the retailer commission, bonus, or other incentive on the Lottery web site or that temporarily or permanently prevents the use of all or part of

the web site does not preclude the authorization of the retailer compensation.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3).  
Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-213. Ticket Sales to Players

- A. A retailer shall sell only the type of Lottery products authorized by its Lottery-issued license.
- B. The Director may require a retailer to sell any one or combination of Lottery game products based on the retailer's license.
- C. A retailer shall not make any representation to a player regarding a likelihood to win, a guaranteed return on a percentage of purchases, or better chances or odds of winning.
- D. On-line tickets.
  1. All on-line ticket sales are final. If a retailer holding a full product license accepts a returned on-line ticket from a player or generates an on-line ticket refused by the player and the retailer does not resell the ticket, the Lottery shall deem the on-line ticket to be owned by the retailer.
  2. A retailer holding a full product license shall not devote more than 15 consecutive minutes of sales to an on-line game purchase by any single player if other customers are waiting to make a purchase.
  3. A retailer holding a full product license shall only use selection slips, materials, or methods authorized by the Lottery to generate plays selected by the player.
- E. Instant scratch tickets.
  1. All instant scratch ticket sales are final.
  2. A retailer holding a full product license shall sell instant scratch tickets within each pack in sequential order.
  3. A retailer holding a full product license shall not sell an instant scratch ticket after the announced end of game.
- F. All instant tab ticket sales are final.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3).  
Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-214. Payments to Lottery

- A. Money collected from the sale of Lottery tickets by retailers are trust monies required to be collected for the benefit of the state and shall be paid to the Lottery according to subsections (B) and (C).
- B. A retailer holding a full product license or limited license shall pay for ticket sales in the following manner:
  1. Pay to the Lottery each Friday, by an electronic funds transfer, the amount due from the sale of its Lottery tickets for the seven-day period ending at the close of business on the previous Saturday.
  2. The amount due for on-line tickets means the retailer's gross on-line sales revenue, minus any promotional tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments.
  3. The amount due for instant scratch tickets is based on billing for instant ticket packs issued to a retailer with billing occurring 45 days after a pack is activated, or after 85% of winning tickets in the pack are validated, which-



ever occurs first, minus any promotional tickets, returned tickets, prize winnings paid out by the retailer, the retailer's sales commission, and plus or minus any accounting or prize adjustments. Corporate account retailers may elect to settle in 21 days with no associated validation percentage.

4. The retailer shall deposit funds in a timely manner into a bank account from which the electronic funds transfer will be made to the Lottery.
  - a. The retailer shall provide the Lottery with an electronic funds transfer authorization showing a valid bank account number from which the amounts due to the Lottery will be transferred, and
  - b. The retailer shall notify the Lottery of any bank account changes a minimum of 10 business days before the effective date of the change.
5. If a retailer's payment is returned to the Lottery for any reason, the retailer shall deliver a certified check, cashier's check, money order, or make a direct deposit for the amount due to the Lottery's bank account within 24 hours of notification. Additionally, if the retailer's payment is returned to the Lottery:
  - a. The Director may require that the retailer's Lottery-issued equipment be disabled;
  - b. The Director may revoke, suspend, or deny renewal of the retailer's license according to R19-3-204;
  - c. The Director may require payment for instant scratch tickets upon activating the pack for sale; and
  - d. The Director may require the return of the retailer's current inventory of instant scratch tickets and suspend further delivery of instant scratch tickets.
- C. A retailer holding a charitable organization license or instant tab license shall pay the Lottery's authorized representative for instant tab tickets.
- D. If the retailer owes money to the Lottery, the Lottery may offset that debt with any monies that are owed to the retailer by the Lottery.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

#### R19-3-215. Prize Validation and Payment

- A. A retailer holding a full product license shall provide prize validation and payment services for instant scratch tickets or on-line tickets to any Lottery claimant regardless of where the ticket was purchased.
- B. A retailer holding a full product license shall pay all winning prizes for instant scratch tickets or on-line tickets up to and including \$100, and may pay all winning prizes from \$101 up to and including \$599.
  1. A winning instant scratch ticket shall satisfy the validation criteria in R19-3-705 and R19-3-706 and have a proper validation receipt issued by the Lottery-authorized equipment.
  2. A winning on-line ticket shall satisfy the validation criteria in R19-3-406 and R19-3-407 and have a proper validation receipt issued by the Lottery-authorized equipment.
- C. A retailer selling instant tab tickets shall pay all winning prizes for tickets sold at its location.

1. A winning instant tab ticket shall satisfy the validation criteria in R19-3-705(A) and (B)(1) through (8), and contain the necessary play, prize, and win symbol captions that enable visual confirmation of a prize.
  2. Prizes shall not be paid by the Lottery or by another retailer.
- D. Prizes shall be paid by cash, check, money order, or if requested by the player, by Lottery tickets. If a retailer pays a prize with a money order, any associated fees shall be paid by the retailer.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-216. Distribution and Return of Instant Tickets

- A. The Lottery or its authorized representative shall distribute instant scratch tickets and accept returned instant scratch tickets as follows:
  1. Distribute to each retailer holding a full product license the quantity of tickets on which the Lottery and the retailer agree, based on the retailer's anticipated sales volume.
  2. Collect full and partial packs of tickets during a game if the Lottery and a retailer holding a full product license determine the retailer's sales for a specific game are minimal.
  3. Collect full and partial packs of tickets when a game is ended. The Lottery shall announce the ending date of a game and communicate this information to all retailers holding a full product license in a timely manner.
  4. Credit to a retailer holding a full product license, in the billing period following the receipt of the Lottery-authorized returned tickets, the net dollar value of any unopened full packs and any partial packs of tickets.
- B. The Lottery or its authorized representative shall distribute instant tab tickets and shall not accept returns of instant tab tickets.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2).

#### R19-3-217. Unaccounted for and Stolen Instant Scratch Tickets

- A. All Lottery tickets issued to a retailer holding a full product license or limited license shall be the property of the retailer until their return is acknowledged by the Lottery. The Lottery is not responsible for lost tickets.
- B. A retailer holding a full product license or limited license shall report stolen Lottery tickets to the local law enforcement agency and the Lottery Investigations unit within one hour from the time the theft occurs or the theft first could have been discovered. The retailer shall:
  1. Provide a copy of the written police report to the Lottery,
  2. Cooperate in any investigation and prosecution of the theft,
  3. Sign an affidavit providing the details as known by the retailer, and

4. Maintain and report current game, pack, and ticket inventory.
- C. If a retailer holding a full product license or limited license sustains a loss from stolen tickets, the retailer's insurance is the loss payee.
- D. If a retailer holding a full product license or limited license has insufficient insurance to pay for the retailer's loss and the retailer complies with subsection (B), the Lottery will credit the retailer's account for stolen instant tickets as follows:
  1. The Lottery shall credit all charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from a source not associated with the retailer or by an unknown party.
  2. The Lottery shall credit 50% of the charges against the account of the retailer for the stolen tickets if the Lottery determines the theft was from an employee, manager, officer, director, or a relative with access to Lottery tickets.
  3. Each retailer is limited to no more than two stolen ticket credit requests within any 12-month period.
- E. The Lottery shall not issue a credit for stolen tickets if the Lottery finds a retailer holding a full product license or limited license was negligent or did not enforce reasonable loss-prevention procedures to protect tickets, ticket processing, and ticket accounting.
- F. If a prize claim is made against a ticket that has been reported as stolen or a ticket unaccounted for by the retailer holding a full product license or limited license, the Lottery shall hold the prize money in trust pending the findings of an investigation by an appropriate law enforcement agency.
- G. The loss of instant tab tickets is the responsibility of the retailer.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 2639, effective September 8, 2007 (Supp. 07-3).  
Amended by final rulemaking at 16 A.A.R. 2388, effective November 16, 2010 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 1471, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 22 A.A.R. 1379, effective July 8, 2016 (Supp. 16-2).

**ARTICLE 3. REPEALED****R19-3-301. Repealed****Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-301 adopted effective August 17, 1981 (Supp. 81-4). Former Section R4-37-301 repealed, new Section R4-37-301 adopted effective March 6, 1986 (Supp. 86-2). Amended subsections (F) and (I) effective September 26, 1986 (Supp. 86-5). Amended effective September 12, 1989 (Supp. 89-3). Emergency amendment adopted effective April 20, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency amendments permanently adopted with changes effective July 20, 1993 (Supp. 93-3). R19-3-301 recodified from R4-37-301 (Supp. 95-1). Repealed effective October 25, 1996 (Supp. 96-4).

**R19-3-302. Repealed****Historical Note**

Adopted as an emergency effective May 26, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-3). New Section R4-37-302 adopted as an emergency effective August 13, 1981, pursuant to A.R.S. § 41-1003,

valid for only 90 days (Supp. 81-4). Former Section R4-37-302 adopted as an emergency now adopted as a permanent rule effective October 15, 1981 (Supp. 81-5). Former Section R4-37-302 repealed, new Section R4-37-302 adopted effective March 6, 1986 (Supp. 86-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective February 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R-19-3-302 recodified from R4-37-302. Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-303. Repealed****Historical Note**

Adopted as an emergency effective October 14, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-5). Former Section R4-37-303 adopted as an emergency now adopted as a permanent rule effective December 17, 1981 (Supp. 81-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-303 adopted effective May 2, 1986 (Supp. 86-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective February 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-303 recodified from R4-37-303. (Supp. 95-1). Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-304. Repealed****Historical Note**

Adopted as an emergency effective January 13, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-1). Former Section R4-37-304 adopted as an emergency now adopted as a permanent rule effective February 16, 1982 (Supp. 82-1). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-304 adopted effective June 30, 1986 (Supp. 86-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective March 28, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-304 recodified from R4-37-304 (Supp. 95-1). Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-305. Repealed****Historical Note**

Adopted as an emergency effective May 21, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R4-37-305 adopted as an emergency now adopted as a permanent rule effective August 19, 1982 (Supp. 82-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-305 adopted effective August 28, 1986 (Supp. 86-4). Repealed effective September 12, 1989 (Supp. 89-3). Former R4-37-323 adopted and renumbered as R4-37-305 effective November 1, 1989 (Supp. 89-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-305 recodified from R4-37-305 (Supp. 95-1). New Section R19-3-305 adopted effective November 3, 1995 (Supp. 95-4). Section, including Illustration A, B and C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16,

2005 (05-3).

#### **Illustration A. Repealed**

##### **Historical Note**

Illustration A repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **Illustration B. Repealed**

##### **Historical Note**

Illustration B repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **Illustration C. Repealed**

##### **Historical Note**

Illustration C repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-306. Repealed**

##### **Historical Note**

Adopted as an emergency effective July 15, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-4). Former Section R4-37-306 adopted as an emergency now adopted as a permanent rule effective October 20, 1982 (Supp. 82-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-306 adopted as an emergency effective November 14, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Adopted without change as a permanent rule effective February 12, 1987 (Supp. 87-1). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective January 5, 1990 (Supp. 90-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-306 recodified from R4-37-306. (Supp. 95-1). New Section adopted effective December 6, 1995 (Supp. 95-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-307. Repealed**

##### **Historical Note**

Adopted as an emergency effective September 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-5). Readopted without change as an emergency effective December 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-5). Former Section R4-37-307 adopted as an emergency now adopted as a permanent rule without change effective March 23, 1983 (Supp. 83-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-307 adopted effective January 6, 1987 (Supp. 87-1). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective March 7, 1990 (Supp. 90-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-307 recodified from R4-37-307. (Supp. 95-1). New Section adopted effective December 6, 1995 (Supp. 95-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-308. Repealed**

##### **Historical Note**

Adopted as an emergency effective December 28, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Former Section R4-37-308 adopted as an emergency now adopted as a permanent rule without change effective March 23, 1983 (Supp. 83-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-308 adopted effective March 5, 1987 (Supp. 87-2).

Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective April 10, 1990 (Supp. 90-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-308 recodified from R4-37-308 (Supp. 95-1). New Section adopted effective December 6, 1995 (Supp. 95-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-309. Repealed**

##### **Historical Note**

Adopted as an emergency effective February 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-6). Former Section R4-37-309 adopted as an emergency now adopted as a permanent rule with amendments in subsection (F)(1) and (4) effective April 13, 1983 (Supp. 83-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-309 adopted effective April 8, 1987 (Supp. 87-2). Repealed effective September 12, 1989 (Supp. 89-3). New Section adopted effective June 25, 1990 (Supp. 90-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-309 recodified from R4-37-309 (Supp. 95-1). New Section adopted effective January 30, 1996 (Supp. 96-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-310. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-310 adopted as an emergency now adopted as a permanent rule without change effective August 17, 1983 (Supp. 83-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-310 adopted effective June 26, 1987 (Supp. 87-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-310 adopted effective August 2, 1990 (Supp. 90-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-310 recodified from R4-37-310 (Supp. 95-1). New Section adopted effective March 6, 1996 (Supp. 96-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-311. Repealed**

##### **Historical Note**

Adopted as an emergency effective July 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R4-37-301 adopted as an emergency now adopted as a permanent rule without change effective September 29, 1983 (Supp. 83-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-311 adopted effective September 10, 1987 (Supp. 87-3). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-311 adopted effective August 2, 1990 (Supp. 90-3). Labels for subsections (E) and (F) changed (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-311 recodified from R4-37-311 (Supp. 95-1). New Section adopted effective March 6, 1996 (Supp. 96-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-312. Repealed**

##### **Historical Note**

Adopted effective September 21, 1983 (Supp. 83-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-312 adopted effective November 12, 1987

(Supp. 87-4). Repealed effective September 12, 1989 (Supp. 89-3). New Section R4-37-312 adopted effective October 12, 1990 (Supp. 90-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-312 recodified from R4-37-312 (Supp. 95-1). New Section adopted effective May 13, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-313. Repealed****Historical Note**

Adopted effective December 1, 1983 (Supp. 83-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-313 adopted effective January 7, 1988 (Supp. 88-1). Automatically repealed effective January 7, 1989 (Supp. 89-1). New Section R4-37-313 adopted effective November 6, 1990 (Supp. 90-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-313 recodified from R4-37-313 (Supp. 95-1). New Section adopted effective May 13, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-314. Repealed****Historical Note**

Adopted effective January 6, 1984 (Supp. 84-1). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-314 adopted effective March 11, 1988 (Supp. 88-1). Automatically repealed effective March 11, 1989 (Supp. 89-1). New Section R4-37-314 adopted effective December 12, 1990 (Supp. 90-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-314 recodified from R4-37-314 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-315. Repealed****Historical Note**

Adopted effective March 22, 1984 (Supp. 84-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-315 adopted effective May 5, 1988. Automatically repealed effective May 5, 1989 (Supp. 89-2). New Section R4-37-315 adopted effective January 21, 1991 (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-315 recodified from R4-37-315 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-316. Repealed****Historical Note**

Adopted effective May 31, 1984 (Supp. 84-3). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-316 adopted effective June 30, 1988 (Supp. 88-2). Amended by deleting subsection (C) effective June 12, 1989 (Supp. 89-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-316 recodified from R4-37-316 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-317. Repealed****Historical Note**

Adopted effective July 12, 1984 (Supp. 84-4). Repealed effective September 12, 1989 (Supp. 89-3). New Section

R4-37-317 adopted effective January 21, 1991 (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-317 recodified from R4-37-317 (Supp. 95-1). New Section adopted effective June 21, 1996 (Supp. 96-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-318. Repealed****Historical Note**

Adopted effective July 26, 1984 (Supp. 84-4). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-318 adopted effective August 10, 1988 (Supp. 88-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-318 recodified from R4-37-318 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Illustration “A” Repealed****Historical Note**

Adopted effective July 19, 1996 (Supp. 96-3). Illustration A repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-319. Repealed****Historical Note**

Adopted effective September 14, 1984 (Supp. 84-5). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-319 adopted effective November 9, 1988 (Supp. 88-4). Section expired November 9, 1989 (Supp. 90-1). R19-3-319 recodified from R4-37-319 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-320. Repealed****Historical Note**

Adopted effective November 15, 1984 (Supp. 84-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-320 adopted effective January 6, 1989 (Supp. 89-1). Section expired effective January 6, 1990 (Supp. 90-1). R19-3-320 recodified from R4-37-320 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-321. Repealed****Historical Note**

Adopted effective November 15, 1984 (Supp. 84-6). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-321 adopted effective March 10, 1989 (Supp. 89-1). Section expired effective March 10, 1990 (Supp. 90-1). R19-3-321 recodified from R4-37-321 (Supp. 95-1). New Section adopted effective July 19, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-322. Repealed****Historical Note**

Adopted effective March 7, 1985 (Supp. 85-2). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-222 adopted effective May 3, 1989 (Supp. 89-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-222 recodified from R4-37-222 (Supp. 95-1). New Section adopted effective August 27, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3075,

effective September 16, 2005 (05-3).

**R19-3-323. Repealed**

**Historical Note**

Adopted effective May 1, 1985 (Supp. 85-3). Repealed effective March 6, 1986 (Supp. 86-2). New Section R4-37-323 adopted and renumbered as R4-37-305 effected November 1, 1989 (Supp. 89-4). New Section R4-37-323 adopted effective March 25, 1991 (Supp. 91-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-323 recodified from R4-37-323 (Supp. 95-1). New Section adopted effective October 2, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-324. Repealed**

**Historical Note**

Adopted effective June 12, 1985 (Supp. 85-3). Repealed effective May 2, 1986 (Supp. 86-3). New Section adopted effective May 2, 1991 (Supp. 91-2). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-324 recodified from R4-37-324 (Supp. 95-1). New Section adopted effective October 2, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-325. Repealed**

**Historical Note**

Adopted effective September 4, 1985 (Supp. 85-5). Repealed effective August 28, 1986 (Supp. 86-4). New Section adopted effective July 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-325 recodified from R4-37-325 (Supp. 95-1). New Section adopted October 2, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-326. Repealed**

**Historical Note**

Adopted effective October 28, 1985 (Supp. 85-5). Repealed effective January 6, 1987 (Supp. 87-1). Adopted effective July 3, 1991 (Supp. 91-3). New Section adopted effective July 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-326 recodified from R4-37-326 (Supp. 95-1). New Section adopted effective October 25, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-327. Repealed**

**Historical Note**

Adopted effective January 9, 1986 (Supp. 86-1). Repealed effective January 6, 1987 (Supp. 87-1). New Section adopted effective July 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-327 recodified from R4-37-327 (Supp. 95-1). New Section adopted effective October 24, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-328. Repealed**

**Historical Note**

Adopted effective October 28, 1985 (Supp. 85-5). Repealed effective January 6, 1987 (Supp. 87-1). Adopted effective July 3, 1991 (Supp. 91-3). New Section adopted effective September 3, 1991 (Supp. 91-3).

Repealed effective November 28, 1994 (Supp. 94-4). R19-3-328 recodified from R4-37-328 (Supp. 95-1). New Section adopted effective October 24, 1996 (Supp. 96-4). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-329. Repealed**

**Historical Note**

Adopted effective January 9, 1986 (Supp. 86-1). Repealed effective January 6, 1987 (Supp. 87-1). New Section adopted effective September 3, 1991 (Supp. 91-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-329 recodified from R4-37-329 (Supp. 95-1). New Section adopted November 22, 1996 (Supp. 96-4). Section, including Exhibit A, B and C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit A. Repealed**

**Historical Note**

Exhibit A repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit B. Repealed**

**Historical Note**

Exhibit B repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit C. Repealed**

**Historical Note**

Exhibit C repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-330. Repealed**

**Historical Note**

Adopted effective November 21, 1991 (Supp. 91-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-330 recodified from R4-37-330 (Supp. 95-1).

**R19-3-331. Repealed**

**Historical Note**

Adopted effective December 20, 1991 (Supp. 91-4). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-331 recodified from R4-37-331 (Supp. 95-1).

**R19-3-332. Repealed**

**Historical Note**

Adopted effective March 13, 1992 (Supp. 92-1). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-332 recodified from R4-37-332 (Supp. 95-1).

**R19-3-333. Repealed**

**Historical Note**

Adopted effective July 10, 1992 (Supp. 92-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-333 recodified from R4-37-333 (Supp. 95-1).

**R19-3-334. Repealed**

**Historical Note**

Adopted effective July 10, 1992 (Supp. 92-3). Repealed effective November 28, 1994 (Supp. 94-4). R19-3-334 recodified from R4-37-334 (Supp. 95-1).

**R19-3-335. Repealed**

**Historical Note**

Adopted effective July 10, 1992 (Supp. 92-3). Repealed

effective November 28, 1994 (Supp. 94-4). R19-3-335  
recodified from R4-37-335 (Supp. 95-1).

**R19-3-336. Repealed****Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-336 recodified from R4-37-336 (Supp. 95-1).

**R19-3-337. Repealed****Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-337 recodified from R4-37-337 (Supp. 95-1).

**R19-3-338. Repealed****Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-338 recodified from R4-37-338 (Supp. 95-1).

**R19-3-339. Repealed****Historical Note**

Adopted effective December 23, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-339 recodified from R4-37-339 (Supp. 95-1).

**R19-3-340. Repealed****Historical Note**

Adopted effective December 23, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-340 recodified from R4-37-340 (Supp. 95-1).

**R19-3-341. Repealed****Historical Note**

Adopted effective December 23, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-341 recodified from R4-37-341 (Supp. 95-1).

**R19-3-342. Repealed****Historical Note**

Adopted effective December 23, 1992 (Supp. 92-4).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-342 recodified from R4-37-342 (Supp. 95-1).

**R19-3-343. Repealed****Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-343 recodified from R4-37-343 (Supp. 95-1).

**R19-3-344. Repealed****Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1).  
Repealed effective November 28, 1994 (Supp. 94-4).  
R19-3-344 recodified from R4-37-344 (Supp. 95-1).

**R19-3-345. Repealed****Historical Note**

Adopted effective March 4, 1993 (Supp. 93-1). R19-3-  
345 recodified from R4-37-345 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2).

**R19-3-346. Repealed****Historical Note**

Adopted effective March 4, 1993 (Supp. 93-1). R19-3-

346 recodified from R4-37-346 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2)

**R19-3-347. Repealed****Historical Note**

Adopted effective March 4, 1993 (Supp. 93-1). R19-3-  
347 recodified from R4-37-347 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2).

**R19-3-348. Repealed****Historical Note**

Adopted effective March 4, 1993 (Supp. 93-1). R19-3-  
348 recodified from R4-37-348 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2).

**R19-3-349. Repealed****Historical Note**

Adopted effective April 20, 1993 (Supp. 93-2). R19-3-  
349 recodified from R4-37-349 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2).

**R19-3-350. Repealed****Historical Note**

Reserved; Section repealed by final rulemaking at 11  
A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-351. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). R19-3-351  
recodified from R4-37-351 (Supp. 95-1). Repealed effec-  
tive April 18, 1997 (Supp. 97-2).

**R19-3-352. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). R19-3-352  
recodified from R4-37-352 (Supp. 95-1). Repealed effec-  
tive April 18, 1997 (Supp. 97-2).

**R19-3-353. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). R19-3-353  
recodified from R4-37-353 (Supp. 95-1). Repealed effec-  
tive April 18, 1997 (Supp. 97-2).

**R19-3-354. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). R19-3-354  
recodified from R4-37-354 (Supp. 95-1). Repealed effec-  
tive April 18, 1997 (Supp. 97-2).

**R19-3-355. Repealed****Historical Note**

Adopted effective October 1, 1993 (Supp. 93-4). R19-3-  
355 recodified from R4-37-355 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2).

**R19-3-356. Repealed****Historical Note**

Adopted effective October 1, 1993 (Supp. 93-4). R19-3-  
356 recodified from R4-37-356 (Supp. 95-1). Repealed  
effective April 18, 1997 (Supp. 97-2).

**R19-3-357. Repealed****Historical Note**

Adopted effective December 2, 1993 (Supp. 93-4). R19-

3-357 recodified from R4-37-357 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

**R19-3-358. Repealed**

**Historical Note**

Adopted effective December 2, 1993 (Supp. 93-4). R19-3-358 recodified from R4-37-358 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

**R19-3-359. Repealed**

**Historical Note**

Adopted effective December 2, 1993 (Supp. 93-4). R19-3-359 recodified from R4-37-359 (Supp. 95-1). Repealed effective April 18, 1997 (Supp. 97-2).

**R19-3-360. Repealed**

**Historical Note**

Adopted effective December 2, 1993 (Supp. 93-4). R19-3-360 recodified from R4-37-360 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-361. Repealed**

**Historical Note**

Adopted effective December 2, 1993 (Supp. 93-4). R19-3-361 recodified from R4-37-361 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-362. Repealed**

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). R19-3-362 recodified from R4-37-362 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-363. Repealed**

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). R19-3-363 recodified from R4-37-363 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-364. Repealed**

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). R19-3-364 recodified from R4-37-364 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-365. Repealed**

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1). R19-3-365 recodified from R4-37-365 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-366. Repealed**

**Historical Note**

Adopted effective May 23, 1994 (Supp. 94-2). R19-3-366 recodified from R4-37-366 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-367. Repealed**

**Historical Note**

Adopted effective May 23, 1994 (Supp. 94-2). R19-3-367 recodified from R4-37-367 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-368. Repealed**

**Historical Note**

Adopted effective May 23, 1994 (Supp. 94-2). R19-3-368 recodified from R4-37-368 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-369. Repealed**

**Historical Note**

Adopted effective June 10, 1994 (Supp. 94-2). R19-3-369 recodified from R4-37-369 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-370. Repealed**

**Historical Note**

Adopted effective June 10, 1994 (Supp. 94-2). R19-3-370 recodified from R4-37-370 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-371. Repealed**

**Historical Note**

Adopted effective June 10, 1994 (Supp. 94-2). R19-3-371 recodified from R4-37-371 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-372. Repealed**

**Historical Note**

Adopted effective July 15, 1994 (Supp. 94-3). R19-3-372 recodified from R4-37-372 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-373. Repealed**

**Historical Note**

Adopted effective July 15, 1994 (Supp. 94-3). R19-3-373 recodified from R4-37-373 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-374. Repealed**

**Historical Note**

Adopted effective July 15, 1994 (Supp. 94-3). R19-3-374 recodified from R4-37-374 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-375. Repealed**

**Historical Note**

Adopted effective September 15, 1994 (Supp. 94-3). R19-3-375 recodified from R4-37-375 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-376. Repealed**

**Historical Note**

Adopted effective September 15, 1994 (Supp. 94-3). R19-3-376 recodified from R4-37-376 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-377. Repealed**

**Historical Note**

Adopted effective October 11, 1994 (Supp. 94-4). R19-3-377 recodified from R4-37-377 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-378. Repealed**

**Historical Note**

Adopted effective October 11, 1994 (Supp. 94-4). R19-3-378 recodified from R4-37-378 (Supp. 95-1). Repealed

effective May 13, 1997 (Supp. 97-2).

**R19-3-379. Repealed**

**Historical Note**

Adopted effective November 28, 1994 (Supp. 94-4). R19-3-379 recodified from R4-37-379 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-380. Repealed**

**Historical Note**

Adopted effective November 28, 1994 (Supp. 94-4). R19-3-380 recodified from R4-37-380 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-381. Repealed**

**Historical Note**

Adopted effective December 20, 1994 (Supp. 94-4). R19-3-381 recodified from R4-37-381 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-382. Repealed**

**Historical Note**

Adopted effective January 13, 1995 (Supp. 95-1). R19-3-382 recodified from R4-37-382 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-383. Repealed**

**Historical Note**

Adopted effective January 13, 1995 (Supp. 95-1). R19-3-383 recodified from R4-37-383 (Supp. 95-1). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-384. Repealed**

**Historical Note**

Adopted effective May 11, 1995 (Supp. 95-2). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-385. Repealed**

**Historical Note**

Adopted effective May 11, 1995 (Supp. 95-2). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-386. Repealed**

**Historical Note**

Adopted effective May 11, 1995 (Supp. 95-2). Repealed effective May 13, 1997 (Supp. 97-2).

**R19-3-387. Repealed**

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-388. Repealed**

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-389. Repealed**

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-390. Repealed**

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-391. Repealed**

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-392. Repealed**

**Historical Note**

Adopted effective April 20, 1995 (Supp. 95-2). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-393. Repealed**

**Historical Note**

Adopted effective July 17, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-394. Repealed**

**Historical Note**

Adopted effective July 17, 1995 (Supp. 95-3). Section, including Exhibit A and B, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit A. Repealed**

**Historical Note**

Exhibit A repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit B. Repealed**

**Historical Note**

Exhibit B repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-395. Repealed**

**Historical Note**

Adopted effective July 17, 1995 (Supp. 95-3). Section, including Exhibit C, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit C. Repealed**

**Historical Note**

Exhibit C repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-396. Repealed**

**Historical Note**

Adopted effective July 17, 1995 (Supp. 95-3). Section, including Exhibit D, repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**Exhibit D. Repealed**

**Historical Note**

Exhibit D repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

**R19-3-397. Repealed**

**Historical Note**

Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075,



effective September 16, 2005 (05-3).

#### **R19-3-398. Repealed**

##### **Historical Note**

Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

#### **R19-3-399. Repealed**

##### **Historical Note**

Adopted effective September 13, 1995 (Supp. 95-3). Section repealed by final rulemaking at 11 A.A.R. 3075, effective September 16, 2005 (05-3).

### **ARTICLE 4. DESIGN AND OPERATION OF ON-LINE GAMES**

#### **R19-3-401. Definitions**

Definitions. In this Article, unless the context otherwise requires, these words and terms shall have the following meanings:

1. "Cash Value" means payment of the Division 1 (jackpot) prize pool share amount paid in one lump sum as provided in the prize structure in the game profile.
2. "Drawing" means the process used to randomly select the winning play symbols from the defined game matrix.
3. "On-line Lottery Game" means a game where tickets are purchased through a network of Arizona Lottery-issued computer terminals located in retail outlets. The terminals are linked to a central computer that records the wagers.
4. "Fixed payout" means a set prize dollar amount for that specific prize in the prize structure.
5. "Game board" or "board" means the area of the selection slip which contain a matrix that lists all the offered play symbols. More than one game board may appear on the selection slip.
6. "Game option" means a game feature that is tied to a specific game which the player has a choice to play.
7. "Game play" or "play" means the selected play symbols which appear on a ticket as a single wager. More than one game play may appear on a ticket.
8. "Game profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential game fundamentals required by these rules for an on-line game.
9. "Game ticket" or "ticket" means a receipt produced by a Lottery-issued terminal evidencing the purchase of a participation in a game or game option. The ticket contains a security code, ticket price, a retailer number, a serial number and the game symbols purchased for one or more specific drawings.
10. "Matrix" means the number of selections a player may choose from a predetermined pool of play symbols.
11. "Multiple winners" means a situation in which more than one claimant redeems an individual share in one wager.
12. "Pari-mutuel" means a system in which those holding winning tickets divide the total prize amount in proportion to their wagers.
13. "Play style" means the description in the game profile of the matrix, play symbols, and the manner of selecting the winning play symbols.
14. "Play symbols" means the numbers, letters, symbols, or pictures used in the matrix to determine if a player is entitled to a prize.
15. "POWERBALL" means a multi-state game that is conducted pursuant to the rules of the Multi-State Lottery Association (MUSL) and approved by a game profile.
16. "Prize category" means the value of a specific prize.

17. "Prize structure" means the chart of the prize value, number of prizes or prize payout percentage, any fixed payments, any pari-mutuel payments, and the odds of winning the prizes.
18. "Prohibited games" mean on-line or electronic keno or internet games.
19. "Quick pick" means the random selection by a terminal of one or more play symbols from the defined game matrix.
20. "Selection slip" means a preprinted set of game boards provided by the Lottery upon which the player selects play symbols and game options. Each selection slip may have multiple game boards.
21. "Share" means any single winning game play, which is equal to any other share in the same prize division.
22. "Terminal" means a device authorized by the Lottery linked to a central computer for the purpose of issuing Lottery tickets and entering, receiving, and processing Lottery transactions.
23. "Winning numbers or winning play symbols" means the numbers or play symbols from the defined game matrix randomly selected at each drawing which determine winning game plays contained on a ticket.

##### **Historical Note**

Adopted as an emergency effective June 10, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R4-37-401 adopted as an emergency effective June 10, 1983, now adopted without change as a permanent rule effective September 14, 1983 (Supp. 83-5). Amended subsections (A), (D), (E), (J), (K) effective September 7, 1984 (Supp. 84-4). Amended subsection (K) effective March 14, 1985 (Supp. 85-2). Amended effective September 26, 1986 (Supp. 86-5). Amended effective June 29, 1989 (Supp. 89-2). Amended as an emergency effective September 25, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments permanently adopted effective March 3, 1992 (Supp. 92-1). Amended effective March 9, 1992 (Supp. 92-1). Amended effective April 4, 1994 (Supp. 94-2). R19-3-401 recodified from R4-37-401 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

#### **R19-3-402. Game Profile**

- A. Each game or game option shall have a Game Profile and at a minimum, the Profile shall contain the following information:
  1. Game name or game option name;
  2. Matrix/description of how to play and win;
  3. Retail sales price;
  4. Purchase conditions and characteristics;
  5. Play symbols and prize symbols, if any;
  6. Prize structure, including the approximate odds, the prize amounts available, the prize pool percentage, if alternate prize structures are to be used, any subsection (B) provisions, and any special Division 1 (jackpot) prize specifications;
  7. Special features, if any; and
  8. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.
- B. Each on-line game or option may include specific variants that provide added or alternative methods of winning. Any variants shall be described in the Game Profile.
- C. The Commission shall approve the Game Profile prior to the game being sold to the public.

**Historical Note**

Adopted effective June 27, 1997 (Supp. 97-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 1. Repealed****Historical Note**

Exhibit 1 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 2. Repealed****Historical Note**

Exhibit 2 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 3. Repealed****Historical Note**

Exhibit 3 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 4. Repealed****Historical Note**

Exhibit 4 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 5. Repealed****Historical Note**

Exhibit 5 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 6. Repealed****Historical Note**

Exhibit 6 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 7. Repealed****Historical Note**

Exhibit 7 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 8. Repealed****Historical Note**

Exhibit 8 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 9. Repealed****Historical Note**

Exhibit 9 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 10. Repealed****Historical Note**

Exhibit 10 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 11. Repealed****Historical Note**

Exhibit 11 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 12. Repealed****Historical Note**

Exhibit 12 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 13. Repealed****Historical Note**

Exhibit 13 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 14. Repealed****Historical Note**

Exhibit 14 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**Exhibit 15. Repealed****Historical Note**

Exhibit 15 adopted effective June 27, 1997 (Supp. 97-2). Repealed by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-403. Ticket Purchases, Characteristics, and Restrictions**

- A.** To play an on-line game, a player shall select the specified number of play symbols from the defined game matrix approved in the Game Profile for input into the terminal. Selection methods include:
1. Communicating the play symbols and game options to a retailer, or
  2. Marking the selection slip and submitting the selection slip to a retailer, or
  3. Requesting a "Quick Pick," or
  4. Marking a "Quick Pick" box on a selection slip.
- B.** Game plays must be entered into the Lottery terminal manually or by inserting a Lottery selection slip that is hand marked by the player. Facsimiles, simulations, copies of selection slips, or other materials not printed or approved by the Lottery are prohibited from use.
- C.** To claim a prize, a player must submit the original ticket for validation. Selection slips are not proof of purchase.
- D.** The ticket holder is responsible for the accuracy of ticket data. The Lottery shall not be liable for ticket errors.

**Historical Note**

Adopted effective April 30, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-404. Drawings**

- A.** The drawings shall be held at the times and places established in the Game Profile.
- B.** The on-line game drawing shall randomly select the winning play symbols from those defined in the Game Profile. Mechanical, electrical, or computerized drawing methods may be used to make the random selection.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393,

effective February 15, 2005 (Supp. 04-4).

**R19-3-405. Determination of a Winning Game Play**

- A. A player shall win the prize(s) indicated in the prize structure by matching the winning play symbols selected at the drawing to the play symbols selected by the player.
- B. Players may win on each game play on a ticket.
- C. There may be multiple winning patterns on a single ticket that match winning patterns described in the Game Profile.
- D. The prize structure ordered in the Game Profile shall determine the pari-mutuel and/or fixed prize amount to be paid on a single winning game play.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-406. Ticket Ownership and Responsibility; Prize Payment**

- A. Until a ticket is signed, the ticket is owned by its physical possessor.
- B. The Director shall recognize as the owner of a winning on-line ticket the person whose signature appears upon the ticket in the area designated for that purpose.
  - 1. If more than one signature appears on the ticket, the Director is authorized to require that one or more of those claimants be designated to receive the payment. A claim form shall be submitted by each claimant who is designated to receive a portion of the prize claimed from the winning ticket.
  - 2. Prior to payment of a prize, a claimant who has signed the ticket may designate another claimant to receive the prize by signing a relinquishment of claim statement.
  - 3. When the winning ticket was purchased by a group of players, the group shall designate one of the claimants to sign the ticket for the group. Each claimant shall complete an individual claim form to receive the claimant's portion of the prize.
  - 4. In the event there is an inconsistency in the information submitted on a claim form and as shown on the winning on-line ticket, the Director shall authorize an investigation and withhold all winnings payable to the ticket owner or holder until such time as the Director is satisfied that the proper person is being paid.
- C. Prior to paying the claimant a prize of \$600 or more, the Lottery shall match the winner's name against the lists of persons owing a debt to a participating state agency, furnished to the Lottery under A.R.S. § 5-575.
  - 1. If there is a match on any of the claims submitted with a ticket, the amount that is owed shall be deducted from the prize due the claimant.
  - 2. The claimant shall be notified in writing of the amount of the set-off and the agency to which it shall be paid.
  - 3. If the claimant has two or more agencies which are owed a debt, the Lottery shall pay a pro-rata share to each of the agencies, except that a Department of Economic Security overdue child support set-off shall be paid in full before any amount shall be paid to another agency.
  - 4. The claimant shall be notified in writing that a right to appeal the set-off exists and must be commenced within 30 days of the receipt of this notification. The notification shall include the name and address of the agency with which to file the appeal.
  - 5. If, after deducting withholding taxes and the set-off, a portion of the prize remains then that portion shall be paid to the winner with the notification of set-off.
  - 6. The amount of set-off shall be forwarded to the agency, and that agency shall be responsible for any appeal and

crediting of the payment against the amount owed or refunding any amount to the winner.

- 7. Upon a determination that a set-off is due, the winner loses the right under subsection (B)(2) to assign any portion of the claim.
- D. Prizes shall be paid by cash, check, or if requested by the player, by Lottery tickets.
  - 1. If a ticket contains more than one winning game play, any prize amounts shall be combined and paid in accordance with the prize payment limits specified in Section R19-3-408.
  - 2. Each winning game play wins the prize amount specified in the Game Profile.
- E. The Lottery is not responsible for lost or stolen tickets.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (C) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

**R19-3-407. Ticket Validation Requirements**

- A. Each on-line game ticket shall be validated prior to the payment of a prize.
- B. To be eligible for a prize, a ticket holder must present a ticket meeting all of the following requirements:
  - 1. Issued by the Lottery through a retailer, from a terminal, in an authorized manner;
  - 2. Intact and not mutilated or tampered with in any manner;
  - 3. Not defectively printed;
  - 4. Not a reprinted ticket stating "Not for Sale" on the ticket;
  - 5. Not counterfeit or stolen;
  - 6. Able to pass all other confidential validation tests determined by the Director; and
  - 7. Validated in accordance with the provisions of sections R19-3-406 and R19-3-408.
  - 8. The ticket data is:
    - a. Recorded in the designated central computer system prior to the drawing;
    - b. In agreement with the computer record;
    - c. In the Lottery's official file of winning tickets;
  - 9. Any winning game play on the ticket consists of a selected set of play symbols from the defined game matrix.
  - 10. Has not been previously paid.
- C. If the ticket fails to pass any of the requirements in Section R19-3-407(B), the ticket is void and ineligible for any prize payout.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-408. Procedure for Claiming Prizes**

- A. To claim a prize of up to and including \$599, the claimant shall present the ticket to any participating on-line licensed retailer or to a Lottery office, or mail the ticket to a Lottery office for validation. The licensed retailer shall pay a winner a prize up to and including \$100 and may pay a winner a prize up to and including \$599 provided that:
  - 1. All of the ticket validation criteria in Section R19-3-407 has been satisfied; and
  - 2. A proper validation slip, which is an authorization to pay, has been issued by the terminal.

- B. To claim a prize that the retailer does not validate or is not authorized to pay, including all prizes of \$600 or more, the claimant shall submit a claim form, available from any retailer, and the ticket to the Lottery. If the claim is:
  - 1. Verified and validated by the Lottery as a winning ticket, the Lottery shall make payment of the amount due to the claimant, less any authorized debt set-off amounts and/or withheld taxes.
  - 2. Denied by the Lottery, the claimant shall be notified within 15 days from the day the claim is received in the Lottery office.
- C. If a prize winner dies prior to receiving full payment, the Lottery shall pay all remaining prize money to the prize winner's beneficiary or to any person designated by an appropriate judicial order.
- D. The Lottery is discharged of all liability upon payment of the prize money.
- E. Payment of prize money shall not be accelerated ahead of its normal date of payment.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-409. Claim Period**

- A. In order for the claimant to receive payment, a winning on-line game ticket shall be received by the Lottery or a retailer no later than 5:00 p.m. (Phoenix time) on the 180th calendar day following the game drawing date.
- B. If a claimant presents a valid winning ticket to a retailer for payment on the 180th calendar day following the game drawing date and is not paid the prize, the Director is authorized to pay the prize if the claimant presents the valid winning ticket to the Lottery no later than 5:00 p.m. (Phoenix time) on the following business day.
- C. The end of an on-line game shall be designated by the Director and on file at the Lottery.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-410. Disputes Concerning a Ticket**

- A. If a dispute between the Lottery and a claimant occurs concerning a ticket, the Director is authorized to replace the disputed ticket with a ticket of equivalent sales price for any subsequent drawing from the same game.
- B. If a defective ticket is purchased, the Lottery shall replace the defective ticket with a ticket or tickets of equivalent sales price from the same game.
- C. Replacement of the disputed ticket is the sole and exclusive remedy for a claimant.
- D. If a dispute between the Lottery and a claimant occurs concerning the eligibility of an entry into a Grand Prize drawing, the Director is authorized to place any person's eligible entry that was not entered in the Grand Prize drawing into a subsequent Grand Prize drawing or drawings.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-411. Prize Fund**

- A. Not less than 50 percent of the total annual revenue accruing from the sale of on-line game tickets shall be deposited in the state lottery prize fund for payment of prizes to the holders of winning tickets.
- B. If an on-line game is terminated for any reason, any remaining prize monies shall be held by the Lottery for a period of 180

days from the date of the last drawing and then used for additional prizes in any other Lottery game.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**R19-3-412. Multi-State Lottery Association Games**

- A. The Arizona Lottery is a participating member of the Multi-State Lottery Association (MUSL) referred to as a "party lottery" in the MUSL game rules.
- B. A game profile approved by the Commission and conforming to the information required in R19-3-403 shall be on file at the Arizona State Lottery for all MUSL games played in Arizona.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 393, effective February 15, 2005 (Supp. 04-4).

**ARTICLE 5. PROCUREMENTS****R19-3-501. Definitions**

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
3. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
4. "Best interests of the Lottery" means advantageous to the Lottery.
5. "Bid" means an offer in response to solicitation.
6. "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
7. "Change order" means a written order that is signed by the procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
8. "Contract" means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
9. "Contract amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
10. "Contractor" means a person who has a contract with the Lottery.
11. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
12. "Cost-plus-a-percentage-of-cost-contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
13. "Cost reimbursement contract" means a contract under which a contractor is reimbursed for costs that are reason-

- able, allowable, and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
14. "Day" means a calendar day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
  15. "Defective data" means data that is inaccurate, incomplete, or outdated.
  16. "Director" means the Executive Director of the State Lottery.
  17. "Discussions" means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
  18. "Filed" means delivered to the procurement officer or to the Director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
  19. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
  20. "Interested party" means an offeror or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
  21. "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
  22. "Minor informality" means any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
  23. "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
  24. "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
  25. "Negotiation" means an exchange or series of exchanges, including a request for a best and final offer, between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
  26. "Offer" means a response to a solicitation.
  27. "Offeror" means a person who responds to a solicitation.
  28. "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
  29. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
  30. "Procurement" means all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.
  31. "Procurement file" means the official records file of the Lottery. The procurement file shall include (electronic or paper) the following:
    - a. List of notified vendors;
    - b. Final solicitation;
    - c. Solicitation amendments;
    - d. Bids and offers;
    - e. Offer revisions and best and final offers;
    - f. Discussions;
    - g. Clarifications;
    - h. Final evaluation reports; and
    - i. Additional information, if requested by the procurement officer.
  32. "Proposal" means an offer submitted in response to a solicitation.
  33. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
  34. "Purchase description" means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
  35. "Purchase request" or "purchase requisition" means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
  36. "Request for proposals" means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
  37. "Responsible bidder or offeror" means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
  38. "Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
  39. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
  40. "Services" means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
  41. "Significant procurement role":
    - a. Means any role that includes any of the following duties:
      - i. Participating in the development of a procurement.
      - ii. Participating in the development of an evaluation tool.
      - iii. Approving a procurement or an evaluation tool.
      - iv. Soliciting quotes greater than ten thousand dollars for the provision of materials or services.
      - v. Serving as a technical advisor or an evaluator who evaluates a procurement.
      - vi. Recommending or selecting a vendor that will provide materials or services to the Lottery.

- vii. Serving as a decision maker or designee on a protest or an appeal by a party regarding a Lottery procurement selection or decision.
- b. Does not include making a decision on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the Lottery as applied to the project, services, goods, or materials.
- 42. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
- 43. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.
- 44. "Specification" means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.
- 45. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.
- 46. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
- 47. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.
- 48. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-501 repealed, new Section R4-37-501 renumbered from R4-37-502 and amended effective May 7, 1990 (Supp. 90-2). R19-3-501 recodified from R4-37-501 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-502. Written Determination

- A. If a written determination is required under applicable law, the procurement officer shall include the basis for the action taken in the written determination.
- B. The procurement officer shall place the written determination into the Lottery's procurement file.
- C. A procurement file is considered the official records file of the Lottery.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-

3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-502 renumbered to R4-37-501, new Section R4-37-502 renumbered from R19-3-503 and amended effective May 7, 1990 (Supp. 90-2). R19-3-502 recodified from R4-37-502 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### R19-3-503. Confidential Information

- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term "confidential." Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.
- C. Upon protest to a confidential submission, the procurement officer shall request that the offeror and protester submit factual and legal comments on the issue by a date certain.
- D. After reviewing the statements or expiration of the time to comment, or both, the procurement officer shall make a determination that:
  - 1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest,
  - 2. The designated information is not confidential, or
  - 3. Additional information is required before a final confidentiality determination can be made.
- E. If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review in A.R.S. Title 41, Chapter 6, Article 10 apply to such a review by the Director.
- F. The procurement officer may release information designated as confidential under subsection (A) if:
  - 1. A request for review is not received by the procurement officer within the time period specified in the notice; or
  - 2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-503 renumbered to R4-37-502, new Section R4-37-503 renumbered from R19-3-504 and amended effective May 7, 1990 (Supp. 90-2). R19-3-503 recodified from R4-37-503 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-504. General Provisions

- A. A person that participates in any aspect of a specific procurement as an advisor to the Lottery shall not receive any direct or indirect benefit from a contract for the procurement.
- B. The Director shall not pay for any material or service unless fully approved.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-504 renumbered to R4-37-503, new Section R4-37-504 renumbered from R4-37-505 and amended effective May 7, 1990 (Supp. 90-2). R19-3-504 recodified from R4-37-504 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

**R19-3-505. Prospective Suppliers List**

- A. The procurement officer may refer to a prospective suppliers list maintained by the state procurement administrator as a resource for selection of suppliers.
- B. The procurement officer may choose to compile and maintain a Lottery prospective suppliers list as a resource for selection of suppliers.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-505 renumbered to R4-37-504, new Section R19-3-505 renumbered from R4-37-507 and amended effective May 7, 1990 (Supp. 90-2). R19-3-505 recodified from R4-37-505 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-506. Source Selection Method: Determination Factors**

- A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-559 and 41-2501(G).
- B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.
- C. The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-506 repealed, new Section R4-37-506 renumbered from R4-37-508 and amended effective May 7, 1990 (Supp. 90-2). R19-3-506 recodified from R4-37-506 (Supp. 95-1). Amended effective

December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the first A.R.S. citation in subsection (A) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-507. Solicitation**

- A. The procurement officer shall issue a solicitation at least 14 days before the offer due date and time, unless the procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the procurement officer shall document the specific reasons in the procurement file.
- B. The procurement officer shall:
  1. Advertise the procurement not less than two weeks before offer due date at least one time in a newspaper of general circulation and place the notice on the Lottery web site; and
  2. At a minimum, provide written notice to the prospective suppliers that have registered with the Lottery's procurement officer for the specific material, service, or construction solicited.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-507 renumbered to R4-37-505, new Section R4-37-507 renumbered from R4-37-509 and amended effective May 7, 1990 (Supp. 90-2). R19-3-507 recodified from R4-37-507 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

**R19-3-508. Bid Solicitation Requirements**

The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:
  - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
  - b. The deadline date for requesting a substitution or exception to the solicitation;
  - c. The manner by which the offeror is required to acknowledge amendments;
  - d. The minimum required information in the offer;
  - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
  - f. Any specific responsibility criteria;
  - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
  - h. Any evaluation criteria;
  - i. A statement of where documents incorporated by reference are available for inspection and copying;
  - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;

- k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
- l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
- m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- n. Any bid security required;
- o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
- p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
- q. Any other offer submission requirements;
- 2. Specifications, including:
  - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
  - c. Any other specification requirements;
- 3. Terms and Conditions, including:
  - a. Whether the contract will include an option for extension, and
  - b. Any other contract terms and conditions.
- d. The minimum information required in the offer;
- e. The specific requirements for designating trade secrets and other proprietary information as confidential;
- f. Any specific responsibility or susceptibility criteria;
- g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
- h. Evaluation factors and the relative order of importance;
- i. A statement of where documents incorporated by reference are available for inspection and copying;
- j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
- k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
- l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
- m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- n. Any offer security required;
- o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
- p. Any cost or pricing data required;
- q. The type of contract to be used;
- r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
- s. Any other offer requirements specific to the solicitation.
- 2. Specifications, including:
  - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
  - c. Any other specification requirements specific to the solicitation.
- 3. Terms and Conditions, including:
  - a. Whether the contract is to include an extension option, and
  - b. Any other contract terms and conditions.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-508 renumbered to R4-37-506, new Section R4-37-508 renumbered from R4-37-510 and amended effective May 7, 1990 (Supp. 90-2). R19-3-508 recodified from R4-37-508 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-509. Request for Proposal Solicitation Requirements

The procurement officer shall include the following in the solicitation:

- 1. Instructions to offerors, including:
  - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
  - b. The deadline date for requesting a substitution or exception to the solicitation;
  - c. The manner by which the offeror is required to acknowledge amendments;

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-509 renumbered to R4-37-507, new Section R4-37-509 renumbered from R4-37-512 and amended effective May 7, 1990 (Supp. 90-2). R19-3-509 recodified from R4-37-509 (Supp. 95-1). Amended effective December 16, 1997



(Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-510. Pre-Offer Conferences**

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted for a solicitation, it shall be within a reasonable time prior to the offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R19-3-511.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-510 renumbered to R4-37-508, new Section R4-37-510 renumbered from R4-37-513 and amended effective May 7, 1990 (Supp. 90-2). R19-3-510 recodified from R4-37-510 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-511. Solicitation Amendment**

- A.** The procurement officer shall issue a solicitation amendment to do any or all of the following:
  1. Make changes in the solicitation,
  2. Correct defects or ambiguities,
  3. Provide additional information or instructions, or
  4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.
- B.** If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C.** It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-511 repealed, new Section R4-37-511 renumbered from R4-37-514 and amended effective May 7, 1990 (Supp. 90-2). R19-3-511 recodified from R4-37-511 (Supp. 95-1). Former Section R19-3-511 renumbered to R19-3-513 and amended; new Section R19-3-511 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-512. Modification or Withdrawal of Offer Before Offer Due Date and Time**

- A.** An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B.** The procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-512 renumbered to R4-37-509, new Section R4-37-512 renumbered from R4-37-515 and amended effective May 7, 1990 (Supp. 90-2). R19-3-512 recodified from R4-37-512 (Supp. 95-1). Former Section R19-3-512 renumbered to R19-3-514 and amended; new Section R19-3-512 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### **R19-3-513. Cancellation of a Solicitation Before Offer Due Date and Time**

- A.** Based on the best interest of the Lottery, the procurement officer may cancel a solicitation before the offer due date and time.
- B.** The procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C.** The procurement officer shall not open offers after cancellation. The procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-513 renumbered to R4-37-510, new Section R4-37-513 renumbered from R19-3-516 and amended effective May 7, 1990 (Supp. 90-2). R19-3-513 recodified from R4-37-513 (Supp. 95-1). Former Section R19-3-513 renumbered to R19-3-515 and amended; new Section R19-3-513 renumbered from R19-3-511 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### **R19-3-514. Receipt, Opening, and Recording of Offers**

- A.** The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B.** The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C.** For a bid solicitation, the procurement officer shall open offers after the offer due date and time. The procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.
- D.** For a proposal solicitation, the procurement officer shall open offers after the offer due date and time. The procurement officer shall record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.
- E.** Except for the information identified in subsections (C) and (D), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those per-

sons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-514 renumbered to R4-37-511, new Section R4-37-514 renumbered from R4-37-517 and amended effective May 7, 1990 (Supp. 90-2). R19-3-514 recodified from R4-37-514 (Supp. 95-1). Former Section R19-3-514 renumbered to R19-3-516 and amended; new Section R19-3-514 renumbered from R19-3-512 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-515. Late Offers, Modifications, Withdrawals

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, the procurement officer shall determine the offer, modification, or withdrawal as late.
- B. The procurement officer shall reject a late offer, modification, or withdrawal unless:
  1. The document is received before the contract award at the location designated in the solicitation; and
  2. The document would have been received by the offer due date and time, but for the action or inaction of Lottery personnel.
- C. Upon receiving a late offer, modification, or withdrawal, the procurement officer shall:
  1. If the document is hand delivered, refuse to accept delivery; or
  2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-515 renumbered to R4-37-512, new Section R4-37-515 renumbered from R4-37-518 and amended effective May 7, 1990 (Supp. 90-2). R19-3-515 recodified from R4-37-515 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Former Section R19-3-515 renumbered to R19-3-517 and amended; new Section R19-3-515 renumbered from R19-3-513 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### R19-3-516. Cancellation of Solicitation After Receipt of Offers and Before Award

- A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation after offer due date and time. The

procurement officer shall prepare a written justification for cancellation and place it in the procurement file.

- B. The procurement officer shall notify offerors of the cancellation in writing.
- C. The procurement officer shall retain offers received under the cancelled solicitation in the procurement file. If the Lottery intends to issue another solicitation within six months after cancellation of the procurement, the procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R19-3-503.
- D. In the event of cancellation, the procurement officer shall promptly return any bid security provided by an offeror.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-516 renumbered to R4-37-513, new Section R4-37-516 renumbered from R4-37-519 and amended effective May 7, 1990 (Supp. 90-2). R19-3-516 recodified from R4-37-516 (Supp. 95-1). Former Section R19-3-516 renumbered to R19-3-518 and amended; new Section R19-3-516 renumbered from R19-3-514 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### R19-3-517. One Offer Received

- A. If only one offer is received in response to a solicitation, the procurement officer shall review the offer and either:
  1. Award the contract to the offeror and prepare a written determination that:
    - a. The price submitted is fair and reasonable under R19-3-550,
    - b. The offer is responsive, and
    - c. The offeror is responsible, or
  2. Reject the offer and:
    - a. Resolicit for new offers,
    - b. Cancel the procurement, or
    - c. Use a different source selection method authorized under these rules.
- B. If the procurement officer awards a contract for a solicitation under (A)(1), the award shall comply with R19-3-527 for a bid solicitation and R19-3-528 for a proposal solicitation.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-517 renumbered to R4-37-514, new Section R4-37-517 renumbered from R4-37-520 and amended effective May 7, 1990 (Supp. 90-2). R19-3-517 recodified from R4-37-517 (Supp. 95-1). Former Section R19-3-517 renumbered to R19-3-519 and amended; new Section R19-3-517 renumbered from R19-3-515 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R.

2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award**

- A.** If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
  2. Acknowledge that a mistake was made, and include all of the following in a written response:
    - a. Explanation of the mistake and any other relevant information,
    - b. A request for correction including the corrected offer or a request for withdrawal, and
    - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B.** An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
  2. A request for correction including the corrected offer or a request for withdrawal, and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- C.** The procurement officer may permit an offeror to correct a mistake if the mistake involves a minor informality or if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.
- D.** The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E.** The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.
- F.** If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-518 renumbered to R4-37-515, new Section R4-37-518 renumbered from R4-37-521 and amended effective May 7, 1990 (Supp. 90-2). R19-3-518 recodified from R4-37-518 (Supp. 95-1). Former Section R19-3-518 renumbered to R19-3-520 and amended; new Section R19-3-518 renumbered from R19-3-516 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-519. Extension of Offer Acceptance Period**

- A.** To extend the offer acceptance period, the procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B.** To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-519 renumbered to R4-37-516, new Section R4-37-519 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-519 recodified from R4-37-519 (Supp. 95-1). Former Section R19-3-519 renumbered to R19-3-521 and amended; new Section R19-3-519 renumbered from R19-3-517 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

**R19-3-520. Determination of Not Susceptible for Award**

- A.** The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
  2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
  3. The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration.
- B.** The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award, unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

**Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-520 renumbered to R4-37-517, new Section R4-37-520 renumbered from R4-37-523 and amended effective May 7, 1990 (Supp. 90-2). R19-3-520 recodified from R4-37-520 (Supp. 95-1). Former Section R19-3-520 renumbered to R19-3-522 and amended; new Section R19-3-520 renumbered from R19-3-518 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-521. Bid Evaluation**

- A.** The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation.

- B. The procurement officer may consider life cycle costs and application benefits when evaluating offers for the procurement of materials.
- C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-521 renumbered to R4-37-518, new Section R4-37-521 renumbered from R4-37-524 and amended effective May 7, 1990 (Supp. 90-2). R19-3-521 recodified from R4-37-521 (Supp. 95-1). Former Section R19-3-521 renumbered to R19-3-523 and amended; new Section R19-3-521 renumbered from R19-3-519 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-522. Clarification of Proposal Offers

- A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B. The procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C. The procurement officer shall retain any clarifications in the procurement file.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-522 renumbered to R4-37-519, new Section R4-37-522 renumbered from R4-37-525 and amended effective May 7, 1990 (Supp. 90-2). R19-3-522 recodified from R4-37-522 (Supp. 95-1). Former Section R19-3-522 renumbered to R19-3-524 and amended; new Section R19-3-522 renumbered from R19-3-520 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

- A. The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer

shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the procurement officer shall confirm the negotiations in writing and provide the document to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the best and final offer due date and time by submitting a written request to the procurement officer.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-523 renumbered to R4-37-520, new Section R4-37-523 renumbered from R4-37-526 and amended effective May 7, 1990 (Supp. 90-2). R19-3-523 recodified from R4-37-523 (Supp. 95-1). Former Section R19-3-523 renumbered to R19-3-525 and amended; new Section R19-3-523 renumbered from R19-3-521 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-524. Offer Revisions and Best and Final Offers

- A. The procurement officer may request written revisions to an offer. The procurement officer shall include in the written request:
  1. The date, time, and place for submission of offer revisions; and
  2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.
- B. The procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted, however it is not mandatory to conduct negotiations prior to requesting a best and final offer. The procurement officer shall include in the written request:
  1. The date, time, and place for submission of best and final offer; and
  2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- C. The procurement officer shall request written best and final offers only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.
- D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the procurement officer shall contact the offeror for written confirmation.

The procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
  - a. Explanation of the mistake and any other relevant information,
  - b. A request for correction including the corrected offer or a request for withdrawal, and
  - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

**E.** An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:

1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

**F.** In response to a request made under subsections (D) or (E), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the best and final offer, the procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-524 renumbered to R4-37-521, new Section R4-37-524 renumbered from R4-37-527 and amended effective May 7, 1990 (Supp. 90-2). R19-3-524 recodified from R4-37-524 (Supp. 95-1). Former Section R19-3-524 renumbered to R19-3-526 and amended; new Section R19-3-524 renumbered from R19-3-522 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-525. Evaluation of Proposal Offers

- A.** The procurement officer shall evaluate offers and best and final offers based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B.** The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The procurement officer may:
  1. Accept or reject the findings of the evaluation committee,
  2. Request additional information from the evaluation committee, or
  3. Replace the evaluation committee.

- C.** The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-525 renumbered to R4-37-522, new Section R4-37-525 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-525 recodified from R4-37-525 (Supp. 95-1). Former Section R19-3-525 renumbered to R19-3-527 and amended; new Section R19-3-525 renumbered from R19-3-523 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-526. Responsibility Determinations

- A.** The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.
- B.** The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:
  1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
  2. The offeror's record of performance and integrity;
  3. Whether the offeror has been debarred or suspended;
  4. Whether the offeror is legally qualified to contract with the Lottery;
  5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
  6. Whether the offeror meets the responsibility criteria specified in the solicitation.
- C.** If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination, except when notification to the offeror would compromise the Lottery's ability to negotiate with other offerors. The procurement officer shall file a copy of the determination in the procurement file.
- D.** The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.
- E.** For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-526 renumbered to R4-37-523, new Section R4-37-526 renumbered from R4-37-529 and amended effective May 7, 1990 (Supp. 90-2). R19-3-526 recodified from R4-37-526 (Supp. 95-1). Former Section R19-3-526 renumbered to R19-3-528 and amended; new Section R19-3-526 renumbered from R19-3-524 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21,

2016 (Supp. 16-4).

#### **R19-3-527. Bid Contract Award**

- A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.
- E. Within three days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-527 renumbered to R4-37-524, new Section R4-37-527 renumbered from R4-37-530 effective May 7, 1990 (Supp. 90-2). R19-3-527 recodified from R4-37-527 (Supp. 95-1). Former Section R19-3-527 renumbered to R19-3-529 and amended; new Section R19-3-527 renumbered from R19-3-525 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-528. Proposal Contract Award**

- A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- B. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- C. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.
  1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
  2. The Lottery Commission shall not take action in the executive session.

3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.
- D. The procurement officer shall notify all offerors of an award that has become effective and binding.
- E. After an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.
- F. Within three days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-528 renumbered to R4-37-525, new Section R4-37-528 renumbered from R4-37-531 and amended effective May 7, 1990 (Supp. 90-2). R19-3-528 recodified from R4-37-528 (Supp. 95-1). Former Section R19-3-528 renumbered to R19-3-530 and amended; new Section R19-3-528 renumbered from R19-3-526 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-529. Mistakes Discovered After Bid Award**

- A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
  1. Explanation of the mistake and any other relevant information,
  2. A request for correction including the corrected offer or a request for withdrawal, and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
  1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
  2. Cancel all or part of the award; or
  3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

##### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-529 renumbered to R4-37-526, new Section R4-37-529 renumbered from R4-37-532 and amended effective May 7, 1990 (Supp. 90-2). R19-3-529 recodified from R4-37-529 (Supp. 95-1). Former Section R19-3-529 renumbered to R19-3-531 and amended; new Section R19-3-529 renum-

bered from R19-3-527 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-530. Mistakes Discovered After Proposal Award**

- A.** If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
  2. A request for correction including the corrected offer or a request for withdrawal, and
  3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B.** Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake,
  2. Cancel all or part of the award, or
  3. Deny correction or withdrawal.
- C.** After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the Lottery according to the evaluation factors contained in the solicitation.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-530 renumbered to R4-37-527, new Section R4-37-530 renumbered from R4-37-533 and amended effective May 7, 1990 (Supp. 90-2). R19-3-530 recodified from R4-37-530 (Supp. 95-1). Former Section R19-3-530 renumbered to R19-3-533 and amended; new Section R19-3-530 renumbered from R19-3-528 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535**

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-532 unless any of the following apply:

1. The purchase can be made from a state or agency contract,
2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636,
3. The purchase is not expected to exceed \$10,000.00, or
4. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-531 renumbered to R4-37-528, new Section R4-37-531 renumbered

from R4-37-534 and amended effective May 7, 1990 (Supp. 90-2). R19-3-531 recodified from R4-37-531 (Supp. 95-1). Former Section R19-3-531 renumbered to R19-3-535 and amended; new Section R19-3-531 renumbered from R19-3-529 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-532. Solicitation – Request for Quotation**

- A.** A request for quotation shall be issued for purchases estimated to exceed \$10,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:
1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
  2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
  3. The minimum information that the offer shall contain;
  4. Any evaluation factors;
  5. Whether negotiations may be held;
  6. Any contract options including renewal or extension;
  7. The uniform terms and conditions by text or reference; and
  8. Any other terms, conditions, or instructions specific to the procurement.
- B.** The procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.
- C.** The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:
1. The purchase has been unsuccessfully competed under subsection (B), including failure to obtain fair and reasonable prices;
  2. The procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list, or
  3. The procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-532 renumbered to R4-37-529, new Section R4-37-532 renumbered from R4-37-535 and amended effective May 7, 1990 (Supp. 90-2). R19-3-532 recodified from R4-37-532 (Supp. 95-1). Former Section R19-3-532 renumbered to R19-3-536 and amended; new Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-533. Repealed**

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3).

ant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-533 renumbered to R4-37-530, new Section R4-37-533 renumbered from R4-37-536 and amended effective May 7, 1990 (Supp. 90-2). R19-3-533 recodified from R4-37-533 (Supp. 95-1). Former Section R19-3-533 renumbered to R19-3-537 and amended; new Section R19-3-533 renumbered from R19-3-530 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-534. Quotation Contract Award**

- A.** If only one responsive offer is received, the procurement officer shall determine if the price is fair and reasonable, and in the best interest of the Lottery to award a contract, and place the determination in the procurement file. If time permits, the procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.
- B.** The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.
- C.** The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D.** The procurement officer shall make the procurement file available to the public on the date the contract award becomes effective and binding.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-534 renumbered to R4-37-531, new Section R4-37-534 renumbered from R4-37-538 and amended effective May 7, 1990 (Supp. 90-2). R19-3-534 recodified from R4-37-534 (Supp. 95-1). Former Section R19-3-534 renumbered to R19-3-538 and amended; new Section R19-3-534 adopted December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-535. Sole Source Procurements**

- A.** For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
  1. There is only a single source for the material or service, or
  2. No reasonable alternative source exists.
- B.** This Section applies only to sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.
- C.** The procurement officer shall make a written determination that includes the following information:

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
  2. The name of the proposed supplier,
  3. The duration and estimated total dollar value of the proposed procurement,
  4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-550, and
  5. A description of efforts made to seek other sources.
- D.** The procurement officer shall post the request on the Lottery website and send notice to registered vendors on the state’s electronic system to invite comments on the sole-source request for three working days. Following this period, the procurement officer shall either:
1. Issue a written determination with any conditions or restrictions, or
  2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- E.** If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.
- F.** The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.
- G.** The procurement officer shall keep a record of all sole-source procurements.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-535 renumbered to R4-37-532, new Section R4-37-535 renumbered from R4-37-539 and amended effective May 7, 1990 (Supp. 90-2). R19-3-535 recodified from R4-37-535 (Supp. 95-1). Former Section R19-3-535 renumbered to Section R19-3-339 and amended; new Section R19-3-535 renumbered from R19-3-531 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-536. Emergency Procurements**

- A.** For the purposes of this Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the Lottery’s best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.
- B.** This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C.** A Lottery employee with the approval of the immediate supervisor or the Director may proceed with an emergency procurement without approval from the procurement officer if the emergency necessitates immediate response and it is impracticable to contact the procurement officer. The supervisor or Director shall submit a written confirmation of the emergency



procurement to the procurement officer within five working days of the emergency.

- D. An emergency procurement shall be limited to such actions necessary to address the emergency.
- E. An emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the Lottery.
- F. The procurement officer shall keep a record of all emergency procurements.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-536 renumbered to R4-37-533, new Section R4-37-536 renumbered from R4-37-540 and amended effective May 7, 1990 (Supp. 90-2). R19-3-536 recodified from R4-37-536 (Supp. 95-1). Former Section R19-3-536 renumbered to Section R19-3-541 and amended; new Section R19-3-536 renumbered from R19-3-532 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### R19-3-537. Competition Impracticable Procurements

- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.
- B. The procurement officer shall make a written determination that includes the following information:
  1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest;
  2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
  3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
  4. The scope, duration, and estimated total dollar value of the procurement need.
- C. The procurement officer shall keep a record of all competition impracticable procurements.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-537 repealed, new Section R4-37-537 renumbered from R4-37-541 and amended effective May 7, 1990 (Supp. 90-2). R19-3-537 recodified from R4-37-537 (Supp. 95-1). Former Section R19-3-537 renumbered to R19-3-542 and amended; new Section R19-3-537 renumbered from R19-3-533 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citations in subsections (A) and (B)(1) were updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-

- 3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-538. Request for Information

The procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the procurement officer.
3. There is no required format to be used for requests for information.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-538 renumbered to R4-37-534, new Section R4-37-538 renumbered from R4-37-542 and amended effective May 7, 1990 (Supp. 90-2). R19-3-538 recodified from R4-37-538 (Supp. 95-1). Former Section R19-3-538 renumbered to R19-3-543 and amended; new Section R19-3-538 renumbered from R19-3-534 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-539. Demonstration Projects

- A. The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:
  1. Name of the contractor;
  2. Description of the project, including unique and innovative features of the project;
  3. Statement and explanation that the project is in the best interest of the Lottery;
  4. Duration of the project; and
  5. Proposed contract terms and conditions.
- B. Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or lease the services or materials from the contractor.
- C. The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:
  1. Name of the contractor;
  2. Description of the project, including unique and innovative features of the project;
  3. Statement and explanation that lease or purchase is in the best interest of the Lottery;
  4. Cost to the Lottery;
  5. Duration of the proposed contract; and
  6. Proposed contract terms and conditions.
- D. The term of the contract resulting from a demonstration project shall not exceed two years.

#### Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-539 renum-

bered to R4-37-535, new Section R4-37-539 renumbered from R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-539 recodified from R4-37-539 (Supp. 95-1). Former Section R19-3-539 renumbered to R19-3-547 and amended; new Section R19-3-539 renumbered from R19-3-535 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-540. General Services Administration Contracts**

- A. The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery,
  2. Price is equal to or less than the contractor's current GSA price,
  3. Price is fair and reasonable,
  4. Contractor is willing to offer GSA pricing and terms to the Lottery,
  5. Comparable products or services are not available under a state or agency contract,
  6. Comparable products or services are not restricted under a set-aside contract, and
  7. Contractor accepts required Lottery contract terms and conditions.
- B. The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:
1. Name of the contractor;
  2. GSA contract or schedule number;
  3. Procurement description;
  4. Analysis of price, quality, and other relevant factors; and
  5. Statement that the price is fair and reasonable.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-540 renumbered to R4-37-536, new Section R4-37-540 renumbered from R4-37-544 and amended effective May 7, 1990 (Supp. 90-2). R19-3-540 recodified from R4-37-540 (Supp. 95-1). Former Section R19-3-540 renumbered to R19-3-549 and amended; new Section R19-3-540 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-541. Contract Clauses**

The procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the Lottery's interests are addressed.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-541 renumbered to R4-37-538, new Section R4-37-541 renumbered from R4-37-545 and amended effective May 7, 1990 (Supp. 90-2). R19-3-541 recodified from R4-37-541 (Supp. 95-1). Former Section R19-3-541 renumbered to R19-3-551 and amended; new Section R19-3-541 renum-

bered from R19-3-536 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### **R19-3-542. Assignment of Rights and Duties**

A contractor shall not assign or transfer the rights or duties of a Lottery contract without the written consent of the Director.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-542 renumbered to R4-37-539, new Section R4-37-542 renumbered from R4-37-546 and amended effective May 7, 1990 (Supp. 90-2). R19-3-542 recodified from R4-37-542 (Supp. 95-1). Former Section R19-3-542 repealed; new Section R19-3-542 renumbered from R19-3-537 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### **R19-3-543. Change of Name**

If a contractor requests to change the name in which it holds a Lottery contract, the procurement officer may, upon receipt of a document indicating name change and any other information requested by the procurement officer in the best interest of the Lottery concerning the name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-543 renumbered to R4-37-540, new Section R4-37-543 renumbered from R4-37-547 and amended effective May 7, 1990 (Supp. 90-2). R19-3-543 recodified from R4-37-543 (Supp. 95-1). Former Section R19-3-543 repealed; new Section R19-3-543 renumbered from R19-3-538 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

#### **R19-3-544. Contract Change Orders and Amendments**

- A. The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B. Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if approved by the budget manager and the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-550.
- C. The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-544 renumbered to R4-37-541, new Section R4-37-544 renumbered from R4-37-548 and amended effective May 7, 1990

(Supp. 90-2). R19-3-544 recodified from R4-37-544 (Supp. 95-1). Former Section R19-3-544 repealed; new Section R19-3-544 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-545. Multi-term Contracts**

- A. Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.
- B. A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery and the Lottery Commission pre-approves the extended contract period. The written determination shall include:
  1. The initial and renewal option periods for the contract,
  2. Documentation that the estimated requirements are reasonable and continuing, and
  3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.
- C. The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

#### **Historical Note**

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-545 renumbered to R19-3-541, new Section R4-37-545 renumbered from R4-37-549 and amended effective May 7, 1990 (Supp. 90-2). R19-3-545 recodified from R4-37-545 (Supp. 95-1). Former Section R19-3-545 renumbered to R19-3-552 and amended; new Section R19-3-545 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-546. Terms and Conditions**

- A. The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.
- B. The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements, provided that the procurement officer gives notice to the state procurement administrator of those changes.

#### **Historical Note**

Renumbered to Section R4-37-542 effective May 7, 1990 (Supp. 90-2). R19-3-546 recodified from R4-37-546 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-547. Mandatory Statewide Contracts**

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts for all non-Lottery specific materials and services, unless an off-contract request is approved by the state procurement administrator.

#### **Historical Note**

Renumbered to Section R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-547 recodified from R4-37-547 (Supp. 95-1). New Section R19-3-547 renumbered from R19-3-339 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-547 renumbered to R19-3-550; new Section R19-3-547 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-548. Multiple Source Contracts**

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the Lottery, unless a written determination is made by the procurement officer providing otherwise.

#### **Historical Note**

Renumbered to Section R4-37-544 effective May 7, 1990 (Supp. 90-2). R19-3-548 recodified from R4-37-548 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-548 renumbered to R19-3-551; new Section R19-3-548 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-549. Conflict of Interest**

- A. A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not receive any direct benefit from the utilization of those specifications, plans, or scopes of work.
- B. The procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived. If the procurement officer is the individual with the restriction, the Director may waive the restriction set forth in subsection (A) if the Director determines in writing that the rule's application would not be in the Lottery's best interest. If the Director is the person with the restriction, the restriction may be waived by a determination of the office of the Governor.

#### **Historical Note**

Renumbered to Section R4-37-545 effective May 7, 1990 (Supp. 90-2). R19-3-549 recodified from R4-37-549 (Supp. 95-1). R19-3-549 renumbered from R19-3-540 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking

at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-549 renumbered to R19-3-552; new Section R19-3-549 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-550. Determination of Fair and Reasonable Price**

- A.** For contracts or contract modifications that exceed \$100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
  2. Price is supported by an established catalog or market prices;
  3. Price is set by law or rule; or
  4. Price is supported by relevant, historical price data.
- B.** The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A), or
  2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

**Historical Note**

Adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-550 renumbered to R19-3-553; new Section R19-3-550 renumbered from R19-3-547 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

**R19-3-551. Submission and Certification of Cost or Pricing Data**

- A.** The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the procurement officer.
- B.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C.** The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief, as of a date mutually determined with the procurement officer.

**Historical Note**

Section R19-3-551 renumbered from R19-3-541 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-551 renumbered to R19-3-554; new Section R19-3-551 renumbered from R19-3-548 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

**R19-3-552. Refusal to Submit Cost or Pricing Data**

- A.** If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.
- B.** If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:
1. Reject the contract modification; or

2. Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Section R19-3-552 renumbered from R19-3-545 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-552 renumbered to R19-3-555; new Section R19-3-552 renumbered from R19-3-549 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

**R19-3-553. Defective Cost or Pricing Data**

- A.** The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B.** The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C.** The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under R19-3-565 through R19-3-567. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-553 renumbered to R19-3-556; new Section R19-3-553 renumbered from R19-3-550 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

**R19-3-554. Protest of Solicitations and Contract Awards**

- A.** Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B.** The interested party shall file the protest in writing with the procurement officer and shall include the following information:
1. The name, address, and telephone number of the interested party;
  2. The signature of the interested party or the interested party's representative;
  3. Identification of the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
  5. The form of relief requested.
- C.** If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D.** In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.
- E.** The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in

writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

- F. If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.
- G. The procurement officer shall immediately give notice of a protest to all offerors.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-554 renumbered to R19-3-557; new Section R19-3-554 renumbered from R19-3-551 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-555. Stay of Procurements During the Protest

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:
  1. Proceed with the award or contract performance, or
  2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.
- B. The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.
- C. Determination of a stay decision shall be issued no later than the time of issuance of the procurement officer's decision in accordance with R19-3-556.
- D. Should a stay request be denied by the procurement officer, the protestant may request a procurement stay from the Director. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-555 renumbered to R19-3-561; new Section R19-3-555 renumbered from R19-3-552 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-556. Resolution of Solicitation and Contract Award Protests

- A. The procurement officer has the authority to resolve a protest.
- B. The procurement officer shall issue a written decision within 14 days after a protest has been filed under R19-3-554. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision.
- C. The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.
- D. The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E. If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may

proceed as if the procurement officer had issued an adverse decision.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-556 renumbered to R19-3-564; new Section R19-3-556 renumbered from R19-3-553 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-557. Remedies by the Procurement Officer

- A. If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
  1. The seriousness of the procurement deficiency,
  2. The degree of prejudice to other interested parties or to the integrity of the procurement system,
  3. The good faith of the parties,
  4. The extent of performance,
  5. The costs to the Lottery,
  6. The urgency of the procurement,
  7. The impact on the agency's mission, and
  8. Other relevant issues.
- C. The procurement officer may implement any of the following appropriate remedies:
  1. Decline to exercise an option to renew under the contract,
  2. Terminate the contract,
  3. Amend the solicitation,
  4. Issue a new solicitation,
  5. Award a contract consistent with procurement statutes and regulations, or
  6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). R19-3-557 renumbered to R19-3-565; new Section R19-3-557 renumbered from R19-3-554 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### R19-3-558. Appeals to the Director Regarding Protest Decision

- A. An interested party may appeal the decision entered or deemed to be entered by the procurement officer to the Director within 30 days after the date the decision is received or deemed received under R19-3-556. The interested party shall file a copy of the appeal with the Director and the procurement officer.
- B. The interested party shall file the appeal in writing and shall include the following information:
  1. The information prescribed in R19-3-554(B) including the identification of confidential information under R19-3-503,
  2. A copy of the decision of the procurement officer, and
  3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The Director may consider any appeal that is not filed timely if:
  1. The interested party shows good cause, or

2. The Director finds there is a good cause.
- D.** The Director shall resolve appeals of solicitation decisions as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-559. Notice of Appeal to the Director Regarding Protests**

- A.** The procurement officer shall promptly give notice of the appeal to all offerors.
- B.** The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R19-3-503.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-559 renumbered to R19-3-566; new Section R19-3-559 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-560. Stay of Procurement During Appeal to Director**

- A.** If a stay is issued under R19-3-555, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the Lottery.
- B.** Following a review of the procurement officer's decision and the interested party's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Lottery.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-560 renumbered to R19-3-567; new Section R19-3-560 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-561. Agency Report Regarding Protest Appeals**

- A.** The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
  2. The offer submitted by the interested party;
  3. The offer of the firm that is being considered for award;
  4. The solicitation, including the specifications or portions relevant to the appeal;
  5. The abstract of offers or relevant portions;
  6. Any other documents that are relevant to the protest; and
  7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B.** The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.

- C.** The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.
- D.** The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section R19-3-561 renumbered from R19-3-555 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

#### **R19-3-562. Remedies by the Director**

If the Director sustains the appeal in whole or part and determines that a solicitation, a not-susceptible-for-award determination, or an award does not comply with procurement statutes and rules, the Director shall implement remedies as provided in R19-3-557 or R19-3-563.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-562 renumbered to R19-3-568; new Section R19-3-562 made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### **R19-3-563. Informal Settlement Conference**

- A.** In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision.
- B.** If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing.
- C.** If any interested party chooses not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference.
- D.** If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings.
- E.** If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision.
- F.** When making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the

perceived success or failure of the informal settlement conference.

#### Historical Note

New Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-564; new Section R19-3-563 made by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-564. Dismissal Before Hearing

- A. The Director may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
  1. The appeal does not state a valid basis for protest,
  2. The appeal is untimely as prescribed under R19-3-558, or
  3. The appeal attempts to raise issues not raised in the protest.
- B. The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

#### Historical Note

New Section R19-3-564 renumbered from R19-3-556 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-565; new Section R19-3-564 renumbered from R19-3-563 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-565. Controversies Involving Contract Claims Against the Lottery

- A. A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:
  1. The name, address, and telephone number of the claimant;
  2. The signature of the claimant or claimant's representative;
  3. Identification of the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
  5. The form and dollar amount of the relief requested.
- B. The procurement officer shall have the authority to settle and resolve contract claims.

#### Historical Note

New Section R19-3-565 renumbered from R19-3-557 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-566; new Section R19-3-565 renumbered from R19-3-564 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-566. Procurement Officer's Decision Regarding Contract Claims

- A. If a claim cannot be resolved under R19-3-565, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:
  1. A description of the claim;
  2. A reference to the pertinent contract provision;
  3. A statement of the factual areas of agreement or disagreement;

4. A statement of the procurement officer's decision, with supporting rationale; and
  5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in R19-3-567(B) with the procurement officer within 30 days from the date you receive this decision."
- C. If the procurement officer fails to issue a decision on a contract claim within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

#### Historical Note

New Section R19-3-566 renumbered from R19-3-559 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-567; new Section R19-3-566 renumbered from R19-3-565 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-567. Appeals and Reports to the Director Regarding Contract Claims

- A. The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.
- B. The claimant shall file the appeal in writing and shall include the following:
  1. A copy of the decision of the procurement officer,
  2. A statement of the factual areas of agreement or disagreement, and
  3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D. The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

#### Historical Note

New Section R19-3-567 renumbered from R19-3-560 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-568; new Section R19-3-567 renumbered from R19-3-566 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

#### R19-3-568. Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

#### Historical Note

New Section R19-3-568 renumbered from R19-3-562 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-569; new Section R19-3-568 renumbered from R19-3-567 by final rulemaking at 22 A.A.R. 2966,

effective November 21, 2016 (Supp. 16-4).

#### **R19-3-569. Guidance**

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or 2 A.A.C. 7, including, but not limited to a procurement utilizing a cooperative contract.

#### **Historical Note**

New Section R19-3-569 renumbered from R19-3-568 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

### **ARTICLE 6. ANNUITY ASSIGNMENTS**

#### **R19-3-601. Voluntary Assignment of Prizes Paid in Installments**

- A. A prize winner may request a voluntary assignment of an annuity or a portion of the remaining installments of the annuity by filing an action in a court of competent jurisdiction requesting judicial approval of the assignment. The prize winner and the purchaser of the annuity shall name the state of Arizona as a defendant in the action and shall bear all costs associated with filing the request for judicial approval of the assignment.
- B. A prize winner shall include in the request for judicial approval under subsection (A) the following:
  1. The affidavit required under A.R.S. § 5-563(A)(3);
  2. A copy of the signed assignment agreement between the prize winner and the assignee; and
  3. Proof that the fee under subsection (D) has been paid to the Lottery.
- C. After the court approves the assignment, the prize winner shall send the written judicial approval to the Lottery. Upon receipt of judicial approval of the voluntary assignment, the Director shall direct the insurance company to make future annuity payments as provided in the Court order.
- D. The prize winner or assignee shall pay a fee of \$235.00 to the Lottery to process the voluntary assignment.

#### **Historical Note**

Adopted as an emergency effective October 31, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-5). Adopted without change as a permanent rule effective February 25, 1987 (Supp. 87-1). Amended effective May 7, 1993 (Supp. 93-2). R19-3-601 recodified from R4-37-601 (Supp. 95-1). Repealed effective June 14, 1997 (Supp. 97-2). New Section made by final rulemaking at 11 A.A.R. 2028, effective July 2, 2005 (Supp. 05-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (B)(1) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

### **ARTICLE 7. DESIGN AND OPERATION OF INSTANT GAMES**

#### **R19-3-701. Definitions**

In this Article, unless the context otherwise requires:

1. "Caption" means the printed characters appearing below a play symbol or prize symbol that verify and correspond with that symbol. No more than one caption will appear under a symbol.
2. "Game profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential game fundamentals required by these rules for an instant game.

3. "Instant game" means a game that is played by removing the protective covering from a ticket to reveal the play symbols, or prize symbols, or both that determine if a ticket holder is entitled to a prize or prizes.
4. "Instant scratch game" means an instant game where the protective covering is made of latex or another substance that is scratched off.
5. "Instant tab game" means an instant game where the protective covering is a perforated paper tab that is opened.
6. "Pack" means a group of tickets bearing a common identification number.
7. "Pack-ticket number" means a unique multi-digit number that includes a game number, a pack number, and a ticket number which distinguishes each ticket from every other ticket within an instant game.
8. "PIN" means the designated characters within the validation number that allows an on-line terminal to validate an instant ticket.
9. "Play area" means the portion or portions of the ticket which contains the play symbol or symbols. More than one play area may appear on a ticket.
10. "Play symbols" means the printed image or images that appear within the defined play area of the ticket that determine if the ticket holder is entitled to a prize or prizes.
11. "Prize structure" means the estimated number of prizes, prize values, and odds of winning prizes for an individual game.
12. "Prize symbol" means the printed image or images that indicates the prize or prizes available in that game.
13. "Retailer validation code" means the multiple letters in the play area, under the protective covering that verify prizes less than \$600.
14. "Validation code" means the unique multi-positional code on each ticket that is used to authenticate winning tickets.

#### **Historical Note**

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

#### **R19-3-702. Game Profile**

- A. Each game shall have a Game Profile and at a minimum, the Profile shall contain the following information:
  1. Game name;
  2. Game number;
  3. Prize structure;
  4. Game Playstyle;
  5. Play symbols;
  6. Retailer validation codes, if any;
  7. Special features, if any;
  8. Retail sales price;
  9. How to play and win instructions; and
  10. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.
- B. The Commission shall approve the individual Game Profile prior to the game being sold to the public.

#### **Historical Note**

Adopted effective October 25, 1996 (Supp. 96-4). Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

#### **R19-3-703. Game Playstyle**



- A. The playstyle for an individual game shall be fully described in the Game Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:
1. Match Two,
  2. Match Three,
  3. Add-up,
  4. Tic-Tac-Toe,
  5. Key Symbol or Symbols Match,
  6. Key Symbol or Symbols Beat,
  7. Symbols in Sequence,
  8. Spell Outs,
  9. In Between,
  10. Bingo,
  11. Pattern,
  12. Legend,
  13. Coordinates,
  14. Find,
  15. Maze,
  16. Grid,
  17. Elimination,
  18. Sets.
- B. More than one game and more than one playstyle may appear on a ticket.

**Historical Note**

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1).

**R19-3-704. Determination of a Winning Ticket**

- A. The play symbols are the only determining factor for prize eligibility for a valid ticket.
- B. For each play area on an individual ticket, the player shall remove the protective covering to find the play symbols, or the play and prize symbols. Eligibility to win a prize is based on compliance with the designated playstyle as follows:
1. Match Two. The player shall win the prize or prizes indicated by uncovering two identical play symbols on a play area.
  2. Match Three. The player shall win the prize or prizes indicated by uncovering three identical play symbols on a play area.
  3. Add-Up. The player shall win the prize or prizes indicated in either of the following ways:
    - a. The player adds up the play symbols and the amount is greater than or equal to the designated key symbol on the ticket, or
    - b. The player adds up the play symbols designated for the player and the total is greater than or equal to the control key symbol or symbols.
  4. Tic-Tac-Toe. The player shall win the prize or prizes indicated by uncovering three identical play symbols, in any row, or any column, or any diagonal, on a multi-symbol grid on the play area.
  5. Key Symbol or Symbols Match. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols identical to the designated key play symbol or symbols.
  6. Key Symbol or Symbols Beat. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols designated for the player in the ticket play area which is greater than the control play symbol or symbols.
  7. Symbols in Sequence. The player shall win the prize or prizes indicated by uncovering the designated play symbols in the specified sequential order.
  8. Spell Outs. The player shall win the prize or prizes indicated by uncovering the play symbols to form the designated word or words.
  9. In Between. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols designated for the player with a value less than the highest control play symbol or symbols and greater than the play lowest control play symbol or symbols.
  10. Bingo. The player shall win the prize or prizes indicated by uncovering the play symbols on the designated play area or areas that are identical to the play symbols uncovered on the control play area to form the specified pattern or patterns.
  11. Pattern. The player shall win the prize or prizes indicated by uncovering the play symbol or symbols on a multi-symbol play area that follow a designated pattern.
  12. Legend. The player shall win the prize or prizes indicated by uncovering the designated number or type of play symbols that correspond to a legend.
  13. Coordinates. The player shall win the prize or prizes indicated by uncovering a play symbol or symbols that direct the player to a location on the play area to reveal the specified play symbol, or the number or pattern of play symbols.
  14. Find. The player shall win the prize or prizes indicated by uncovering the designated play or prize symbol.
  15. Maze. The player shall win the prize or prizes indicated by uncovering the directional symbols to make a path or paths leading to a designated prize symbol.
  16. Grid. The player shall win the prize or prizes indicated by uncovering a specified number or pattern of play symbols on a grid on the play area.
  17. Elimination. The player shall win the prize indicated by uncovering the corresponding prize or symbol on a prize table to eliminate all but one remaining prize amount or symbol.
  18. Sets. The player shall win the prize or prizes indicated by uncovering the designated group or groups of play symbols, without repetition or deletion of any play symbol, within a specified location of the play area.
- C. Each of the playstyles described in subsection (B) may include one or more special features such as "automatic win," "multiplier," "wild," "win all," "extra chance," or "free space" that provides an added or alternative method of winning.

**Historical Note**

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1).

**R19-3-705. Ticket Validation and Confirmation Requirements**

- A. Each instant game ticket shall be validated prior to payment of a prize.
- B. To be eligible for a prize, a ticket holder shall present a ticket meeting all of the following requirements:
1. The ticket shall not be stolen or appear on any list of omitted tickets on file with the Lottery;
  2. The ticket shall not be counterfeit or forged, in whole or in part;
  3. The ticket shall not be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
  4. The ticket shall not be blank, partially blank, misregistered, defective, or printed or produced in error;
  5. The play and prize symbols shall have the captions that confirm and agree with those applicable to that instant game;

6. The ticket shall have been issued by the Lottery in an authorized manner;
  7. The ticket shall have been legally obtained;
  8. The ticket shall pass all other confidential validation tests determined by the Director;
  9. The ticket shall be validated in accordance with the provisions of R19-3-706 and R19-3-708;
  10. The display printed on the ticket shall correspond precisely with the approved artwork on file at the Lottery;
  11. All of the ticket symbols originally printed on the ticket shall appear in the play area on the ticket and shall correspond to those shown in the Game Profile; and
  12. The play and prize symbols shall have the required captions that confirm and agree with those of the appropriate instant game.
- C.** In addition to the requirements in subsection (B), each instant scratch game ticket shall meet the following:
1. The ticket shall contain a game number, a pack-ticket number, a retailer validation code, and where applicable, a PIN number, and at least one ticket validation code; and
  2. The validation code of a winning ticket shall appear in the Lottery's official file of validation codes of winning tickets and shall not have been previously paid.
- D.** In addition to the requirements in subsection (B), each instant tab game ticket shall meet the following:
1. The ticket shall contain a game number and a serial number, and
  2. A winning tab ticket shall contain the necessary prize and win symbol captions to enable visual confirmation of a prize.
- E.** If the ticket fails to pass any of the requirements in subsections (B) and (C) for instant scratch games, or subsections (B) and (D) for instant tab games, the ticket is void and ineligible for any prize payout.

#### Historical Note

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

#### **R19-3-706. Ticket Ownership and Responsibility; Prize Payment**

- A.** Until a ticket is signed, the ticket is owned by its physical possessor.
- B.** The owner of a winning instant ticket is the person whose signature appears upon the ticket, if an area has been designated for that purpose.
1. If more than one signature appears on the ticket, the Director is authorized to require that one or more of those claimants be designated to receive the payment. A claim form shall be submitted by each claimant who is designated to receive a portion of the prize claimed from the winning ticket.
  2. Prior to payment of a prize, a claimant who has signed the ticket may designate another claimant to receive the prize by signing a relinquishment of claim statement.
  3. When the winning ticket was purchased by a group of players, the group shall designate one of the claimants to sign the ticket for the group. Each claimant shall complete an individual claim form to receive the claimant's portion of the prize.
  4. In the event there is an inconsistency in the information submitted on a claim form, when required, and as shown on the winning instant ticket, the Director shall authorize an investigation and withhold all winnings payable to the

ticket owner or holder until such time as the Director is satisfied that the proper person is being paid.

- C.** Prior to paying the claimant a prize of \$600 or more, the Lottery shall match the winner's name against the lists of persons owing a debt to a participating state agency, furnished to the Lottery under A.R.S. § 5-575.
1. If there is a match on any of the claims submitted with a ticket, the amount that is owed shall be deducted from the prize due the claimant.
  2. The claimant shall be notified in writing of the amount of the setoff and the agency to which it shall be paid.
  3. If the claimant has two or more agencies which are owed a debt, the Lottery shall pay a pro-rata share to each of the agencies, except that a Department of Economic Security overdue child support setoff shall be paid in full before any amount shall be paid to another agency.
  4. The claimant shall be notified in writing that a right to appeal the setoff exists. The notification shall include the name and address of the agency with which to file the appeal and that the appeal shall commence within 30 days of receipt of the notification.
  5. If, after deducting withholding taxes and the setoff, a portion of the prize remains, then that portion shall be paid to the winner with the notification of setoff.
  6. The setoff amount shall be forwarded to the agency, and that agency shall be responsible for any appeal and crediting of the payment against the amount owed or refunding any amount to the winner.
  7. Upon a determination that a setoff is due, the winner loses the right under subsection (B)(2) to assign any portion of the claim.
- D.** Prizes shall be paid by cash, check, money order, or if requested by the player, by Lottery tickets.
1. If a ticket contains more than one winning game play, any prize amounts shall be combined and paid in accordance with the prize payment limits specified in R19-3-708.
  2. Each winning game play wins the prize amount specified in the Game Profile.
- E.** The Lottery is not responsible for lost or stolen tickets.

#### Historical Note

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citation in subsection (C) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3).

#### **R19-3-707. Claim Period**

- A.** For the claimant to receive payment, a winning instant scratch game ticket shall be received by the Lottery or a retailer no later than 5:00 p.m. (Phoenix time) on the 180th calendar day following the announced end of the instant game.
1. If a claimant presents a valid winning instant scratch ticket to a retailer for payment on the 180th calendar day following the announced end of the instant scratch game and is not paid the prize, the Director is authorized to pay the prize if the claimant presents the valid winning ticket to the Lottery no later than 5:00 p.m. (Phoenix time) on the following business day.
  2. In the case of a drawing prize associated with an instant scratch game, the claimant shall claim the prize no later

than 5:00 p.m. (Phoenix time) on the final day designated by the Director and on file at the Lottery.

- B.** The end of an instant game shall be designated by the Director and on file at the Lottery.

#### Historical Note

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

#### R19-3-708. Procedure for Claiming Prizes

- A.** To claim an instant scratch ticket prize of up to and including \$599, the claimant shall present the ticket to any participating licensed retailer or to a Lottery office, or mail the ticket to a Lottery office for validation. The licensed retailer shall pay all winning prizes up to and including \$100 and may pay all winning prizes from \$101 up to and including \$599 provided that:
1. All of the ticket validation criteria in Section R19-3-705 have been satisfied; and
  2. A proper validation slip, which is an authorization to pay, has been generated by the terminal.
- B.** To claim an instant scratch ticket prize that the retailer does not validate or is not authorized to pay, including all prizes of \$600 or more, the claimant shall submit a claim form, available from any retailer, and the ticket to the Lottery. If the claim is:
1. Verified and validated by the Lottery as a winning ticket, the Lottery shall make payment of the amount due to the claimant, less any authorized debt setoff amounts, or withheld taxes, or both.
  2. Denied by the Lottery, the claimant shall be notified within 15 days from the day the claim is received in the Lottery office.
- C.** If an instant scratch ticket prize winner dies prior to receiving full payment, the Lottery shall pay all remaining prize money to the prize winner's beneficiary or to any person designated by an appropriate judicial order.
- D.** To claim an instant tab ticket prize, the claimant shall present the ticket to the selling retailer. The selling retailer shall pay all winning prizes provided that:
1. All of the ticket validation criteria in R19-3-705(A) and (B)(1) through (8) have been satisfied; and
  2. The retailer has performed a visual confirmation of the winning play, prize, and win symbol captions.
- E.** Payment of prize money shall not be accelerated ahead of its normal date of payment.
- F.** The Lottery is discharged of all liability upon payment of the instant scratch ticket prize money.
- G.** The retailer has sole responsibility to pay prizes on instant tab tickets. The Lottery is discharged of all liability to pay prizes on instant tab tickets.

#### Historical Note

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

#### R19-3-709. Disputes Concerning a Ticket

- A.** If a dispute between the Lottery and a claimant occurs concerning a ticket, the Director is authorized to replace the disputed ticket with a ticket or tickets of equivalent sales price from any current instant game.

- B.** If a defective ticket is purchased, the Lottery shall replace the defective ticket with a ticket or tickets of equivalent sales price from any current instant game.
- C.** Replacement of the disputed ticket is the sole and exclusive remedy for a claimant.
- D.** If a dispute between the Lottery and a claimant occurs concerning the eligibility of an entry into a grand prize, second chance or promotional drawing, the Director is authorized to place any person's eligible entry that was not entered in that drawing into any subsequent drawing or drawings.

#### Historical Note

Adopted effective October 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 13 A.A.R. 1031, effective April 27, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 53, effective December 28, 2010 (Supp. 10-4).

#### ARTICLE 8. RESERVED

#### ARTICLE 9. RESERVED

#### ARTICLE 10. PROMOTIONS

#### R19-3-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Category" means player, consumer, retailer, vendor, or other person who participates in the promotion.
2. "Charitable organization" means a non-profit organization organized and operated exclusively for charitable purposes and is qualified under § 502(c)(3) of the United States Internal Revenue Code.
3. "Media" means the method of communication, as in television, radio, print, outdoor, or Internet, with wide reach and influence.
4. "Prize type" means cash, free ticket or tickets, coupon or coupons, merchandise, retailer or vendor product or service, or discount on retailer or vendor product or service.
5. "Promotion" means a program designed to increase awareness of the Lottery, Lottery beneficiaries, and Lottery games that is intended to increase the sale of Lottery tickets to produce the maximum amount of net revenue for the state.
6. "Promotion playstyle" means the type of process or procedure used to control the promotion.
7. "Promotion Profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential promotion fundamentals required by these rules for a promotion.
8. "Promotional merchandise" means Lottery related goods, consumer products, or services provided by the Lottery for use in a promotion.
9. "Promotional ticket" means a Lottery ticket from a current, active game or a specially designed game provided by the Lottery for use in a promotion.
10. "Targeted game or targeted games" means the specific game or games a promotion is intended to increase sales or awareness of.
11. "Tickets" means one or more Lottery game plays from the targeted game or games.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

#### R19-3-1002. Promotion Profile

- A. Each promotion shall have a Promotion Profile and at a minimum, the Profile shall contain the following information:
1. Promotion name;
  2. Promotion playstyle;
  3. Category;
  4. Targeted game, games or Lottery beneficiaries involved in the promotion;
  5. Promotion description;
  6. Promotion selection criteria, if applicable;
  7. Prize type and structure, including the estimated number and size of monetary prizes, free tickets, coupons, certificates, discounts, and merchandise prizes available, if applicable;
  8. Retail sales price, if applicable;
  9. Promotion date range (beginning and ending promotion dates);
  10. Time range, if applicable;
  11. Day or days of the week, if applicable;
  12. Special feature, if any; and
  13. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.
- B. The Commission shall approve the Promotion Profile prior to the promotion being introduced to the public for participation.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

#### R19-3-1003. Promotion Playstyle - Promotion Type

- A. The playstyle for a specific promotion shall be fully described in the Promotion Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:
1. Second Chance Drawing – Player.
  2. Second Chance Drawing – Retailer.
  3. Retailer's Second Chance Drawing – Retailer/Player.
  4. Increased Prize Payment.
  5. Buy X and Get Y Free – Player.
  6. Sell X and Get Y Free – Retailer.
  7. Validate X and Get Y Free – Retailer.
  8. Buy X and Get Y Free, Every Nth Transaction – Player.
  9. Sell X and Get Y Free, Every Nth Transaction – Retailer.
  10. Complete Survey.
  11. Special Events – Player.
  12. Retailer Incentive.
  13. Cross Promotion.
  14. Media Promotion.
  15. Customer Service.
  16. Mystery Shopper – Retailer.
  17. Ask For the Sale – Retailer.
  18. Charitable Organization.
  19. Public Contest – not related to specific Lottery game.
  20. Multi-State Lottery (MUSL) Promotions.
- B. More than one promotion may run concurrently.
- C. Promotion may be held only on specific days of the week.
- D. Promotion may be held only during specific hours of the day.
- E. Promotion may be available for selected regions, zones, retailer groups or player groups. Groups may be made by business codes, regions, county, zip code, chain designator, field representative or sales quota.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September

15, 2007 (Supp. 07-3).

#### R19-3-1004. Determination of a Winning Promotion

Eligibility to win a prize is based on compliance with the designated promotion playstyle as follows:

1. Second Chance Drawing – Player. The player shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile. The player or players selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
2. Second Chance Drawing – Retailer. The retailer shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile, or the Lottery may use information collected on its database as defined in the Promotion Profile to qualify the retailer. The retailer or retailers selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
3. Retailer's Second Chance Drawing – Retailer/Player. Retailers participating in the promotion shall ask players to deposit the required coupon, tickets or entry form into a Drawing Container at the retailer's location. The retailer shall perform random drawings according to the Promotion Profile. The players selected in the drawings shall win the prize type designated in the Promotion Profile. The Lottery shall provide the participating retailer with a predetermined number of prizes for the promotion.
4. Increased Prize Payout. Players who win a particular prize denomination in the target game or games shall win an additional amount specified in the Promotion Profile. The Promotion Profile shall define any required level of participation to be eligible.
5. Buy X and Get Y Free – Player. Each time a player buys a predetermined number of tickets from the targeted game or games, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement and the Get Y Free shall be specified in the Promotion Profile.
6. Sell X and Get Y Free – Retailer. Each time a retailer sells a predetermined number of tickets from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement and the Get Y Free shall be specified in the Promotion Profile.
7. Validate X and Get Y Free – Retailer. Each time a retailer validates a predetermined number or prize amount from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Validate X requirement and the Get Y Free shall be specified in the Promotion Profile.
8. Buy X and Get Y Free, Every Nth Transaction – Player. Each time a player buys a predetermined number or type of ticket or tickets from the target game or games and that purchase is the Nth transaction produced by the on-line system, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer. Each time a retailer sells a predetermined number of tickets from the target game or games and that sale is the Nth transaction produced by the on-line system, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.

10. Complete Survey. The player or retailer who completes a designated survey shall receive the prize type designated in the Promotions Profile.
11. Special Events – Players. Players who attend a Lottery sponsored special event may participate in activities designed to promote Lottery products. Player participation may include spinning the Lottery prize wheel, various carnival type games of little or no skill, or purchase of tickets for targeted game or games. The prize type shall be designated and awarded according to the Promotion Profile.
12. Retailer Incentive. The retailer shall become eligible to earn the designated prize type through participation as defined in the Promotion Profile.
13. Cross Promotion. Players who present a predetermined number of non-winning tickets of the targeted game or games to a participating retailer or vendor shall win the prize type designated in the Promotion Profile.
14. Media Promotion. Players who participate in media-related promotions shall be eligible to receive the prize type designated in the Promotion Profile. The Lottery shall provide the participating media outlet with coupons or tickets from the targeted game or games or promotional merchandise items.
15. Customer Service. If a player is inconvenienced or dissatisfied as a result of Lottery actions below the usual level of service the Lottery provides, the Lottery may provide the player with the prize type designated in the Promotions Profile.
16. Mystery Shopper – Retailer. The Lottery shall send mystery shoppers or spotters to visit randomly selected retailers in the promotional area. Each retailer who meets the requirements specified in the Promotion Profile shall win the designated prize type.
17. Ask For The Sale – Retailer. Each retailer participating in the promotion shall ask all customers who are determined to be of legal gaming age if they want to purchase a Lottery ticket for the targeted game or games. If the retailer does not ask an eligible customer, the customer shall receive a free coupon or ticket from the designated game. The Lottery shall provide the participating retailer with a predetermined number of coupons or tickets from the targeted game or games according to the Promotion Profile.
18. Charitable Organization. The Lottery shall provide a qualifying charitable organization with a predetermined number of tickets, coupons, or promotional merchandise from a targeted game or games to distribute during their charitable event.
19. Public Contest – not related to specific Lottery game. The Lottery may conduct a contest not related to any specific Lottery game as defined in the Promotion Profile.
20. Multi-State Lottery (MUSL) Promotions. The Lottery may participate in a Multi-State Lottery game-related promotion adopted by the MUSL board.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

**R19-3-1005. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Section repealed by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

**R19-3-1006. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Section repealed by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

**R19-3-1007. Procedure for Claiming Prizes and Claim Period**

- A. To claim a promotion prize, a claimant must follow the procedure provided in the Promotion Profile.
- B. Promotion details are subject to the terms of the Promotion Profile which may modify or specify the ownership, authentication, validation procedures, or the time period for claiming a prize.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

**R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner**

- A. If a dispute between the Lottery and a claimant occurs concerning a promotion ticket or the winning of a promotion prize, the Director is authorized to replace the disputed ticket or promotion prize with a ticket or promotion prize of equivalent value from any current promotion. The decision of the Director is a final, appealable agency action.
- B. Upon claim verification and payment of a prize, the Lottery shall be discharged of all liability to the claimant.
- C. By accepting a prize, the winner, his or her heirs, or legal representative agrees to indemnify and hold harmless, release, and discharge the Lottery, its employees, directors, and Commissioners from and against loss, claim, damage, suit, or injury arising out of or relating to the acceptance of the prize.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1077, effective March 3, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2775, effective September 15, 2007 (Supp. 07-3).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 20. Commerce, Financial Institutions, and Insurance**

### **Chapter 5. Industrial Commission of Arizona**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R20-5-136, R20-5-816

REMOVE Supp. 16-3  
Pages: 1 - 113

REPLACE with Supp. 16-4  
Pages: 1 - 113

*The agency's contact person who can answer questions about expired rules in Supp. 16-4:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*



**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE****CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

(Authority: A.R.S. § 23-101 et seq.)

20 A.A.C. 5, consisting of R20-5-101 through R20-5-164, R20-5-201 through R20-5-224, R20-5-301 through R20-5-318, R20-5-401 through R20-5-428, R20-5-501 through R20-5-512, R20-5-601 through R20-5-682, R20-5-801 through R20-5-829, R20-5-901 through R20-5-914, and R20-5-1001 through R20-5-1007 recodified from 4 A.A.C. 13, consisting of R4-13-101 through R4-13-164, R4-13-201 through R4-13-224, R4-13-301 through R4-13-318, R4-13-401 through R4-13-428, R4-13-501 through R4-13-512, R4-13-601 through R4-13-682, R4-13-801 through R4-13-829, R4-13-901 through R4-13-914, and R4-13-1001 through R4-13-1007, pursuant to R1-1-102 (Supp. 95-1).

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*Article 2, consisting of Sections R4-13-201 through R4-13-222, adopted effective July 6, 1993 (Supp. 93-3).*

*Article 2, consisting of Sections R4-13-201 through R4-13-224, repealed effective July 6, 1993 (Supp. 93-3).*

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*Article 7, consisting of new Sections R20-5-701 through R20-5-739, adopted effective September 9, 1998 (Supp. 98-3).*

*R20-5-701 through R20-5-708 recodified from R4-13-701 through R4-13-708 (Supp. 95-1).*

*Article 7, consisting of Sections R4-13-701 through R4-13-708, transferred to the Department of Agriculture, Title 3, Chapter 8, Article 7, Sections R3-8-201 through R3-8-208, pursuant to Laws 1990, Ch. 374, Sec. 445 (Supp. 91-3).*

*New Article 7 adopted effective July 13, 1989. (Supp. 89-3)*

*Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).*

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914, expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

Former Article 9 consisting of Sections R4-13-901 through R4-13-906 repealed effective May 27, 1977. R20-5-901 through R20-5-914 recodified from R4-13-901 through R4-13-914 (Supp. 95-1).

Article 9 consisting of Sections R4-13-901 through R4-13-914 adopted effective May 27, 1977.

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Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3).

Article 12, consisting of Sections R20-5-1201 through R20-5-1220, made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1).

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**ARTICLE 13. TREATMENT GUIDELINES**

*Article 13, consisting of Sections R20-5-1301 through R20-5-1312, made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).*

## ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

### R20-5-101. Application of the Article; Notice of Rules; Part of Record

- A. This Article applies to all actions and proceedings before the Commission resulting from:
1. Injuries that occurred on or after January 1, 1969;
  2. Petitions to Reopen or Petitions for Readjustment or Rearrangement of Compensation filed on or after that date; and
  3. Requests for hearing under A.R.S. §§ 23-907(H), (I), and (J).
- B. This Article is part of the record in each action or proceeding without reference to the Article.
- C. The Commission deems all parties to have knowledge of this Article.
- D. The Commission shall provide a copy of this Article upon request to any person free of charge.

#### Historical Note

Former Rule 1. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-101 recodified from R4-13-101 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 4530, effective, December 2, 2008 (Supp. 08-4).

### R20-5-102. Definitions

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A.R.S. Title 23, Ch. 6, Articles 1 through 11.

"Authorized representative" means an individual authorized by law to act on behalf of a party who files with the Commission a written instrument advising of the individual's authority to act on behalf of the party.

"Carrier" or "insurance carrier" means the state compensation fund and every insurance carrier authorized by the Arizona Department of Insurance to underwrite workers' compensation insurance in Arizona.

"Claimant" means an employee who files a claim for workers' compensation.

"Filing" means actual receipt of a report, document, instrument, videotape, audiotape, or other written matter at a Commission office during office hours as set forth in R20-5-103.

"Physician" means a licensed physician or other licensed practitioner of the healing arts.

"Self-insured employer" means an employer or workers' compensation pool granted authority by the Commission to self-insure for workers' compensation.

"Uninsured employer" or "noncomplying employer" means an employer that is subject to and fails to comply with A.R.S. §§ 23-961 or 23-962.

"Working days" means all days except Saturdays, Sundays, and state legal holidays.

#### Historical Note

Former Rule 2. R20-5-102 recodified from R4-13-102 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

### R20-5-103. Location of Industrial Commission Offices and Office Hours

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays, and state legal holidays.

#### Historical Note

Former Rule 3. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-103 recodified from R4-13-103 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

### R20-5-104. Address of Claimant and Uninsured Employer

- A. A claimant shall advise the Commission and carrier or self-insured employer of the claimant's current mailing address and place of residence. If a claimant files a workers' compensation claim against an uninsured employer, the claimant shall advise the special fund division of the claimant's current mailing address and place of residence.
- B. An uninsured employer against whom a claimant files a workers' compensation claim shall advise the special fund division of the uninsured employer's current mailing address and place of places of residence.
- C. Providing the address of a claimant's or uninsured employer's attorney or authorized representative is not sufficient to meet the requirements of this Section.

#### Historical Note

Former Rule 4. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-104 recodified from R4-13-104 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

### R20-5-105. Filing Requirements; Time for Filing; Computation of Time; Response to Motion

- A. A report, document, instrument, videotape, audiotape, or other written matter required to be filed with the Commission under A.R.S. § 23-901 et seq. and this Article shall be filed at a Commission office within the time required by law and this Article.
- B. For purposes of computing time under this Article, the following applies:
1. The Commission shall not include in the computation of time the day of the act or event from which the designated period begins to run.
  2. The Commission shall include in the computation of time the last day of the designated period, unless the last day is a Saturday, Sunday, or state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state legal holiday.
  3. If this Article or other law requires that a report, document, instrument, videotape, audiotape, or other written matter be filed within a designated period of time before hearing, the Commission shall not include the day of the act or event from which the designated period of time begins to run. The Commission shall include the last day of the designated period unless that day is a Saturday, Sunday, or state legal holiday, in which event the period runs to the end of the next day that is not a Saturday, Sunday, or state legal holiday.
  4. If the period of time prescribed is less than 11 days, the Commission shall not include intermediate Saturdays, Sundays, or state legal holidays in the computation of time.
- C. The Commission shall deem a report, document, instrument, videotape, audiotape, or other written matter filed at the Tucson office as filed at the main office for purposes of computing time.

- D. A person upon whom a motion to join is filed under this Article may file a response to the motion within 10 days after the motion is filed.
- E. The Commission shall not consider a discovery motion unless the moving party attaches a separate statement to the discovery motion certifying that after good faith efforts to do so, the moving party has been unable to satisfactorily resolve the matter giving rise to the discovery motion with the opposing party.

#### Historical Note

Former Rule 5. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-105 recodified from R4-13-105 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-106. Commission Forms

- A. The following forms shall be used when applicable:
  - 1. Employer's report of industrial injury (form 101) shall contain:
    - a. Employee, employer, and carrier identification;
    - b. Description of employment;
    - c. Description of accident and injury;
    - d. Description of medical treatment received by employee;
    - e. Employee's wage data;
    - f. Date, signature, and title of employer or the employer's representative; and
    - g. Statement doubting the validity of the claim, if the employer doubts the validity of the claim.
  - 2. The physician's portion of the worker's and physician's report of injury (form 102) shall contain:
    - a. Name and address of physician;
    - b. Information regarding preexisting conditions;
    - c. Information regarding the industrial injury, treatment, and prognosis;
    - d. Statement authorizing the attachment of a medical report that contains the information required in form 102; and
    - e. Physician's signature and date.
  - 3. Notice of supportive medical benefits (form 103) shall contain:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Description of authorized medical benefits;
    - c. Date the notice is mailed;
    - d. Name and telephone number of the individual issuing the notice; and
    - e. Statement regarding reopening and appeal rights including filing requirements.
  - 4. Notice of claim status (form 104) shall contain:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Status of the claim;
    - c. Date the notice is mailed;
    - d. Name and telephone number of the individual issuing the notice; and
    - e. Statement of a party's hearing and appeal rights including filing requirements.
  - 5. Notice of suspension of benefits (form 105) shall contain:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Effective date of the suspension;
    - c. Reasons for the suspension;
    - d. Date the notice is mailed;
    - e. Name and telephone number of the individual issuing the notice; and
  - 6. Notice of permanent disability or death benefits (form 106) shall contain:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Applicable statutory authority under which compensation is paid;
    - c. Disability and compensation information;
    - d. Date the notice is mailed;
    - e. Name and telephone number of the individual issuing the notice; and
    - f. Statement regarding hearing and appeal rights including filing requirements.
  - 7. Notice of permanent disability and request for determination of benefits (form 107) shall contain:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Type of disability;
    - c. Applicable statutory authority for designated disability;
    - d. Designation of dependents where death is involved;
    - e. Designation of advanced payments and amount of the advance;
    - f. Date the notice is mailed; and
    - g. Name and telephone number of the individual issuing the notice.
  - 8. Carrier's recommended average monthly wage calculation (form 108) shall contain:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Employment and wage history;
    - c. Designation of dependents; and
    - d. Carrier's calculations for the recommended average monthly wage and the basis for the calculation.
  - 9. Notice of permanent compensation payment plan (form 111) shall contain:
    - a. Employee, employer, and carrier identification;
    - b. Amount of permanent compensation and description of payment plan;
    - c. Name of the responsible entity contracted by the carrier to administer the payment plan;
    - d. Statement that the carrier remains the responsible party for payment;
    - e. Statement regarding supportive care and reopening rights;
    - f. Date the notice is mailed; and
    - g. Name and telephone number of the individual issuing the notice.
  - 10. Report of insurance coverage (form 0006) shall contain:
    - a. Name and address of the carrier;
    - b. Legal name of entity that the carrier insures;
    - c. All other insured names or subsidiary entities under which the carrier's insured does business in Arizona;
    - d. Address of all insured entities with insurance policy information for each address; and
    - e. Employer Identification Number (EIN), Taxpayer Identification Number (TIN), or Federal Identification Number (FIN) assigned to each insured person or entity.
  - 11. Report of significant work exposure to bodily fluids or other infectious material shall contain:
    - a. The requirements set forth in A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B);
    - b. Employee identification,
    - c. Employer identification,



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- d. Source of exposure person identification (if known),
  - e. Details of the exposure including:
    - i. Date of exposure,
    - ii. Time of exposure,
    - iii. Place of exposure,
    - iv. How exposure occurred,
    - v. Type of bodily fluid or fluids,
    - vi. Source of bodily fluid or fluids,
    - vii. Part or parts of body exposed to bodily fluid or fluids,
    - viii. Presence of break or rupture in skin or mucous membrane, and
    - ix. Witnesses (if known), and
  - f. Dated signature of employee or the employee's authorized representative.
- B.** The following forms may be used:
1. The workers' portion of the worker's and physician's report of injury (form 102) requests:
    - a. Employee, employer, insurance carrier, and physician identification;
    - b. Description of the accident, including date of injury; and
    - c. Date and signature of the employee or the employee's authorized representative.
  2. Worker's report of injury (form 407) requests:
    - a. Employee and employer identification,
    - b. Job title,
    - c. Employment description,
    - d. Employee's wage data,
    - e. Date of injury,
    - f. Accident and injury descriptions,
    - g. Medical treatment information,
    - h. Information concerning prior injuries of the employee,
    - i. Disability income, and
    - j. Date and signature of the employee or the employee's authorized representative.
  3. Worker's annual report of income (form 110-A) requests:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Employment and wage history for the preceding 12 months;
    - c. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information; and
    - d. Statement that failure to submit an annual report of income may result in a suspension of benefits by the carrier or self-insured employer.
  4. Notice of intent to suspend (form 110-B) requests:
    - a. Employee, employer, insurance carrier, and claim identification;
    - b. Employment and wage history for the preceding 12 months;
    - c. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information;
    - d. Statement that failure to submit an annual report within 30 days of the date of the notice shall result in a suspension of benefits by the carrier or self-insured employer.
  5. Request for hearing requests:
    - a. Names of the employee, employer, and insurance carrier;
    - b. Claim identification;
    - c. Identification of the award, notice, order, or determination protested and reason(s) for the protest;
    - d. Estimated length of time for hearing and city or town in which hearing is requested;
    - e. Name and address of any witness for whom a subpoena is requested; and
    - f. Date and signature of party or the party's authorized representative.
  6. Petition to reopen requests:
    - a. Names of the employee, employer, and insurance carrier;
    - b. Claim identification;
    - c. Identification or description of the new, additional, or previously undiscovered temporary or permanent disability or medical condition justifying the reopening of the claim; and
    - d. Employee's medical and employment history.
  7. Petition for rearrangement or readjustment of compensation requests:
    - a. Names of the employee, employer, and insurance carrier;
    - b. Claim identification;
    - c. Income and employment history;
    - d. Medical history; and
    - e. Statement of the basis for the increase or decrease in earning capacity.
  8. Claim for dependent's benefits-fatality form requests:
    - a. Identification of dependent filing claim;
    - b. Identification of deceased;
    - c. Date of death;
    - d. Date of injury, if different than date of death;
    - e. Name and address of employer at time of deceased's death;
    - f. Statement of cause of death;
    - g. Names and addresses of health care providers rendering treatment to deceased in two years before death;
    - h. Conditions treated by health care providers in the two years before deceased's death;
    - i. If claim is for spousal benefits, the form requests:
      - i. Name, address, and date of birth of spouse;
      - ii. Copy of marriage certificate;
      - iii. Date and place of marriage to deceased;
      - iv. History of prior marriages of deceased and deceased's spouse, including copies of divorce decrees; and
      - v. Statement of living arrangements at time of deceased's death, including reason for living apart at time of death, if applicable;
    - j. If claim is for a dependent child, the form requests:
      - i. Name, date of birth, and address of child at time of deceased's death;
      - ii. List of children in care and custody of current spouse; and
      - iii. Statement of whether unborn child is expected and date expected;
    - k. If claim is for dependent other than a child, the form requests:
      - i. Name and address of other dependent,
      - ii. Relationship of other dependent to deceased, and
      - iii. Statement of the nature and extent of dependency; and
  9. Request to leave the state form requests:
    - l. Date, telephone number, and signature of dependent or authorized representative of dependent.

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- a. Employee, insurance carrier, and claim identification;
  - b. Reason for requesting to leave Arizona;
  - c. Dates leaving and returning to Arizona;
  - d. Out-of-state address;
  - e. Name and telephone number of attending physician; and
  - f. Date and signature of the employee or the employee's authorized representative.
10. Request to change doctors form requests:
- a. Employee, insurance carrier, and claim identification;
  - b. Reason for requesting change of doctor;
  - c. Name and phone number of claimant's current doctor;
  - d. Name and phone number of doctor claimant requests to change to; and
  - e. Date and signature of the employee or the employee's authorized representative.
11. Complaint of bad faith and unfair claim processing practices requests:
- a. Employee, employer, and insurance carrier identification;
  - b. Description of the alleged bad faith or unfair claim processing practices;
  - c. Date of the complaint; and
  - d. Name, address, and telephone number of the person signing the complaint.
12. Certification of employer's drug and alcohol testing policy requests:
- a. Employer's certification as described under A.R.S. § 23-1021(F),
  - b. Name and federal identification number of the employer, and
  - c. Name of all subsidiaries and locations of the employer.

- C. Optional use of a form described in subsection (B) does not affect any requirement under the Act or this Article.
- D. Forms or format for the forms described in this Section are available from the Commission.
- E. Forms prescribed under this Section shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.

**Historical Note**

Former Rule 6. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-106 recodified from R4-13-106 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2).

**R20-5-107. Manner of Completion of Forms and Documents**

- A. An individual completing a form or document shall fill out the form or document legibly in ink or by typewriter.
- B. A party or a party's authorized representative shall sign any form or document that is required by the Act, this Article, or other law to be signed.
- C. Unless otherwise provided in this Article, if a party is required to sign a form or document, the Commission shall not accept a typewritten name or stamped signature.
- D. If, within the time period prescribed by law, a party files an incomplete form or document, or files an instrument other than a form or document when a form or document is required, the Commission shall serve notice to the party that the form or

document fails to comply with this Section. The Commission deems the report or document timely filed if the party files a properly completed and signed form or document within 14 days after the Commission serves the notice described in this subsection.

**Historical Note**

Former Rule 7. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-107 recodified from R4-13-107 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-108. Confidentiality of a Commission Claims File; Reproduction and Inspection of a Commission Claims File**

- A. Except as provided in this Section, a claims file maintained by the Commission is private and confidential and the Commission shall not make the claims file available for inspection and copying. For purposes of this Section, "claims file" means the official record maintained by the Commission for a claimant's industrial injury including the worker's report of injury, employer's report of injury, worker and physician's report of injury, and all other reports, records, instruments, videotapes, audiotapes, transcripts, and other matters scanned or otherwise placed into the file.
- B. Except as provided in subsections (D) and (E), the Commission shall make a Commission claims file relating to a current or prior claim of a claimant available for inspection and copying by any party to any proceeding currently or previously before the Commission involving the same claimant.
- C. Except as provided in subsections (D) and (E), the Commission shall not make a Commission claims file available to a non-party for inspection and copying unless the Commission receives a court order or written authorization signed by the affected claimant or the affected claimant's authorized representative.
- D. The Commission shall make a transcript contained in a Commission claims file available for inspection and copying if:
  - 1. The person requesting to inspect and copy the transcript is a person authorized under subsections (B) or (C); and
  - 2. The transcript concerns a hearing related to a claim that is not in litigation.
- E. The Commission shall make a transcript contained in a Commission claims file available only for inspection if:
  - 1. The person requesting to inspect and copy the transcript is a person authorized under subsections (B) or (C); and
  - 2. The transcript concerns a hearing related to a claim currently in litigation.
- F. The Commission shall provide copies at a charge of \$.25 per page.
- G. A Commission claims file shall not be removed from a Commission office unless in the custody of an authorized representative of the Commission.

**Historical Note**

Former Rule 8. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-108 recodified from R4-13-108 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-109. Admission into Evidence of Documents Contained in a Commission Claims File**

- A. If a party or an administrative law judge considers a document contained in a Commission claims file, including a transcript of a prior proceeding, necessary or appropriate for hearing purposes, the administrative law judge shall receive a copy of

the document into evidence if the document is otherwise admissible.

- B. With the permission of the administrative law judge, instead of submitting a copy of the document into evidence, a party may refer to the document's location on the Commission's optical disk imaging system by providing an accurate description of the document that includes the claimant's claim number and image document identification number the Commission assigns to the document.

#### Historical Note

Former Rule 9. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-109 recodified from R4-13-109 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-110. Employer Duty to Report Fatality

If an employee dies as a result of an injury by accident arising out of and in the course of employment, the employer shall report the death to the Commission's claims division by telephone, telegram, or electronic filing, no later than the next business day following the death. The report shall state the name of the employee, when, how, and where the accident occurred, and the nature of the condition causing the accident. This Section does not limit or affect an employer's duty to report a death to the Arizona Occupational Safety and Health Division of the Commission as required under R20-5-637.

#### Historical Note

Former Rule 10. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-110 recodified from R4-13-110 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-111. Request for Autopsy

If a claim is filed for compensation for death from an industrial injury and an autopsy is requested, the expense of the autopsy shall be borne by the requesting party.

#### Historical Note

Former Rule 11. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-111 recodified from R4-13-111 (Supp. 95-1).

#### R20-5-112. Physician's Initial Report of Injury

- A. A physician shall complete and file with the Commission a physician's initial report of injury under A.R.S. § 23-908(A) within eight days after first providing treatment to an injured worker. The physician shall report the injury:
1. Using Commission form 102 (worker's and physician's report of injury), or
  2. Attaching to form 102 a medical report that contains the information required in form 102.
- B. The physician shall sign and date form 102 or the medical report attached to form 102. The signature of the physician may be typewritten or stamped on this form.
- C. If a claimant uses form 102 to initiate a claim, either the injured worker or the injured worker's authorized representative shall sign the worker's portion of form 102.

#### Historical Note

Former Rule 12. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-112 recodified from R4-13-112 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

August 17, 2001 (Supp. 01-3).

#### R20-5-113. Physician's Duty to Provide Signed Reports; Rating of Impairment of Function; Restriction Against Interruption or Suspension of Benefits; Change of Physician

- A. If a claimant's disability extends beyond seven days, every physician who attends, treats, or examines the claimant shall provide to the insurance carrier, self-insured employer, or special fund division, at least once every 30 days while the claimant's disability continues, a personally signed report describing the:
1. Claimant's condition,
  2. Nature of treatment,
  3. Expected duration of disability, and
  4. Claimant's prognosis.
- B. When a physician discharges a claimant from treatment, the physician:
1. Shall determine whether the claimant has sustained any impairment of function resulting from the industrial injury. The physician should rate the percentage of impairment using the standards for the evaluation of permanent impairment as published by the most recent edition of the American Medical Association in Guides to the Evaluation of Permanent Impairment, if applicable; and
  2. Shall provide a final signed report to the insurance carrier, self-insured employer, or special fund division that details the rating of impairment and the clinical findings that support the rating.
- C. A carrier, self-insured employer, and special fund division shall not interrupt or suspend a claimant's temporary disability compensation benefits because a physician fails to comply with any requirement of subsection (A).
- D. A carrier, self-insured employer, and special fund division may withhold payment to a physician for services rendered to a claimant until the physician complies with subsection (A).
- E. Upon application of a party, the Commission shall authorize a change of physician if:
1. The Commission determines that the health, life, or recovery of a claimant is retarded, endangered, or impaired;
  2. The attending physician agrees to the change or is unavailable to continue treatment;
  3. The Commission determines that the relationship between the attending physician and claimant renders further progress or improvement unlikely;
  4. The Commission determines that the claimant's recovery may be expedited by a change of physician or conditions of treatment; or
  5. The insurance carrier agrees to the change.
- F. Except as provided in A.R.S. § 23-1070 and this subsection, a claimant who is examined by a physician under A.R.S. § 23-908(E) is not required to obtain written authorization to change to another physician. If, however, the claimant continues to see, or treat with, a physician who the claimant initially saw or treated with under A.R.S. § 23-908(E), then that physician is an attending physician and the claimant shall obtain written authorization to change under A.R.S. § 23-1071(B) if the claimant seeks to change to another physician.

#### Historical Note

Former Rule 13. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-113 recodified from R4-13-113 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-114. Examination at Request of Commission, Carrier

**or Employer; Motion for Relief**

- A. If the Commission or a party requests an examination of a claimant by a physician, the party requesting the examination shall serve the claimant, or if represented, the claimant's attorney, with notice of the time, date, place, and physician conducting the examination at least 15 days before the scheduled date of the examination.
- B. If a claimant unreasonably fails to attend or promptly advise of the claimant's inability to attend an examination under this Section, the party requesting the examination may charge the claimant or deduct from the claimant's entitlement to present or future temporary or permanent disability compensation, any reasonable expense of the missed appointment.
- C. A party adverse to a party who schedules a medical examination may offer into evidence the report of any medical examination as provided in R20-5-155 or within five days after the adverse party receives the report, subject to the right of cross-examination by the party who scheduled the examination.
- D. If a carrier, self-insured employer, or special fund division requests an examination of a claimant's mental or physical condition under A.R.S. § 23-1026, the carrier, self-insured employer, or special fund division shall immediately, upon receipt of the report of the examination, provide a copy of the report to the claimant or the claimant's authorized representative. If the mental condition of an unrepresented claimant is examined under A.R.S. § 23-1026, the carrier, self-insured employer, or special fund division may, in its discretion, provide the report to the claimant's treating physician rather than to the claimant.
- E. To protect a claimant from annoyance, embarrassment, oppression, or undue burden or expense, the Commission may order, upon good cause shown, one or both of the following:
  1. That the examination not be held; or
  2. That the examination may be conducted only on specified terms and conditions, including a designation of the time, place, and examining physician.
- F. A claimant requesting protection under subsection (E) shall file a motion with the presiding administrative law judge or chief administrative law judge if a judge has not been assigned to the case, within three days after the claimant receives notice of the examination. The claimant shall serve a copy of the motion on all parties. The party requesting the examination shall have three days after receiving the motion to file a response. The party shall serve the response on the claimant or, if represented, the claimant's attorney of record.

**Historical Note**

Former Rule 14. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-114 recodified from R4-13-114 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-115. Request to Leave the State**

- A. The effective date of an order granting or denying a request to leave the state under A.R.S. § 23-1071(A) is the date a claimant files a request to leave the state with the Commission.
- B. For purposes of A.R.S. § 23-1071(A):
  1. "While the necessity of having medical treatment continues" means the period of time in which a claimant asserts an entitlement to temporary compensation, or active medical, surgical, or hospital benefits;
  2. "Leave the state" means to travel across the state border, except when the logical or nearest medical facility is situated across the state border; and

3. "From the date the employee first requested the written approval" means from the date the claimant's request is filed with the Commission.

**Historical Note**

Former Rule 15. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-115 recodified from R4-13-115 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-116. Payment of Claimant's Travel Expenses When Directed to Report for Medical Examination or Treatment**

- A. If a claimant is directed by a carrier, self-insured employer, or special fund division to report for a medical examination or treatment in a locality other than either the claimant's current place of residence or employment, the carrier, self-insured employer, or special fund division shall pay, in advance, the claimant's travel expenses from either the claimant's current place of residence or employment, whichever route of travel is required.
- B. For purposes of this Section, "travel expenses" means those expenses required to be paid under A.R.S. § 23-1026.
- C. The carrier, self-insured employer, or special fund division shall calculate travel expenses using the current rates applicable to state employees.

**Historical Note**

Former Rule 16. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Correction to subsection (A) as certified effective March 1, 1987 (Supp. 88-4). R20-5-116 recodified from R4-13-116 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-117. Medical, Surgical, Hospital, and Burial Expenses**

- A. A carrier, self-insured employer, or special fund division, shall pay bills for medical, surgical, and hospital benefits provided under A.R.S. § 23-901 et seq. according to applicable medical and surgical fee schedules adopted by the Commission and in effect at the time the services are rendered. A physician or provider of nursing, hospital, drug or other medical services shall itemize and submit a bill for payment only to the responsible carrier, self-insured employer, or special fund division.
- B. A claimant shall not be responsible to pay any disputed amounts between the medical provider and the carrier, self-insured employer, or special fund division.
- C. If a claimant pays a bill described in subsection (A), the responsible carrier, self-insured employer, or special fund division shall reimburse the claimant the amount allowed by the fee schedules, provided that the claimant presents receipted vouchers or other proof of payment to support the claim for reimbursement.
- D. If an insured employer pays a bill described in subsection (A), the responsible carrier or self-insured employer shall reimburse the employer the amount allowed by the fee schedules, provided that the employer presents receipted vouchers or other proof of payment to support the claim for reimbursement.
- E. An insurance carrier, self-insured employer, or special fund division may pay any authorized burial expenses directly to the funeral service professional.
- F. If an employee's dependent pays burial expenses, the responsible carrier, self-insured employer, or special fund division shall reimburse the dependent the amount authorized by A.R.S. § 23-1046 provided that the dependent presents proof of payment to support the claim for reimbursement.

- G. If an insured employer pays burial expenses, the responsible carrier or self-insured employer shall reimburse the employer to the extent authorized by A.R.S. § 23-1046 provided that the employer presents proof of payment to support the claim for reimbursement.

**Historical Note**

Former Rule 17. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-117 recodified from R4-13-117 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-118. Effective Date of Notices of Claim Status and Other Determinations; Attachments to Notices of Claim Status; Form of Notices of Claim Status**

- A. If a notice of claim status accepting a claim for benefits is final, any subsequent notice of claim status that changes a claimant's amount of, or entitlement to, compensation or medical, surgical, or hospital benefits shall not have a retroactive effect for more than 30 days from the date a carrier or self-insured employer issues the subsequent notice of claim status. This subsection does not apply to a subsequent notice that affects the entitlement to or amount of death benefits. The Commission may for good cause relieve a carrier or self-insured employer of the effect of this subsection.
- B. If a notice of claim status or other determination issued by a carrier, self-insured employer, or special fund division, is based upon a physician's report:
1. The carrier or self-insured employer shall attach a copy of the physician's complete report to the notice of claim status or other determination sent to the Commission; and
  2. The carrier, self-insured employer, or special fund division shall attach a copy of the physician's complete report to the notice of claim status or other determination served on a party, except as provided in R20-5-114(D).
- C. If a carrier, self-insured employer, or special fund division pays compensation to a claimant:
1. The carrier or self-insured employer shall close the claim by issuing a notice of claim status; and
  2. The special fund division shall close the claim by issuing a notice of determination.
- D. The inadvertent failure of a carrier, self-insured employer, or special fund division to comply with subsection (B) shall not affect the validity of a notice or determination if the carrier, self-insured employer, or special fund division issuing the notice or determination had in its possession at the time the notice or determination is issued a medical report consistent with the notice or determination.

**Historical Note**

Former Rule 18. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-118 recodified from R4-13-118 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-119. Notice of Third-party Settlement**

- A. Except as otherwise provided by law, if an employer is insured for workers' compensation insurance and a claimant, or in the event of death, the claimant's dependent, elects to proceed against a third party, the claimant shall notify the appropriate workers' compensation carrier, or self-insured employer, of any settlement or judgment in the third party suit and the basis upon which the claimant and third party agree to disburse the proceeds of the settlement or judgment.

- B. If an employer is uninsured for workers' compensation insurance and a claimant, or in the event of death, the claimant's dependent, elects to proceed against a third party, the claimant shall notify the special fund division of any settlement or judgment in the third party suit and the basis upon which the claimant and third party agree to disburse the proceeds of the settlement or judgment.
- C. If a lawsuit is filed against a third party, the claimant or the claimant's attorney shall provide copies of pleadings and all offers of settlement to the workers' compensation carrier, self-insured employer, or special fund division to whom notice is required under subsections (A) and (B).

**Historical Note**

Former Rule 19. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-119 recodified from R4-13-119 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-120. Settlement Agreements, Compromises and Releases**

- A. No settlement agreement, compromise, or waiver of rights of a workers' compensation claim, will be valid unless approved by the Commission.
- B. The acceptance of any payments or the signing of a settlement agreement, compromise, release or waiver of rights, unless approved by the Commission, shall not release the employer or his insurance carrier from any obligation imposed by the Workers' Compensation Law.
- C. The carrier or employer shall not be entitled to a credit for any sums paid to an employee under a settlement agreement which has not been approved by the Commission.

**Historical Note**

Former Rule 20. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-120 recodified from R4-13-120 (Supp. 95-1).

**R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards**

- A. The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.
- B. The Commission shall calculate the present value of an award at least annually, whether payable for a period of months or based upon the life of the employee, using the United States Life Tables, 2003, National Vital Statistics Reports, Vol. 54, Number 14, April 19, 2006, revised March 28, 2007, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on the following formula: The mean average of the three-month Treasury Bill rate on December 31 of each of the five years prior to July 1 of the current year. The rate, once calculated, is effective until the Commission calculates a new rate under this subsection. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.

**Historical Note**

Former Rule 21. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-121 recodified from R4-13-121 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 724, effective February 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 2973, effective July 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4139, effective November 6, 2007 (Supp. 07-4).

**R20-5-122. Lump Sum Commutation**

- A. A petition for a lump sum commutation in an unscheduled case shall not be approved unless the carrier approves of such petition.
- B. If the lump sum commutation petition is approved by the carrier, the Commission's primary consideration in passing upon the petition will be whether more net income per month will be generated after receipt of the lump sum than the applicant is presently receiving. The granting of a lump sum petition will only be granted if the facts demonstrate a reasonable basis for financial betterment or rehabilitation of the claimant.
- C. The burden of proving that the commutation of compensation satisfies the criteria in (B) is on the applicant.

**Historical Note**

Former Rule 22. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-122 recodified from R4-13-122 (Supp. 95-1).

**R20-5-123. Rejection of the Act**

If an employee serves upon an employer written notice under A.R.S. § 23-906, rejecting the provisions of the Act, the employer shall keep one copy of the rejection in the employer's business records.

**Historical Note**

Former Rule 23. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-123 recodified from R4-13-123 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-124. Rejection Not Applicable to New Employment**

- A. An election by an employee to reject the Act is not binding upon the employee in a new employment by another employer or following re-employment by the same employer.
- B. If an employee is continuously employed and the employer changes workers' compensation insurance carriers, or form of doing business, the prior rejection is valid and remains in full force and effect.

**Historical Note**

Former Rule 24. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-124 recodified from R4-13-124 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-125. Rejection Before an Employer Complies with A.R.S. §§ 23-961(A) and 23-906(D)**

An employee's rejection of the Act received by an employer before the employer complies with the requirements of A.R.S. §§ 23-961(A) or 23-906(D) is valid and continues in full force and effect whether the employer subsequently obtains workers' compensation coverage under A.R.S. § 23-961(A), posts the notice required under A.R.S. § 23-906(D), or makes available the forms required under A.R.S. § 23-906(D).

**Historical Note**

Former Rule 25. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-125 recodified from R4-13-125 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-126. Revocation of Rejection**

- A. An employee who rejects the Act may revoke that rejection by serving upon the employee's employer an original and one copy of a written notice of revocation. The written revocation shall state that the employee revokes the employee's prior rejection of the Act.
- B. Within five days after receiving a written notice of revocation, an insured employer shall file with the employer's carrier, or workers' compensation pool, a copy of the notice of revocation. The employee has all rights to compensation and benefits provided by the Act for any injury that occurs after the employee serves the revocation notice upon the employer.

**Historical Note**

Former Rule 26. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-126 recodified from R4-13-126 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-127. Insurance Carrier Notification to Commission of Coverage**

- A. Every insurance carrier authorized to underwrite workers' compensation insurance in Arizona shall, within five days after undertaking to insure an employer, report that information to the Commission. The carrier shall provide the information on or in the same format as Commission form 0006. Form 0006 is available upon request from the Commission.
- B. Failure to comply with this Section does not affect the validity of coverage.

**Historical Note**

Former Rule 27. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-127 recodified from R4-13-127 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-128. Medical Information Reproduction Cost Limitation; Definition of Medical Information**

- A. A health care provider shall not charge more than \$.25 per page plus \$10 per hour in associated clerical costs for reproduction of medical information when a party, an authorized representative of a party, or an entity that is authorized by a claimant in a workers' compensation matter makes a request for that information under A.R.S. § 23-908(C).
- B. This Section applies to all A.R.S. § 23-908(B) health care providers providing medical services to injured claimants including health care providers that contract with copying services, recordkeeping services, or other similar services for the reproduction of medical information. For purposes of this Section, fees for reproduction of medical information charged by these services are considered the same as if the reproduction fees are charged by a health care provider.
- C. For purposes of this Section, "medical information" means:
  1. A communication recorded in any form or medium and maintained for the purpose of patient care, diagnosis, or treatment, including a report, note, order, test result, photograph, videotape, X-ray, and billing record;

2. A report of an independent medical examination that describes patient care or treatment;
  3. A psychological record;
  4. A medical record held by a health care provider including a medical record prepared by another provider; and
  5. A recorded communication between emergency medical personnel and medical personnel concerning the care or treatment of a person.
- D.** For purposes of this Section, “medical information” does not include:
1. Materials that are prepared in connection with utilization review, peer review, or quality assurance activities, including records that a health care provider prepares under A.R.S. §§ 36-441, 36-445 or 36-2402; and
  2. Recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity.

#### Historical Note

Former Rule 28. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-128 recodified from R4-13-128 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-129. Carrier or Workers’ Compensation Pool Determinations Binding upon its Insured or Member; Self-Rater Exception**

- A.** The Commission deems an insurance carrier or workers’ compensation pool the agent of an employer insured by the carrier or workers’ compensation pool.
- B.** The Commission also deems any action or determination taken or made by the insurance carrier or workers’ compensation pool binding upon the employer. The employer may not protest or petition the Commission for relief concerning an action or determination taken by the employer’s insurance carrier or workers’ compensation pool unless the employer notifies the carrier or workers’ compensation pool, and the Commission in writing that the employer disagrees with the carrier’s or worker’s compensation pool’s action or determination within the time described in A.R.S. § 23-947.
- C.** This Section does not apply to employers insured under a Self-Rating Insurance Plan.

#### Historical Note

Former Rule 29. Amended subsection (A) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-129 recodified from R4-13-129 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-130. Claims Office Location and Function; Requirements of Maintaining an Out-of-State Claims Office**

- A.** Except as provided in subsection (B), each carrier that has or is underwriting workers’ compensation insurance in Arizona, and each employer and workers’ compensation pool that has been granted authority to act as a self-insurer by the Commission, shall maintain a workers’ compensation claims office in Arizona. A carrier, self-insured employer, and self-insured workers’ compensation pool shall process and pay workers’ compensation claims and maintain the workers’ compensation claims files described in R20-5-131 in its Arizona office. A carrier, self-insured employer, and self-insured workers’ compensation pool shall notify the claims division of the Commission of the address of the Arizona claims office.
- B.** Except as provided in subsections (C) and (D), a carrier or self-insured employer may request authorization from the

Commission to maintain an out-of-state claims office. The Commission shall grant a carrier or self-insured employer authorization to maintain an out-of-state claims office no later than 20 days after the carrier or self-insured employer provides satisfactory evidence of the following:

1. Existence of a toll-free telephone line to the out-of-state claims office;
  2. Completion of Commission claims division’s training by the individuals responsible for claims processing at the out-of-state office; and
  3. Designation of a financial institution located in Arizona that will cash on demand checks issued by the out-of-state claims office.
- C.** The Commission shall not permit a self-insured workers’ compensation pool to maintain a claims office out-of-state.
  - D.** The Commission shall rescind its authorization to maintain an out-of-state claims office if a carrier or self-insured employer no longer meets the requirements of subsection (B) or fails to process and pay claims as required under the Act and this Article.
  - E.** A carrier or self-insured employer maintaining an out-of-state claims office shall print the carrier’s or self-insured employer’s toll-free telephone number to the out-of-state claims office on all notices of claim status or other determinations issued by the out-of-state claims office. Failure to print the toll-free telephone number on a notice or other determination as required by this subsection does not affect the validity of the notice or determination.
  - F.** For claims processing purposes, a carrier, self-insured employer, or self-insured workers’ compensation pool may have more than one designated representative provided the carrier, self-insured employer, or self-insured workers’ compensation pool:
    1. Notifies the Commission at the time an insurance policy is issued or authorization to self-insure is granted; and
    2. Notifies the Commission each time that the insurance policy or authorization to self-insure is renewed.

#### Historical Note

Former Rule 30. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-130 recodified from R4-13-130 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-131. Maintenance of Carrier and Self-insured Employer Claims Files; Contents; Inspection and Copying; Exchange of Medical Reports; Authorization to Obtain Medical Records**

- A.** A carrier and self-insured employer shall maintain a workers’ compensation claims file for each claimant. A carrier and self-insured employer shall include in a workers’ compensation claims file all employer’s reports, medical and hospital reports, awards, orders, notices of claims status, wage data, and all other items affecting the claim required by law to be maintained by a carrier or self-insured employer.
- B.** Subject to subsection (C), all parties, authorized representatives of parties, and authorized representatives of the Commission may inspect and copy items contained in a carrier’s or self-insured employer’s claims file within five days from the date the item is filed in the claims file.
- C.** If a carrier or self-insured employer maintains a claims file at an out-of-state claims office, the carrier or self-insured employer shall make the claims file available for copying and inspection to the persons listed in subsection (B) within 10 days after receiving a request for the file at a location in Arizona designated by the carrier or self-insured employer.

- D. A carrier or self-insured employer shall furnish copies of a claims file within 10 days after receiving a request from any party, authorized representative of a party, and authorized representative of the Commission at a charge not to exceed \$.25 per page. A carrier or self-insured employer may require prepayment of the copying charges if the requester or authorized representative has an account with the carrier or self-insured employer that is more than 30 days overdue.
- E. A carrier or self-insured employer is not required to maintain in a claims file, or produce for inspection and copying:
  1. Documents or matters representing the work product of the carrier or self-insured employer;
  2. Documents or matters representing the work product of a carrier's or self-insured's attorney; or
  3. Investigation and rehabilitation reports.
- F. All medical records concerning a claimant's mental or physical condition that are in a party's possession shall be furnished, upon request, to another party in the same Commission proceeding.
- G. Within 10 days of a request, a claimant shall provide to a party in a Commission proceeding involving the claimant, a release of information authorizing any attending, treating, or examining physician to provide records described in A.R.S. § 23-908(C).

#### Historical Note

Former Rule 31. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-131 recodified from R4-13-131 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-132. Parties' Notice to Commission of Intention to Impose Liability upon A.R.S. § 23-1065 Special Fund

If the notices required by A.R.S. § 23-1065 are not given to the Commission, the Commission shall not be bound by the testimony and evidence presented at a hearing as it relates to the imposition of liability upon the special fund.

#### Historical Note

Former Rule 32. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-132 recodified from R4-13-132 (Supp. 95-1).

#### R20-5-133. Claimant's Petition to Reopen Claim

- A. A petition to reopen filed with the Commission under A.R.S. § 23-1061(H) shall be in writing, signed, and dated by the claimant or the claimant's authorized representative. A petition to reopen form is available from the Commission upon request.
- B. A claimant shall provide to the Commission a copy of a medical report supporting the disability or condition justifying the reopening of the claim.
- C. If the Commission does not receive the medical report described in subsection (B) within 14 days of receipt of a petition to reopen, the Commission shall notify all parties, in writing, that it has received a petition to reopen without the required medical report. A carrier or self-insured employer is not required to act on a petition to reopen that is received without the required medical report.
- D. If the Commission receives a medical report in support of a petition to reopen and a claimant does not file a petition to reopen within 14 days of receipt of the medical report, the Commission shall forward the medical report to the carrier or self-insured employer for information purposes only. A carrier or self-insured employer is not required to take any action upon receipt of the medical report.
- E. If the Commission receives a medical report in support of a petition to reopen from an out-of-state physician and a party

objects to the report at least 20 days before a scheduled hearing, the Commission shall not consider the report or place the report in evidence unless the party submitting the report produces the author of the report for cross-examination either at the hearing or at a deposition. The party submitting into evidence the medical report prepared by an out-of-state physician shall pay the expenses of a deposition under this subsection.

#### Historical Note

Former Rule 33. Amended subsections (A), (C), (D) and (E) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-133 recodified from R4-13-133 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-134. Petition for Rearrangement or Readjustment of Compensation Based Upon Increase or Reduction of Earning Capacity

- A. A petition for rearrangement or readjustment of compensation filed with the Commission under A.R.S. § 23-1044(F) shall be in writing. A form is available from the Commission upon request.
- B. A party or a party's authorized representative shall sign a petition for rearrangement or readjustment and include in the petition:
  1. A statement of the basis upon which the rearrangement or readjustment of compensation is sought, and
  2. Documentation in support of the petition.
- C. The petition shall be signed by the employee or the employee's authorized representative, the employer, or, in the case of an insurance carrier, by its authorized representative, and shall include a statement of the basis upon which the rearrangement of compensation is sought accompanied by supportive documentary evidence.
- D. If a self-insured employer, carrier, special fund division, or uninsured employer requests a hearing protesting the Commission's determination under A.R.S. § 23-1044(F) and the claimant resides outside of Arizona, the Commission may order the self-insured employer, carrier, special fund division, or uninsured employer to pay the claimant's transportation and living expenses to attend any scheduled hearing.

#### Historical Note

Former Rule 34. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-134 recodified from R4-13-134 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-135. Requests for Hearing; Form

- A. Any interested party or the party's authorized representative, except as otherwise provided by law or this Article, may request a hearing on a claim. A request for hearing shall be in writing.
- B. A Request for Hearing form is available upon request from the Commission and requests the following:
  1. Employee, employer, insurance carrier, authorized representative, and claim identification;
  2. Issue upon which the request for hearing is filed;
  3. Requests for subpoenas of witnesses;
  4. Desired location and length of time for the hearing;
  5. Signature and address of requesting party.

#### Historical Note

Former Rule 35. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-



135 recodified from R4-13-135 (Supp. 95-1).

#### **R20-5-136. Expired**

##### **Historical Note**

Former Rule 36. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-136 recodified from R4-13-136 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 8, 2016 (Supp. 16-4).

#### **R20-5-137. Service of a Request for Hearing**

A party filing a request for hearing shall serve a copy of the party's request for hearing upon all other parties at the same time that the party files the request for hearing with the Commission. The failure to serve a copy of a request for hearing upon other parties does not affect the validity of the hearing request.

##### **Historical Note**

Former Rule 37. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-137 recodified from R4-13-137 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-138. Hearing Calendar and Assignment to Administrative Law Judge; Notification of Hearing**

- A. The chief administrative law judge shall maintain a hearing calendar. The chief administrative law judge shall ensure that a request for hearing filed in accordance with this Article is:
  1. Placed on the hearing calendar, and
  2. Assigned to an administrative law judge who is designated as the presiding administrative law judge.
- B. A presiding administrative law judge may hold a hearing at an earlier date than required under A.R.S. § 23-941(D), if all parties to the proceeding agree.

##### **Historical Note**

Former Rule 38. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-138 recodified from R4-13-138 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-139. Administrative Resolution of Issues by Stipulation Before Filing a Request for Hearing**

- A. At any time before the filing of a request for hearing, parties may resolve issues by written stipulation. The parties shall file the stipulation with the Commission for approval or other action as may be appropriate.
- B. If the Commission determines that a written stipulation is reasonably supported by the facts, the Commission may approve the stipulation or enter an appropriate award without a request for hearing or hearing.

##### **Historical Note**

Former Rule 39. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-139 recodified from R4-13-139 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-140. Informal Conferences**

- A. A presiding administrative law judge may hold an informal conference to:
  1. Resolve and dispose of disputed issues;
  2. Narrow or limit the scope of the issues to be considered at a subsequent hearing;

3. Simplify the method of proof at a hearing; or
4. Eliminate the need for hearing if the facts appear to be uncontested.

- B. A party may request that a pending hearing be disposed of by an informal conference, by filing a written request that:
  1. Specifies the purpose for the conference consistent with subsection (A), and
  2. Does not contain any argument regarding the merits of the case.
- C. If the presiding administrative law judge determines that an informal conference is appropriate, the judge shall give notice to the parties of the time and place of the conference. The presiding administrative law judge may, without a request from a party, schedule an informal conference by giving five days notice to the parties of the time, place, and subject matter of the informal conference. The parties may waive the five day notice requirement of this subsection.
- D. If a presiding administrative law judge disposes of issues in controversy at an informal conference, the presiding administrative law judge may enter an award without convening a hearing.
- E. If a presiding administrative law judge disposes of, narrows, or limits some, but not all issues in controversy, the presiding administrative law judge shall prepare and mail to the parties a statement setting forth the issues to be resolved at a hearing. The presiding administrative law judge shall limit the hearing to the issues contained in the statement unless at the hearing all parties and, the presiding administrative law judge agree that the judge may consider issues beyond the scope of the statement.
- F. Upon request by a party or upon a presiding administrative law judge's own motion, the presiding administrative law judge may order the parties to file a joint statement listing the disputed issues to be considered at formal hearing. The presiding administrative law judge shall give the parties at least 10 days to file the statement and shall order the parties to file the statement three to 10 days before the first scheduled hearing.

##### **Historical Note**

Former Rule 40. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-140 recodified from R4-13-140 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-141. Subpoena Requests for Witnesses; Objection to Documents or Reports Prepared by Out-of-State Witness**

- A. Subpoena requests for witnesses.
  1. Subpoena request for non-medical witness. A party may request a presiding administrative law judge to issue a subpoena to compel the appearance of a non-medical witness by filing a written request with the presiding administrative law judge at least 10 days before the date of the first scheduled hearing.
  2. Subpoena request for expert medical witness. A party may request a presiding administrative law judge to issue a subpoena to compel the appearance of an expert medical witness by filing a written request with the presiding administrative law judge at least 20 days before the date of the first scheduled hearing.
  3. Statement of expected testimony. In the discretion of the presiding administrative law judge, the judge may order the party requesting a subpoena to file within five days of the order a written statement summarizing the substance of the testimony expected of the witness.
  4. Issuance of Subpoena. A presiding administrative law judge shall issue a subpoena requested under this Section

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if the judge determines that the testimony of the witness is material and necessary and, if applicable:

- a. The party files a timely statement under subsection (A)(3); or
  - b. The party shows at or before the first scheduled hearing that good cause exists for the party's failure to respond timely to the judge's order under subsection (A)(3).
5. Service of a subpoena. The Commission may serve a subpoena by mail unless the party requesting the subpoena requests personal service. If a party requests personal service of a subpoena, the Commission shall prepare the subpoena and the party requesting personal service shall:
- a. Ensure that the subpoena is served in the same manner as in a civil action; and
  - b. Pay all expenses of the service.
- B.** A presiding administrative law judge shall not grant a party a continued hearing because a subpoenaed witness fails to appear at hearing unless the party filed a timely request for subpoena as required by subsection (A). If a party timely requested a subpoena for a witness who fails to appear at a scheduled hearing, the presiding administrative law judge may grant a continued hearing if the party requesting the subpoena demonstrates that:
1. The testimony of the witness is material and necessary, and
  2. Good cause is shown as to why the witness failed to appear.
- C.** Witness Fees.
1. If a non-medical witness requests a witness fee, the party requesting the subpoena shall pay the non-medical witness fees and mileage provided for witnesses in civil actions in the Superior Court. If more than one party subpoenas the same witness, the parties shall divide the witness fee equally.
  2. The Commission shall pay the witness fee to a medical witness under the Commission's medical fee schedule after the presiding administrative law judge approves the fee.
- D.** Objection to an out-of-state physician's report.
1. A presiding administrative law judge shall not consider or place into evidence a timely filed physician's report authored by a physician residing outside Arizona if a party files an objection to that report at least 20 days before the scheduled hearing, unless the party submitting the report produces the author for cross-examination either at the hearing or at a deposition.
  2. Nothing in R20-5-143(G) precludes a party from taking or submitting into evidence a deposition of a physician taken under this subsection.
  3. The party submitting into evidence a report of an out-of-state physician shall pay the expenses of a deposition taken under this subsection.
- E.** Objection to document prepared by out-of-state non-medical witness.
1. A presiding administrative law judge shall not consider or place into evidence a timely filed document prepared by a non-medical witness who resides outside Arizona if a party files an objection to that document at least seven days before the scheduled hearing unless the party submitting the document produces the author for cross-examination either at the hearing or at a deposition.
  2. Nothing in R20-5-143 precludes a party from taking or submitting into evidence a deposition within the time limits set by a presiding administrative law judge.

3. The party submitting into evidence a document prepared by an out-of-state non-medical witness shall pay the expenses of a deposition taken under this subsection.

- F.** If a presiding administrative law judge approves, the testimony of a party's out-of-state non-medical or expert medical witness may be taken telephonically.

**Historical Note**

Former Rule 41. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-141 recodified from R4-13-141 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-142. In-State Oral Depositions**

- A.** A party may take the oral deposition of another party or a witness residing in Arizona by serving a Notice of Deposition by Oral Examination upon the deponent and every party at least 10 days before the date of the oral deposition and at least 40 days before the first scheduled hearing.
- B.** A party may file with the presiding administrative law judge a written objection to the taking of an oral deposition within five days after service of the Notice of Deposition. If no request for hearing has been filed, a party shall file the written objection with the chief administrative law judge. The party objecting to the deposition shall:
1. State the basis for objecting to the deposition; and
  2. Serve a copy of the party's objections on all parties.
- C.** The oral deposition shall not commence until the presiding administrative law judge rules on the written objection. The presiding administrative law judge shall rule on the written objection to the taking of an oral deposition within seven days after a party files a written objection by:
1. Ordering the deposition to proceed;
  2. Ordering the deposition not be taken; or
  3. Entering any other appropriate protective order.
- D.** The party taking the deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.
- E.** The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other interested party.
- F.** A presiding administrative law judge shall not cancel or continue a hearing because a party fails to take or complete a deposition under this Section.
- G.** A deposition taken under this Section shall only be used to impeach a witness during a hearing, except that, in the exercise of discretion, the presiding administrative law judge may admit a deposition into evidence for another purpose if:
1. The deponent is deceased at the time of the hearing, or
  2. All parties agree.
- H.** A party may take a telephonic deposition under this Section either by agreement of the parties or by order of the presiding administrative law judge in the exercise of the judge's discretion.

**Historical Note**

Former Rule 42. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-142 recodified from R4-13-142 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-143. Out-of-State Oral Depositions**

- A.** A party shall obtain permission from a presiding administrative law judge before taking an out-of-state oral deposition of another party or a witness by filing a written request with the presiding administrative law judge that contains:

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1. The name and address of the party or witness to be deposed, and
  2. Each reason why the party's or witness' testimony is necessary.
- B.** The party requesting permission to take the out-of-state deposition shall serve a copy of the request upon each party.
- C.** If no objection to the request for permission to take the deposition is filed under subsection (D) the presiding administrative law judge shall, within seven days from the date of the request, grant or deny permission to take the deposition.
- D.** A party may file with the presiding administrative law judge a written objection to the taking of an out-of-state oral deposition within five days after being served with a request to take the out-of-state deposition. The party objecting to the out-of-state deposition shall:
1. State the basis for objecting to the deposition; and
  2. Serve a copy of the party's objections on each party.
- E.** The oral deposition shall not commence until the presiding administrative law judge rules on the written objection. The presiding administrative law judge shall rule on the written objection to the taking of an out-of-state oral deposition within seven days after a party files the written objection by:
1. Ordering the deposition to proceed,
  2. Ordering the deposition not be taken, or
  3. Entering any other appropriate protective order.
- F.** A party shall not take more than two depositions per hearing under this Section unless a presiding administrative law judge, upon a showing of good cause, approves the taking of additional depositions.
- G.** In the exercise of discretion, the presiding administrative law judge may admit into evidence a deposition taken under this Section if the transcript of the deposition is filed with the Commission at least five days before any scheduled hearing or as otherwise directed by the presiding administrative law judge. If the transcript of the deposition is not timely filed under this subsection, the administrative law judge shall not consider the deposition for any purpose unless the parties and the administrative law judge agree that the deposition may be considered.
- H.** Parties may take telephonic depositions under this Section either by agreement of the parties or by order of a presiding administrative law judge in the exercise of the administrative law judge's discretion.
- I.** A party taking a deposition taken under this Section shall comply with R20-5-142(A), (D), (E) and (F).

**Historical Note**

Former Rule 43. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-143 recodified from R4-13-143 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-144. Written Interrogatories**

- A.** After a party files a request for hearing with the Commission, any party may serve written interrogatories upon another party. A party shall serve written interrogatories at least 40 days before the scheduled hearing.
- B.** A party shall not serve more than 25 interrogatories, including subsections.
- C.** A party shall serve answers to the interrogatories upon all parties within 10 days after service of the interrogatories. A party shall not file answers to the interrogatories with the Commission.
- D.** A presiding administrative law judge shall not cancel or continue a hearing because a party fails to answer interrogatories under this Section.

- E.** A party shall only use written interrogatories served under this Section to impeach a witness during a hearing, except that, in the exercise of discretion, the presiding administrative law judge may admit the interrogatory answers into evidence for another purpose if the party answering the interrogatories is deceased at the time of the scheduled hearing.

**Historical Note**

Former Rule 44. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-144 recodified from R4-13-144 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-145. Refusal to Answer or Attend; Motion to Compel; Sanctions Imposed**

- A.** If a party or deponent refuses to answer any question asked at a deposition under R20-5-142 or R20-5-143, the party asking the question shall either complete the deposition in other matters or adjourn the deposition. With notice to all persons affected by the deponent's refusal to answer a question, the party asking the question may apply to the presiding administrative law judge for an order compelling the deponent to answer the question.
- B.** If a party refuses to answer an interrogatory served under R20-5-144, the party serving the interrogatory may submit the interrogatory to the presiding administrative law judge and apply for an order compelling the answer.
- C.** If a presiding administrative law judge issues an order compelling an answer under subsection (A) or (B) and finds that a refusal to answer is without substantial justification, the presiding administrative law judge shall require the party or witness refusing to answer or the authorized representative advising that party or witness not to answer, or both of them, to pay to the party asking the question:
1. Reasonable attorney's fees incurred to obtain the order compelling the answer, and
  2. Reasonable expenses that will be incurred to obtain the requested answer.
- D.** If a presiding administrative law judge denies a motion to compel an answer under subsection (A) or (B), and finds that the motion was made without substantial justification, the presiding administrative law judge shall require the party filing the motion, or the parties' authorized representative advising that party to make the motion, or both of them, to pay to the party or witness refusing to answer, reasonable attorney's fees incurred in opposing the motion.
- E.** In addition to the sanctions authorized under R20-5-157, a presiding administrative law judge may, upon a party's motion, impose the following sanctions upon a party if the party, or an officer or managing agent of that party, willfully fails to appear for a deposition after being served with proper notice of the deposition, or fails to serve answers to interrogatories after proper service of the interrogatories:
1. Strike out all or any part of a document filed by the party;
  2. Dismiss the action or proceeding, or any part of the action or proceeding;
  3. Order the suspension or forfeiture of compensation; or
  4. Preclude the introduction of evidence.
- F.** The party filing a motion under subsections (A), (B), or (E) shall attach to the motion:
1. The statement required under R20-5-105(E) and
  2. A proposed order that includes the relief requested and a service page with the names and addresses of all parties served.

**Historical Note**

Former Rule 45. Amended effective March 1, 1987, filed

February 26, 1987 (Supp. 87-1). R20-5-145 recodified from R4-13-145 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-146. Repealed**

##### **Historical Note**

Former Rule 46. R20-5-146 recodified from R4-13-146 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-147. Videotape Recordings and Motion Pictures**

- A. A party proposing to offer a videotape recording or motion picture into evidence at a Commission hearing shall provide written notice to the Commission and all parties at least 40 days before the first scheduled hearing.
- B. If a party serves a written request to view a videotape recording or motion picture upon the party proposing to submit the videotape recording or motion picture into evidence, the party proposing to offer the videotape recording or motion picture into evidence shall provide the necessary facilities and equipment to allow the other party to view the videotape recording or motion picture no later than 25 days before the first scheduled hearing.
- C. A presiding administrative law judge may admit into evidence a videotape recording or motion picture if the videotape recording or motion picture:
  1. Is a reasonable and accurate representation of the scene, person, object, or action portrayed; and
  2. Will aid in the understanding of the issues before the presiding administrative law judge.
- D. The party submitting the videotape recording or motion picture into evidence shall ensure that commentary, interrogation, dialogue, or testimony are not a part of the videotape recording or motion picture.
- E. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to view a videotape recording or motion picture as provided in this Section.
- F. This Section does not apply to:
  1. Videotape recordings or motion pictures obtained by surveillance, or
  2. Videotape recordings or motion pictures of medical procedures performed by a physician.

##### **Historical Note**

Former Rule 47. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-147 recodified from R4-13-147 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-148. Burden of Presentation of Evidence; Offer of Proof**

- A. A party shall rest at the conclusion of the presentation of the party's evidence. If there is a dispute as to which party has the burden of proof, the presiding administrative law judge shall direct who has the burden of proof.
- B. If a presiding administrative law judge prohibits a witness from answering a question, the presiding administrative law judge shall permit an offer of proof in the form of an avowal or in writing.

##### **Historical Note**

Former Rule 48. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-148 recodified from R4-13-148 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

August 17, 2001 (Supp. 01-3).

#### **R20-5-149. Presence of Claimant at Hearing; Notice of a Parties' Non-Appearance at Hearing; Assessment of Hearing Costs for Non-Appearance**

- A. A claimant, whether or not represented by an attorney, shall appear personally at any hearing without the necessity of subpoena unless excused by the presiding administrative law judge.
- B. Subject to subsection (A), at least three days before a scheduled hearing a party shall notify the presiding administrative law judge of any non-appearance by a party or party's authorized representative that requires the judge to cancel or reschedule the hearing.
- C. If a party fails to notify the presiding administrative law judge as required under subsection (B), the presiding administrative law judge may order the party or the party's authorized representative to reimburse the Commission for hearing expenses and costs incurred by the Commission including fees of expert medical witnesses and other witness fees.

##### **Historical Note**

Former Rule 49. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-149 recodified from R4-13-149 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-150. Joinder of a Party**

- A. An administrative law judge may join as a party any person, firm, corporation, or other entity in favor of whom or against whom a right to relief may exist and over whom the Commission may acquire jurisdiction.
- B. Joinder may be made upon application of any party or upon the presiding administrative law judge's own motion.
- C. A party seeking to join another person, firm, corporation, or other entity shall file a motion requesting joinder with the presiding administrative law judge at least 30 days before hearing. The moving party shall serve a copy of the motion upon the person, firm, corporation, or other entity for whom joinder is requested, and upon all other parties.
- D. If the requirements of this Section are met, the presiding administrative law judge shall join as a party the person, firm, corporation, or other entity for whom joinder is requested and shall issue a notice advising the parties of the joinder.

##### **Historical Note**

Former Rule 50. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-150 recodified from R4-13-150 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-151. Special Appearance**

Any party against whom a claim may exist under the Act, or against whom a contingent liability may exist under the Act, and over whom the Commission has not acquired jurisdiction, may enter a special appearance. A special appearance made under this Section does not invoke the jurisdiction of the Commission.

##### **Historical Note**

Former Rule 51. R20-5-151 recodified from R4-13-151 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### **R20-5-152. Resolution of Issues by Stipulation After the Filing of a Request for Hearing; Notice of Resolution; Assessment of Hearing Costs**

- A. Subject to the requirement of subsection (D), parties may stipulate to any fact or issue after a party files a request for hearing. The stipulation may be in writing or made orally at the time of hearing.
- B. A stipulation is binding upon the parties unless a presiding administrative law judge or the Commission grants the parties permission to withdraw the stipulation.
- C. If a stipulation is not reasonably supported by the evidence, a presiding administrative law judge or the Commission, may set aside or refuse to accept the stipulation and proceed to determine the true facts.
- D. A party shall notify a presiding administrative law judge of any stipulation, compromise or settlement agreement, or withdrawal of a hearing request that makes a hearing unnecessary at least three days before a scheduled hearing.
- E. The presiding administrative law judge may order a party or parties to reimburse the Commission for hearing expenses and costs incurred by the Commission including fees of expert medical witnesses and other witness fees if a party fails to notify the presiding administrative law judge as required under subsection (D).

#### Historical Note

Former Rule 52. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-152 recodified from R4-13-152 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-153. Exclusion of Witnesses

Any party may request that all other witnesses except the parties be excluded from the hearing until called to testify. The presiding administrative law judge may, in the judge's discretion, grant or deny the request. If the request is granted, the presiding administrative law judge shall admonish each witness not to discuss the witness's testimony with anyone other than attorneys on the case.

#### Historical Note

Former Rule 53. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-153 recodified from R4-13-153 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-154. Correspondence to Administrative Law Judge

A person submitting correspondence, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence upon all other parties, or if represented, the parties' authorized representatives. The administrative law judge shall not consider correspondence or subpoena requests to be evidence except by agreement of all parties to the matter.

#### Historical Note

Former Rule 54. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-154 recodified from R4-13-154 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-155. Filing of Medical and Non-Medical Reports Into Evidence; Request for Subpoena to Cross-examine Author of Report Submitted into Evidence; Failure to Timely Request Subpoena for Author

- A. Except as provided in R20-5-114(C), a party filing a medical report or hospital record into evidence ("medical report") that is not already contained in the Commission's claims file, shall file the medical report with the presiding administrative law judge at least 25 days before the first scheduled hearing.

- B. A party filing into evidence a document, report, instrument, or other written matter not described in subsection (A) ("non-medical report") that is not already contained in the Commission's claims file, shall file the non-medical report with the presiding administrative law judge at least 15 days before the first scheduled hearing.
- C. The party filing a medical or non-medical report into evidence shall serve a copy of the report to all other parties.
- D. A presiding administrative law judge shall not receive into evidence any medical or non-medical report that is not filed as required under this Section. If the report has been placed in the Commission's claims file, the presiding administrative law judge shall remove the report from the Commission's claims file and return the report to the filing party.
- E. The presiding administrative law judge may suspend the requirements of this Section;
  1. Upon a showing of good cause; or
  2. If the parties agree that the judge may accept the medical or non-medical report into evidence.
- F. The party filing a medical or non-medical report under this Section shall file a cover letter with the report stating:
  1. The party's identity;
  2. The reports filed; and
  3. Proof of service of the reports upon the other parties.
- G. A party seeking to cross-examine the author of any medical or non-medical report filed into evidence shall request a subpoena under R20-5-141.
- H. If a party fails to timely request a subpoena under this Section and R20-5-141, the party waives the right to cross-examine the author of any medical or non-medical report filed into evidence and the presiding administrative law judge shall admit the medical or non-medical report into evidence.

#### Historical Note

Former Rule 55. Amended subsections (A) and (D) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-155 recodified from R4-13-155 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-156. Continuance of Hearing

- A. A party may request a continuance of a scheduled hearing. If a party shows good cause, a presiding administrative law judge may grant a request that a hearing be continued.
- B. If at the conclusion of a hearing a party seeks to continue the hearing to introduce additional evidence, the party shall state specifically and in detail:
  1. The nature and substance of the additional evidence,
  2. The names and addresses of additional witnesses, and
  3. The reason the party was unable to produce the evidence or witnesses at the hearing.
- C. A presiding administrative law judge may deny a request for a continuance under subsection (B) if the presiding administrative law judge determines that, with the exercise of due diligence, the evidence or testimony could have been produced or the evidence or testimony would be cumulative, immaterial, or unnecessary.
- D. A presiding administrative law judge may, on the judge's own motion, continue a hearing and order further examinations or investigations that the judge determines are warranted.
- E. If more than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing discovery and filing deadlines under this Article shall be calculated with respect to the new hearing date.
- F. If less than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing dis-

covery and filing deadlines under this Article shall be calculated with respect to the original hearing date.

#### Historical Note

Former Rule 56. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-156 recodified from R4-13-156 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-157. Sanctions

- A. A presiding administrative law judge may impose the following sanctions against any party or authorized representative of a party who fails to comply with this Article or fails to comply with an order of the presiding administrative law judge or Commission:
1. Dismissal of the party's request for hearing;
  2. Refusal to permit the introduction of evidence by the party; or
  3. Assessment of reasonable attorney's fees and costs against the sanctioned party or authorized representative of a party.
- B. If a party shows good cause, a presiding administrative law judge or the Commission may relieve a party of sanctions imposed under subsection (A).

#### Historical Note

Former Rule 57. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-157 recodified from R4-13-157 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-158. Service of Awards and Other Matters

- A. An award, decision, order, subpoena, notice, document, or other matter required by the Act, this Article, or other law to be served shall be made upon a party or, if represented, the party's authorized representative. Service upon the authorized representative is service upon the party.
- B. Service may be made and is deemed complete by:
1. Depositing the document or matter in the United States mail, with postage prepaid, addressed to the party served at the address as shown by the records of the Commission; or
  2. Personal service in the same manner as a summons is served in a civil action.
- C. Proof of service may be made by an affidavit or oral testimony of the person making such service.

#### Historical Note

Former Rule 58. Amended subsection (C) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-158 recodified from R4-13-158 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-159. Record for Award or Decision on Review

A presiding administrative law judge's award or decision under A.R.S. § 23-942 or award or decision upon review under A.R.S. § 23-943 shall be based upon:

1. The record as it exists at the conclusion of the hearings, and
2. Any memoranda provided under A.R.S. § 23-943(E) or requested by the presiding administrative law judge.

#### Historical Note

Former Rule 59. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-159 recodified from R4-13-159 (Supp. 95-1). Amended by final

rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-160. Application to Set Attorney Fees Under A.R.S. § 23-1069

- A. For purposes of A.R.S. § 23-1069, "final disposition of a case" occurs when all compensation benefits have been released to a claimant.
- B. A claimant or attorney filing an application for attorney's fees under A.R.S. § 23-1069 shall serve notice of the application to all parties, including if applicable, the insurance carrier, self-insured employer, or special fund division.
- C. Upon the filing of an application, the attorney and claimant shall, provide information to the Commission to enable the Commission to award reasonable attorney's fees.
- D. Attorney's fees awarded under this Section shall be set by the Commission, an administrative law judge, or other authorized representative of the Commission.

#### Historical Note

Former Rule 60. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-160 recodified from R4-13-160 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-161. Stipulations for Extensions of Time

Stipulations for extensions of time in which to file papers or briefs in the various courts shall be received and signed by the Chief Counsel or other members of the Legal Department.

#### Historical Note

Former Rule 61. R20-5-161 recodified from R4-13-161 (Supp. 95-1).

#### R20-5-162. Legal Division Participation

The chief counsel and other members of the legal staff of the Commission who participate in proceedings or matters under the Act and this Article do so on behalf of the Commission.

#### Historical Note

Former Rule 62. R20-5-162 recodified from R4-13-162 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

#### R20-5-163. Bad Faith and Unfair Claim Processing Practices

- A. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "bad faith" if the employer, self-insured employer, insurance carrier, or claims processing representative:
1. Institutes a proceeding or interposes a defense that is not:
    - a. Well-grounded in fact;
    - b. Warranted by existing law; or
    - c. A good faith argument for the extension, modification, or reversal of existing law;
  2. Unreasonably delays:
    - a. Payment of benefits; or
    - b. Authorization for, or receipt of, medical benefits or treatment;
  3. Unreasonably underpays benefits;
  4. Unreasonably terminates benefits;
  5. Intentionally misleads a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or
  6. Unreasonably interferes with or obstructs the claimant's right to choose the claimant's attending physician, except

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- in cases involving a self-insured employer under A.R.S. § 23-1070.
- B.** For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits “unfair claim processing practices” if the employer, self-insured employer, insurance carrier, or claims processing representative:
1. Unreasonably issues a notice of claim status without adequate supporting information in its possession or available to it;
  2. Unreasonably fails to acknowledge communications from the Commission, an unrepresented claimant, or a claimant’s attorney with respect to a claim;
  3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant’s attorney with respect to a claim;
  4. Directly advises a claimant not to consult or obtain the services of an attorney; or
  5. Communicates directly, for an improper purpose, with a claimant represented by an attorney.
- C.** A person alleging bad faith or unfair claim processing practices (“complainant”) shall file a written complaint with the claims manager of the Commission. The complainant, or the complainant’s authorized representative, shall sign the complaint.
- D.** The complaint shall describe the specific actions of the employer, self-insured employer, insurance carrier, or claims processing representative, that are alleged to constitute bad faith or unfair claim processing practices. A complaint form is available upon request from the Commission.
- E.** Upon receipt of a complaint under this subsection, the claims manager of the Commission shall serve the complaint upon all parties.
- F.** If the Commission acts on its own motion under A.R.S. § 23-930(A), the claims manager shall mail a notice of alleged bad faith or unfair claim processing practices to the claimant or the claimant’s authorized representative and the:
1. Employer;
  2. Self-insured employer;
  3. Insurance carrier; or
  4. Claims processing representative.
- G.** The person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section shall file with the claims manager a written response to the complaint or notice, within 30 days after service by the Commission of the complaint or notice.
- H.** The person or entity filing a written response shall serve a copy of the response upon the complainant, or the complainant’s authorized representative, if represented.
- I.** If the person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section fails to file a written response, the Commission shall consider the absence of a response a denial of the allegations of the complaint or notice.
- J.** Upon receipt of a written response, or upon the expiration of 30 days if no response is filed, the Commission shall enter an award as it deems, in its discretion, appropriate under A.R.S. §§ 23-930(B) or (C).

**Historical Note**

Adopted as an emergency effective February 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Amended and readopted as an emergency effective April 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Readopted without change as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Readopted without change as an emergency effective November 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended and readopted as an emergency effective July 11, 1989 (Supp. 89-3). Adopted as a permanent rule effective October 4, 1989 (Supp. 89-4). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

**R20-5-164. Human Immunodeficiency Virus, Hepatitis C, Methicillin-resistant *Staphylococcus Aureus*, Spinal Meningitis and Tuberculosis; Significant Exposure; Employee Notification; Reporting; Documentation; Forms**

- A. An employer subject to the Act shall notify its employees of the requirements of A.R.S. §§ 23-1043.02, 23-1043.03, and 23-1043.04 by posting the Commission notices titled "Work Exposure to Bodily Fluids" and "Work Exposure to methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)" in a conspicuous place immediately next to the "Notice to Employees" notice required under A.R.S. § 23-906(D).
- B. Properly posted "Work Exposure to Bodily Fluids" and "Work Exposure to Methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)" notices constitute sufficient notice to employees of the requirements of a prima facie case under A.R.S. §§ 1043.02(B), 23-1043.03(B), and 23-1043.04(B).
- C. An employer's insurance carrier, claims processor, or workers' compensation pool shall provide the notices specified in subsection (A) to the employer. These notices are also available from the Commission upon request.
- D. An employer shall make readily available to its employees the Commission form described in R20-5-106 titled "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material." An employer's insurance carrier, claims processor, or workers' compensation pool shall provide the "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" to the employer. This form is also available from the Commission upon request.
- E. If an employee sustains a significant exposure as defined in A.R.S. §§ 23-1043.02(G), 23-1043.03(G), or 23-1043.04(H)(2), the employee shall complete, date, and sign a "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" form. The employee or employee's authorized representative shall give to the employer the completed, dated, and signed form. The employer shall return one copy of the completed form to the employee or to the employee's authorized representative. Nothing in this subsection limits the requirements to report an injury or file a claim under the Act.
- F. If an employee submits a written report of a significant exposure to an employer, but does not use the Commission form titled "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material," the employer shall provide the employee the Commission form within five calendar days after receiving the employee's initial written report.
- G. The date of the receipt by the employer or its authorized representative of the employee's initial report is the date used to compute the time period prescribed in A.R.S. §§ 23-1043.02(B)(2), 23-1043.03(B)(2), and 23-1043.04(B)(2) if:
  1. The initial report contains the information required in the "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" form, or
  2. The employee gives to the employer the completed Commission form within 10 calendar days after the employee's receipt of the Commission form.
- H. Failure or refusal by the employer to provide the Commission form to the employee shall not be a defense to a prima facie claim under A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B).
- I. In investigating the circumstances and facts surrounding an employee's report to an employer of a significant exposure under A.R.S. §§ 23-1043.02(C), 23-1043.03(C), and 23-1043.04(C), the employer, or its carrier, or any employees, agents or contractors of either the employer or carrier, shall not

disclose to any person, except as authorized or required by law, that the reporting employee, or any witness or alleged source of exposure, may have or did contract the human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, methicillin-resistant *Staphylococcus aureus*, spinal meningitis, or tuberculosis. However, an employer, its carrier or their respective attorneys, may:

1. Direct an agent to investigate the employee's report of significant exposure, and
  2. Communicate with the investigating agent about the conduct and results of the investigation.
- J. As required under the federal Occupational Safety and Health Standard for Bloodborne Pathogens, 29 CFR 1910.1030, an employer shall pay for the testing required by A.R.S. § 23-1043.02.

**Historical Note**

Adopted effective April 9, 1992 (Supp. 92-2). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2).

**R20-5-165. Calculation of Maximum Average Monthly Wage**

In using the Bureau of Labor Statistics Employment Cost Index to adopt the amount of an increase to the maximum average monthly wage under A.R.S. § 23-1041(E), the Commission shall use the *Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers*, available at <http://www.bls.gov/>.

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1925, effective July 10, 2013 (Supp. 13-3).

**ARTICLE 2. SELF-INSURANCE REQUIREMENTS FOR INDIVIDUAL EMPLOYERS AND WORKERS' COMPENSATION POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND 41-621.01**

**R20-5-201. Definition of Self-insurer**

"Self-insurer" or "self-insured" means an individual employer or a workers' compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that is authorized by the Commission to self-insure for workers' compensation.

**Historical Note**

Former Rule I. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-201 recodified from R4-13-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4).

**R20-5-202. Self-insurance Application; Requirements**

- A. All applicants who initially apply for self-insurance on or after the certification of the 1993 rule amendments by the Attorney General and filing of those amendments with the Secretary of State shall:
  1. Complete, date, sign, and file with the Commission an application for authority to self-insure on a form that can be obtained from the Commission and contains the following information:
    - a. Applicant identification including names, addresses, corporation, subsidiary, and partnership information;
    - b. Nature of business;
    - c. History of business in Arizona and elsewhere;
    - d. Payroll data;
    - e. Work force data;
    - f. Insurance data;
    - g. Claims history;



- h. Method proposed to finance self-insurance liability and reserves;
  - i. Program for compliance with occupational safety and health standards, rules, and laws of this state;
  - j. Program to finance medical, surgical, and hospital benefits including information on organization responsible for processing claims;
  - k. Names and addresses of Arizona agents upon whom legal notice of proceedings before the Commission is served;
  - l. Authorization for signator;
  - m. Authorization by corporate resolution, or board of trustees resolution, if applicable; and
  - n. Statement attesting to the truthfulness of the information in the application.
2. Maintain an office in Arizona. Payroll reports and other materials relating to the calculation of premiums shall be readily available at this office for inspection and audit by the Commission or its authorized representative.
  3. In the first year of operation, obtain a guaranty bond and specific excess insurance or excess of loss insurance in an amount as provided in R20-5-206(D)(1) to adequately protect against catastrophic losses. Starting with the second year of operation, an individual self-insurer shall choose one of the two options provided in R20-5-206(D). The insurance shall contain:
    - a. A 60-day notice of termination; and
    - b. A provision that insolvency of the self-insurer does not relieve the excess insurer of liability assumed under the contract.
- B.** An individual applicant for self-insurance that is not a member of a workers' compensation pool, in addition to complying with subsection (A) of this rule, shall:
1. Have been engaged in business in Arizona for at least five years prior to the date of application.
  2. Provide an annual payroll in this state of at least \$2,000,000 (this payroll may include the combined payrolls of all subsidiary companies carried under the self-insurance authorization; the requirements of this subsection do not apply to political subdivisions of this state) and meet either of the following thresholds:
    - a. Total reported assets of at least \$50,000,000; or
    - b. Combination of \$10,000,000 in net worth and a cash flow ratio of .25.
  3. Provide the Commission with an internally certified copy of the employer's audited or reviewed financial statements for the most current and prior two years. The Commission's review of the applicant's financial statements includes the following:
    - a. Calculation of the following ratios:
      - i. Cash Flow Ratio - Cash flow from operations divided by current liabilities which is an indication of the ability of the applicant to meet current obligations out of cash flow.
      - ii. Current Ratio - Current assets divided by current liabilities which indicate the applicant's ability to service current obligations.
      - iii. Debt Status Ratio - Net worth divided by total liabilities which indicate the proportion of funds supplied by the applicant relative to the funds supplied by creditors.
      - iv. Profitability Ratio - Profit before taxes, divided by total assets, multiplied by 100 which measures the return on assets and the efficiency of assets employed by the firm.
      - v. Quick Ratio - Cash and equivalents, plus trade receivables, divided by current liabilities which express the degree to which the applicant's liabilities are covered by the most liquid current assets.
      - vi. Working Capital Ratio - Working capital divided by sales which measures the sufficiency of working capital to support sales.
    - b. Comparison of the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry.
    - c. Review of notes to the financial statement.
    - d. Review of management report of operation and other information published in the annual statement.
  4. Provide the Commission with the names of all other jurisdictions in which it has been granted authority to self-insure and the effective dates of such authorization.
  5. Provide the Commission with the names of all other jurisdictions in which its application to self-insure has been denied or its authority to self-insure has been suspended or revoked, and the dates and reasons for such denials, suspensions, or revocations.
- C.** In addition to the requirements of subsection (A), a workers' compensation pool applicant for self-insurance shall:
1. File with the application for self-insurance a completed indemnity agreement on a form that can be obtained from the Commission, signed by a duly authorized agent of the pool jointly and severally binding the pool and each of its members to comply with the provisions of A.R.S. Title 23, Chapter 6 and rules adopted pursuant to Chapter 6. The indemnity agreement shall contain the following information:
    - a. Name of the group, with names of trustees and members;
    - b. Amount of the corporate surety bond;
    - c. Name of the service agent of the group, including a description of the agent's duties and responsibilities; and
    - d. Statement that the group will defend and assume liabilities in the name of and on behalf of any member of the group.
  2. Provide a copy of the most recently audited financial report of the pool prepared by a certified public accountant, including a copy of the examination report prepared by the Department of Insurance and that Department's recommendations, if any.
  3. Provide the names and addresses of the members of the board of trustees of the pool.
  4. Provide the agreement indicating the terms and conditions of coverage within the pool including any exclusions of coverage.
  5. An intergovernmental agreement filed with the Commission pursuant to A.R.S. § 11-952.01(G)(7) shall contain the provisions of A.R.S. § 11-952.01(I).

#### Historical Note

Former Rule II. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-202 recodified from R4-13-202 (Supp. 95-1).

#### R20-5-203. Self-insurance Renewal Application; Requirements

- A.** All individual applicants for self-insurance renewal authority shall:
1. Complete, date, sign, and file with the Commission an Option Election form that can be obtained from the Commission when providing a bond or other security as

required by R20-5-206(D) for the payment of workers' compensation liabilities. The Option Election form shall list the following:

- a. Total outstanding workers' compensation accrued liabilities for all previous periods of self-insurance;
- b. Amount of future reserves;
- c. Amount of calculated bond based on the amount of total estimated future liability x 125%.

For those self-insurers complying with R20-5-206(D)(1), the self-insurer shall additionally provide a certificate of excess insurance.

2. Provide a continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank. The amount of the bond, letter of credit, or securities shall equal the amount submitted on the Option Election form.
  3. Submit a copy of the most recent certified annual financial statement at least 30 days prior to the anniversary date of the authorization to self-insure. A parent company that has executed a guaranty for a subsidiary shall also submit a copy of its most recent certified annual financial statement within the same time period required by this subsection.
  4. Provide a Guaranty To Satisfy Compensation Claims Under Workers' Compensation Act in Arizona form as provided in R20-5-206(C) completed, signed, and dated by the parent company of a subsidiary self-insurer if the parent company of the self-insurer is different from the last filing approved by the Commission.
- B.** All workers' compensation pool applicants for self-insurance renewal authority shall:
1. Provide information to the Commission as required under subsections (A)(1), (2), and (3).
  2. Provide an updated indemnity agreement pursuant to R20-5-202(C)(2) for changes occurring since the last filing approved by the Commission.
- C.** All applicants for renewal shall continue to maintain an office in Arizona as described in R20-5-202(A)(2).
- D.** The Commission's analysis for renewal includes the following:
1. A review of the items required by R20-5-202(A).
  2. A review of the claims profile which includes a review of the preceding year's claims filed, claims denied, and denial rate. Denial rates in excess of 8% require additional analysis by the Commission's Claims Division to establish the reasons for the denials.
  3. A review of the self-insurer's financial profile which includes a review of the financial data as described in R20-5-202(B)(3).

#### Historical Note

Former Rule III. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-203 recodified from R4-13-203 (Supp. 95-1).

#### R20-5-204. Denial of Authorization to Self-insure

If the Commission denies an application for authorization to self-insure for failure to comply with A.R.S. § 23-961(A)(2) or for failure to comply with the requirements of R20-5-202 or R20-5-203, the Commission shall issue an Order to the applicant refusing authorization to self-insure. An appeal of such denial may be made pursuant to A.R.S. § 23-945.

#### Historical Note

Former Rule IV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-204 recodified

from R4-13-204 (Supp. 95-1).

#### R20-5-205. Resolution of Authorization

If the Commission grants authorization to self-insure, a Resolution of Authorization to Self-insure will be issued. The issuance of the Resolution shall be conditioned upon the deposit with the Commission, prior to the effective date stated in the Resolution, of the bonds or other securities specified by A.R.S. § 23-961(A)(2) and this Article.

#### Historical Note

Former Rule V. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-205 recodified from R4-13-205 (Supp. 95-1).

#### R20-5-206. Posting of Guaranty Bond; Effective Date; Execution; Subsidiary Company Guaranty Bond; Parent Company Guaranty; Bond Amounts

- A.** Any guaranty bond filed with the Commission shall bear the same effective date as the effective date of the Resolution of Authorization to Self-insure and shall be for a minimum of one year, subject to annual renewal.
- B.** A guaranty bond shall be made by a company authorized and licensed to transact the business of fidelity and surety insurance in Arizona. The guaranty bond shall be executed by a duly authorized agent of the surety and be countersigned by a licensed resident agent. A bond form can be obtained from the Commission and contains the following information:
1. Applicant identification;
  2. Amount of the bond;
  3. Conditions of the bond obligations; and
  4. Statement regarding responsibility for fees and costs associated with collection of the bond and responsibility for payment of any award or judgment against the surety.
- C.** For the Commission to issue a Resolution of Authorization to Self-insure to a subsidiary company, the parent company shall first execute a guaranty for the subsidiary on a form that can be obtained from the Commission. The parent company shall submit its most recent audited financial statement to the Commission for analysis to determine the ability of the parent company to meet its obligations under the guaranty and under A.R.S. § 23-961(A)(2). The guaranty shall state that the parent company agrees and guarantees on behalf of the subsidiary that any and all liabilities against the subsidiary, under or by virtue of the Workers' Compensation Laws of Arizona, shall be promptly and fully paid, and the subsidiary company has on deposit a guaranty bond or securities. The guaranty for a subsidiary company, and the Resolution of Authorization to Self-insure issued to such subsidiary company, shall be valid and effective only as long as the parent company has on file with the Commission a valid guaranty to satisfy compensation claims of the subsidiary. A parent company is one which owns sufficient stock in the subsidiary company to control the subsidiary and does not mean a company in which all or a majority of the stockholders are the same as in the subsidiary. The guaranty shall be accompanied by a verified certificate as to stock ownership of the subsidiary, a certified copy of the charter or articles of incorporation of the parent company and a certified copy of the resolution of the directors of the parent company authorizing a designated officer to execute the guaranty.
- D.** In compliance with this Article and the Workers' Compensation Laws of Arizona, an individual self-insurer that is not a member of a workers' compensation pool shall post either:
1. A minimum \$250,000 guaranty bond and a specific excess reinsurance policy with a self-insured retention of \$250,000 and a policy limit of liability of not less than \$10,000,000.

2. A guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insurer to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insurer for the Commission's approval.

- E. In compliance with this Article and the Workers' Compensation Laws of Arizona, a workers' compensation pool shall post a guaranty bond equal to 125% of the total outstanding accrued liability as reflected in the Option Election form from the self-insured pool to the Commission or a minimum guaranty bond in the amount of \$100,000, whichever is greater. The total outstanding accrued liabilities shall be determined by certification from the self-insured pool for the Commission's approval.

#### Historical Note

Former Rule VI; Amended effective February 27, 1975 (Supp. 75-1). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-206 recodified from R4-13-206 (Supp. 95-1).

#### R20-5-207. Posting of Securities in Lieu of Guaranty Bond; Registration; Deposit

- A. In lieu of posting a guaranty bond as provided in R20-5-206, the self-insurer may deposit with the Commission for transmittal to the State Treasurer bonds of the United States.
- B. Any securities deposited with the State Treasurer shall be registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws. The securities shall be held by the State Treasurer, as custodian subject to the order of, and in trust for, The Industrial Commission of Arizona, with the power in the Commission to collect or order collection of the principal as it becomes due, to sell or order the sale of these securities or any part of these securities, and to apply or order the application of the proceeds to the payment of any award rendered against the self-insurer in the event of the default in the payment of its obligations. The interest coupons on such securities shall be remitted by the Commission to the self-insurer upon request as they mature.
- C. The securities deposited in compliance with subsections (A) and (B) shall have a face value at maturity in the amount specified by the Commission.

#### Historical Note

Former Rule VII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-207 recodified from R4-13-207 (Supp. 95-1).

#### R20-5-208. Posting Other Securities

If the Commission accepts securities other than those specified in R20-5-207, including letters of credit, these securities shall be registered in the same manner as provided in R20-5-207.

#### Historical Note

Former Rule VIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-208 recodified from R4-13-208 (Supp. 95-1).

#### R20-5-209. Authorization Limitation

If the Resolution of Authorization to Self-insure is validated by a deposit of acceptable securities, or by a guaranty bond, the resolution shall remain in full force and effect for a period of one year unless revoked by the Commission.

#### Historical Note

Former Rule IX. Section repealed, new Section adopted

effective July 6, 1993 (Supp. 93-3). R20-5-209 recodified from R4-13-209 (Supp. 95-1).

#### R20-5-210. Continuation of Authorization

If timely and sufficient application for renewal is made pursuant to R20-5-203, the existing authorization to self-insure shall continue, subject to compliance with A.R.S. Title 23, Chapter 6 and this Article, until the renewal application has been finally determined by the Commission.

#### Historical Note

Former Rule X. R20-5-210 recodified from R4-13-210 (Supp. 95-1).

#### R20-5-211. Revocation of Authorization; Notice of Insolvency; Notice of Change of Ownership

- A. The Commission may revoke a resolution of authorization to self-insure for good cause. Good cause includes:
  1. The impairment of the solvency of the self-insurer.
  2. The failure of the self-insurer to respond within 10 days of a demand by the Commission to substitute a satisfactory guaranty bond or securities when in the Commission's judgment the bond or securities on deposit are unsatisfactory or insufficient in amount or character.
  3. The failure of the self-insurer to pay tax assessments levied by the Commission within 30 days of the due dates prescribed by A.R.S. §§ 23-961 and 23-1065.
  4. The failure of the self-insurer to promptly provide the Commission within 60 days the reports required by the Commission under this Article concerning the business, operations, employees, wages, injuries, and other subjects under Commission jurisdiction.
  5. The failure to comply with state workers' compensation laws.
  6. The failure of the self-insurer to pay or comply with any award of the Commission within 30 days after the award becomes final.
  7. The willful misstating of any material fact in a payroll report, injury report, or other report or statement made to the Commission.
  8. The deliberate refusal of the self-insurer to comply with Commission rules.
  9. The failure of the workers' compensation pool to notify the Commission within 30 days before termination or cancellation that a member has been terminated or cancelled.
  10. The failure of the workers' compensation pool to notify the Commission within 30 days of receipt of notification that, as a result of the annual audit or examination by the Director of the Department of Insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations and the resulting notification by the Director of the Department of Insurance to the administrator and board of trustees of the workers' compensation pool of the insufficiency and the Director's list of recommendations to abate the deficiency.
  11. The failure of the pool to comply with the recommendation of the Director of the Department of Insurance within 60 days of the date of notice as prescribed in A.R.S. §§ 11-952.01(L) and 41-621.01(J).
- B. The self-insurer shall notify the Commission within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- C. The self-insurer shall notify the Commission within 24 hours of any change in the ownership status of the employer.

**Historical Note**

Former Rule XI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-211 recodified from R4-13-211 (Supp. 95-1).

**R20-5-212. Notice of Revocation of Resolution of Authorization to Self-insure**

The registration and deposit in the United States mail of a Notice of Revocation of the Resolution of Authorization to Self-insure, addressed to the last known address of the employer as shown by the records of the Commission, and signed by the Commission, shall be deemed to constitute actual delivery of such notice to a self-insurer.

**Historical Note**

Former Rule XII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-212 recodified from R4-13-212 (Supp. 95-1).

**R20-5-213. Substitution of Bond or Securities**

No bond or other security deposited as a condition precedent to validating a Resolution of Authorization to Self-insure shall be returned nor shall any substitution be allowed, except upon written order of the Commission. No return of such bond or other security shall be authorized except upon proof that the employer has placed with the Commission an amount or amounts as determined by the Commission to be sufficient to provide for the present value of all death benefits, awards, and determinations previously made by the Commission or the self-insurer, with an adequate contingency amount to apply to reopened claims that have been closed and become final during the period of self-insurance.

**Historical Note**

Former Rule XIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-213 recodified from R4-13-213 (Supp. 95-1).

**R20-5-214. Rating Plans Available for Self-insurers**

- A. Any of the following rating plans are available to self-insured employers for the purpose of calculating the taxes required by A.R.S. §§ 23-961(G) and 23-1065(A).
  1. Fixed Premium Plan
  2. Ex-medical Plan
  3. Guaranteed Cost Plan
  4. Retrospective Rating Plan
- B. The provisions of the rating plans apply only to operations and payroll in Arizona, and all such operations in Arizona shall be combined as a single base for the calculation of any premium modifications to all such operations.

**Historical Note**

Former Rule XIV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-214 recodified from R4-13-214 (Supp. 95-1).

**R20-5-215. Fixed Premium Plan: Definition; Formula; Eligibility**

- A. A Fixed Premium Plan means a plan in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.
- B. The formula for calculation of the fixed premium plan is as follows:  $\text{Payroll} \times \text{Applicable Rate Less Premium Discount}$ .
- C. Fixed Premium Plan shall be the exclusive plan available to:
  1. Those self-insurers electing this plan.
  2. Those self-insurers whose annual net taxable premium does not exceed \$100,000 annually.
  3. Those self-insurers not eligible for any other plan authorized by the Commission for rating purposes.

**Historical Note**

Former Rule XV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-215 recodified from R4-13-215 (Supp. 95-1).

**R20-5-216. Ex-medical Plan: Definition; Formula; Eligibility; Modification**

- A. An Ex-Medical Plan means a plan for premium calculation which provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to all of the self-insurer's employees for their benefit and that has complied with the requirements specified in A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in such plan.
- B. The formula for calculation of the Ex-Medical Plan is as follows:  $[(\text{Payroll} \times \text{Applicable Rate}) \times (1 - \text{Ex-Medical Factor})]$  less Premium Discount.
- C. Only those self-insurers whose program for medical, surgical, or hospital services has been authorized by the Commission are eligible to utilize this plan, for premium calculation.
- D. To be eligible for this plan the self-insurer's annual net taxable premium must exceed \$100,000.

**Historical Note**

Former Rule XVI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-216 recodified from R4-13-216 (Supp. 95-1).

**R20-5-217. Guaranteed Cost Plan: Definition; Formula; Eligibility; Cost of Calculation**

- A. A Guaranteed Cost Plan means a plan providing for the direct relationship, on an annual basis, of the premium for tax purposes and the experience modification developed to reflect the loss payment and incurred loss experience of the self-insured employer. Loss data for three complete years must be provided to calculate the experience modification factor. This plan shall be calculated annually and the premium shall not be subject to further adjustment during the subsequent year.
- B. The formula for the calculation of the Guaranteed Cost Plan is as follows:  $\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor Less Premium Discount}$ .
- C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the Guaranteed Cost Plan:
  1. The submission of data concerning paid loss determinations and incurred loss reserves for each workers' compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Three years of loss data shall be formulated to calculate the experience modification factor.
  2. An annual net taxable premium exceeding \$100,000.

**Historical Note**

Former Rule XVII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-217 recodified from R4-13-217 (Supp. 95-1).

**R20-5-218. Retrospective Rating Plan: Definition; Formula; Eligibility**

- A. Retrospective rating plan means a plan providing for the relationship between the premium for tax purposes, the experience modification factor developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year. This plan is to be calculated annually and the premiums shall not be subject to further adjustment during the tax year.
- B. The formula for calculating the retrospective rating plan is as follows:  $[\text{Payroll} \times \text{Applicable Rate} \times \text{Experience Modification Factor} \times \text{Basic Premium Factor} + (\text{losses current year} +$

adjusted losses previous year) x loss conversion factor)] x Tax Multiplier = Net Taxable Premium (NTP). The NTP is subject to a maximum and minimum premium level depending on which one of the four rating option plans specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4 is used.

- C. Only those self-insurers who satisfy all of the following requirements shall be eligible to use the retrospective rating plan:
1. The submission of data concerning paid loss determinations and incurred loss reserved for each worker's compensation claimant. The information is used to calculate an experience modification factor for the self-insurer. Four years of loss data must be formulated. The oldest three years of data is used to calculate the rate and the most current year's data is used in the actual tax calculation.
  2. An annual net taxable premium exceeding \$100,000.

#### Historical Note

Former Rule XVIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-218 recodified from R4-13-218 (Supp. 95-1).

#### R20-5-219. Payment of Taxes by Self-insurers

The tax payments described in A.R.S. §§ 23-961(G) through (J) and 23-1065(A) shall be processed in accordance with the following:

1. All self-insurers shall submit their payroll, loss, medical, and other information to the Commission by January 31 of each year.
2. All self-insurers shall pay their annual taxes on or before March 31 based on premiums calculated for the preceding calendar year. The payment for each tax shall not be less than \$250.00 per year.
3. Those self-insurers who paid \$2,000.00 or more for the administrative fund tax (A.R.S. § 23-961(G)) for the preceding calendar year shall pay a quarterly tax in the following year. One of two methods can be used to calculate the payment. The first method is a quarterly payment of 25% of the tax calculated for the previous year. The second method is based on actual payroll and premiums calculated for each quarter. Those self-insured employers who paid \$2,000.00 or more for the Special Fund tax (A.R.S. § 23-1065(A)) for the preceding calendar year must pay a quarterly tax using the same methods to calculate payment. The quarterly payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
4. Upon calculation of the annual taxes, it shall be determined by the Commission if the self-insured employer has overpaid or underpaid its taxes. If the total of the quarterly payments is less than the actual taxes calculated for the year, then the amount representing the difference is due on or before March 31. If the total of the quarterly payments exceeds the amount of the actual taxes calculated for the year, a refund will be paid to the self-insurer.
5. If the self-insurer fails to pay the annual or quarterly taxes when due, a penalty of the greater of \$25.00 or 5% of the tax or payment due plus interest at the rate of 1% per month from the date the tax or payment was due shall be paid by the self-insurer.

#### Historical Note

Former Rule XIX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-219 recodified

from R4-13-219 (Supp. 95-1).

#### R20-5-220. Basis; Definitions

For determining the premium for purposes of R20-5-214, the Commission shall utilize as the basis for classifications, rating procedures, and plans those specified in the rating systems filed by the rating organization used by the State Compensation Fund pursuant to A.R.S. Title 20, Chapter 2, Article 4.

#### Historical Note

Former Rule XX. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-220 recodified from R4-13-220 (Supp. 95-1).

#### R20-5-221. Book and Record Review by the Commission

All reports, books, and records of the self-insurer relating to classifications, payroll, incurred loss reserves, and procedures for development of statistical information for the development of rating information are subject to review by the Commission and its authorized representatives. If, in the judgment of the Commission, reports, records, and data relating to payroll or claims are not valid or credible, the Commission reserves the right to require correction of procedure and data to better determine the information needed to evaluate the rating programs.

#### Historical Note

Former Rule XXI. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-221 recodified from R4-13-221 (Supp. 95-1).

#### R20-5-222. Audits; Cost of Audit

The Commission may, at any time upon three working days' notice, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of the self-insurer for the purpose of determining the scope and adequacy of the maintained records. The entire cost of the audit will be borne by the self-insurer.

#### Historical Note

Former Rule XXII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-222 recodified from R4-13-222 (Supp. 95-1).

#### R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure

##### A. Administrative completeness review.

1. Initial application.
  - a. The Administration Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
  - b. The Administration Division shall inform an applicant by written notice whether the application is complete within the time-frame provided in this subsection. If the application is incomplete, the Administration Division shall include in its written notice to the applicant a complete list of the missing information.
  - c. The Administration Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Renewal application.
  - a. The Administration Division shall review a renewal application for authority to self-insure within 20

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days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.

- b. The Administration Division shall inform a self-insurer by written notice whether the application is complete within the time-frame provided in subsection (A)(2)(a). If the application is incomplete, the Administration Division shall include in its written notice to the self-insurer a complete list of the missing information.
- c. The Administration Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Administration Division that the application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D).

**B. Substantive review.**

1. Initial application. Within 70 days after the Administration Division determines an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Administration Division determines a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.

**C. Overall review.**

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

- D.** If an applicant or self-insurer cannot timely submit to the Administration Division information to complete an initial or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Administration Division no later than 40 days after receipt of the notice from the Administration Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45-day deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Administration Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

**Historical Note**

Former Rule XXIII. Section repealed effective July 6, 1993 (Supp. 93-3). R20-5-223 recodified from R4-13-223 (Supp. 95-1). New Section adopted October 9, 1998 (Supp. 98-4).

**R20-5-224. Computation of Time**

- A.** In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

- B.** Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

**Historical Note**

Former Rule XXIV. Section repealed effective July 6, 1993 (Supp. 93-3). R20-5-224 recodified from R4-13-224 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4).

**ARTICLE 3. PRIVATE EMPLOYMENT AGENTS**

**R20-5-301. Definitions**

In addition to the definitions provided in A.R.S. § 23-521, the following definitions apply to this Article:

“Advertising” means any material, means, or medium used by a licensed employment agent for solicitation or promotion of business. This includes business cards, notices, or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It also includes referral cards, invoices, letterheads, or other forms if the forms are used in combination with solicitation or promotion of business.

“Applicant” means any individual, including a talent or model, seeking the services of a licensed employment agent.

“Applicant-paid fee” means a sum of money or value that is collected from an applicant for receiving employment services from a licensed employment agent.

“Bona fide job order” means an employer’s or company’s written or oral authorization to a licensed employment agent to refer an applicant to the employer.

“Business manager” means a person, firm, corporation, or association whose services to a talent or model are limited to giving financial advice or managing the business affairs of the talent or model.

“Candidate” means a person, firm, corporation, or association, applying for an employment agent license.

“Career counseling service” means a person, firm, corporation, or association that provides career assistance, career management, job search assistance, evaluation or planning, information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or other information to enable an individual to secure employment, but does not include the following:

A provider of job referral services;

A provider of vocational rehabilitation as defined in A.R.S. § 23-501;

A person, firm, corporation, or association that prepares resumes and documents in support of resumes without providing career counseling or referral services;

A public or private educational institution;

A psychologist licensed or certified in this state who provides career guidance and counseling to patients as part of the psychologist’s practice;

A person engaged in the practice of social work, counseling, or marital and family therapy as those terms are defined in A.R.S. § 32-3251, who provides career guidance and counseling as part of the social work, counseling, marital or family therapy;

A physician licensed in this state who provides career guidance and counseling to patients as part of the physician’s practice;

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A priest, minister, rabbi or other clergy who provides career guidance and counseling as part of the clergy's practice; and

An attorney licensed in this state who provides career guidance and counseling as part of the attorney's practice.

"Career counselor" means an individual working in a career counseling service to provide career assistance, career management, job search assistance, career evaluation or planning, or information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, or other information to enable an individual to secure employment. An employee of a career counseling service whose duties are primarily clerical in nature is not a career counselor.

"Commission" means the Industrial Commission of Arizona.

"Company" means a business that obtains applicants from a licensed talent and/or modeling agency.

"Complaint" means an oral or written communication made to the Department or to the Commission by any person alleging improper conduct by a licensed employment agent.

"Council" means the Arizona Employment Advisory Council.

"Department" means the Labor Department of the Industrial Commission of Arizona.

"Director" means the Director of the Industrial Commission of Arizona.

"Electronic media service" means a business that lists applications, resumes, or job openings on a computerized network or system.

"Engagement" means the employment of an individual as an actor, entertainer, model, or performer in an entertainment enterprise.

"Entertainment enterprise" means theater, motion pictures, radio, television, opera, ballet, modeling, circus, vaudeville or variety act, or other performance- or exhibition-oriented business.

"License" means a document issued by the Commission that authorizes a person to conduct business as an employment agent.

"Labor contractor" means an employer as defined under A.R.S. Title 23, Chapter 6, who leases or provides temporary workers to a customer or client.

"Licensed employment agent" or "licensee" means an employment agent defined in A.R.S. § 23-521(A) who holds a valid license issued by the Commission under A.R.S. § 23-521 et seq.

"Managing agent" means a person, firm, corporation, or association that is designated by a licensed employment agent to be in charge of the operation of an employment agency or any of its branches or divisions.

"Model" means an individual who is employed to display, by wearing, clothes or other merchandise.

"Personal manager" means a person, firm, corporation, or association whose services are limited to counseling or advising a talent or model in connection with the talent's or model's professional career.

"Placement counselor" means an individual working in a placement counseling service to assist an applicant to obtain

employment by providing career counseling services, referral services, or registry services. An employee of a licensed employment agent whose duties are primarily clerical in nature is not a placement counselor.

"Placement counseling service" means a person, firm, corporation, or association that provides career counseling services, referral services, or registry services.

"Referral service" means a person, firm, corporation, or association that refers an applicant to employment upon receipt of a bona fide job order.

"Secretary" means the Director of the Industrial Commission of Arizona Labor Department who serves as the Secretary for the Employment Advisory Council.

"Talent" means an individual rendering performing services in an entertainment enterprise, including musicians.

"Talent or modeling agency or agent" means a person, firm, corporation, or association that provides employment information to a talent or model for the purpose of securing an engagement for the talent or model.

#### Historical Note

Former Rule I. R20-5-301 recodified from R4-13-301 (Supp. 95-1). Section R20-5-301 repealed; new Section R20-5-301 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-302. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

#### Historical Note

Former Rule II; Amended effective March 9, 1981 (Supp. 81-2). R20-5-302 recodified from R4-13-302 (Supp. 95-1). Section R20-5-302 repealed; new Section R20-5-302 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-303. Forms Prescribed by the Commission

The Commission shall make the following forms, which contain the information listed, available upon request.

1. Initial application for employment agent license:
  - a. Name of candidate, including other names used by the candidate;
  - b. Personal identifying information of candidate;
  - c. Residence, length of residence, and place of prior residency of candidate;
  - d. Employment history of candidate, including work history and experience as an employment agent;
  - e. Personal references of candidate;
  - f. Felony and misdemeanor convictions of candidate;
  - g. Name, trade name, divisions and all other names under which candidate intends to do business;
  - h. Proposed location of all business sites;
  - i. Organizational structure of business;
  - j. Names and addresses of all persons or firms having a financial interest in the business and the percent-

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- age of financial interest of each person's or firm's share;
- k. Job classifications of proposed clientele;
- l. Fee rates and schedules of business;
- m. Names and addresses of all persons who will be involved in the management and supervision of the business at all locations of the business;
- n. Information relating to Workers' Compensation Insurance; and
- o. Request for education records; and
- p. Request for military discharge records.
- 2. Business financial statement:
  - a. Name of candidate;
  - b. Business address of candidate; and
  - c. Disclosure of financial information of candidate that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person.
- 3. Personal financial statement:
  - a. Name of candidate or managing agent;
  - b. Home address of candidate or managing agent; and
  - c. Disclosure of personal financial information of candidate or managing agent that pertains to financial stability or irregularity, misappropriation, conversion, irregular withholding or accounting of money belonging to another person.
- 4. Supplemental application:
  - a. Name and telephone number of managing agent, including other names used by the managing agent;
  - b. Name of private employment agent with whom the managing agent intends to associate;
  - c. Personal identifying information of managing agent;
  - d. Residence, length of residence, and place of prior residency of managing agent;
  - e. Employment history of managing agent, including work history and experience as an employment agent;
  - f. Personal references of managing agent;
  - g. Felony and misdemeanor convictions of managing agent; and
  - h. Request for education records; and
  - i. Request for military discharge records.
- 5. Renewal application for employment agent license:
  - a. Name, address, and telephone number of licensee seeking renewal;
  - b. Position of licensee with employment agent business;
  - c. Name, trade name, including abbreviations of name or trade name, of licensee seeking renewal;
  - d. Current legal business status of licensee seeking renewal;
  - e. Name of managing agent;
  - f. Type of business to be renewed;
  - g. Address of all business sites of licensee;
  - h. Name of all divisions operated by licensee;
  - i. Names and addresses of other businesses operated by licensee;
  - j. Number of placement counselors employed by licensee during preceding year;
  - k. Schedule of fees and rules implemented by licensee and any changes in the schedule of fees and rules during the preceding year;
  - l. List of changes made to forms required by A.R.S. § 23-521 et seq. and this Article in the preceding year;
  - m. Information pertaining to complaints received in the preceding year by the licensee; and

- n. Information pertaining to compliance with the Arizona workers' compensation laws.

**Historical Note**

Former Rule III; Amended effective March 9, 1981 (Supp. 81-2). R20-5-303 recodified from R4-13-303 (Supp. 95-1). Section R20-5-303 repealed; new Section R20-5-303 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-304. Time-frames for Processing Initial and Renewal Applications for Employment Agent License by Commission****A. Administrative completeness review.**

1. The Department shall review an initial or renewal application for employment agent license within 15 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-521 et seq. and this Article. The Department shall inform the candidate or licensee by written notice whether the application is deemed complete or deficient within the time-frame provided in this subsection. The Department shall deem the application withdrawn if the candidate or licensee fails to file a complete application within 45 days of being notified by the Department that the application is incomplete or deficient. A candidate or licensee can request an extension of time to file a complete application by filing a written request with the Department before the Department deems the application withdrawn. For good cause shown, the Department may grant an extension of time by serving written notice of the extension upon the candidate or licensee.

**B. Substantive review.**

1. Initial applications. Within 120 days after an initial application is deemed complete, the Commission shall determine whether the initial application for employment agent license meets the substantive criteria of A.R.S. § 23-521 et seq. and this Article and shall issue a written order granting or denying the license.
2. Renewal applications. Within 60 days after a renewal application is deemed complete, the Commission shall determine whether the renewal application for employment agent license meets the substantive criteria of A.R.S. § 23-521 et seq. and this Article and shall issue a written order refusing to renew the license or grant the renewal by issuing a new license.

**C. Overall Review.**

1. Initial application. Within 135 days after receipt of an initial application for an employment agent license, the Commission shall issue an order denying or granting the initial license.
2. Renewal application. Within 75 days after receipt of a renewal application for an employment agent license, the Commission shall issue an order refusing to renew the license or grant the renewal by issuing a new license.

**Historical Note**

Former Rule IV; Amended effective March 9, 1981 (Supp. 81-2). R20-5-304 recodified from R4-13-304 (Supp. 95-1). Section R20-5-304 repealed; new Section R20-5-304 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-305. Filing Requirements for Initial Application for Employment Agent License****A. Initial application for employment agent license.**

1. A candidate shall complete an initial application on forms approved by the Commission.



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2. A candidate shall file an application for an employment agent license with the Department. An application is considered filed when it is received at the office of the Department and stamped by the Department with the date of filing.
  3. An application shall be typewritten or written in legible text.
  4. The individual completing the application shall sign and date the application and have the signature notarized.
  5. The individual completing and signing the application shall verify that the information contained in and submitted with the application is true and correct.
- B.** If a candidate intends to do business as a sole proprietorship, then the candidate shall include the following information with the application for an initial employment agent license:
1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
  2. A personal financial statement completed by the candidate;
  3. A business financial statement completed by the candidate;
  4. Education records of the candidate and all managing agents;
  5. Military discharge records of the candidate and all managing agents;
  6. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
  7. A copy of the registration of the trade name through the Arizona Secretary of State;
  8. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
  9. A copy of the franchise agreement, if the proposed business is a franchise; and
  10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business.
- C.** If a candidate intends to do business as a partnership, the candidate shall include the following information with the application for an initial employment agent license:
1. A supplemental application completed by all partners and managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
  2. A personal financial statement for each partner and prepared by each partner;
  3. A business financial statement completed by all partners;
  4. Education records of all partners and all managing agents;
  5. Military discharge records of all partners and all managing agents;
  6. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
  7. A copy of the registration of the trade name through the Arizona Secretary of State;
  8. A copy of the partnership agreement;
  9. A copy of the franchise agreement, if the proposed business is a franchise;
  10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business;
11. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
- D.** If the candidate intends to do business as a corporation, an officer of the corporation shall complete and sign the initial application for employment agent license and shall include the following information in the candidate's application:
1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
  2. A business financial statement of the corporation;
  3. Education records of all managing agents and the officer completing the application for employment agent license;
  4. Military discharge records of all managing agents and the officer completing the application;
  5. A \$5000 surety bond or a \$1000 cash deposit. If a cash deposit is submitted, the candidate shall increase the deposit to \$5000 before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
  6. Completion of the written examination required by A.R.S. § 23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
  7. Certified resolution of the corporation authorizing the application for an employment agent license and naming the individuals authorized to act on behalf of the corporation;
  8. A copy of the candidate's articles of incorporation on file with the Arizona Corporation Commission;
  9. A copy of the franchise agreement, if the proposed business is a franchise;
  10. A copy of the sale or purchase agreement, if the candidate is purchasing an existing employment agent business; and
  11. A copy of the registration of the trade name through the Arizona Secretary of State.
- E.** A candidate shall include with an application for initial employment agent license a schedule of fees and charges as described in A.R.S. § 23-530(A).
- F.** A candidate shall include with an application for initial employment agent license a copy of all rules and regulations as described in A.R.S. § 23-530(A).
- G.** A candidate shall include with an application for initial employment agent license sample forms of the following documents:
1. Receipts;
  2. Contracts;
  3. Job order forms; and
  4. Other documents that relate in any manner to the fee that is charged an applicant.

**Historical Note**

Former Rule V; Former Section R4-13-305 renumbered and amended as Section R4-13-306, new Section R20-5-305 adopted effective March 9, 1981 (Supp. 81-2). R20-5-305 recodified from R4-13-305 (Supp. 95-1). Section R20-5-305 repealed; new Section R20-5-305 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-306. Written Examination**

- A.** Except as otherwise provided in this Article, all individuals required by A.R.S. § 23-526 and this Article to take the written examination described in A.R.S. § 23-526(B), shall complete the examination within 12 months before filing an initial application for employment agent license with the Department. The Commission shall not grant an employment agent license unless all individuals required by A.R.S. § 23-526 and this

Article to take the written examination have answered correctly 80% of the questions asked in the examination.

- B. The Department shall give notice of the time and place of the written examination upon request.
- C. Examination results are valid for a period of 12 months. If after 12 months, the individual taking the examination does not use the results in support of an application for an employment agent license, then that individual shall be required to retake the examination.

#### Historical Note

Former Rule VI. Former Section R4-13-306 renumbered and amended as Section R4-13-307, former Section R4-13-305 renumbered and amended as Section R4-13-306 effective March 9, 1981 (Supp. 81-2). R20-5-306 recodified from R4-13-306 (Supp. 95-1). Section R20-5-306 repealed; new Section R20-5-306 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-307. Renewal of Employment Agent License

- A. A licensee can apply for renewal of an employment agent license under A.R.S. § 23-528 by filing a completed renewal application with the Department before the date of the expiration of the license. In addition to the information described in R20-5-303(5), a licensee shall include the renewal license fee in A.R.S. § 23-528(B).
- B. The Commission shall deem an employment agent license expired if a renewal application is not filed with the Department before the expiration date of the employment agent license. If an employment agent license expires, the formerly licensed agent shall file a new application which meets the requirements of this Article for an initial application.
- C. If a timely and complete renewal application is filed with the Department under this Article, the Commission shall consider the existing employment agent license valid, subject to compliance with A.R.S. § 23-531 et seq. and this Article, until a new license is issued or an order of the Commission refusing to renew becomes final.

#### Historical Note

Former Rule VII. Former Section R4-13-307 renumbered as Section R4-13-309, former Section R4-13-306 renumbered and amended as Section R4-13-307 effective March 9, 1981 (Supp. 81-2). R20-5-307 recodified from R4-13-307 (Supp. 95-1). Section R20-5-307 repealed; new Section R20-5-307 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-308. Substantive Review of Initial or Renewal Application for Employment Agent License

- A. When a completed initial or renewal application for employment agent license is filed, the Department shall investigate the candidate or licensee to verify whether the information contained in and submitted with the initial or renewal application for employment agent license is accurate and complies with the requirements of A.R.S. § 23-521 et seq. and this Article. The Department shall also conduct an investigation of the candidate or licensee, in accordance with A.R.S. § 23-523(3) and § 23-524, to determine whether the candidate or licensee has a history or record of any of the following:
  - 1. Dishonesty;
  - 2. Financial instability or irregularity, including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
  - 3. Incompetence;
  - 4. Gross negligence;
  - 5. Bribery;

- 6. Willful or repeated disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
- 7. Source of injury or loss to the public; or
- 8. Lack of education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.

- B. The Department shall verify that all individuals who are required by this Article to take the written examination required by A.R.S. § 23-526(B) have received a passing score of 80%.
- C. The Department shall present the findings of its investigation described in subsections (A) and (B) to the Council. The Council shall make its recommendation regarding an initial or renewal application for employment agent license based on the information submitted by the candidate or licensee and the investigation of the Department. Under the authority of A.R.S. § 23-522.02, the Council shall recommend that an application for an initial or renewal license be denied if the Council finds one or more of the following conditions:
  - 1. Material misrepresentation or fraud in the initial or renewal application;
  - 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
  - 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
  - 4. The candidate, licensee, or managing agent has a history or record of incompetence;
  - 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
  - 6. The candidate, licensee, or managing agent has a history or record of bribery;
  - 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
  - 8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
  - 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- D. The Department shall present the recommendation of the Council pertaining to an initial application to the Commission. The Department shall also present to the Commission the recommendation of the Council that denies a renewal application. If the Council recommends that a renewal application be granted, the Department is not required to present the recommendation to the Commission. In that event, the Department shall notify the licensee of the approval by sending the licensee a renewed license.

#### Historical Note

Former Rule VIII. Former Section R4-13-308 renumbered as Section R4-13-310, new Section R4-13-308 adopted effective March 9, 1981 (Supp. 81-2). R20-5-308 recodified from R4-13-308 (Supp. 95-1). Section R20-5-308 repealed; new Section R20-5-308 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-309. Decision by the Commission on an Initial or Renewal Application for Employment Agent License

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- A. In addition to the requirements imposed by A.R.S. § 23-521 et seq., the Commission shall consider the following before granting or denying an initial or renewal employment agent license:
  1. The information submitted by the candidate or licensee,
  2. The findings of the investigation by the Department, and
  3. The recommendation of the Council.
- B. Under the authority in A.R.S. §§ 23-523 and 23-524, the Commission shall deny an application for an initial or renewal license if the Commission finds one or more of the following conditions:
  1. Material misrepresentation or fraud in the initial or renewal application;
  2. The candidate, licensee, or managing agent has a history or record of dishonesty;
  3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
  4. The candidate, licensee, or managing agent has a history or record of incompetence;
  5. The candidate, licensee, or managing agent has a history or record of gross negligence;
  6. The candidate, licensee, or managing agent has a history or record of bribery;
  7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
  8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
  9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- C. The Commission shall issue written findings and an order granting or denying an employment agent license.
- D. If the Commission denies an employment agent license, the Department shall serve a copy of the Commission's written findings and order upon the candidate or licensee within five days of the date the Commission issues its findings and order.
- E. If the Commission grants a renewal application for employment agent license, then the Department shall provide the licensee with a renewed license within five days of the date the Commission issues its written findings and order.
- F. If the Commission grants an initial application for employment agent license, the Department shall provide the candidate with written notification of that approval. The written notification shall include a statement that the license approved by the Commission will be issued upon receipt of the annual fee required under A.R.S. § 23-528 and that the approval will expire within 45 days unless the fee is paid.

**Historical Note**

Former Rule IX. Former Section R4-13-309 repealed, former Section R4-13-307 renumbered as Section R4-13-309 effective March 9, 1981 (Supp. 81-2). R20-5-309 recodified from R4-13-309 (Supp. 95-1). Section R20-5-309 repealed; new Section R20-5-309 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-310. Payment of Initial License Fee under A.R.S. § 23-528**

- A. The Commission shall not issue an initial employment agent license granted under this Article until the candidate pays the license fee required under A.R.S. § 23-528.
- B. A candidate shall pay the license fee required under A.R.S. § 23-528 within 45 days of the date the Commission grants the initial application for employment agent license.
- C. If a candidate fails to pay the license fee required under A.R.S. § 23-528 within the time provided in this Section, the Commission shall deem the order approving an initial application for employment agent license expired. In that event, the Commission shall require the candidate to file a new application if the candidate still seeks licensing as an employment agent.

**Historical Note**

Former Rule X. Former Section R4-13-310 renumbered and amended as Section R4-13-312, former Section R4-13-308 renumbered as Section R4-13-310 effective March 9, 1981 (Supp. 81-2). R20-5-310 recodified from R4-13-310 (Supp. 95-1). Section R20-5-310 repealed; new Section R20-5-310 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-311. Right to Request a Hearing**

- A. A candidate or licensee shall have 30 days from the date the Commission findings and order is served under R20-5-309 to request a hearing.
- B. A request for hearing shall be in writing and signed by the candidate or licensee or the candidate's or licensee's legal representative. The candidate or licensee shall file the request for hearing with the Department.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Department within the time specified in subsection (A).

**Historical Note**

Former Rule XI. Former Section R4-13-311 repealed, new Section R4-13-311 adopted effective March 9, 1981 (Supp. 81-2). R20-5-311 recodified from R4-13-311 (Supp. 95-1). Section R20-5-311 repealed; new Section R20-5-311 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-312. Hearing Rights and Procedures**

- A. Burden of proof.
  1. Except as provided in subsection (A)(2) and R20-5-324, in all proceedings arising out of A.R.S. Title 23, Chapter 3, Article 2, the candidate or licensee shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-521 et seq. and this Article.
  2. In revocation and suspension hearings, the Commission shall have the burden of proof to establish that the licensee committed the acts described in A.R.S. § 23-529(A).
- B. Roles of Chair and Chief Counsel.
  1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
  2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission. Upon direction of the Chair of the Commission and on behalf of the Commission, the Chief Counsel shall issue all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Department.

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- C. Appearance by a party.
1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
  2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.
1. For purposes of this Section, a document is deemed filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
  2. Except as otherwise provided in A.R.S. § 23-521, et seq. and this Article, service of all documents upon the Commission, candidate, licensee or applicant shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.
1. The Commission shall give the parties at least 20 days notice of hearing.
  2. A notice of hearing shall be in writing and mailed to the address of the candidate or licensee as shown on the application for employment agent license or upon the candidate's or licensee's representative if a notice of appearance has been filed by the representative. In the case of a fee dispute hearing, a notice of hearing shall be mailed to the address of the applicant as shown on the complaint and the licensee as shown on the answer, if an answer is filed. If no answer is filed, then the notice of hearing shall be sent to the last known mailing address of the licensee as shown on the records of the Commission.
  3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).
- F. Evidence.
1. The civil rules of evidence do not apply to hearings held under this Section.
  2. The parties may make opening and closing statements with the permission of the Commission if the statements will be helpful to a determination of the issues.
  3. All witnesses at a hearing shall testify under oath or affirmation.
  4. The parties may present evidence and conduct cross-examination of witnesses.
  5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
  6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
  7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the

documentary or other tangible evidence and the facts to be proved by them.

- G. Transcript of Proceedings. Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

**Historical Note**

Former Rule XII. Former Section R4-13-312 renumbered as Section R4-13-314, former Section R4-13-310 renumbered and amended as Section R4-13-312 effective March 9, 1981 (Supp. 81-2). R20-5-312 recodified from R4-13-312 (Supp. 95-1). Section R20-5-312 repealed; new Section R20-5-312 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-313. Decision Upon Hearing by Commission**

- A. A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-309(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B. A decision of the Commission to revoke or suspend a license shall be based upon the grounds in A.R.S. § 23-529 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C. A decision of the Commission under R20-5-322(D) shall be based upon the grounds in R20-5-322(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D. Within 30 days after the Commission renders a decision at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E. A Commission decision is final unless a candidate or licensee requests review under R20-5-314 within 30 days from the date the written decision is issued.

**Historical Note**

Former Rule XIII. Former Section R4-13-313 renumbered and amended as Section R4-13-318 effective March 9, 1981 (Supp. 81-2). R20-5-313 recodified from R4-13-313 (Supp. 95-1). New Section adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-314. Request for Review**

- A. A party may request review of a Commission decision issued under R20-5-313 by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties.
- B. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
1. Irregularities in the hearing proceedings or any order or abuse of discretion depriving the party seeking review of a fair hearing;
  2. Misconduct by the Department, Council, Commission, or any party to the hearing;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
  5. Excessive or insufficient sanctions or penalties imposed at hearing;
  6. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;

- 7. Bias or prejudice of the Department, Council, or Commission; or
- 8. That the order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C. A request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E. The Commission's decision upon review is final unless a candidate or licensee seeks judicial review as provided in A.R.S. § 12-901 et seq.

#### Historical Note

Former Section R4-13-312 renumbered as Section R4-13-314 effective March 9, 1981 (Supp. 81-2). R20-5-314 recodified from R4-13-314 (Supp. 95-1). Section R20-5-314 repealed; new Section R20-5-314 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-315. Procedure for Investigation and Disposition of Complaints Filed Under A.R.S. § 23-529

- A. A complaint described in A.R.S. § 23-529 shall be filed with the Department within 90 days of the date on which the event giving rise to the complaint occurred.
- B. Upon receipt of a complaint, the Department shall conduct a thorough investigation of the facts relative to the alleged misconduct including obtaining a response from the licensee that is the subject of the complaint. If, upon completion of its investigation, the Department determines that there is sufficient evidence to warrant a revocation or suspension hearing, the Department shall present its findings to the Commission. If the Commission agrees with the Department that there is sufficient evidence to warrant a revocation or suspension hearing, the Commission shall direct the secretary of the Commission to serve the subject licensee with a verified complaint under A.R.S. § 23-529. In addition to the requirements set forth in A.R.S. § 23-529, the verified complaint shall contain the factual findings of the Department and a statement that the Commission shall consider the failure of the licensee to appear at hearing to be an admission of the factual findings in the verified complaint.
- C. Except as provided in A.R.S. § 23-529, A.A.C. R20-5-312, R20-5-313, and R20-5-314 govern hearing rights and procedures for revocation and suspension hearings.

#### Historical Note

Adopted effective March 9, 1981 (Supp. 81-2). R20-5-315 recodified from R4-13-315 (Supp. 95-1). Section R20-5-315 repealed; new Section R20-5-315 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-316. Reissuance of Employment Agent License After Suspension under A.R.S. § 23-529(D)

- A. An employment agent, whose license has been suspended, may file a request with the Commission after the Commission's decision suspending the license is deemed final asking that the license be reissued. The request for reissuance shall be filed with the Department and shall include the following:
  - 1. The grounds and facts supporting the request for reissuance;
  - 2. All action taken by the formerly licensed employment agent to correct, remedy, or address the reason that the Commission suspended the license; and
  - 3. All information required in an initial application, unless unchanged, in which case a verified statement that the information required for an initial employment agent license is true and correct as originally submitted.

- B. The Department shall review the request for reissuance of employment agent license for administrative completeness within 15 days of receipt of the request.
- C. Within 60 days after the expiration of the time-frame described in subsection (B), the Commission shall conduct a hearing to determine whether the previously suspended license should be reissued. The Commission shall reissue the suspended license if it appears by substantial evidence that the licensee has corrected or remedied the reason that the Commission suspended the license and the licensee has not engaged in any acts in violation of A.R.S. Title 23, Chapter 3, Article 2 or this Article during the time that the license was suspended.
- D. R20-5-312, R20-5-313 and R20-5-314 govern hearing rights and procedure for this Section.

#### Historical Note

Adopted effective March 9, 1981 (Supp. 81-2). R20-5-316 recodified from R4-13-316 (Supp. 95-1). Section R20-5-316 repealed; new Section R20-5-316 adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-317. Amendment of Employment Agent License

- A. A licensee shall apply to the Department for an amendment to its employment agent license 30 days before:
  - 1. Changing the name under which the employment agent license is issued; or
  - 2. Changing the location of the employment agency.
- B. The Department shall review a request for amendment and shall issue an amended license 15 days after receipt of a licensee's current license and the following, if applicable:
  - 1. If the licensee changes the name of the employment agency, the licensee shall submit an amendment or rider of the surety bond showing the new name; or
  - 2. If the licensee changes the licensee's trade name, the licensee shall submit a copy of the registration of the new trade name with the Arizona Secretary of State and submit an amendment or rider of the surety bond showing the new name.
- C. Transfer or sale of license prohibited.
  - 1. A licensee shall not transfer to another the licensee's employment agent license.
  - 2. A licensee shall not sell the licensee's employment agent license. A purchaser of a licensee's business shall not operate the applicant-paid fee business until the purchaser is licensed by the Commission under A.R.S. § 23-521 et seq. and this Article.
- D. Before a licensee changes its legal status or form of doing business, the licensee shall file an initial application for an employment agent license for the new business.
- E. Relinquishment of license.
  - 1. A licensee shall give the Department 30 days written notice before terminating or discontinuing business as an employment agent.
  - 2. After receipt of a notice of intent to terminate or discontinue, the Department shall conduct an investigation of the licensee's operation to determine whether the operations are in order and in compliance with A.R.S. § 23-521 et seq. and this Article.
  - 3. If the Department determines that the licensee's operations are in order it shall notify the licensee and the company issuing the surety bond that the Department approves the discontinuance of the licensee's business and cancellation of the bond. If the licensee has made a cash deposit, the Department shall instruct the State Treasurer to return the cash deposit. After the Department notifies the licensee of its approval to discontinue business,

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ness, the licensee shall return its license to the Department for cancellation.

4. If, after an investigation of the licensee's operation, the Department determines that the licensee's operation is not in order (for example, pending claims, refund claims), the Department shall not approve the cancellation of the surety bond or return of the licensee's cash deposit until the licensee resolves all pending matters to the satisfaction of the Department.

**F. Cancellation of the bond by the surety.**

1. The Department shall provide written notice to a licensee within five days of a notice of cancellation of the bond by the surety. A licensee shall submit a new bond or cash deposit to the Department at least 10 days before the existing bond is canceled.
2. If a licensee fails to provide to the Department a new bond or cash deposit within 10 days before the cancellation of the existing bond, the Department shall advise the licensee in writing that the licensee may not act as an employment agent from the date of the cancellation until the date a new bond or cash deposit is received by the Department.
3. The repeated failure to maintain a surety bond or cash deposit at all times constitutes gross negligence and cause for disciplinary action under A.R.S. § 23-529.

**G. Disassociation of managing agent.**

1. A licensee shall notify the Department within 10 days if any managing agent is disassociated from a licensee.
2. At the time of disassociation, a licensee shall appoint another managing agent unless an existing managing agent will be managing the employment agency without replacement of the disassociating managing agent.
3. A newly appointed managing agent shall complete and file a supplemental application within 30 days of appointment.
4. A newly appointed managing agent shall take and pass the written examination required by A.R.S. § 23-526 and R20-5-306.
5. The Department shall advise a licensee whether an application filed by a newly appointed managing agent is deemed complete within 10 days from the date the application is filed. The Department shall issue findings and an order approving or disapproving the appointment of the newly appointed managing agent within 45 days of the date that the licensee is notified the application is complete. The Department shall disapprove the appointment of the new managing agent if the Department finds one or more of the following conditions:
  - a. Material misrepresentation or fraud in the newly appointed managing agent's supplemental application;
  - b. The newly appointed managing agent has a history or record of dishonesty;
  - c. The newly appointed managing agent has a history or record of financial instability or irregularity including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
  - d. The newly appointed managing agent has a history or record of incompetence;
  - e. The newly appointed managing agent has a history or record of gross negligence;
  - f. The newly appointed managing agent has a history or record of bribery;

- g. The newly appointed managing agent has a history or record of willful disregard of the requirements of A.R.S. Title 23, Chapter 3, Article 2;
- h. The newly appointed managing agent has a history or record of injury or loss to the public; or
- i. The newly appointed managing agent lacks the education, experience, training, or skill to enable the newly appointed managing agent to competently discharge the duties and responsibilities of a managing agent.

6. The Department shall deem its findings and order issued under subsection (G) final unless the licensee requests a hearing before the Commission within 30 days of the date that the findings and order is issued. The request for hearing shall be in writing, signed by the licensee or the licensee's legal representative and filed with the Commission. The Commission shall consider the factors in subsection (G) when approving or disapproving the appointment of a new managing agent. R20-5-312, R20-5-313, and R20-5-314 shall govern hearing rights and procedure for a request for hearing filed under this subsection.

**Historical Note**

Adopted effective March 9, 1981 (Supp. 81-2). R20-5-317 recodified from R4-13-317 (Supp. 95-1). Section R20-5-317 repealed; new Section R20-5-317 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-318. Form of Books, Registers and Records**

- A.** A licensee shall keep true and correct records of all the business transactions related to the business of an employment agency, including records documenting all bona fide job orders or referrals and copies of all advertisements of the licensee. The licensee shall ensure that all records are legible, understandable and maintained in the office of the licensee for at least three years.
- B.** In addition to the requirements of subsection (A), a licensee shall maintain a summary record of the licensee's job orders and referrals for the prior three years which is recorded on a form containing the following:
  1. Name of the individual communicating the job order;
  2. Name of the individual communicating the job referral;
  3. Date of the job order and the job referral;
  4. Name of the individual recording the job order and job referral;
  5. Name and address of employer or company placing the job order;
  6. Name of individual to whom the applicant is to report for an interview;
  7. Job title and basic requirements of the job contained in job order and referral; and
  8. Name of applicant referred.

**Historical Note**

Former Section R4-13-313 renumbered and amended as Section R4-13-318 effective March 9, 1981 (Supp. 81-2). R20-5-318 recodified from R4-13-318 (Supp. 95-1). Section R20-5-318 repealed; new Section R20-5-318 adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-319. Form and Requirements of Contracts**

- A.** Contract terms and provisions. A licensee shall ensure that all contracts between a licensee and applicant set forth in clear and unambiguous terms the respective rights and obligations of the applicant and licensee and include the following:
  1. The name and address of the applicant and licensee;

2. A list of the current schedule of fees and charges described in A.R.S. § 23-530(A) and submitted to the Commission;
  3. A clear statement defining when the applicant becomes obligated for the payment of a fee;
  4. A clear statement describing the circumstances under which the applicant is entitled to an adjustment, waiver, or refund of a fee;
  5. A clear statement describing the services performed by the licensee, including if applicable, the duration of the contract;
  6. A statement that the employment agency is licensed, bonded, operates under the laws of Arizona, and is regulated by the Industrial Commission of Arizona;
  7. An acknowledgment by the applicant that the applicant has received a copy of the signed contract; and
  8. Except for contracts between an applicant and a talent or modeling agent, a statement that employment is considered to be temporary when within 90 days after employment begins the employment is terminated through “no fault” of the applicant, or the applicant voluntarily terminates the employment with “just cause.”
  9. The following statement shall be included in all contracts between an applicant and career counseling service in no smaller than 10 point bold face type: ‘No verbal or written promise or guarantee of any job or employment is made or implied under the terms of the contract’.
- B.** An applicant is deemed to have accepted a position when the applicant agrees with an employer or company to start work at an agreed-upon wage.
- C.** Except for contracts between an applicant and a talent or modeling agent, all placements are considered permanent unless the contract expressly states otherwise or within 90 days after employment begins the employment is terminated through “no fault” of the applicant, or the applicant voluntarily terminates the employment with “just cause.”
- D.** A licensee shall provide the applicant a copy or duplicate original of all documents signed by either or both the applicant and licensee.
- E.** The duration and terms of a contract entered into by a talent or modeling agent and applicant shall not exceed two years. A contract may be renewed or terminated by mutual consent of the parties.
- F.** If a term of a contract entered into by a talent or modeling agent, or applicant provides that the applicant’s compensation is paid directly to the talent or modeling agent by a company, the talent or modeling agent shall pay the applicant the compensation received, less the talent or modeling agent’s fee, no later than seven days after receiving the compensation from the company.
- G.** A talent or modeling agent shall not specify in a contract with an applicant a higher rate of commission than that which is on file with the Department.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-320. Bona Fide Job Order

- A.** A licensee shall not offer or represent to an applicant a specific position without having a bona fide job order.
- B.** A licensee shall not misrepresent any matter in connection with a bona fide job order.
- C.** A licensee shall not initiate contact with any applicant at the applicant’s current place or places of employment for any reason related to the licensee’s employment agency business without the applicant’s written permission.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-321. Bona Fide Job Referral

- A.** A referral from a licensee, other than a talent or modeling agent, is bona fide when all of the following are completed:
1. The licensee informs the applicant of the name and location of an employer that has placed a bona fide job order, including the name of the individual to whom the applicant will report for an interview;
  2. The licensee informs the applicant of the job specifications and salary range, including the nature, terms, and conditions of the position;
  3. The licensee informs the employer of the applicant’s name and qualifications; and
  4. The employer and applicant agree, either directly or by authorized arrangement of the licensee, to meet for an interview.
- B.** A referral from a talent or modeling agent is bona fide when all of the following are completed:
1. The talent or modeling agent informs the applicant of the name and location of a company that has placed a bona fide job order;
  2. The talent or modeling agent informs the applicant of the time and duration of the contracted engagement and the amount to be paid to the applicant for the engagement; and
  3. The talent or modeling agent gives the applicant a description of the entertainment or services to be performed by the applicant, including the nature, terms, and conditions of the position, and if applicable, the number of performances per day or week required of the applicant.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-322. Submission and Approval of Fee Schedule and Receipts by Commission

- A.** The Department shall not approve a fee schedule or receipt submitted by a candidate or licensee unless the schedule or receipt is in a form that is reasonably understandable by applicants.
- B.** The Department shall consider the following factors in determining the reasonableness of a fee under A.R.S. § 23-530(B):
1. The fee customarily charged in the locality for similar employment services;
  2. The time and labor required of the candidate or licensee;
  3. The skill required to perform the employment services properly; and
  4. The experience, reputation, and ability of the candidate or licensee performing the employment services.
- C.** A licensee may change its schedule of fees by filing an amended schedule of fees with the Department. The licensee shall not use the amended schedule of fees until the schedule has been approved by the Department.
- D.** Except as provided in R20-5-308, the Department shall review a licensee’s amended schedule of fees within 30 days from the date of filing and shall issue a written order approving or disapproving the schedule of fees. The Commission shall deem an order approving or disapproving the schedule of fees final unless a licensee requests a hearing within 30 days after the order is issued. R20-5-312, R20-5-313, and R20-5-314 shall govern hearings held under this subsection.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-323. Fees for Services**

- A. Under A.R.S. § 23-530 and subject to subsection (D), a licensee, other than a talent or modeling agent or career counselor, may charge an applicant a fee when any of the following occur:
1. The applicant accepts employment as a result of a bona fide job order;
  2. The applicant accepts employment as a result of a bona fide job order and fails to report for work, except when justifiable circumstances prevent the applicant from reporting to work. For purposes of this Section 'justifiable circumstances' include death of an applicant or family member, serious physical or psychological illness or condition of an applicant or family member or 'just cause' as defined in R20-5-323(F);
  3. The applicant fails to secure or does not accept a position to which the applicant was originally referred but accepts another position with that employer or with any employer to whom the first employer refers the applicant within six months as a result of the original referral by the licensee; and
  4. The applicant informs another person of the availability of the position described in the referral by the licensee and that person accepts the position within six months after the date of the referral.
- B. Under A.R.S. § 23-530 and subject to subsection (D), a talent or modeling agent may charge an applicant a fee when the applicant receives compensation from the company to whom the applicant is sent under a bona fide referral.
- C. Under A.R.S. § 23-530 and subject to subsection (D), a career counselor may either charge an applicant a fee after the applicant receives services from the career counselor, or require payment in advance of services, if the career counselor provides a prompt refund to the applicant when services are not provided.
- D. Computation of a fee by a licensee other than a talent or modeling agent or career counselor.
1. A licensee shall not charge a full fee but may charge an adjusted fee to an applicant who starts work but before the expiration of 90 days stops work for the following reasons:
    - a. The applicant or family member dies,
    - b. The applicant or family member suffers a serious physical or psychological illness or condition,
    - c. The applicant is discharged 'without fault', or
    - d. The applicant resigns with 'just cause'.
  2. A licensee shall not charge more than 50% of the scheduled fee to an applicant who fails to report to work without good reason or voluntarily terminates employment without just cause within 30 days of starting employment.
- E. For purposes of computing a fee, termination "for cause" or "with fault" means a lawful or legal termination "for cause" or "with fault" under the laws of this State which may include termination for the following reasons:
1. Unexcused absence from work;
  2. Intentional violation of employer work rules; or
  3. Incapacitation or inability to perform work duties due to alcohol, drugs, or illegal substances or agents.
- F. For purposes of computing a fee, an applicant has "just cause" for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld from the applicant and those conditions, if known, would cause the applicant to reasonably refuse employment.
- G. Refund of a fee.

1. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if following a bona fide job order the applicant is not permitted to, or is unable to start work, as a result of justifiable circumstances as defined in R20-5-323(A)(2).
2. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if the licensee fails to provide or deliver the services or products agreed upon in the contract between the licensee and applicant.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-324. Fee Disputes**

- A. Complaint alleging refund dispute.
1. An applicant alleging that a licensee has failed to refund a fee that the applicant is entitled to receive may file a written notarized complaint with the Department. The written complaint shall be filed within 90 days of demanding a refund from the licensee. The applicant shall make the written complaint under oath and include the following information:
    - a. The name and address of the applicant;
    - b. The name and address of the licensee against whom the complaint is filed;
    - c. The factual allegations of the applicant along with any supporting documentation;
    - d. The relief requested by the applicant; and
    - e. All steps taken to informally resolve the dispute between the applicant and licensee.
  2. The Department shall serve the licensee a copy of the complaint by certified mail within five days of receipt of the complaint.
- B. Answer.
1. A licensee shall respond to a complaint filed against it by filing an answer with the Department within 10 days after the complaint is mailed.
  2. The licensee shall attach to the licensee's answer copies of all receipts, agreements, or contracts relevant to the dispute.
  3. The Department shall mail the applicant a copy of the licensee's answer within 10 days of receipt of the answer.
- C. Investigation and determination by Department.
1. The Department shall investigate the allegations contained in a complaint and answer to determine whether a fee charged by the licensee complies with A.R.S. § 23-521 et seq. and this Article. At the request of the parties or on its own motion, the Department may schedule an informal meeting between the applicant, licensee and Director of the Department. The Department shall convene the informal meeting for the purpose of obtaining information to assist the Department in its investigation of the refund dispute.
  2. Within 90 days after receipt of the answer, or the complaint if no answer is filed, the Department shall issue written findings and an order setting forth its determination of the refund dispute.
  3. The Department shall mail a copy of its findings and order upon the applicant and licensee by mail at the last known address of the applicant and licensee.
  4. The Department shall deem its findings and order final unless within 30 days from the date the findings and order is mailed, the applicant or licensee, or an authorized representative of the applicant or licensee, requests a hearing before the Commission.
- D. Commission Hearing and Decision.



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1. Hearing rights and procedures shall be governed by R20-5-312.
2. An applicant shall have the burden to establish that the applicant is entitled to a refund.
3. Based on the evidence presented at hearing, the Commission shall determine whether the fee charged by the licensee complies with the requirements of A.R.S. § 23-521 et seq. and this Article entitling the applicant to a refund of the fee. The Commission shall issue written findings and an order setting forth its determination. The Commission decision is final unless a party requests review within 30 days from the date the decision is issued.
4. A party may request review of a Commission decision issued under this subsection by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties. The request for review shall be based upon one or more of the grounds set forth in R20-5-314 (B) that have materially affected the rights of a party. The request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
5. The Commission shall deem its decision upon review final unless an applicant or licensee seeks review as required by A.R.S. § 23-532(C).
5. A position shall not be advertised at maximum pay only. A position may be advertised at a range from minimum to maximum, or by the words "to a maximum or \$" or "to \$." The word "open" or the symbol "\$\$\$" may not be used as a substitute for the salary of any position or positions in an advertisement;
6. An advertised position that requires or may require travel 50 miles beyond the city in which the newspaper or medium is published shall state that the position is not local;
7. A job title shall appear in an advertisement and shall be reasonably descriptive in accordance with the type of work to be performed;
8. An advertisement for a position within the agency itself shall indicate the agency is the employer;
9. An advertisement shall not state "guarantees a job," "guaranteed results," or words of similar import;
10. If the advertisement is a display or promotional advertisement and does not list a particular position, it shall carry the licensed name of the licensed employment agency;
11. An advertisement shall not state or imply that the licensed employment agency has access to an "unpublished job market" or "hidden job market"; and
12. An advertisement for a career counseling service shall not state or imply the following:
  - a. The existence of specific or general job openings;
  - b. Special contacts;
  - c. The success performance of clients in percentage terms;
  - d. Prospective increase in income as a result of utilizing the career counseling service;
  - e. The number of interviews or job offers likely to be obtained as a result of utilizing the career counseling service; and
  - f. The time within which it is likely that a new position will be found.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-325. Determining Right of Referral and Placement**

As between two licensees, the licensee entitled to a fee is the licensee that first completes a bona fide referral. However, if after the expiration of six months from the date of a referral by a licensee to an employer, no active interest or consideration is being given the applicant by the employer through the original referral, and a second licensee, who has a bona fide job order from the employer, refers the same applicant to the same employer and the applicant secures employment as a result of the second referral, the second licensee is entitled to the fee.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-326. Advertising**

In addition to the provisions of A.R.S. § 23-534, the Department shall deem advertising false, misleading, or misrepresentative if the advertisement fails to conform to the following requirements:

1. An advertisement shall carry the name under which the agency is licensed to do business and shall state that the business is an applicant-paid service or includes an applicant-paid service. An agent may abbreviate in an advertisement "applicant-paid service" as "app-pd svc." An agent may abbreviate in an advertisement the name under which the agency is licensed to do business provided that an agent does not abbreviate its licensed name by using initials only unless initials are a part of the name under which the agent is licensed;
2. If an advertisement is for a specific position, it shall be based upon an actual bona fide job order with the licensee and available at the time the advertisement is printed;
3. An advertisement shall not use a post office box number, a press box number, an associate name, an employer or counselor name, a telephone number only, or any other "blind" address;
4. An advertisement shall be canceled when a position is known to be filled or when knowledge is available that the position is not available;

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-327. Labor Contractors**

A labor contractor is not considered a private employment agent provided the labor contractor does not charge a fee to the worker who is contracted to the labor contractor's customer or client and meets the definition of a labor contractor under this Article.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-328. Talent and Modeling Agencies**

- A. All talent or modeling agencies meeting the definition of an employment agent in A.R.S. § 23-521(A) are subject to the provisions of A.R.S. § 23-521 et seq. and this Article, except that the Department shall not consider the following activities as conducting the business of a talent agent in this state if no fees are charged to applicants for:
  1. The production of theatrical or musical arts or stage shows consisting of responsibility for an entire program;
  2. Acting as exclusive business or personal manager for a talent and not referring talent and models to jobs; or
  3. Casting services.
- B. A talent or modeling agency shall investigate any company who offers employment to a talent or model to reasonably ensure that the company has not defaulted in the payment of salaries, fees, or other compensation to talents and models the company has employed.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-329. Employment Agencies Acting Without a License**

- A. The Department shall investigate the nature and scope of the business of any person, firm, corporation, or association when the person, firm, corporation, or association appears to meet the definition of an "employment agent" in A.R.S. § 23-521, but is operating without an employment agent license.
- B. The Department's investigation may include requesting written reports from the person, firm, corporation, or association in question, inspecting relevant records, and securing statements or depositions from witnesses.
- C. If, after a thorough investigation, the Department determines that the person, firm, corporation, or association is conducting the business of an employment agent in Arizona without an employment agent license, the Department shall submit the entire record of its investigation, along with the Department's findings, to the appropriate law enforcement agency for criminal prosecution in accordance with the provisions of A.R.S. § 23-536.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS****R20-5-401. Applicability**

This Article applies to all boilers, lined hot water heaters and pressure vessels operated in Arizona, except the following:

1. Boilers, lined hot water heaters and pressure vessels regulated by the United States Government;
2. Boilers, lined hot water heaters and pressure vessels operated in private residences or apartment complexes of not more than six units; and
3. Boilers, lined hot water heaters and pressure vessels operated on Indian reservations.
4. A lined hot water heater that does not exceed any of the following:
  - a. Heat input of 200,000 BTU per hour,
  - b. Water temperature of 210° F, and
  - c. Nominal water containing capacity of 120 gallons.

**Historical Note**

Former Rules B-1.1 and B-1.2. Former Section R4-13-401 repealed, new Section R4-13-401 adopted effective April 12, 1979 (Supp. 79-2). Section R4-13-401 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-401 recodified from R4-13-401 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-402. Definitions**

In this Article, unless the text otherwise requires:

1. "Act" means A.R.S. Title 23, Chapter 2, Article 11.
2. "Alteration" means any change in the item described on the original manufacturer's data report which affects the pressure-containing capability of the boiler or pressure vessel, including but not limited to:
  - a. Non physical changes such as an increase in the maximum allowable working pressure either internal or external, or
  - b. A reduction in minimum design temperature of a boiler or pressure vessel requiring additional mechanical tests.
3. "ANSI" means American National Standards Institute, Inc., located at 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
4. "Apartment house" means a building with multiple family dwelling units, not used for commercial purposes, including condominiums and townhouses, where boilers are located in a common area outside of the individual dwelling units, such as a boiler room.
5. "Applicant" means an individual requesting permission to act as a special inspector under A.R.S. § 23-485.
6. "ASME Code" means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII and IX, published by ASME International.
7. "ASME International" means a not for profit professional organization that promotes the art, science and practice of mechanical and multidisciplinary engineering and allied sciences throughout the world.
8. "Authorized Inspector" means an authorized representative under A.R.S. § 23-471(1) or a special inspector under A.R.S. § 23-485.
9. "Authorized representative" means the boiler chief or boiler inspector employed by the Division.
10. "Blowdown tank" or "Blowdown separator" means an ASME-stamped vessel designed to receive discharged steam or hot water from a boiler blowoff or blowdown piping system.
11. "Boiler" means a closed vessel in which fluid is heated for use external to itself by the direct application of heat resulting from the combustion of fuel, solid, liquid, or gaseous, or by the use of electricity.
12. "Certificate of Competency" means a person who has passed the National Board Exam.
13. "Certificate Inspection" means an internal inspection, when construction allows; otherwise, it means as complete an inspection as possible.
14. "Condemned" means a boiler or lined hot water heater that has been inspected and found to be unsafe by the Director or authorized inspector and has been stamped or tagged with the code XXX AZ8 XXX.
15. "CSD-1" means Controls and Safety Devices for Automatically Fired Boilers, published by ASME International, incorporated by reference in R20-5-404(A)(4).
16. "Direct fired jacketed steam kettle" means a pressure vessel with inner and outer walls that is subject to steam pressure and stress, is used to boil or heat liquids or to cook food, and falls under the scope of Section VIII, Division 1, Appendix 19 (Electrically Heated or Gas Fired Jacketed Steam Kettles) of the ASME Boiler and Pressure Vessel Code incorporated by reference in R20-5-404(A).
17. "External inspection" means an examination of a boiler or lined hot water heater performed by an authorized inspector when the boiler or lined hot water heater is in operation.
18. "Forced circulation hot water heater" means a hot water heater used for potable water, a hot water heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.
19. "Fully attended power boiler" means a power boiler that is operated by an individual who meets the requirements of R20-5-408(C), and whose primary function is the care, maintenance, and operation of the boiler and the equipment associated with the boiler system.

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20. "High temperature water boiler" means a boiler in which water is heated and operates at a pressure in excess of 160 psig (1.1 MPa) and/or temperature in excess of 250° F.
21. "Historical boilers" means steam boilers of riveted construction, preserved, restored, or maintained for hobby or demonstration use.
22. "Inspection certificate" means a document issued by the Division for the operation of a boiler, lined hot water heater or direct fired jacketed steam kettles when a certificate inspection has been successfully completed.
23. "Internal inspection" means a complete examination of the internal and external surfaces of a boiler or lined hot water heater by an authorized inspector after the boiler or lined hot water heater is shut down.
24. "Lined hot water heater" means the same as lined hot water storage heater defined in A.R.S. § 23-471(10) as a vessel which is closed except for openings through which water can flow, that includes the apparatus by which heat is generated and on which all controls and safety devices necessary to prevent pressures greater than 160 psig (1100 kPa gage) and water temperature greater than 210° F are provided, in which potable water is heated by the combustion of fuels, electricity, or any other heat source and removed for external use.
25. "MAWP" means maximum allowable working pressure.
26. "National Board Commissioned Inspector" means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.
27. "National Board Registration Number" means a unique number issued to a boiler, hot water heater or pressure vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.
28. "NFPA" means National Fire Protection Association.
29. "Non-Standard Boiler" means any boiler, hot water heater or pressure vessel that is not constructed or maintained to the standards incorporated by reference of this Article.
30. "Owner" or "Operator" means any individual or organization, including this state and all political subdivisions of this state, who have title, control or duty to control, the operation of one or more boilers, lined hot water heaters or pressure vessels.
31. "Portable boiler" means a boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose or wire.
32. "Relief valve" means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.
33. "Repairs" means work necessary to restore a boiler, lined hot water heater or pressure vessel to operating condition that complies with this Article.
34. "Safety relief valve" means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a safety valve or as a relief valve.
35. "Safety valve" means an ASME-stamped automatic pressure relieving device designed for steam or vapor service which is actuated by the pressure upstream of the valve and characterized by full opening pop-action.
36. "Secondhand" means a boiler, lined hot water heater or pressure vessel that has changed both location and ownership since original installation.
37. "Shelter" means a permanent structure that provides protection from the weather.
38. "Special Inspector" means any authorized inspector who is issued an Arizona Commission but is not employed by the state of Arizona.
39. "State Identification Number" means a unique number assigned by the Division to a boiler, hot water heater or pressure vessel installed in Arizona.
40. "User" means a person or entity that does not have legal title to a boiler, lined hot water heater or pressure vessel, but has control and responsibility for the operation of a boiler, lined hot water heater or pressure vessel.

**Historical Note**

Former Rules B-2.1 through B-2.6. Former Section R4-13-402 repealed, new Section R4-13-402 adopted effective April 12, 1979 (Supp. 79-2). Amended effective March 31, 1981 (Supp. 81-2). Amended effective May 11, 1981 (Supp. 81-3). Amended effective May 31, 1985 (Supp. 85-3). Section R4-1-402 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-402 recodified from R4-13-402 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-403. Boiler Advisory Board**

- A. Members of the boiler advisory board appointed by the Commission pursuant to A.R.S. § 23-474(2) shall serve for a period of three years. At the end of each three year term, the Commission may extend a member's term an additional three years or replace any member with an individual representing similar interest within the industry. The board shall be composed of persons in the boiler industry and shall be balanced in representation with respect to industry, owner/operators, labor and the public.
- B. The board shall hold an annual meeting and such other meetings as may be appropriate and shall conduct business at times and places arranged by the Commission.

**Historical Note**

Former Rules B-3.1 through B-3.3. Former Section R4-13-403 repealed, new Section R4-13-403 adopted effective April 12, 1978 (Supp. 79-2). Section R4-13-403 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-403 recodified from R4-13-403 (Supp. 95-1). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-404. Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels**

- A. The following apply to this Article:
  1. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona, six months after the effective date of this Article shall comply with the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII Division 1, 2, 3, IX, and B31.1 Power Piping, and addenda as of July 1, 2007, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International at Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
  2. An owner or user of a boiler, lined hot water heater or pressure vessel installed, repaired, replaced, or reinstalled in Arizona, before the effective date of this Article shall

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comply with subsection (A)(1), or the ASME Boiler and Pressure Vessel Code in effect at the time of the last installation, repair, replacement, or reinstallation of the boiler, lined hot water heater or pressure vessel in Arizona.

3. An owner or user of a gas-fired lined hot water heater installed, operated, repaired, replaced, or reinstalled in Arizona shall comply with the American National Standard for Gas Water Heaters, ANSI Z21.10.3-2004, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
  4. An owner or user of a boiler installed, repaired, replaced or reinstalled in Arizona after the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers, ANSI/ASME CSD-1-2006, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
  5. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona before the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers in effect at the time of the last installation, repair, replacement or reinstallation of a boiler in Arizona. As an alternative, an owner or user of a boiler described in this subsection may comply with subsection (A)(4).
  6. A permanent source of outside air shall be provided for each boiler and lined hot water heater room to assure complete combustion of the fuel as required by ANSI Z223.1-2006, NFPA 54, National Fuel Gas Code incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
- B.** The following registration requirements apply to this Article:
1. All boilers and lined hot water heaters, including reinstalled and secondhand boilers, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors except for:
    - a. Non-standard boilers installed up to six months after the effective date of this Section,
    - b. Cast iron boilers, and
    - c. Cast aluminum boilers.
  2. All fired and unfired pressure vessels installed or reinstalled on or after July 1, 2009, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors.
- C.** The following installation, maintenance, and repair requirements apply to this Article.
1. An owner or user shall keep a signed copy of the Manufacturer's Data Report for a boiler or lined hot water heater at the location of the boiler or lined hot water heater and make the report available for review upon request from an authorized inspector.
  2. A boiler shall have masonry or structural supports of sufficient strength and rigidity to safely support the boiler and its contents without any vibration in the boiler or its connecting piping.
  3. There shall be at least 36 in. (915 mm) of clearance on each side of the boiler or lined hot water heater. Alternative clearances according to the manufacturer's recommendations are subject to approval by the Division prior to installation of boiler or lined hot water heater.
  4. A boiler with a manhole shall have at least five feet clearance between the boiler manhole and any wall, ceiling, or piping.
  5. A newly constructed boiler room in excess of 500 square feet of floor area and containing one or more boilers with a fuel capacity of 1,000,000 BTU per hour or a heating capacity greater than 285 Kw (electric), shall have at least two exits on each level of the boiler or boilers. The owner or user shall ensure each exit is remotely located from other exits.
  6. An owner or user shall keep a boiler or lined hot water heater room clean and with no obstructions to the boiler or lined hot water heater.
  7. An owner or user shall not store flammable or explosive materials in a boiler or lined hot water heater room.
  8. An owner or user shall not store combustibles less than three feet from any part of a boiler or lined hot water heater.
  9. If a boiler or lined hot water heater is moved outside Arizona for temporary use or repairs, the owner or user shall not reinstall the boiler or lined hot water heater in Arizona until the owner or user notifies and receives verbal or written approval from the Division under R20-5-419 to reinstall the boiler or lined hot water heater. If the Division grants approval to reinstall the boiler or lined hot water heater, the owner or user shall not operate the reinstalled boiler or lined hot water heater until the owner or user receives an inspection certificate from the Division under this Article.
  10. Before a new power boiler or a used or secondhand boiler or pressure vessel is installed, an inspection shall be made by an authorized inspector of this state, or by a National Board Commission Inspector. This inspection is to assess the integrity of the vessel and evaluate the original design specification. Prior to installation, an application shall be filed by the owner or user of the boiler or pressure vessel with the Division for approval. This application shall contain the following information:
    - a. Name of the owner or user;
    - b. Mailing address of owner or user;
    - c. Business telephone number of owner or user;
    - d. Installation name and address;
    - e. Installation date;
    - f. Start up date;
    - g. Name and address of boiler/pressure vessel insurance company;
    - h. Arizona serial number of the boiler/pressure vessel being replaced, if applicable;
    - i. Description of the new, used or secondhand power boiler/ pressure vessel as to include:
      - i. Manufacture's name,
      - ii. Date manufactured,

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- iii. Maximum allowable pressure or temperature of boiler/pressure vessel, and
  - iv. National Board registration number;
  - j. Name, address, business phone number, cell phone number, fax number and state contractor's license number of company or individual that will be installing the object;
  - k. Name, title and phone number of the contact person on the site of installation; and
  - l. Signature, title and date of the person submitting the application.
11. Before the owner or user installing a used boiler or pressure vessel, the boiler or pressure vessel shall pass a hydrostatic test that is witnessed by an authorized inspector, authorized representative or by any National Board Commissioned inspector in accordance with R20-5-411.
  12. An owner or user of a portable boiler shall notify an authorized inspector before installing the portable boiler and shall not operate the portable boiler until the owner or user receives an inspection certificate from the Division.

**Historical Note**

Former Rules B-4.1 through B-4.3. Former Section R4-13-404 repealed, new Section R4-13-404 adopted effective April 12, 1979 (Supp. 79-2). Amended subsection (P) by adding paragraph (7) and amended subsection (Q) effective October 3, 1980 (Supp. 80-5). Section R4-13-404 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-404 recodified from R4-13-404 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-405. Repealed****Historical Note**

Former Section R4-13-405 repealed effective April 12, 1979 (Supp. 79-2). New Section R4-13-405 adopted effective June 13, 1980 (Supp. 80-3). Section R4-13-405 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-405 recodified from R4-13-405 (Supp. 95-1). Repealed by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-406. Repairs and Alterations**

- A. If repairs or alterations may affect the working pressure or safety of a boiler, an owner, user, or operator shall consult with an authorized inspector before having the repairs or alterations made. The authorized inspector shall provide the owner, user, or operator information regarding the best method to repair or alter the boiler. The owner, user, or operator shall ensure that an authorized inspector inspects and approves the repairs and alterations after the repairs or alterations are made.
- B. Repairs and alterations to boilers shall conform to the applicable provisions of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.national-board.org/>.
- C. An owner or user shall not permit an individual to remove or repair a safety appliance of a boiler or lined hot water heater in operation. An owner or user shall not permit a person to remove or repair a safety appliance of a boiler or lined hot

water heater not in operation except as provided under the ASME Code. If an owner or user permits a person to remove a safety appliance from a boiler or lined hot water heater as provided under the ASME Code, then the owner or user shall ensure that the safety appliance is reinstalled in proper working order before the boiler or lined hot water heater is placed back into operation.

- D. No person shall alter in any manner a safety valve, relief valve, or safety relief valve, except by an organization qualified in accordance with The National Board Inspection Code, ANSI/NB-23 2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.national-board.org/>.
- E. Repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- F. Beginning six months after the effective date of this Section replacement of fittings or appliances shall comply with the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII, Division 1, 2, 3, IX and B31.1 Power Piping, and addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007. A copy of the incorporated material may also be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org>.

**Historical Note**

Former Section R4-13-406 repealed effective April 12, 1979 (Supp. 79-2). New Section R4-13-406 adopted effective June 13, 1980 (Supp. 80-3). Section R4-13-406 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-406 recodified from R4-13-406 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-407. Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates**

- A. An authorized inspector shall comply with the guidelines set forth in The National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B. If an owner, user, or operator fails to comply with the requirements for an inspection or pressure test under this Article, the

Division shall withhold the inspection certificate until the owner, user, or operator complies with the requirements.

- C. An authorized inspector shall not engage in the sale of any object or device relating to boilers, lined hot water heaters, direct fired jacketed steam kettles or equipment associated with boilers, or lined hot water heaters or direct fired jacketed steam kettles.
- D. Under A.R.S. § 23-485(D), the Special Inspector shall file the inspection reports by entering data into the Division's Web-based inspection entry form, by submitting a paper inspection report issued by the Division or by electronic transfer of data between the insurance company's database and the Division's database. The inspection report shall contain the following:
  1. Whether it is a Certificate or non-Certificate inspection;
  2. Whether it is an internal or external inspection;
  3. Name of location, address and phone number of the object;
  4. Name, address and phone number of owner or responsible party;
  5. Contact person's name and phone number at the inspection location;
  6. State Identification Number;
  7. Certificate due date;
  8. Certificate duration;
  9. Whether the object is active, inactive or scrapped;
  10. MAWP permitted or allowed;
  11. National Board registration number;
  12. Name of the manufacturer and the year the object was built;
  13. Special location in plant, if applicable;
  14. Boiler type;
  15. Purpose of the boiler;
  16. Specify type of fuel used;
  17. Whether the firing method is automatic, manual or unknown;
  18. Whether the fuel train is in compliance with CSD-1, NFPA 85, Z21.10.3 or other;
  19. Whether the boiler is fully attended as per R20-5-408(C);
  20. Heating Surface/BTU Input/ Kilowatt (Kw) Input, as applicable;
  21. Whether the heating surface type is stamped, computed or unknown;
  22. Minimum safety valve relief capacity required;
  23. Whether the minimum safety valve relief capacity type is BTU/Hr, LBS/Hr or unknown;
  24. Number of temperature/pressure controls, as applicable;
  25. Owner number assigned by the owner to specifically identify object's location;
  26. Inspection date;
  27. Whether the certificate is posted;
  28. Safety Valve Total Capacity;
  29. Safety Valve #1 set pressure;
  30. Safety Valve #2 set pressure;
  31. Safety Valve #3 set pressure;
  32. Whether the object has been hydro tested;
  33. Hydro Test (psi), if applicable;
  34. Whether Pressure/Altitude Gage was tested;
  35. Whether the condition of the object is okay to issue a certificate;
  36. Inspection comments, condition of boiler;
  37. Violations noted;
  38. Inspector name and Arizona Commission number; and
  39. National Board Commission number.
- E. The Division shall issue to an owner or user an inspection certificate within 30 calendar days of receipt of an inspection report that documents a boiler, lined hot water heater or direct

fired jacketed steam kettle that complies with the Act and this Article. An owner or user of a boiler, lined hot water heater or direct fired jacketed steam kettle shall post the inspection certificate in the establishment where the boiler, lined hot water heater or direct fired jacketed steam kettle is located.

- F. An owner, user, or operator shall ensure that an authorized inspector tags or stamps a steam boiler with an identification number assigned by the Division immediately after installing, but before operating, a new steam boiler, or when an authorized inspector performs an initial certificate inspection of an existing steam boiler. The identification number shall be at least 5/16" in height and in the following format: AZ-# # # #.
- G. The Division shall mark with a metal dye stamp a boiler or lined hot water heater identified by the Division as not safe for further service, with the code "XXX AZ8 XXX" which shall designate that the boiler or lined hot water heater is condemned.
- H. For any conditions not covered by this Article, the applicable provisions of the ASME Code that was in effect in Arizona at the time of the installation of the boiler or lined hot water heater shall apply.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-407 recodified from R4-13-407 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-408. Frequency of Inspection

- A. An owner, user, or operator of a power boiler shall ensure that an authorized inspector performs a certificate inspection and external inspection of the power boiler every 12 months. An authorized inspector shall perform the external inspection while the power boiler is in operation to ensure that safety devices of the power boiler are operating properly.
- B. An authorized inspector shall perform an internal inspection and pressure test on a boiler, lined hot water heater or pressure vessel if the inspector determines from an external inspection of the boiler, lined hot water heater or pressure vessel that continued operation of the boiler, lined hot water heater or pressure vessel is a danger to the public or worker safety.
- C. The Division shall issue a 12 month inspection certificate to an owner or user to operate a fully attended power boiler if:
  1. An owner or user ensures that an authorized inspector performs an external safety inspection and audit of the operational methods and logs of the fully attended power boiler at least every 12 months and performs an internal inspection of the fully attended power boiler at least every 36 months;
  2. Continuous boiler water treatment is under the direct supervision of persons trained and experienced in water treatment for the purpose of controlling and limiting corrosion and deposits.
  3. Records are available for review, that indicate:
    - a. The date, time, and reason the boiler is out of service; and
    - b. Daily analysis of water samples that adequately show the conditions of the water and elements or characteristics that are capable of producing corrosion or other deterioration to the boiler or its parts; and
  4. Controls, safety devices, instrumentation, and other equipment necessary for safe operation are current, in service, calibrated, and meet the requirements of an appropriate safety code for the size boilers, such as NFPA

85, ASME CSD-1 Controls and Safety Devices for Automatically Fired Boilers, National Board Inspection Code ANSI/NB-23, and state requirements.

5. Inspection reports of an authorized inspector document that the fully attended power boiler complies with A.R.S. § 23-471 et seq. and this Article.

- D. An owner, user, or operator of a direct-fired jacketed steam kettle shall ensure that an authorized inspector performs a certificate inspection of the direct-fired jacketed steam kettle every 24 months.
- E. An owner, user, or operator of a heating or process boiler, not exceeding 15 p.s.i. maximum allowable working pressure, steam or vapor, shall ensure that an authorized inspector performs a certificate inspection of the heating or process boiler every 24 months.
- F. An owner or user of a hot water heating or hot water supply boiler, or lined hot water heater shall ensure that an authorized inspector performs a certificate and external inspection of the hot water heating or hot water supply boiler or lined hot water heater at the time the hot water heating or hot water supply boiler or lined hot water heater is installed. An inspection certificate issued by the Division following an inspection under this subsection shall not state an expiration date.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-408 recodified from R4-13-408 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-409. Notification and Preparation for Inspection

- A. An authorized inspector shall perform a certificate inspection at a time mutually agreeable to the inspector and owner, user, or operator.
- B. Before an authorized inspector performs an internal inspection of a boiler, an owner, user, or operator shall:
  1. Cool the furnace and combustion chambers;
  2. Drain the water from the boiler;
  3. Remove the manhole and handhole plates, wash-out plugs, and inspection plugs in water column connections;
  4. Remove insulation or brickwork if necessary to determine the condition of the boiler, headers, furnace, supports, and other parts;
  5. Remove the pressure gauge for testing;
  6. Prevent any leakage of steam or hot water into the boiler by disconnecting the involved pipe or valve;
  7. Close, tag, and padlock the non-return and steam stop valves before opening the manhole or handhole covers and entering any part of the steam generating unit that is connected to a common header with other boilers. Open the free blow drain or cock between the non-return and steam stop valves;
  8. Close, tag, and padlock the blowoff valves after draining the boiler; and
  9. Open all drains and vent lines.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-409 recodified from R4-13-409 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

#### R20-5-410. Report of Accident

An owner or user shall notify the Division within 24 hours of an explosion, severe overheating, or personal injury involving a boiler, lined hot water heater or direct fired jacketed steam kettle. A person

shall not remove or disturb the involved boiler, lined hot water heater, direct fired jacketed steam kettle or parts of the boiler, lined hot water heater or direct fired jacketed steam kettle before an investigation by an authorized inspector, except for the purpose of preventing personal injury or limiting consequential damage.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-410 recodified from R4-13-410 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-411. Hydrostatic Tests

The owner or user shall perform a hydrostatic or pneumatic pressure test in accordance with the code incorporated by reference in R20-5-404(A) and R20-5-406(B).

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-411 recodified from R4-13-411 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices

- A. An owner, user, or operator shall ensure that low-water fuel cutoff devices or combined water feeding and fuel cutoff devices do not interfere with an operator's or inspector's ability to safely clean, repair, or inspect a boiler or lined hot water heater.
- B. A low-water fuel cutoff device shall have a pressure rating not less than the set pressure of the safety valve or safety relief valve.
- C. In addition to the requirements of subsections (A) and (B), all low-water fuel cutoffs and flow sensing devices shall be constructed and installed in accordance with applicable ASME Code and standards for boilers and steam jacketed kettles in R20-5-404(A).

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-412 recodified from R4-13-412 (Supp. 95-1).

Amended effective October 9, 1998 (98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-413. Safety and Safety Relief Valves

- A. A valve shall not be placed between a safety valve or a safety relief valve and installed on a boiler or lined hot water heater, or between a safety valve or a safety relief valve and the discharge pipe attached to the boiler or lined hot water heater.
- B. When a power boiler is supplied with feed-water directly from a water main without the use of a feeding apparatus, safety valves shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water main feeding the boiler;
- C. Safety valves, safety relief valves and relief valves shall conform to the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Section I, IV or VIII, and addenda as of January 1, 2008, incorporated by reference as applicable. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ and may

be obtained from the ASME, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-413 recodified from R4-13-413 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-414. Repealed

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-414 recodified from R4-13-414 (Supp. 95-1).

Repealed by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains

- A. Except as provided in this Section, an owner or user of blowdown and blowoff equipment shall comply with the National Board Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B. Blowdown from a boiler is a hazard to life and property.
- C. Blowdown from a boiler shall pass through blowdown equipment that reduces pressure and temperature to levels not exceeding 5 p.s.i.g. and 140° F.
- D. The thickness of a blowdown vessel shall be at least 3/16".
- E. All blowdown equipment shall be fitted with openings that allow cleaning and inspection of the equipment.
- F. Blowdown separators may be used with boilers instead of boiler blowdown tanks, provided that blowdown separators are operated with a temperature gauge and water cooler to prevent drain water temperature from exceeding 140° F.
- G. In addition to the requirements of subsections (A) through (F), the following requirements apply to blowdown piping, valves and drains for power boilers: Each power boiler and high temperature water boiler shall be installed and maintained according to ASME Code, Section 1 and B31.1, incorporated by reference in R20-5-404, at the time of installation.
- H. In addition to the requirements of subsections (A) through (F), the following requirements apply to bottom blowdown or drain valves for heating boilers and hot water heaters:
  1. A hot water heating boiler or hot water heater shall have a bottom blowdown or drain pipe connection fitted with a valve or cock connected with the lowest available water space with the minimum size of blowdown piping and valves as required by ASME Code, Section IV, incorporated by reference, in R20-5-404(A).
  2. Discharge outlets of blowdown pipes, safety valves and other piping shall be located and structurally supported to prevent injury to individuals.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-415 recodified from R4-13-415 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-416. Maximum Allowable Working Pressure

- A. The ASME Code under which a boiler was constructed and stamped shall determine the maximum allowable working pressure for the ASME-stamped boiler.
- B. If components in the boiler or hot water system such as valves, pumps, expansion tanks, storage tanks or piping have a lesser working pressure rating than the boiler or hot water heater, the pressure setting for the safety or safety relief valve on the boiler or hot water heater shall be based upon the component with the lowest maximum allowable working pressure rating.

#### Historical Note

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-416 recodified from R4-13-416 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

#### R20-5-417. Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles

- A. An owner or user of a boiler, hot water heater or direct fired jacketed steam kettle constructed under the ASME Code, Sections I, IV or VIII Division 1, incorporated by reference in R20-5-404(A) shall comply with the manufacturer's maintenance and operation instructions for the boiler, hot water heater or direct fired jacketed steam kettle.
- B. In addition to the requirements of subsection (A), an owner or user of a boiler constructed under the ASME Code, Sections I, IV, shall comply with the following preventive maintenance schedule if the boiler contains the component or system listed.
  1. On a daily basis, the owner or user shall:
    - a. Test the low-water fuel cutoff and alarm, and
    - b. Check the burner flame for proper combustion.
  2. On a weekly basis, the owner or user shall:
    - a. Check for proper ignition, and
    - b. Check the flame failure detection system.
  3. On a monthly basis, the owner or user shall:
    - a. Test all fan and air pressure interlocks,
    - b. Check the main burner safety shutoff valve,
    - c. Check the low fire start switch,
    - d. Test fuel pressure and temperature interlocks of oil-fired units, and
    - e. Test the high and low fuel pressure switch of gas-fired units.
  4. Every six months, the owner or user shall:
    - a. Inspect burner components;
    - b. Check flame failure system components, such as vacuum tubes, amplifier and relays;
    - c. Check wiring of all interlocks and shutoff valves;
    - d. Recalibrate all indicating and recording gauges; and
    - e. Check steam and blowdown piping and valves.
  5. Annually, the owner or user shall:
    - a. Replace vacuum tubes, scanners, or flame rods in the flame failure system according to the manufacturer's instructions;
    - b. Check all coils and diaphragms; and
    - c. Test operating parts of all safety shutoff and control valves.
- C. An owner or user of a power boiler or high temperature boiler shall designate an individual who meets the requirements of subsection (D) to operate the boiler. An owner or user may operate the boiler if the owner or user meets the requirements of subsection (D).



- D.** An operator of a power boiler or high temperature water boiler shall meet the following minimum requirements:
1. Knowledge of and an ability to explain the function and operation of all safety controls of the boiler,
  2. Ability to start the boiler in a safe manner,
  3. Knowledge of all safe methods of feeding water to the boiler,
  4. Knowledge of and the ability to blow down the boiler in a safe manner,
  5. Knowledge of safety procedures to follow if water exceeds or drops below permissible safety levels, and
  6. Knowledge of and the ability to safely shut down the boiler.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-417 recodified from R4-13-417 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-418. Non-standard Boilers**

An owner or user shall remove from service a boiler, hot water heater or pressure vessel that does not bear an ASME stamp unless the boiler owner or user request a variance under R20-5-429.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-418 recodified from R4-13-418 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater**

- A.** The Division shall grant or deny approval to reinstall a boiler or lined hot water heater within three business days after an owner or user requests approval to reinstall the boiler or lined hot water heater. The order of the Division granting or denying approval to reinstall a boiler shall be in writing.
- B.** The Division shall grant approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater complies with A.R.S. § 23-471 et seq. and this Article. The Division shall deny approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater does not comply with A.R.S. § 23-471 et seq. and this Article.
- C.** An order of the Division denying approval to reinstall a boiler shall be final unless an owner or user requests a hearing under A.R.S. § 23-479 within 15 days after the Division mails the order. The owner or user requesting a hearing shall have the burden to prove that a boiler meets the requirements of A.R.S. § 23-471 et seq. and this Article.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-419 recodified from R4-13-419 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-420. Special Inspector Certificate under A.R.S. § 23-485**

- A.** Review Time-frames.
1. Administrative Completeness Review.
    - a. The Division shall determine whether an application to take a written examination or request for a special inspector certificate under A.R.S. § 23-485 is com-

plete within three days of receipt of the application or request. The Division shall inform the applicant whether the application or request is complete or incomplete by written notice. If the application or request is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information.

- b. The Division shall deem an application or request withdrawn if an applicant fails to file a complete application or request within 10 days of being notified by the Division that the application or request is incomplete, unless the applicant obtains an extension to provide the missing information. An applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than 10 days after the Division mails notice that the application or request is incomplete. The written request for an extension shall state the reasons the applicant is unable to meet the 10-day deadline. If an extension will enable the applicant to assemble and submit the missing information, the Division shall grant an extension of not more than 10 days and provide written notice of the extension to the applicant.
2. Substantive review.
    - a. Application to take written examination under A.R.S. § 23-485(A). Within three days after the Division deems an application complete under subsection (B), the Division shall determine whether the applicant is eligible to take the National Board Examination.
    - b. Request for special inspector certificate under A.R.S. § 23-485. Within three days after the Division deems a request complete under subsection (C), the Division shall determine whether the applicant meets the criteria of A.R.S. § 23-485 and subsection (C).
  3. Overall review. The overall review period shall be six days, unless extended under A.R.S. § 41-1072 et seq.
- B.** Application to take Written Examination under A.R.S. § 23-485(A).
1. An individual requesting to take the written examination under A.R.S. § 23-485(A) shall complete an application to take the National Board Examination and submit the application to the Division at least 45 days before the date of the examination.
  2. The application to take the National Board Examination shall be filed with the Division. An application is considered filed when it is received at the office of the Division and stamped by the Division with the date of filing.
  3. An application to take the National Board Examination shall be on a legible form, paper or electronic, issued to the Division, with the following information:
    - a. Full legal name,
    - b. State or country of residency,
    - c. Mailing address,
    - d. Telephone number,
    - e. E-mail address, and
    - f. Employer's name and address.
- C.** Application for Special Inspector Certificate under A.R.S. § 23-485. An application for a special inspector certificate under A.R.S. § 23-485 is deemed complete under subsection (A)(1) when the following is filed with the Division:
1. The applicant provides written documentation that the applicant holds a certificate of competency as an inspector of boilers or lined hot water heaters for a state that has

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- a standard of examination equal to that of Arizona or the applicant is a National Board Commissioned Inspector, and
2. The applicant provides proof of employment as a full time inspector for a company conducting business in Arizona and whose duties as an inspector include making inspections of boilers or lined hot water heaters to be used or insured by the company and not for resale.
- D.** If an applicant meets the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a certificate to the applicant under subsection (C). If an applicant fails to meet the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a written notice denying eligibility to the applicant. The Commission shall deem the notice denying eligibility final if an applicant does not request a hearing within 15 calendar days after the Division mails the notice.
- E.** Written Examination under A.R.S. § 23-485(A).
1. The written examination described in A.R.S. § 23-485(A) shall be the National Board Examination of the National Board of Boiler and Pressure Vessel Inspectors.
  2. The Division shall administer the National Board Examination the first Wednesday and Thursday of every March, June, September, and December to eligible applicants. Within two days after the Division administers the National Board Examination, the Division shall return the examinations of eligible applicants to the National Board of Boiler and Pressure Vessel Inspectors. Examinations shall be graded by the National Board of Boiler and Pressure Vessel Inspectors.
  3. The Division shall provide written notice to an applicant of the applicant's grade for the National Board Examination within three days after the Division receives notice of the grade from the National Board of Boiler and Pressure Vessel Inspectors.
  4. The Division shall issue a certificate of competency to an applicant who passes the National Board Examination.
- F.** Issuance of Special Inspector Certificate. The Division shall issue a special inspector certificate, A.R.S. § 23-485, to an applicant no later than 15 calendar days after the Division determines that an applicant meets the criteria of A.R.S. § 23-485 and subsection (C).
- G.** Hearing on Denial of Eligibility for Special Inspector Certificate.
1. A request for hearing protesting a notice of eligibility shall be in writing and signed by the applicant or the applicant's legal representative. The applicant shall file the request for hearing with the Division.
  2. The Commission shall hold a hearing under A.R.S. § 41-1065. The hearing shall be stenographically recorded.
  3. The Chair of the Commission or designee shall preside over hearings held under this Section. The Chair shall apply the provisions of A.R.S. § 41-1062 et seq. to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
  4. A decision of the Commission to deny or grant eligibility for a special inspector certificate shall be based upon the criteria set forth in A.R.S. § 23-485 and this Section and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated. An order of the Commission denying a special inspector certificate is final unless an applicant files a request for review within 15 days after the Commission mails its order.
5. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of an applicant:
    - a. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the applicant seeking review was deprived of a fair hearing;
    - b. Misconduct by the Division;
    - c. Accident or surprise which could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
    - e. Excessive or insufficient sanctions or penalties imposed at hearing;
    - f. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
    - g. Bias or prejudice of the Division; and
    - h. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
  6. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
  7. The Commission's decision upon review is final unless an applicant seeks judicial review as provided in A.R.S. § 23-483.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-420 recodified from R4-13-420 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-421. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-421 recodified from R4-13-421 (Supp. 95-1).

**R20-5-422. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-422 recodified from R4-13-422 (Supp. 95-1).

**R20-5-423. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-423 recodified from R4-13-423 (Supp. 95-1).

**R20-5-424. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-424 recodified from R4-13-424 (Supp. 95-1).

**R20-5-425. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-425 recodified from R4-13-425 (Supp. 95-1).

**R20-5-426. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-426 recodified from R4-13-426 (Supp. 95-1).

**R20-5-427. Repealed**

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-427 recodified from R4-13-427 (Supp. 95-1).

**R20-5-428. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-428 recodified from R4-13-428 (Supp. 95-1).

**R20-5-429. Variance**

- A. Any owner or user may apply to the Director for a variance from the requirements of this Article, upon demonstrating the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The Director shall issue a variance if the Director determines that the proponent of the variance has demonstrated the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The variance issued shall prescribe the construction, installation, operation, maintenance, and repair conditions that the owner or user shall maintain.
- B. A variance may be modified or revoked upon application by an owner, user or the Director, on the Director's own motion at any time after six months from issuance if the owner or user has not complied with the variance or if the variance does not protect the health and safety of employees or general public.
- C. The application for a variance shall be made on the form issued by the Division and contains the following information:
  1. Owner or user's name and company name;
  2. Mailing address;
  3. Telephone number;
  4. Fax number;
  5. Contact person;
  6. Contact person's telephone number;
  7. Address or location of proposed variance;
  8. Type of facility to include;
    - a. Variance description;
    - b. Justification for variance;
    - c. Component or system involved;
    - d. Supporting documentation for variance;
    - e. Identify the statute, rule, code or standard to justify the variance; and
  9. Printed name and title of owner or user, signature of owner or user and date.
- D. If an owner or user does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. § 23-479 can be made with the Commission.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-430. Forced Circulation Hot Water Heaters**

- A. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils shall have a safety control, to prevent burner operation at a flow rate inadequate to protect the hot water heater unit against overheating, at all allowable firing rates. The safety control shall shut down the burner and prevent restarting until an adequate flow is restored.
- B. All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils, shall have a manually operated remote shutdown switch or circuit breaker and shall be located just outside the hot water heater room door and marked for easy identification. The shutdown switch shall be installed in a manner to

safeguard against tampering. If a hot water heater room door is on the building exterior, the switch shall be located just inside the door. If there is more than one door to the hot water heater room there shall be a switch located at each door. The remote shutdown switch or circuit breaker shall disconnect all power to the burner controls.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-431. Code Cases**

Code cases approved for use by the ASME Code Committee are allowed to be used in the design, fabrication and testing of boilers and pressure vessels provided approval from the Chief Boiler Inspector is obtained prior to use.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-432. Historical Boilers**

Historical boilers shall require an initial Certificate inspection by an authorized inspector, followed by a Certificate inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pressure retaining boundary shall be monitored and recorded on the inspection report, in accordance with R20-5-407(D), to the owner and the Division's electronic copy.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**ARTICLE 5. ELEVATOR SAFETY****R20-5-501. Repealed****Historical Note**

Former Rule E-1. Amended effective November 9, 1979 (Supp. 79-6). R20-5-501 recodified from R4-13-501 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

**R20-5-502. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "ASME" means American Society of Mechanical Engineers.
2. "AZFS Key" means Arizona Firefighters Service Key, a universal key used by a firefighter to operate a conveyance during an emergency.
3. "Chief" means the head inspector of the Elevator Safety Section of the Division of Occupational Safety and Health.
4. "Elevator Safety Section" means the Elevator Safety Section of the Division of Occupational Safety and Health of the Industrial Commission of Arizona.
5. "Inspection" means the official determination by an inspector of the condition of all parts of the equipment on which the safe operation of an elevator depends.
6. "Major Alteration" means work performed to any conveyance that is not routine maintenance or repair.
7. "State Serial Number" is a unique number assigned by the Chief Elevator Inspector to each individual elevator, dumbwaiter, escalator, and moving walks.

**Historical Note**

Former Rule E-2. R20-5-502 recodified from R4-13-502 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R.

381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### **R20-5-503. Repealed**

##### **Historical Note**

Former Rule E-3. R20-5-503 recodified from R4-13-503 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

#### **R20-5-504. Safety Standards for Platform Lifts and Stairway Chairlifts**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the American Society of Mechanical Engineers Safety Standard for Platform Lifts and Stairway Chairlifts ASME A18.1-2005, with amendments as of November 29, 2005, which are incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

##### **Historical Note**

Former Rule E-4. R20-5-504 recodified from R4-13-504 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### **R20-5-505. Certificate of Inspection**

The owner or operator under A.R.S. § 23-491.02 shall keep the Industrial Commission's Certificate of Inspection at the same location as the elevator, dumbwaiter, escalator, moving walk, or related equipment and make the certificate available for inspection and copying upon request. The State Serial Number shall be posted or displayed in the elevator cab, and on the escalators, the State Serial Number shall be affixed to the right, at the lower end of the unit.

##### **Historical Note**

Former Rule E-5. R20-5-505 recodified from R4-13-505 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### **R20-5-506. Recordkeeping**

- A. The Elevator Safety Section shall assign a State Serial Number to every elevator, dumbwaiter, escalator, and moving walk for recordkeeping purposes. The State Serial Number shall be on a tag that is affixed to the controller or mainline disconnect in the elevator machine room.
- B. The owner or operator shall notify the Elevator Safety Section at least 90 days before installation, relocation, or major alteration of a dumbwaiter with automatic transfer device within the state, elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.
- C. The building owner or operator shall notify the Elevator Safety Section within 24 hours of every accident involving personal injury or disabling damage to a dumbwaiter with automatic transfer device, an elevator, escalator, dumbwaiter, moving walk, material lift, wheelchair lift, stairway chairlift, or platform lift.

##### **Historical Note**

Former Rule E-6. Amended effective November 9, 1979 (Supp. 79-6). R20-5-506 recodified from R4-13-506 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by

final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### **R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices**

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 Safety Code for Elevators and Escalators, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before the effective date of this Section shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007.

##### **Historical Note**

Former Rule R4-13-507 repealed, new Section R4-13-507 adopted effective November 9, 1979 (Supp. 79-6).

Amended effective March 30, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Amended effective July 24, 1985 (Supp. 85-4). Amended effective September 5, 1989 (Supp. 89-3). Amended effective March 20, 1992 (Supp. 91-2). R20-5-507 recodified from R4-13-507 (Supp. 95-1). Amended effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2935, effective August 4, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### **R20-5-508. Safety Standards for Belt Manlifts**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Standard for Belt Manlifts, ASME A90.1-2003, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org/>.

##### **Historical Note**

Adopted effective November 9, 1979 (Supp. 79-6). R20-5-508 recodified from R4-13-508 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### **R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations**

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations, ANSI, A10.4-2007, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for

review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

#### Historical Note

Adopted effective November 9, 1979 (Supp. 79-6).  
Amended effective June 23, 1983 (Supp. 83-3). R20-5-509 recodified from R4-13-509 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### R20-5-510. Safety Requirements for Material Hoists

Every owner or operator under A.R.S. § 23-491.02 shall comply with the standards of the American National Standard Institute Safety Requirements for Material Hoists, ANSI, A10.5-2006, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

#### Historical Note

Adopted effective November 9, 1979 (Supp. 79-6).  
Amended effective June 23, 1983 (Supp. 83-3). R20-5-510 recodified from R4-13-510 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### R20-5-511. Guide for Inspection of Elevators, Escalators, and Moving Walks

Every Elevator Inspector under A.R.S. § 23-491.05 shall use the American National Standard Institute, Guide for Inspection of Elevators, Escalators, and Moving Walks, ASME, A17.2-2004, which is incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is also available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at <http://www.asme.org>.

#### Historical Note

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-511 recodified from R4-13-511 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

#### R20-5-512. Expired

#### Historical Note

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-512 recodified from R4-13-512 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 2320, effective May 19, 2005 (Supp. 05-2).

#### R20-5-513. Firefighters' Emergency Operation

All conveyances provided with firefighters' emergency operation installed per ASME, A17.1-2007, incorporated by reference, shall utilize the AZFS Key.

#### Historical Note

New Section made by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2).

## ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of August 3, 2015, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after August 3, 2015.

#### Historical Note

Editorial correction (Supp. 75-1). Amended as an emergency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-601 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective June 17, 1981 (Supp. 81-3). Amended effective November 14, 1984 (Supp. 84-6). Amended effective March 3, 1987 (Supp. 87-1). Amended effective April 22, 1988; amended effective May 26, 1988 (Supp. 88-2). Amended effective October 14, 1988 (Supp. 88-4). Amended effective September 14, 1989 (Supp. 89-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 6, 1990 (Supp. 90-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 21, 1991 (Supp. 91-4). Amended effective February 28, 1992 (Supp. 91-2). Amended effective October 22, 1992; amended effective December 23, 1992 (Supp. 92-4). Amended effective September 13, 1993 (Supp. 93-3). Amended effective October 21, 1993; amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective November 18, 1994 (Supp. 94-4). Amended effective January 12, 1995; R20-5-601 recodified from R4-13-601 (Supp. 95-1). Amended effective August 28, 1996 (Supp. 96-3). Amended effective April 1, 1997 (Supp. 97-2). Amended effective December 12, 1997 (Supp. 97-4). Amended effective August 27, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 592, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 851, effective February 5, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 2108, effective June 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 4102, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 1417, effective March 30, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2711, effective June 17, 2008 (Supp. 08-2). Amended by final rulemaking at 16 A.A.R. 1469, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1264, effective June 13, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 1492, effective August 5, 2012 by Notice of Public Information at 18 A.A.R. 1653 (Supp. 12-2). Amended by final rulemaking at 18 A.A.R. 3007, effective October 24, 2012 (Supp. 12-4). Amended by final rulemaking at 22 A.A.R. 773, effective March

16, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 1391, effective May 10, 2016 (Supp. 16-2).

#### **R20-5-601.01. Fall Protection for Residential Construction**

Each employer shall comply with the requirements in A.R.S. Title 23, Chapter 2, Article 13. These requirements shall apply to all conditions and practices related to residential construction activity by all employers, both public and private, in the state of Arizona.

##### **Historical Note**

New Section made by exempt rulemaking at 18 A.A.R. 1144, effective May 25, 2012 (Supp. 12-2).

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

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of July 10, 2014, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after July 10, 2014.

##### **Historical Note**

Editorial correction (Supp. 75-1). Amended as an emergency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). New Section R4-13-602 adopted effective July 30, 1980 (Supp. 80-4). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-602 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective June 17, 1981 (Supp. 81-3). Amended subsection (A) effective October 1, 1981 (Supp. 81-5). Amended subsection (A) effective March 5, 1982 (Supp. 82-2). Amended subsection (A) effective May 6, 1983 (Supp. 83-3). Amended subsection (A) effective April 6, 1984 (Supp. 84-2). Amended subsection (A) effective July 3, 1984 (Supp. 84-4). Amended subsection (A) effective October 18, 1984 (Supp. 84-5). Editorial correction, amendment October 18, 1984, withdrawn for subsequent certification. Amended effective November 14, 1984, and December 14, 1984 (Supp. 84-6). Amended subsection (A) effective June 9, 1986 (Supp. 86-3). Amended subsection (A) effective March 3, 1987 (Supp. 87-1). Amended subsection (A) effective June 26, 1987 (Supp. 87-2). Amended subsection (A) effective April 22, 1988; amended subsection (A) effective May 26, 1988 (Supp. 88-2). Amended subsection (A) effective October 14, 1988 (Supp. 88-4). Amended effective September 14, 1989 (Supp. 89-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 6, 1990 (Supp. 90-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 21, 1991 (Supp. 91-4). Amended effective February 28, 1992 (Supp. 91-2). Amended effective March 20, 1992 (Supp. 91-2). Amended effective June 16, 1992 (Supp. 92-2). Amended effective October 22, 1992; amended effective December 23, 1992 (Supp. 92-4). Amended effective May 14, 1993 (Supp. 93-2). Amended effective September 13, 1993

(Supp. 93-3). Amended effective October 21, 1993; amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective July 19, 1994 (Supp. 94-3). Amended effective November 18, 1994 (Supp. 94-4). Amended effective January 12, 1995; Amended effective February 10, 1995; R20-5-602 recodified from R4-13-602 (Supp. 95-1). Amended effective August 28, 1996 (Supp. 96-3). Amended effective April 1, 1997 (Supp. 97-2). Amended effective December 12, 1997 (Supp. 97-4). Amended effective August 27, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 592, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 5137, effective October 19, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 2108, effective June 2, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 576, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 4102, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 1417, effective March 30, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 2927, effective July 31, 2007 (07-3). Amended by final rulemaking at 14 A.A.R. 193, effective January 8, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 2711, effective June 17, 2008 (Supp. 08-2). Amended by final rulemaking at 14 A.A.R. 4337, effective December 30, 2008 (Supp. 08-4). Amended by final rulemaking at 15 A.A.R. 1564, effective August 31, 2009 (Supp. 09-3). Amended by final rulemaking at 16 A.A.R. 1469, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 109, effective January 12, 2011 (Supp. 11-1). Amended by final rulemaking at 17 A.A.R. 1264, effective June 13, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 1492, effective August 5, 2012 by Notice of Public Information at 18 A.A.R. 1653 (Supp. 12-2). Amended by final rulemaking at 18 A.A.R. 3007, effective October 24, 2012 (Supp. 12-4). Amended by final rulemaking at 22 A.A.R. 773, effective March 16, 2016 (Supp. 16-1).

#### **R20-5-602.01. Subpart T, Commercial Diving Operations**

Each employer shall comply with the standards in Subpart T of the Federal Occupational Safety and Health Standards for the General Industry as published in 29 CFR 1910, with amendments as specified in R20-5-602, except that the exemption set forth in 29 CFR 1910.401(a)(2)(ii) shall not apply. Subpart T shall apply to any diving operation performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency.

##### **Historical Note**

New Section made by final rulemaking at 14 A.A.R. 193, effective January 8, 2008 (Supp. 08-1).

#### **R20-5-603. The Federal Occupational Safety and Health Standards for Agriculture, 29 CFR 1928**

Each employer shall comply with the standards in Subparts A through D inclusive of the Federal Occupational Safety and Health Standards for Agriculture, as published in 29 CFR 1928, with amendments as of March 7, 1996, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. This incorporation by reference does not include amendments or editions to 29 CFR 1928 published after March 7, 1996.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1). Former Section R4-13-603 repealed, new Section R4-13-603 adopted as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-603 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective April 22, 1988 (Supp. 88-2). Amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective November 18, 1994 (Supp. 94-4). Amended effective February 10, 1995. R20-5-603 recodified from R4-13-603 (Supp. 95-1). Amended effective April 1, 1997 (Supp. 97-2).

**R20-5-604. Rules of Agency Practice and Procedure concerning OSHA Access to Employee Medical Records, 29 CFR 1913**  
Each employer pursuant to A.R.S. § 23-403(B) shall comply with Federal Regulations, Title 29, Part 1913, with amendments as of May 23, 1980 (amendments of May 23, 1980 on file with the Secretary of State), which are hereby adopted and incorporated by reference as if set forth fully herein. This regulation applies to OSHA Access to Employee Medical Records.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Repealed as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Repealed effective March 2, 1981 (Supp. 81-2). New rule adopted effective November 14, 1984 (Supp. 84-6). R20-5-604 recodified from R4-13-604 (Supp. 95-1).

**R20-5-605. Hoes for Weeding or Thinning Crops**

- A. The use of a hoe with a handle less than four feet in length for weeding or thinning crops is prohibited. This prohibition is based upon the existence of other practical and adequate alternatives to the use of these short-handle hoes.
- B. This rule does not apply to greenhouse or nursery operations.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Repealed effective March 2, 1981 (Supp. 81-2). New Section R4-13-605 adopted effective September 7, 1984 (Supp. 84-5). R20-5-605 recodified from R4-13-605 (Supp. 95-1).

**R20-5-606. State Definition of Terms Used in Adopting Federal Standards Pursuant to R20-5-601, R20-5-602, R20-5-603 and R20-5-604**

For the purposes of the standards enumerated in the federal occupational safety and health standards incorporated into R20-5-601, R20-5-602, R20-5-603, and R20-5-604:

1. "Agency" means the Industrial Commission of Arizona.
2. "Assistant Secretary" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.
3. "Assistant Secretary of Labor for Occupational Safety and Health" means the Director of the Arizona Division of Occupational Safety and Health of the Industrial Commission of Arizona.

4. "Office of the Solicitor of Labor" means Legal Counsel for the Industrial Commission of Arizona.
5. "OSHA" means Arizona Division of Occupational Safety and Health.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Repealed effective March 2, 1981 (Supp. 81-2). New Section R4-13-606 adopted effective May 31, 1985 (Supp. 85-3). R20-5-606 recodified from R4-13-606 (Supp. 95-1).

**R20-5-607. Expired****Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-607 repealed, former emergency adoption effective October 29, 1980, adopted and amended effective March 2, 1981 (Supp. 81-2). R20-5-607 recodified from R4-13-607 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5062, effective September 30, 2003 (Supp. 03-4).

**R20-5-608. Definitions**

- A. "Act" means the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
- B. The definitions and interpretations contained in A.R.S. § 23-401 of the Act shall be applicable to such terms when used in these rules.
- C. "Working days" means Mondays through Fridays but shall not include Saturdays, Sundays, or state holidays. In computing fifteen working days, the day of the receipt of any notice shall not be included, and the last day of the fifteen working days shall be included.
- D. "Compliance Safety and Health Officer" means a person authorized by the Occupational Safety and Health Division, Industrial Commission of Arizona, to conduct inspections.
- E. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, stores, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with requirements of subsection (A) of this Section.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977,

pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-608 repealed, new Section R4-13-608 adopted effective March 2, 1981 (Supp. 81-2). R20-5-608 recodified from R4-13-608 (Supp. 95-1).

**R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards**

- A. Each employer shall post and keep posted a notice or notices, to be furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Industrial Commission. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.
- B. Copies of the Act, all regulations published in this Chapter and applicable standards will be available at all offices of the Arizona Division of Occupational Safety and Health. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.
- C. Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of A.R.S. § 23-418 of the Act.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1).  
Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-609 repealed, former Section R4-13-608 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-609 effective March 2, 1981 (Supp. 81-2).  
R20-5-609 recodified from R4-13-609 (Supp. 95-1).

**R20-5-610. Authority for Inspection**

- A. The Director of the Division of Occupational Safety and Health or his authorized representative upon presentation of credentials shall be permitted to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, or place of environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee and to review records required by the Act and regulations published in this Article and other records which are directly related to the purpose of the inspection.
- B. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Williams-Steiger Occupational Safety and Health Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education and Welfare under Section 8 of the Williams-Steiger Occupational Safety and Health Act and pursuant to 29

CFR Part 1903 shall not affect the authority of any state to conduct inspections in accordance with agreements and plans under Section 18 of the Williams-Steiger Occupational Safety and Health Act.

- C. Prior to inspecting areas containing information which is classified by an agency of the United States government in the interests of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

**Historical Note**

Adopted effective February 28, 1975 (Supp. 75-1).  
Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-610 repealed, former Section R4-13-609 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-610 effective March 2, 1981 (Supp. 81-2).  
R20-5-610 recodified from R4-13-610 (Supp. 95-1).

**R20-5-611. Objection to Inspection**

- A. Upon a refusal to permit a Compliance Safety and Health Officer, in the exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to privately question any employer, owner, operator, agent, or employee, in accordance with rule R20-5-610, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with rule R20-5-615, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefore to the Director of the Division. The Director shall immediately consult with the Industrial Commission and its legal counsel, who shall promptly take appropriate action, including compulsory process if necessary.
- B. Compulsory process may be sought in advance of an inspection or reinvestigation if, in the judgment of the Director of the Division and the Industrial Commission Chief Legal Counsel, circumstances exist including but not limited to specific evidence of an existing violation or reasonable legislative or administrative standards for conducting an inspection which make pre-inspection process desirable or necessary.
- C. With the approval of the Industrial Commission, and the Industrial Commission Chief Legal Counsel, compulsory process may also be obtained by the Director of the Division or his designee.
- D. For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

**Historical Note**

Adopted effective June 19, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).  
Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-611 repealed, former Section R4-13-610 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-611 effective March 2, 1981 (Supp. 81-2). R20-5-611 recodified from R4-13-611 (Supp. 95-1).

**R20-5-612. Entry Not a Waiver**



Any permission to enter, inspect, review records, or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty under the Act. Compliance Safety and Health Officers are not authorized to grant any such waiver.

#### Historical Note

Adopted effective June 19, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-612 repealed, former Section R4-13-611 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-612 effective March 2, 1981 (Supp. 81-2). R20-5-612 recodified from R4-13-612 (Supp. 95-1).

#### R20-5-613. Advance Notice of Inspections

- A. Advance notice of inspections may not be given except in the following situations:
1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
  2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
  3. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in an inspection; and
  4. In other circumstances where the Division Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
- B. In the situations described in subsection (A) of this Section, advance notice of inspections may be given only if authorized by the Division Director. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See rule R20-5-615(B) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable him promptly to inform such representative of the inspection. An employer who fails to comply with his obligation under this subsection promptly to inform the authorized representative of the employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer to promptly inform such representative of the inspection may be subject to citation and penalty under A.R.S. § 23-408 of the Act. Advance notice in any of the situations described in subsection (A) of this Section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and other unusual circumstances.

#### Historical Note

Adopted effective July 28, 1975 (Supp. 75-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-613 repealed, former Section R4-13-612 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-613 effective March 2, 1981 (Supp. 81-2). R20-5-613

recodified from R4-13-613 (Supp. 95-1).

#### R20-5-614. Conduct of Inspections

- A. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in rule R20-5-610 which they wish to review.
- B. Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.
- C. In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to ensure that such actions with flash, spark producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- D. The conduct of inspections shall be such as to preclude unreasonable disruption to the operations of the employer's establishment.
- E. At the conclusion of an inspection, a Compliance Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.

#### Historical Note

Adopted effective March 2, 1976 (Supp. 76-2). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-614 repealed, former Section R4-13-613 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-614 effective March 2, 1981 (Supp. 81-2). R20-5-614 recodified from R4-13-614 (Supp. 95-1).

#### R20-5-615. Representatives of Employers and Employees

- A. Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.
- B. Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- C. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has

been shown why accompaniment by a third party who is not an employee is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.

- D.** Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of rule R20-5-616(B). With regard to information classified by an agency of the United States government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.

#### Historical Note

Adopted effective March 2, 1976 (Supp. 76-2). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-615 repealed, former Section R4-13-614 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-615 effective March 2, 1981 (Supp. 81-2).

R20-5-615 recodified from R4-13-615 (Supp. 95-1).

#### R20-5-616. Trade Secrets

- A.** At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Compliance Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with provisions of A.R.S. § 23-426.
- B.** Upon the request of an employer, any authorized representative of employees under rule R20-5-615 in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, a Compliance Safety and Health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

#### Historical Note

Adopted effective March 2, 1976 (Supp. 76-2). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6).

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-616 repealed, former Section R4-13-615 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-616 effective March 2, 1981 (Supp. 81-2).

R20-5-616 recodified from R4-13-616 (Supp. 95-1).

#### R20-5-617. Consultation with Employees

Compliance Safety and Health Officers may privately consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act, which he has reason to believe exists in the workplace, to the attention of the Compliance Safety and Health Officer.

#### Historical Note

Adopted effective January 21, 1976 (Supp. 76-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-617 repealed, former Section R4-13-616 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-617 effective March 2, 1981 (Supp. 81-2). R20-5-617 recodified from R4-13-617 (Supp. 95-1).

#### R20-5-618. Complaints by Employees

- A.** A copy of a complaint submitted pursuant to A.R.S. § 23-408(E) shall be provided to the employer or his agent by the Director of the Division of Occupational Safety and Health or his representative no later than the time of inspection, except that, upon the request of the person giving such notice, his name shall not appear in such copy or in any record published, released, or made available by the Arizona Division of Occupational Safety and Health.
- B.** If upon receipt of such notification the Division Director determines that the complaint meets the requirements set forth in subsection (A) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

#### Historical Note

Adopted effective January 21, 1976 (Supp. 76-1). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-618 repealed, former Section R4-13-617 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-618 effective March 2, 1981 (Supp. 81-2). R20-5-618 recodified from R4-13-618 (Supp. 95-1).

#### R20-5-619. Inspection Not Warranted; Informal Review

If the Division Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint in accordance with A.R.S. § 23-408(E), he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Industrial Commission and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Industrial Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Industrial Commission, at their discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Industrial Commission shall affirm, modify, or reverse the determination of the Division Director and furnish the complaining party and the employer a written notification of their decision and the reasons therefore. The decision of the Industrial Commission shall be final and not subject to further review. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of A.R.S. § 23-408(E).

#### Historical Note

Adopted effective May 25, 1977 (Supp. 77-3). Repealed

as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-619 repealed, former Section R4-13-618 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-619 effective March 2, 1981 (Supp. 81-2). R20-5-619 recodified from R4-13-619 (Supp. 95-1).

#### **R20-5-620. Expired**

##### **Historical Note**

Adopted effective May 25, 1977 (Supp. 77-3). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-620 repealed, former Section R4-13-619 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-620 effective March 2, 1981 (Supp. 81-2). R20-5-620 recodified from R4-13-620 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 5062, effective September 30, 2003 (Supp. 03-4).

#### **R20-5-621. Citations: Notices of De Minimis Violations**

- A.** The Division Director shall review the inspection reports of the Compliance Safety and Health Officer. If, on the basis of the report, the Division Director believes that the employer has violated a requirement of A.R.S. § 23-403 of the Act, of any standard, rule or order promulgated pursuant to A.R.S. § 23-410 of the Act, or of any substantive rule published in these rules, he shall, if appropriate, consult with the Industrial Commission's counsel and shall issue to the employer either a citation or notice of de minimis violations. An appropriate citation or notice of de minimis violation shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.
- B.** If a citation or notice of de minimis violation issued for a violation alleged in a request for inspection under A.R.S. § 23-408(E), a copy of the citation or notice of de minimis violation shall also be sent to the employee or representative of employees who made such request or notification.
- C.** After an inspection, if the Division Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under A.R.S. § 23-408(E), the informal review procedures prescribed in rule R20-5-619(A) shall be applicable. After considering all views presented, the Industrial Commission shall affirm the determination of the Division Director, order a reinspection, or issue a citation if the Industrial Commission believes that the inspection disclosed a violation. The Industrial Commission shall furnish the complaining party and the employer with a written notification of their determination and the reasons therefore. The determination of the Industrial Commission shall be final and not subject to review.
- D.** Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless a citation is affirmed by the Hearing Division or the Review Commission.

##### **Historical Note**

Adopted as an emergency effective May 24, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-3). Repealed as an emergency effective November 16, 1977, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-620 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-621 effective March 2, 1981 (Supp. 81-2). R20-5-621 recodified from R4-13-621 (Supp. 95-1).

#### **R20-5-622. Proposed Penalties**

- A.** All employers shall be notified of any proposed penalties, issued pursuant to A.R.S. § 23-418, by certified mail or by a signed verification in person.
- B.** The Division Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations in accordance with the provisions of A.R.S. § 23-418 of the Act.
- C.** Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

##### **Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-621 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-622 effective March 2, 1981 (Supp. 81-2). R20-5-622 recodified from R4-13-622 (Supp. 95-1).

#### **R20-5-623. Posting of Citations**

- A.** Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which the employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.
- B.** Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest under A.R.S. § 23-471(A) shall not affect his posting responsibility under this rule unless and until the Hearing Division and/or Review Commission issues a final order vacating the citation.
- C.** An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Hearing

Division and/or Review Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-622 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-623 effective March 2, 1981 (Supp. 81-2). R20-5-623 recodified from R4-13-623 (Supp. 95-1).

#### R20-5-624. Employer and Employee Contests before the Hearing Division

- A. All notices to contest citations and/or penalties shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- B. Any affected employee or employee representative appealing the period allowed an employer to abate a particular violation shall submit the notice of contest to the Division Director who shall immediately transmit such notice to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-623 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-624 effective March 2, 1981 (Supp. 81-2). R20-5-624 recodified from R4-13-624 (Supp. 95-1).

#### R20-5-625. Failure to Correct a Violation for Which a Citation Has Been Issued

- A. All employers failing to correct an alleged violation for which a citation has been issued, within the period permitted for its correction, shall be notified of such failure and any proposed penalties issued pursuant to A.R.S. § 23-418 by certified mail or by signed verification in person.
- B. All notices to contest a notification of failure to correct a violation and of proposed additional penalty shall be submitted to the Division Director and immediately transmitted to the Hearing Division in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- C. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Industrial Commission and not subject to review by any court or agency unless within fifteen working days from the receipt of such notification, the employer notifies the Division Director in writing that he intends to contest the notification or the proposed additional penalty before the Hearing Division.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-624 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-625 effective March 2, 1981 (Supp. 81-2). R20-5-625 recodified from R4-13-625 (Supp. 95-1).

#### R20-5-626. Informal Conferences

At the request of an affected employer, employee, or representative of employees, the Industrial Commission, or their designee, may

hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to rules and procedures prescribed by the Industrial Commission. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. Any party may be represented by counsel in such conference. No such conference or request for such conference shall operate as a stay of any fifteen working day period for filing a notice of intention to contest as prescribed in rule R20-5-624.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-625 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-626 effective March 2, 1981 (Supp. 81-2). R20-5-626 recodified from R4-13-626 (Supp. 95-1).

#### R20-5-627. Abatement Verification

- A. Scope and application. This Section applies to employers, as defined in A.R.S. § 23-401, who receive a citation for a violation of the Arizona Occupational Safety and Health Act.
- B. Definitions:
  1. Abatement means action by an employer to comply with a cited standard or rule or to eliminate a recognized hazard, as defined in A.R.S. § 23-401, identified by the Division during an inspection.
  2. Abatement date means:
    - a. For an uncontested citation item, the later of:
      - i. The date in the citation for abatement of the violation;
      - ii. The date approved by the Division as a result of a petition for modification of the abatement date (PMA); or
      - iii. The date for abatement completion as established in a citation by an informal conference agreement.
    - b. For a contested citation item for which an administrative law judge has issued a final decision affirming the violation, the later of:
      - i. The date identified in the final decision for completion of abatement;
      - ii. The date computed by adding the original period allowed for abatement in the citation to begin 15 days from the final decision date of an administrative law judge; or
      - iii. The date established by a formal settlement agreement.
  3. Affected employee means an employee who is exposed to the hazard identified as a violation in a citation.
  4. Final order date means:
    - a. The date on which an uncontested citation is deemed final under A.R.S. § 23-417 (A); or
    - b. For a contested citation item: The date on which a decision or order of an administrative law judge becomes final under A.R.S. § 23-421 or § 23-423.
  5. Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between workplaces.
- C. Abatement certification.

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1. Within 10 calendar days after the abatement date, an employer shall certify to the Division that the employer has abated each cited violation except as provided in subsection (C)(2). An employer may use Appendix A to certify abatement.
  2. An employer is not required to certify abatement if a Compliance Safety and Health Officer, during an onsite inspection:
    - a. Observes, within 24 hours after a violation is identified, that abatement has occurred; and
    - b. Notes the abatement action on the citation.
  3. An employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by subsection (H), the completion date and method of abatement and a statement that affected employees and their representatives have been informed of the completed abatement.
- D. Abatement documentation.**
1. Within 10 days after the abatement date, an employer shall submit to the Division, documents which evidence that abatement is complete for each willful or repeat violation and for any serious violation for which abatement documentation is required.
  2. Documents which evidence that abatement is complete may include documents for purchase or repair of equipment, photographs or videos of the abatement, or other written records.
- E. Abatement plans.**
1. The Division may require an employer to submit an abatement plan, except for a nonserious violation, when the time permitted for abatement is more than 90 days. The citation shall state that an abatement plan is required. An employer may use Appendix B for an abatement plan.
  2. An employer shall submit an abatement plan for each cited violation within 25 days from the date of a final order when the citation states that a plan is required. In the abatement plan, the employer shall identify:
    - a. The violation,
    - b. The steps necessary to achieve abatement,
    - c. A schedule for completing abatement, and
    - d. How the employer will protect employees from the violative condition until abatement is complete.
- F. Progress reports.**
1. The Division may require an employer who submits an abatement plan under subsection (E), to submit periodic progress reports for each cited violation. If the Division requires a periodic progress report, the citation shall include the following information:
    - a. Periodic progress reports are required and the cited violations for which periodic progress reports are required;
    - b. The date on which an initial progress report must be submitted. The date of the initial progress report shall be no sooner than 30 days after the submission date required for abatement;
    - c. Whether additional progress reports are required; and
    - d. The date on which additional progress reports shall be submitted.
  2. For each violation, the employer shall summarize in the progress report, the action taken to achieve abatement and the date the action was taken.
- G. Employee notification.**
1. An employer shall inform affected employees and the employees' representative of abatement activities covered by this Section by posting a copy of each document submitted to the Division or a summary of the document at the location of the cited violation.
2. For employers who have mobile work operations, the employer shall:
    - a. Post each document or a summary of the document submitted to the Division in a conspicuous place where it can be readily seen by employees and the employee representative; or
    - b. Take other steps to communicate fully to affected employees and the employees' representative about abatement actions.
  3. The employer shall inform employees and the employees' representative of the right to examine and copy all abatement documents submitted by the employer to the Division.
    - a. An employee or an employee representative shall submit a written request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted to the Division.
    - b. An employer shall comply with an employee's or employee representative's written request to examine and copy abatement documents within five working days of receiving the request.
  4. An employer shall ensure that notice in subsection (G)(1) to employees and a employee representative is provided at the same time or before the information is provided to the Division and that abatement documents are:
    - a. Not altered, defaced, or physically covered by other material; and
    - b. Remain posted for at least three working days after submission to the Division.
- H. Transmitting abatement documents.**
1. An employer shall include, in each submission required by this Section, the following information:
    - a. The employer's name and address;
    - b. The inspection number to which the submission relates;
    - c. The citation, item number, and location to which the submission relates;
    - d. A statement that the information submitted is accurate; and
    - e. The signature of the employer or the employer's authorized representative.
  2. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division receives the document is the date of submission.
- I. Movable equipment.**
1. For serious, repeat, and willful violations involving movable equipment, an employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within or between workplaces. The Division shall deem attaching a copy of the citation to the equipment to meet the tagging requirement of subsection (I)(3) and the posting requirement of R20-5-623.
  2. The employer shall use a warning tag to warn employees about the nature of the violation involving the movable equipment and identifies the location of the violation. An employer may use the tag in Appendix C to meet this requirement.
  3. If a violation has not been abated, an employer shall attach a warning tag or a copy of the citation to the equipment as follows:

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- a. For hand-held equipment, the employer shall attach a warning tag or copy of the citation within eight hours after the employer receives the citation; and
- b. For non-hand-held equipment, the employer shall attach a warning tag or copy of the citation before moving the equipment within or between work-places.
4. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the Division to meet the requirements of this Section when the information required by subsection (1)(2) is included on the tag.
5. An employer shall ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or physically covered by other material.
6. An employer shall ensure that the tag or copy of the citation attached to movable equipment remains attached until:
  - a. The employer has abated the violation and all abatement verification documents required by this Section have been submitted to the Division;
  - b. The employer has permanently removed the cited equipment from service or the cited equipment is no longer within the employer's control; or
  - c. The Division, administrative law judge, or Review Board vacates the citation.

**Historical Note**

Adopted effective June 26, 1998 (Supp. 98-2).

**Appendix A. Sample Abatement - Certification Letter (Non-mandatory)**

[Name], Director  
The Industrial Commission of Arizona  
Division of Occupational Safety and Health  
P. O. Box 19070  
Phoenix, Arizona 85005

[Company's Name]  
[Company's Address]

The hazard referenced in Inspection Number [Insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

**Historical Note**

Appendix A adopted effective June 26, 1998 (Supp. 98-2).

**Appendix B. Sample Abatement Plan or Progress Report (Nonmandatory)**

(Name), Director  
The Industrial Commission of Arizona  
Division of Occupational Safety and Health  
P. O. Box 19070  
Phoenix, Arizona 85005

[Company's Name]  
[Company's Address]

Check one:

Abatement Plan [ ]

Progress Report [ ]

Inspection Number \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

Citation Number(s)\* \_\_\_\_\_

Item Number(s)\* \_\_\_\_\_

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1. ....	.....	.....
2. ....	.....	.....
3. ....	.....	.....
4. ....	.....	.....
5. ....	.....	.....

Date required for final abatement: \_\_\_\_\_

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

Name of primary point of contact for questions: (optional)

Telephone number: \_\_\_\_\_

\*Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

**Historical Note**

Appendix B adopted effective June 26, 1998 (Supp. 98-

2).

**Appendix C. Sample Warning Tag (Nonmandatory)**

<p><b>O</b></p> <p><b>WARNING:</b></p> <p>EQUIPMENT HAZARD BY ADOSH</p> <p>EQUIPMENT CITED:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>HAZARD CITED:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>FOR DETAILED INFORMATION: SEE ADOSH CITATION POSTED AT:</p> <p>_____</p> <p>_____</p>
---

BACKGROUND COLOR--ORANGE  
MESSAGE COLOR--BLACK

**Historical Note**

Appendix C adopted effective June 26, 1998 (Supp. 98-2).

**R20-5-628. Safe Transportation of Compressed Air or Other Gases**

An employer shall not use Polyvinyl Chloride (PVC) piping in a place of employment for the transportation and distribution of compressed air or other compressed gases in an above-ground installation.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1161, effective March 11, 2003 (Supp. 03-1).

**R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904**

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of January 1, 2015, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after January 1, 2015.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 874, effective February 19, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 318, effective January 1, 2004 (Supp. 03-4). Amended by final rulemaking at 22 A.A.R. 775, effective March 16, 2016 (Supp. 16-1).

**R20-5-630. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-640 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-630 effective March 2, 1981 (Supp. 81-2). R20-5-630 recodified from R4-13-631 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-631. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-631 recodified from R4-13-631 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-632. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-632 recodified from R4-13-632 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-633. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-633 recodified from R4-13-633 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-634. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-634 recodified from R4-13-634 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-635. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2).

2). R20-5-635 recodified from R4-13-635 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-636. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted and amended effective March 2, 1981 (Supp. 81-2). R20-5-636 recodified from R4-13-636 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-637. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective December 14, 1994 (Supp. 94-4). R20-5-637 recodified from R4-13-637 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-638. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-638 recodified from R4-13-638 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-639. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). R20-5-639 recodified from R4-13-639 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-640. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-641 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-640 effective March 2, 1981 (Supp. 81-2). R20-5-640 recodified from R4-13-640 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-641. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-642 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-641 effective March 2, 1981 (Supp. 81-2). R20-5-641 recodified from R4-13-641 (Supp. 95-1). Section repealed by final rulemaking at 8

A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-642. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-643 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-642 effective March 2, 1981 (Supp. 81-2). R20-5-642 recodified from R4-13-642 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-643. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-644 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-643 effective March 2, 1981 (Supp. 81-2). R20-5-643 recodified from R4-13-643 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-644. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-645 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-644 effective March 2, 1981 (Supp. 81-2). R20-5-644 recodified from R4-13-644 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-645. Repealed****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-646 adopted as an emergency effective October 29, 1980, renumbered and amended as Section R4-13-645 effective March 2, 1981 (Supp. 81-2). R20-5-645 recodified from R4-13-645 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 364, effective December 31, 2001 (Supp. 01-4).

**R20-5-646. Emergency Expired****Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Emergency expired. R20-5-646 recodified from R4-13-646 (Supp. 95-1).

**R20-5-647. Reserved****R20-5-648. Reserved****R20-5-649. Reserved****R20-5-650. Definitions**

As used in rules R20-5-650 through R20-5-669 inclusive, unless the context clearly requires otherwise:

1. "Act" means the Arizona Occupational Safety and Health Act of 1972 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
2. "Commission" means the Industrial Commission of Arizona.



3. "Person" means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or political subdivision.
4. "Party" means a person admitted to participate in a hearing conducted in accordance with subsection (3). An applicant for relief and any affected employee shall be entitled to be named as parties.
5. "Affected employee" means an employee or any one of his authorized representatives, such as his collective bargaining agent, who would be affected by the granting or denial of a variance.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-651 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-650 effective March 2, 1981 (Supp. 81-2). R20-5-650 recodified from R4-13-650 (Supp. 95-1).

**R20-5-651. Petitions for Amendments**

Any person may at any time petition the Commission in writing to revise, amend, or revoke any provisions of rules R20-5-650 through R20-5-669 inclusive. The petition should set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-652 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-651 effective March 2, 1981 (Supp. 81-2). R20-5-651 recodified from R4-13-651 (Supp. 95-1).

**R20-5-652. Effects of Variances**

All variances granted hereunder shall have only future effect. In their discretion, the Commission may decline to entertain an application for variance on the subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Federal Occupational Safety and Health Review Commission, State of Arizona Hearing Division or the Arizona Review Board until the completion of such proceeding.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-654 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-652 effective March 2, 1981 (Supp. 81-2). R20-5-652 recodified from R4-13-652 (Supp. 95-1).

**R20-5-653. Public Notice of a Granted Variance**

Every final action granting a variance, shall be published in statewide newspapers. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-655 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-653 effective March 2, 1981 (Supp. 81-2). R20-5-653 recodified from R4-13-653

(Supp. 95-1).

**R20-5-654. Form of Documents; Subscription; Copies**

- A. No particular form is prescribed for applications and other papers which may be filed in proceedings hereunder. However, any applications and other papers shall be clearly legible. An original and six copies of any application and other papers shall be filed. The original shall be typewritten. Clear carbon copies or printed or processed copies are acceptable copies.
- B. Each application or other paper which is filed in proceedings hereunder shall be signed by the person filing the same or by his attorney or other authorized representative and where required by these regulations shall be verified by the applicant.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-646 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-654 effective March 2, 1981 (Supp. 81-2). R20-5-654 recodified from R4-13-654 (Supp. 95-1).

**R20-5-655. Variances**

- A. Application for variance. Any employer, or class of employers, desiring a variance from a standard or regulation or any portion thereof, authorized by A.R.S. § 23-411 of the Act may file a written application containing the information specified in subsection (B) of this Section with the Industrial Commission of Arizona, 1601 West Jefferson, Phoenix, Arizona 85005.
- B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-411(B) and (C) of the Act.
- C. Interim order.
  1. Application. In accordance with A.R.S. § 23-411(B)(3) of the Act, an application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
  2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
  3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for variance.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-657 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-655 effective March 2, 1981 (Supp. 81-2). R20-5-655 recodified from R4-13-655 (Supp. 95-1).

**R20-5-656. Variances under A.R.S. § 23-412**

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- A. Application for variance. Any employer, or class of employers, desiring a variance authorized by A.R.S. § 23-412 of the Act may file a written application containing the information specified in subsection (B) of this Section, with the Industrial Commission of Arizona, 1601 W. Jefferson, Phoenix, Arizona 85005.
- B. Contents. An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-412 of the Act.
- C. Interim order
  - 1. Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.
  - 2. Notice of denial of application. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.
  - 3. Notice of the grant of an interim order. If an interim order is granted, a copy of the order shall be served upon the applicant and other parties, and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-658 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-656 effective March 2, 1981 (Supp. 81-2). R20-5-656 recodified from R4-13-656 (Supp. 95-1).

**R20-5-657. Renewal of Rules or Orders: Federal Multi-state Variances**

- A. Renewal or rules or orders. Any final rule or order issued under A.R.S. § 23-411 of the Act may be renewed or extended as permitted by the applicable Section and in the manner prescribed for its issuance.
- B. Multi-state variances. Where a federal variance has been granted with multi-state applicability, including applicability in this state operating under a state plan approved under Section 18 of the Act, from a standard or portion thereof identical to this state's standard or regulation or portion thereof such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligation with regard to the state standard or portion thereof provided no objections of substance are found to be interposed by the Commission.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-659 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-657 effective March 2, 1981 (Supp. 81-2). R20-5-657 recodified from R4-13-657 (Supp. 95-1).

**R20-5-658. Action on Applications**

- A. Defective applications

- 1. If an application filed pursuant to rule R20-5-655, R20-5-656, R20-5-657 and R20-5-658 does not conform to the applicable Section, the Commission may deny the application.
- 2. Prompt notice of the denial of an application shall be given to the applicant.
- 3. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.
- 4. A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.
- B. Adequate applications
  - 1. If an application has not been denied pursuant to subsection (A) of this Section, the Commission shall cause to be published in statewide newspapers a notice of the filing of the application.
  - 2. A notice of the filing of an application shall include:
    - a. The terms, or an accurate summary, of the application;
    - b. A reference to the Section of the Act under which the application has been filed;
    - c. An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
    - d. Information to affected employers, employees, of any right to request a hearing on the application.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-660 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-658 effective March 2, 1981 (Supp. 81-2). R20-5-658 recodified from R4-13-658 (Supp. 95-1).

**R20-5-659. Request for Hearings on Petition**

- A. Request for hearing. Any employer, employee, authorized employee representative, representative, or other person interested in or affected by an order of the Commission may petition for a hearing on the reasonableness and lawfulness of an order issued under A.R.S. §§ 23-411 or 23-412, by a verified petition filed with the Commission.
- B. Contents of a petition. A request for a hearing filed pursuant to subsection (A) of this Section shall include:
  - 1. The name and address of the applicant;
  - 2. A concise statement of facts showing how the employer, employee, authorized employee representative, representative, or other person would be affected by the relief applied for;
  - 3. A petition shall set forth specifically and in detail the order upon which a hearing is desired;
  - 4. The reasons why the order is unreasonable or unlawful;
  - 5. The issue to be considered by the Commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.
  - 6. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
    - a. Giving a copy thereof to their authorized representative;
    - b. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the petition specifying where a copy of the full petition may be examined (or, in lieu of the summary, posting the application itself); and
    - c. Other appropriate means.

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7. If the applicant is an affected employee, a certification that a copy of the petition has been furnished to the employer.
- C. The Commission may on its own motion proceed to modify or revoke a rule or order issued under A.R.S. §§ 23-411 or 23-412 of the Act. In such event, the Commission shall cause to be published in statewide newspapers a notice of its intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing and shall take such other action as may be appropriate to give actual notice to the affected employees. Any request for a hearing shall include a short and plain statement of:
1. How the proposed modification or revocation would affect the requesting party; and
  2. What the requesting party would seek to show on the subjects or issues involved.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-661 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-659 effective March 2, 1981 (Supp. 81-2). R20-5-659 recodified from R4-13-659 (Supp. 95-1).

**R20-5-660. Consolidation of Proceedings**

The Commission on its own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-662 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-660 effective March 2, 1981 (Supp. 81-2). R20-5-660 recodified from R4-13-660 (Supp. 95-1).

**R20-5-661. Notice of Hearing**

- A. Service. Upon request for a hearing as provided in this Section, or upon its own initiative, the Commission shall serve, or cause to be served, a reasonable notice of hearing.
- B. Contents. A notice of hearing served under subsection (A) of this Section shall include:
1. The time, place, and nature of the hearing;
  2. The legal authority under which the hearing is to be held;
  3. A specification of issues of fact and law.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-663 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-661 effective March 2, 1981 (Supp. 81-2). R20-5-661 recodified from R4-13-661 (Supp. 95-1).

**R20-5-662. Manner of Service**

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

**Historical Note**

Adopted as an emergency effective October 29, 1980,

pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-664 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-662 effective March 2, 1981 (Supp. 81-2). R20-5-662 recodified from R4-13-662 (Supp. 95-1).

**R20-5-663. Industrial Commission; Powers and Duties**

- A. Powers. The Commissioners shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:
1. To administer oaths and affirmations;
  2. To rule upon offers of proof and receive relevant evidence;
  3. To provide for discovery and to determine its scope;
  4. To regulate the course of the hearing and the conduct of the parties and their counsel therein;
  5. To consider and rule upon procedural requests;
  6. To hold conferences for the settlement or simplification of the issues by consent of the parties;
  7. To make, or to cause to be made, an inspection of the employment or place of employment involved;
  8. To make decisions in accordance with A.R.S. §§ 23-405.5, 23-411, 23-412, and 23-945; and
  9. To take any other appropriate action authorized by the Act, this Section, or A.R.S. § 23-945.
- B. Contumacious conduct; failure or refusal to appear or obey the rulings of the Commission.
1. Contumacious conduct at any hearing before the Commission shall be grounds for exclusion from the hearing.
  2. If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the Commission may make such orders with regard to the refusal as are just and appropriate, including an order denying an application of an applicant or regulating the contents of the record of the hearing.
- C. Referral to Rules of Procedure for Occupational Safety and Health hearings. On any procedural question not regulated by this Section, the Act, or A.R.S. § 23-945, Commission shall be guided to the extent practicable by any pertinent provisions of the Rules of Procedure for Occupational Safety and Health hearings before the Industrial Commission of Arizona.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-665 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-663 effective March 2, 1981 (Supp. 81-2). R20-5-663 recodified from R4-13-663 (Supp. 95-1).

**R20-5-664. Prehearing Conferences**

- A. Convening a conference. Upon its own motion or the motion of a party, the Commission may direct the parties or their counsel to meet with them for a conference to consider:
1. Simplification of the issues;
  2. Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
  3. Stipulations, admissions of fact, and of contents and authenticity of documents;
  4. Limitation of the number of parties and of expert witnesses; and
  5. Such other matters as may tend to expedite the disposition of the proceeding and to assure a just conclusion thereof.

- B.** Record of conference. The Commission shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearings to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-666 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-664 effective March 2, 1981 (Supp. 81-2). R20-5-664 recodified from R4-13-664 (Supp. 95-1).

#### R20-5-665. Consent Findings and Rules or Orders

- A.** General. At any time before the reception of evidence in any hearing, or during any hearing, a reasonable opportunity may be afforded to permit the negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the Commission. After consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.
- B.** Contents. Any agreement containing consent findings in rule or other disposing of a proceeding shall also provide:
1. That the rule or order shall have the same force and effect as if made after a full hearing;
  2. That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
  3. A waiver of any further procedural steps before the Commission; and
  4. A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.
- C.** Submission. On or before the expiration of the time granted for negotiations, the parties or their counsel may:
1. Submit the proposed agreement to the Commission for its consideration; or
  2. Inform the Commission that agreement cannot be reached.
- D.** In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the Commission may accept such agreement by issuing its decision based upon the agreed findings.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-667 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-665 effective March 2, 1981 (Supp. 81-2). R20-5-665 recodified from R4-13-665 (Supp. 95-1).

#### R20-5-666. Discovery

- A.** Depositions
1. For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by

deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the Commission and having power to administer oaths.

2. Application. Any party desiring to take the deposition of a witness may make application in writing to the Commission, setting forth:
  - a. The reasons why such deposition should be taken;
  - b. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;
  - c. The name and address of each witness; and
  - d. The subject matter concerning which each witness is expected to testify.
3. Notice. Such notice as the Commission may order shall be given by the party taking the deposition to every other party.
4. Taking and receiving in evidence. Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of the hearing.
- B.** Other discovery. Whenever appropriate to a just disposition of any issue in a hearing, the Commission may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

#### Historical Note

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-668 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-666 effective March 2, 1981 (Supp. 81-2). R20-5-666 recodified from R4-13-666 (Supp. 95-1).

#### R20-5-667. Hearings

- A.** Order of proceeding. Except as may be ordered otherwise by the Commission, the party applicant for relief shall proceed first at a hearing.
- B.** Burden of proof. The party applicant shall have the burden of proof.
- C.** Evidence
1. Admissibility. A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the Commission shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

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2. Testimony of witnesses. The testimony of a witness shall be upon oath or affirmation administered by the Commission.

- D. Official notice. Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: provided that the parties shall be given adequate notice, at the hearing or by reference in the Commission's decision, of the matters so noticed and shall be given adequate opportunity to show the contrary.
- E. Record. Minutes shall be taken of the Commission hearings. Copies of the minutes may be obtained by the parties upon written application filed with the secretary of the Commission and upon the payment of fees at the rate provided in the agreement with the Commission.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-669 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-667 effective March 2, 1981 (Supp. 81-2). R20-5-667 recodified from R4-13-667 (Supp. 95-1).

**R20-5-668. Decisions of the Commission**

- A. Proposed findings of fact, conclusions, and rules or orders. Within 10 days after completion of the hearing or such additional time as the Commission may allow, each party may file with the Commission proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.
- B. Decisions of the Commission. Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rule or order, the Commission shall make and serve upon each party its decision, which shall become final upon the 30th day after service thereof, unless exceptions are filed thereto, as provided in rule R20-5-669. The decision of the Commission shall include:
  1. A statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record, and
  2. The appropriate rule, order, relief, or denial thereof. The decision of the hearing examiner shall be based upon a consideration of the whole record and shall state all facts officially notice and relied upon. It shall be made on the basis of a preponderance of reliable and probative evidence.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-670 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-668 effective March 2, 1981 (Supp. 81-2). R20-5-668 recodified from R4-13-668 (Supp. 95-1).

**R20-5-669. Judicial Review**

Any employer, employee, authorized employee representative, representative, or any person in interest is dissatisfied with an order of the Commission may appeal in accordance with A.R.S. § 23-413 of the Act.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days

(Supp. 80-5). Former Section R4-13-674 adopted as an emergency effective October 29, 1980, renumbered and adopted as Section R4-13-670 effective March 2, 1980 (Supp. 81-2). R20-5-669 recodified from R4-13-669 (Supp. 95-1).

**R20-5-670. Field Sanitation**

- A. This Section applies to any agricultural establishment where a crew of five or more employees are engaged on any given day in hand-labor operations in one location.
- B. As used in this Section:
  1. "Agricultural establishment" means a business operation that uses paid employees in the production of food, fiber or other material such as seed, seedlings, plants or parts of plants.
  2. "Crew of employees" means a group of persons who are employed to perform hand-labor operations as a unit at an agricultural establishment. "Crew of employees" does not include the employer and the employer's immediate family members.
  3. "Hand-labor operations" means agricultural activities or operations performed in the field by hand or with hand tools. Hand-labor operations include the hand-harvest of vegetables, nuts and fruits, hand-weeding of crops and hand-planting of seedlings. Hand-labor operations do not include such activities as logging operations, irrigation operations, the care or feeding of livestock or hand-labor operations in permanent structure, such as canning facilities or packing houses. Hand-labor operations do not include activities in which persons are acting as equipment operators.
  4. "Handwashing facility" means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single-use towels.
  5. "Potable water" means water that meets the standards for drinking purposes prescribed by the state or local authority having jurisdiction or water that meets the quality standards prescribed by the United States Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141 (July 1983), incorporated by reference and on file in the Office of the Secretary of State.
  6. "Toilet facility" means a facility designed for the purpose of both defecation and urination, including biological or chemical toilets, combustion toilets or sanitary privies, which is supplied with toilet paper adequate for employee needs. Toilet facilities may be either fixed or portable.
- C. Employers shall provide the following for employees engaged in hand-labor operations at an agricultural establishment without cost to the employee:
  1. Potable drinking water as follows:
    - a. Potable water shall be provided and shall be placed in locations readily accessible to all employees.
    - b. The water shall be suitably cool, no more than 80°F, and in sufficient amounts, a minimum of two gallons per employee, taking into account the air temperature, humidity and the nature of the work performed, to meet employees' need.
    - c. The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.
  2. Toilet and handwashing facilities as follows:
    - a. One toilet facility and one handwashing facility shall be provided for each 40 employees or fraction thereof, except as provided in subsection (D) of this Section.

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- b. Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to ensure privacy.
- c. Toilet and handwashing facilities shall be accessibly located, in close proximity to each other and within 1/4 mile of each employee's place of work in the field. If it is not feasible to locate facilities accessibly and within the required distance due to the terrain, facilities shall be located at the point of closest vehicular access.
- D.** Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less (including transportation time to and from the field) during the day.
- E.** Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including all of the following:
  - 1. Drinking water containers shall be covered, cleaned and refilled daily.
  - 2. Toilet facilities shall be operational and maintained in clean and sanitary condition and shall be supplied with toilet paper adequate for employee needs.
  - 3. Handwashing facilities shall be maintained in clean and sanitary condition.
  - 4. Disposal of wastes from facilities shall not cause unsanitary conditions.
- F.** Employees shall be allowed reasonable opportunities during the workday to use the facilities.
- 3. Complaints lodged with employers; or
- 4. Complaints filed as specified in R20-5-682.
- B.** The term "instituted or caused to be instituted any proceeding" as used in A.R.S. § 23-425(A) includes:
  - 1. Inspections of worksites under A.R.S. § 23-408(A);
  - 2. Employee contest of abatement date under A.R.S. § 23-417(D);
  - 3. Employee initiation of proceedings for promulgation of an occupational safety and health standard under A.R.S. § 23-410(A);
  - 4. Employee application for modification or revocation of a variance under A.R.S. § 23-413;
  - 5. Employee judicial challenge to a standard under A.R.S. § 23-410(E);
  - 6. Employee appeal of an Administrative Law Judge Division order under A.R.S. § 23-421(C);
  - 7. Exercise of rights by any employee pursuant to A.R.S. § 23-418.01;
  - 8. Any other employee action authorized by the Arizona Occupational Safety and Health Act of 1972; or
  - 9. Setting into motion the activities of others which result in the proceedings specified in subsections (B)(1) through (8).
- C.** The term "testified or is about to testify in any such proceeding" as used in A.R.S. § 23-425(A) includes:
  - 1. Testimony in proceedings instituted or caused to be instituted by the employee; or
  - 2. Any statements given in the course of judicial, quasi-judicial or administrative proceedings. For this purpose, administrative proceedings include inspections, investigations and administrative rulemaking or adjudicative functions.
- D.** The term "the exercise by such employee on behalf of himself or others of any right afforded by this Article" as used in A.R.S. § 23-425(A) includes:
  - 1. The right to participate as a party in enforcement proceedings pursuant to A.R.S. § 23-408(D);
  - 2. The right to request information from the Industrial Commission; or
  - 3. To cooperate with inspections or investigations by the Industrial Commission.
- E.** If the employee, with no reasonable alternative, refuses in good faith to expose himself to a dangerous condition, the employee is engaged in protected activity. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the dangers through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer and been unable to obtain a correction of the dangerous condition.
- F.** Employees who refuse to comply with valid occupational safety and health standards or valid safety rules implemented by the employer are not protected by A.R.S. § 23-425.

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Adopted effective May 2, 1986 (Supp. 86-3). R20-5-670 recodified from R4-13-670 (Supp. 95-1).

**R20-5-671. Reserved**

**R20-5-672. Reserved**

**R20-5-673. Reserved**

**R20-5-674. Emergency expired**

**Historical Note**

Adopted as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Emergency expired. R20-5-674 recodified from R4-13-674 (Supp. 95-1).

**R20-5-675. Reserved**

**R20-5-676. Reserved**

**R20-5-677. Reserved**

**R20-5-678. Reserved**

**R20-5-679. Reserved**

**R20-5-680. Protected Activity**

- A.** All complaints pursuant to A.R.S. § 23-425 shall relate to conditions at the workplace. The filing of complaints need not be in writing for purposes of this subsection except that those complaints filed pursuant to R20-5-682 shall comply with R20-5-682. The term "filed any complaint" as used in A.R.S. § 23-425(A) includes:
  - 1. Employee requests for inspection pursuant to A.R.S. § 23-408(F);
  - 2. Complaints registered with other state, local or federal governmental agencies which have the authority to regulate or investigate occupational safety and health conditions;

**Historical Note**

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-680 recodified from R4-13-680 (Supp. 95-1).

**R20-5-681. Elements of a Violation of A.R.S. § 23-425**

To establish a violation of A.R.S. § 23-425(A), the employee shall prove all of the following:

- 1. The employee was engaged in protected activities as defined in R20-5-680.

2. The employer had knowledge of the employee's protected activities prior to the adverse action which the employee claims to be a discharge or discrimination.
3. The action claimed to be discharge or discrimination was adverse to the employee.
4. The protected activity was a substantial reason for the alleged discharge or discrimination or the alleged discharge or discrimination would not have taken place but for the employee's engagement in the protected activity.

**Historical Note**

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-681  
recodified from R4-13-681 (Supp. 95-1).

**R20-5-682. Procedure**

- A. A complaint of A.R.S. § 23-425(A) discharge or discrimination shall be filed with the Division of Occupational Safety and Health by the employee or by a representative authorized by A.R.S. § 23-408(F) to do so on the employee's behalf. The complaint shall be written and shall be signed by the person filing the complaint.
- B. The date of filing a complaint under A.R.S. § 23-425(B) is the date of receipt of the complaint by the Division.
- C. The Division may accept or deny an employee's withdrawal of a complaint. The Industrial Commission's investigatory jurisdiction shall not be foreclosed by unilateral action of the employee.
- D. The Industrial Commission may resolve an A.R.S. § 23-425 complaint with the employer without the consent of the employee.
- E. The Industrial Commission's jurisdiction to investigate and determine A.R.S. § 23-425 complaints is independent of the jurisdiction of other agencies or bodies. The Industrial Commission may defer to the results of other such proceedings where:
  1. The rights asserted in those other proceedings are substantially the same as the rights pursuant to A.R.S. § 23-425;
  2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
  3. The proceedings were fair and regular; and
  4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.
- F. A determination pursuant to A.R.S. § 23-425(C) includes:
  1. A decision to not proceed with the case;
  2. To defer the case to another forum; or
  3. To proceed to litigation in Superior Court.

**Historical Note**

Adopted effective May 3, 1989 (Supp. 89-2). R20-5-682  
recodified from R4-13-682 (Supp. 95-1).

**ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR  
WORKERS' COMPENSATION POOLS ORGANIZED  
UNDER A.R.S. § 23-961.01**

**R20-5-701. Definitions**

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

- "Administrator" means an individual or organization chosen by a board to manage the daily operations of a pool.
- "Applicant" means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.
- "Board of trustees" or "board" means a body of individuals that manage all operations of a worker compensation pool.

"Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.

"Certificate of authority" means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.

"Claim" means a worker compensation claim.

"Code classification" means a number assigned by an approved rating organization that classifies employees.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Administration Division of the Industrial Commission of Arizona.

"Excess insurance carrier" means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Financial rating organization" means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

"Fiscal year" means a 12 month cycle that begins from the effective date of authority to self-insure.

"Loss fund" means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

"Member" means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

"Pool" means a workers' compensation group organized under A.R.S. § 23-961.01.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.

"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.

"Rate" means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.

"Rating organization" means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Service company” means an entity or organization that is contracted by a pool to receive, process, and pay workers’ compensation claims for a pool.

“Trustee fund” means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-702. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-insure:
  - a. Name of the pool;
  - b. Address and telephone number of the pool’s principal office;
  - c. Effective date of formation of the pool;
  - d. Name and address of each member of the pool;
  - e. Two digit standard industrial classification code for each member of the pool;
  - f. Name and address of the industry or trade association, or professional organization to which members of the pool belong;
  - g. Effective date of formation of the industry or trade association, or professional organization to which members of the pool belong;
  - h. Type of business in which members are engaged and length of time in business for each member;
  - i. Explanation of how businesses of members are the same or similar;
  - j. Amount of workers’ compensation insurance premiums paid by each member in the preceding year;
  - k. Names and addresses of the board of trustees;
  - l. Name, address, and telephone number of the administrator appointed by the board of trustees;
  - m. Name, address, and telephone number of the service company, if applicable;
  - n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;
  - o. Premium tax plan selection;
  - p. Authorized signature and title of person signing initial application;

- q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
- r. Date of execution of the initial application.
2. Renewal Application:
  - a. Name of the pool;
  - b. Address and telephone number of the pool’s principal office;
  - c. Name and address of each member of the pool and the effective date of membership;
  - d. Renewal date of the pool;
  - e. Effective date of initial authority to self-insure;
  - f. Total number of member employees covered by the pool;
  - g. Total payroll of the pool for the last fiscal year;
  - h. Name, address, and telephone number of the administrator;
  - i. Name, address, and telephone number of the service company, if applicable;
  - j. Name, address, and telephone number of the excess insurance carrier;
  - k. Name and address of the companies providing guaranty bond and fidelity policy;
  - l. Name and address of individuals serving on the board of trustees;
  - m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;
  - n. Authorized signature and title of person signing renewal application;
  - o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and
  - p. Date of execution of the renewal application.
3. Self-Insurance Guaranty Bond Form:
  - a. Pool identification;
  - b. Names of fidelity and surety insurance companies;
  - c. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;
  - d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
  - e. Authorized signatures and titles by pool, surety, and agent; and
  - f. Date of execution of the guaranty bond form.
4. Option Election Form:
  - a. Calculation and selection of type of guaranty bond and securities;
  - b. Description of incurred liability and anticipated future liability (compensation and medical) on all open cases for the preceding four years and the current year;
  - c. Authorized signature and title of person signing option election form;
  - d. Statement that all information and assertions contained in the form are factually correct and true; and
  - e. Date of execution of the option election form.
5. Self-insured Payroll Report:
  - a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);
  - b. Amount paid in the preceding calendar year;



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- c. Authorized signature and title of person signing self-insured payroll report;
- d. Statement that all information and assertions contained in the report are factually correct and true; and
- e. Date of execution of self-insured payroll report.
6. Self-insured Medical Report:
  - a. Description of costs relating to industrial injuries;
  - b. Reinsurance premiums paid;
  - c. Total expenditures for workers' compensation and occupational disease claims;
  - d. Authorized signature and title of person signing self-insured medical report;
  - e. Statement that all information and assertions contained in the report are factually correct and true; and
  - f. Date of execution of the self-insured medical report.
7. Self-insured Injury Report:
  - a. Description of specific information for the current year and three preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved for each claim in excess of \$5,000;
  - b. Description of all injuries for the current year and three preceding years if individual injury required payment of less than \$5,000;
  - c. Authorized signature, title, and telephone number of person signing self-insured injury report;
  - d. Statement that all information and assertions contained in the report are factually correct and true; and
  - e. Date of execution of the self-insured injury report.
8. Quarterly Tax Payment Form:
  - a. Name and address of the pool;
  - b. Description and calculation of the quarterly tax and designation of the applicable quarter;
  - c. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;
  - d. Description and calculation of any penalty due;
  - e. Authorized signature, title and telephone number of person signing the quarterly tax payment form;
  - f. Statement that all information and assertions contained in the form are factually correct and true; and
  - g. Date of execution of the quarterly tax payment form.
9. Application to Add a Member to Self-insured Pool:
  - a. Name of the pool and name of the member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;
  - b. Nature and years in business of the member to be added;
  - c. History of business in Arizona and elsewhere for the member to be added;
  - d. Payroll data for each member to be added;
  - e. Work force data for each member to be added;
  - f. Financial data for each member to be added;
  - g. Insurance data for each member to be added;
  - h. Two digit standard industrial classification code for each member of the pool;
  - i. Workers' compensation claims, loss and performance history for the member to be added;
  - j. Authorization by board resolution approving addition of each new member;
  - k. Authorized signature and title of person signing application;
  - l. Statement that all information and assertions contained in the application are factually correct and true; and
  - m. Date of execution of the application.
10. Notice Confirming Addition of Member to Pool:
  - a. Name of the pool;
  - b. Name and address of the new member;
  - c. Effective date of membership;
  - d. Rate and code classification to be applied to new member;
  - e. Standard industrial classification code for new member;
  - f. Authorized signature and title of person signing notice;
  - g. Statement that all information and assertions contained in the notice are factually correct and true; and
  - h. Date of execution of the notice.
11. Notice of Termination of Membership:
  - a. Name and address of pool;
  - b. Effective date of termination;
  - c. Name and address of the member to be terminated, identified as follows:
    - i. All names and addresses of every location used by the member;
    - ii. If the member is a partnership, the names and addresses of all the partners;
    - iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and
    - iv. If a member changes names, both the new and former names.
  - d. Authorized signature, title and telephone number of person signing notice;
  - e. Statement that all information and assertions contained in the notice are factually correct and true; and
  - f. Date of execution of the notice.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-704. Requirement for Commission Approval to Act as Self-insurer**

A pool does not have authority to act as a self-insurer under A.R.S. §§ 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-705. Duration of Certificate of Authority**

Except as provided in this subsection, a certificate of authority is valid for one fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application becomes final.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-insure**

A. Administrative completeness review.

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1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.
  2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.
- B. Substantive review.**
1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.
  2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.
- C. Overall review.**
1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
  2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.
- Historical Note**
- Adopted effective September 9, 1998 (Supp. 98-3).
- R20-5-707. Filing Requirements for Initial Application for Self-Insurance License**
- A. Initial application for authorization to self-insure.**
1. An application for authority to self-insure shall be completed on forms approved by the Commission.
  2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.
  3. An application shall be typewritten or written in ink in legible text.
  4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.
  5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:**
1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
  2. A copy of the articles of incorporation establishing the pool, if applicable;
  3. A copy of the trust agreement establishing the pool, if applicable;
  4. A copy of the by-laws governing the operations of the pool;
  5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
  6. A resolution from the board approving employers for membership in the pool;
  7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool for the most current and prior two years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership at the time of the initial application is not less than \$1,000,000;
  8. A copy of the following financial ratios for each employer applying for membership in the pool:
    - a. Cash flow ratio;
    - b. Current ratio;
    - c. Debt status ratio;
    - d. Profitability ratio;
    - e. Quick ratio; and
    - f. Working capital ratio.
  9. A detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
  10. A written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken and will take to lower the member's experience modification rate;
  11. An original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712, or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage is effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
  12. An original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:
    - a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which shall be deposited with the Industrial Commission before approval for self-insurance is effective,
    - b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which is effective when approval for self-insurance is effective, or
    - c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which shall

- be deposited with the Arizona State Treasurer before approval for self-insurance is effective.
13. A completed and signed Option Election Form and Self-Insurance Bond Form;
  14. A copy of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
  15. A copy of the signed agreement or contract of hire between a board and the administrator of the pool;
  16. A designation of a service company and a copy of the signed agreement between the service company and pool that meet the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
  17. A list of all rates by code classification to be used by the pool to calculate premiums;
  18. A statement showing how premiums shall be calculated for members;
  19. A detailed description of the underwriting program required under R20-5-727;
  20. A feasibility study by a member of the American Academy of Actuaries (MAAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and
  21. A schedule showing net workers' compensation premiums paid, total losses incurred, and experience modification rates for the three preceding years for each employer applying for membership in the pool.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

- A. A self-insured pool seeking renewal of an authority to self-insure for workers' compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application is pending before the Commission. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.
- B. A renewal application shall meet the following requirements:
  1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
  2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;
  3. An application shall be typewritten or written in ink in legible text;
  4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
  5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- C. A self-insured pool shall provide the following information at the time the pool files a renewal application:
  1. An updated, completed and signed Option Election Form;

2. A continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set forth in the updated Option Election Form and that meets the requirements of R20-5-713;
  3. A confirmation of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715;
  4. A copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
  5. A continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
  6. A statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
  7. A statement of any change in the calculation method of a premium for each member;
  8. A statement describing the expenses paid from the trustee fund and the loss fund expressed in a dollar amount and as a percentage of the total premiums collected by the pool in the preceding fiscal year;
  9. A copy of the current contract or agreement of hire between the pool and administrator; and
  10. A copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).
- D. No later than 120 days after the end of a pool's fiscal year, the pool shall file with the Division a copy of the pool's most recent audited annual financial statements and a copy of the pool's most recent actuarial review of:
    1. Losses and reserves for all known claims, and
    2. Reserves for incurred but not reported claims.
  - E. The Commission shall deem a renewal application complete when a pool provides the information required under subsections (C) and (D).
  - F. If a pool does not file a renewal application, each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the pool's certificate of authority expires.
  - G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool shall provide proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the date the Commission deems the application withdrawn.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million at the time the pool files an initial application for authority to self-insure.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-710. Similar Industry Requirement

The Commission shall consider the following in determining whether two or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

1. Two digit standard industrial classification code established by the 1987 Standard Industrial Classification Manual assigned to an employer applying for membership in the pool; and
2. Other information describing or concerning the business of an employer applying for membership in the pool. The

Commission may solicit additional written or oral information from a pool or others to assist the Commission in determining whether two or more employers are engaged in a similar industry.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-711. Joint and Several Liability of Members

- A. The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:
1. Liability of members. Each member is liable for its own workers' compensation claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.
  2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related to such action or proceeding. The pool shall also pay all judgments or awards, and all interest due and accruing after a judgment.
- B. The joint and several liability clause required under A.R.S. § 23-961.01 to be included in each agreement or contract to establish a pool shall include the language in subsection (A)(1) and (2).
- C. The joint and several liability clause required under A.R.S. § 23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.
- D. A pool shall ensure that all members read and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection (A).
- E. Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of authority to self-insure.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-712. Fidelity Policy

- A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:
1. Individuals appointed to the pool's board of trustees (individual and collective liability),

2. Administrator of the pool, and
3. Employees of the pool.

- B. The amount of the fidelity policy in subsection (A) shall be at least \$1 million. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in excess of \$1 million is necessary to protect members of the pool from damages resulting from misrepresentation or misuse of any monies or securities owned, controlled, or managed by the board, administrator, or employees of the pool.
- C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-713. Guaranty Bond

- A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either:
1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection (B); or
  2. \$200,000.
- B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guaranty bond shall be in the amount established in the option election form.
- C. A guaranty bond or continuation certificate for the guaranty bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to self-insure. The guaranty bond or continuation certificate shall be valid for a period of one year, subject to annual renewal in the amount established in the Option Election Form filed with a renewal application.
- D. A guaranty bond or continuation certificate for the guaranty bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continuation certificate shall be executed by an authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.
- E. Instead of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections (A) and (B).
- F. Instead of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections (A) and (B).
- G. The Commission shall not accept certificates of deposit instead of a guaranty bond, securities, or letter of credit.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-714. Securities Deposited with the Arizona State Treasurer

- A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."
- B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona.

- C. The Commission shall have the following powers with regard to securities held by the State Treasurer:
1. To collect or order the collection of the securities as they become due;
  2. To sell or order the sale of the securities, or any part of the securities; and
  3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment of a pool's obligations under the Arizona Workers' Compensation Act.
- D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-715. Aggregate and Specific Excess Insurance Policies**

- A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.
- B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.
- C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.
- D. Policy and Retention Amounts.
1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
    - a. Retention for specific excess insurance shall not be less than \$100,000 nor exceed \$1,250,000 without advance written approval by the Commission. Specific excess insurance shall be provided to the statutory limit; and
    - b. Maximum retention of aggregate excess insurance shall not exceed 150% of collected premiums. Total aggregate insurance coverage shall not be less than \$1,000,000.
  2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

Amended by final rulemaking at 22 A.A.R. 2782, effective September 7, 2016 (Supp. 16-3).

**R20-5-716. Rates and Code Classifications; Penalty Rate**

- A. A pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance.
- B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds**

- A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses of the pool.
- B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:
  1. The rating plan is filed by an Arizona licensed rating organization, and
  2. The rating plan has not been disapproved by the Arizona Department of Insurance.
- C. Each member shall pay to a pool the premium due in equal monthly or quarterly payments for the premium year, except that upon admission into a pool, a new member shall pay no later than five days after the effective date of membership not less than 25% of the annual premium calculated for the new member. The remaining premium due after a new member has advanced 25% of the annual premium shall be paid in equal monthly or quarterly payments for the premium year. A pool shall permit a member to pay a premium in advance of the monthly or quarterly schedule.
- D. Deviations from rates.
  1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:
    - a. The deviation is based upon the expense and loss experience of the pool,
    - b. The deviation is supported and justified by an actuary's feasibility study, and
    - c. The pool provides the information required under this subsection to the Division and receives approval from the Division.
  2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.
- E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:
  1. Surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
  2. Total assets of a pool are greater than total liabilities for each fiscal year;
  3. An actuary approves the amount of the refund;
  4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and
  5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is reported.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-718. Financial Statements**

- A. A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.

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- B. A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.
- C. A pool shall ensure that an actuarial opinion is rendered by an actuary who is a member of the Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).
- D. A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. The audit shall include:
  - 1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
  - 2. A description of how the pool operates; and
  - 3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.
- E. Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall provide its annual financial statement within 120 days after the pool's fiscal year ends.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-719. Board of Trustees**

- A. A pool shall be managed by a board of trustees consisting of at least five individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.
- B. Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:
  - 1. Responsibility for all operations of a pool;
  - 2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
  - 3. Hiring of an administrator to manage the daily operations of a pool;
  - 4. Reviewing and taking action on applications for membership in a pool;
  - 5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
  - 6. Determining the premium to be charged to a member;
  - 7. Investing surplus monies in compliance with this Article and other applicable law;
  - 8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
  - 9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;
  - 10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
  - 11. Ensuring that accounts and records of the pool are audited as required under this Article.
- C. Delegation of board duties to administrator.
  - 1. Except as prohibited by law, a board may delegate to an administrator the duties the board determines proper.
  - 2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.

- D. Board prohibitions. A board or board trustee shall not commit or perform the following acts:
  - 1. Extend credit to members for payment of a premium;
  - 2. Utilize money collected as premiums for a purpose unauthorized by this Article;
  - 3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
  - 4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-720. Administrator; Prohibitions; Disclosure of Interest**

- A. An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.
- B. An administrator shall not commit any of the acts described in R20-5-719(D).
- C. An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of services or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool**

- A. An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or the board's designee, on a form approved by the Commission.
- B. Consideration of application by a board.
  - 1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.
  - 2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.
- C. Commission Approval.
  - 1. Except as provided in subsection (C)(2), within seven days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:
    - a. The employer meets the requirements of A.R.S. § 23-961.01 and this Article;

- b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
  - c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.
2. After a pool has completed one year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:
    - a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
    - b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.
  3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall mail the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737, and R20-5-738.
- D. Admission of an employer under subsection (C)(2).**
1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the employer applying for membership.
  2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.
  3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting**

- A.** A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.
- B.** A pool shall provide the Commission written notice of a member's intent to terminate membership or a pool's intent to cancel a member's participation in the pool at least 30 days before the termination or cancellation is effective on a form approved by the Commission.
- C.** A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-723. Trustee Fund; Loss Fund**

- A.** A pool shall maintain a trustee fund and a loss fund.
- B.** Trustee fund.
  1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.
  2. A pool shall create a loss fund from the trustee fund.
  3. A pool shall pay administrative expenses of the pool from the trustee fund.
  4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.
- C.** Loss fund.
  1. A pool shall place its loss fund in a designated federally insured depository in Arizona.
  2. A pool shall pay all workers' compensation expenses from the loss fund.
  3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.
  4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-724. Investment Activity of a Pool**

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:
  - a. United States Government bonds;
  - b. United States Treasury notes;
  - c. Municipal and corporate bonds described under subsections (A)(2), (3), and (4);
  - d. Certificates of deposit;
  - e. Savings accounts in banks located in Arizona that are federally insured; and
  - f. Common or preferred stock.
2. Corporate and municipal bonds are restricted to the top three major investment grades as determined by two financial rating services;
3. Not more than 5% of a corporate municipal bond portfolio is invested in any one corporation or municipality;
4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds;
5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks; and
6. Not more than 5% of a common and preferred stock portfolio is invested in any one corporation.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims**

- A.** A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.
- B.** Qualifications of a service company.

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1. A service company shall have facilities and equipment to manage, process, and store workers' compensation claims;
  2. If required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
    - a. Processing of Arizona workers' compensation claims; and
    - b. Arizona Worker's Compensation Act;
  3. Service company personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- C.** A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers' Compensation Act and the rules. A contract between a pool and service company shall include this requirement.
- D.** Transfer of claims from one service company to another service company.
1. The transfer of claims from one service company to another service company shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.
  2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
  3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from one service company to another.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-726. Processing of Workers' Compensation Claims by a Pool**

- A.** The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:
1. The pool has facilities and equipment to manage, process, and store its own workers' compensation claims;
  2. If required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
    - a. Processing of Arizona workers' compensation claims; and
    - b. Arizona Workers' Compensation Act;
  3. Pool personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- B.** A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and the rules.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-727. Loss Control and Underwriting Programs**

- A.** A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.
- B.** A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.
- C.** A pool shall ensure those persons with education, experience, or training in loss control administer the loss control program.
- D.** A pool shall ensure those persons with education, experience, or training in underwriting administer the underwriting program.
- E.** A pool shall maintain facilities and equipment to implement the loss control and underwriting programs.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy**

- A.** A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding. The proposal may include the following:
1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;
  2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; or
  3. Assessment of members.
- B.** The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within one year after the date the Commission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.
- C.** If, as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.
- D.** The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.
- E.** Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.
- F.** A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-729. Arizona Office; Recordkeeping; Records Available for Review**



- A. A pool shall maintain an office in Arizona.
- B. A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.
- C. A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.
- D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records.
- E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a third party, the third party shall immediately surrender the records to a pool, upon request by the pool.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### **R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission**

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### **R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission**

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### **R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065**

- A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using one of the following insurance plans selected by a pool:
  - 1. Fixed premium plan:
    - a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
    - b. A discount is allowed for premium size; and
    - c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.
  - 2. Guaranteed cost plan:
    - a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured;
    - b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.
  - 3. Retrospective plan:
    - a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
    - b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
    - c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
    - d. The net taxable premium is subject to a maximum and minimum premium level depending on which one of the four rating insurance option plans specified in the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;

- B. A pool shall not select a retrospective plan unless the pool meets the following criteria:
  - 1. The pool has an annual net taxable premium exceeding \$100,000; and
  - 2. The pool submits and calculates four years of data concerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest three years of data is used to calculate the rate and the current year data is used to calculate the tax.
- C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:
  - 1. Self-insured Payroll Report, and
  - 2. Self-insured Injury Report.
- D. Payment of quarterly tax.
  - 1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in one of the following ways:
    - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate; or
    - b. Calculation based on actual payroll and premiums collected for each quarter.
  - 2. A pool shall file a completed and signed Self-insurers' Quarterly Tax Payment Form with each quarterly tax payment.
  - 3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
  - 4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.
- E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.
- F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division**

- A.** Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:
1. Whether the pool has met the requirements of A.R.S. § 23-961.01;
  2. Whether the pool has met the requirements of this Article; and
  3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
    - a. Total cash, receivables, and investments to total assets; and
    - b. Total revenue to total expenditures for loss fund and trustee fund.
- B.** The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure**

- A.** The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:
1. The information submitted by an applicant or pool,
  2. The information and recommendations of the Division, and
  3. The requirements of A.R.S. § 23-961.01 and this Article.
- B.** The Commission shall deny an application for authority to self-insure if the Commission finds one or more of the following conditions:
1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01,
  2. An applicant or pool does not meet the requirements of this Article, or
  3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C.** A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.
- D.** The Division shall mail a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.
- E.** In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity insurance coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of author-

ity to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.

- F.** In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess insurance coverage with evidence of excess insurance coverage as required under this subsection.
- G.** In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter of credit, or other securities as required under this subsection.
- H.** Subject to subsections (E), (F), and (G), no later than 10 days after the Commission grants authorization to self-insure, the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-735. Right to Request a Hearing**

- A.** An applicant or pool shall have 10 days from the date the Commission mails the findings and order under R20-5-734 to request a hearing.
- B.** A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.
- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-736. Hearing Rights and Procedures**

- A.** Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
  2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.
- B.** Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.

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2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.
- C. Appearance by a party.**
1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
  2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.**
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
  2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.**
1. The Commission shall give the parties at least 20 days notice of hearing.
  2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.
  3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).
- F. Evidence.**
1. The civil rules of evidence do not apply to hearings held under this Section.
  2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
  3. All witnesses at a hearing shall testify under oath or affirmation.
  4. A party may present evidence and conduct cross-examination of witnesses.
  5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
  6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
  7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of doc-

uments or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.

- G. Transcript of Proceedings.** Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-737. Decision Upon Hearing by Commission**

- A.** A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C.** A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members without Commission approval shall be based upon the grounds in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D.** After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E.** A Commission decision is final unless an applicant or pool requests review under R20-5-738 no later than 15 days after the written decision is mailed to the parties.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).

**R20-5-738. Request for Review**

- A.** A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B.** A request for review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
  1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
  2. Accident or surprise which could not have been prevented by ordinary prudence;
  3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
  4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
  5. Bias or prejudice of the Division or Commission; and
  6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.

- E. The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. § 23-946.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

#### R20-5-739. Revocation of Authority to Self-insure

- A. In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:
1. Failure to comply with requirements of this Article or applicable requirements of 20 A.A.C. 5, Article 1;
  2. Failure to comply with applicable requirements of A.R.S. § 23-901 et seq.;
  3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
  4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
  5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and
  6. The willful misstatement of any material fact in an application, report, or statement made to the Commission.
- B. Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.
- C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.
- D. The Commission shall revoke a pool's authority to self-insure if the Commission finds one or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.
- E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.
- G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).

### ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

#### R20-5-801. Notice of Rules

Sections R20-5-801 et seq. apply to all actions and proceedings of or before the Commission and Review Board pertaining to those issues arising out of Title 23, Chapter 2, Article 10.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-801 recodified from R4-13-801 (Supp. 95-1).

#### R20-5-802. Location of Office and Office Hours

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for the transaction of business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays and legal holidays.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-802 recodified from R4-13-802 (Supp. 95-1).

#### R20-5-803. Definitions

In these Rules of Procedures, unless the context otherwise requires, the following words and terms shall have the following meanings:

1. "Commission" means the Industrial Commission of Arizona.
2. "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.
3. "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.
4. "Representative" means any person, including an authorized employee representative, authorized by a party to represent him in a proceeding.
5. "Citation" means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.
6. "Notification of proposed penalty" means a written communication issued by the Industrial Commission of Arizona pursuant to A.R.S. § 23-418.
7. "Party" means the Occupational Safety and Health Division of the Commission, the affected employer and affected employees.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-803 recodified from R4-13-803 (Supp. 95-1).

#### R20-5-804. Computation of Time

In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-804 recodified from R4-13-804 (Supp. 95-1).

#### R20-5-805. Record Address

The initial pleading filed by any person shall contain his name, address and telephone number. Any change in such information must be communicated promptly in writing to the Commission and to all other parties. A party who fails to furnish such correct and current information shall be deemed to have waived his right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-805 recodified from R4-13-805 (Supp. 95-1).

#### R20-5-806. Service and Notice

- A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.
- B. Service upon a party who has appeared through a representative shall be made only upon such representative.
- C. Unless otherwise herein indicated, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if

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by mail) or at the time of personal delivery (if by personal delivery).

- D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.
- E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (C).
- F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of Notice of the Date of Hearing, post, where the citation is required to be posted, a copy of the Notice of Date of Hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:  
(Name of employer)

Your employer has been cited by the Industrial Commission of Arizona for violation of the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Industrial Commission. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission in its Rules of Procedure. Notice of Intent to Participate should be sent to:

THE INDUSTRIAL COMMISSION  
OF ARIZONA  
1601 West Jefferson Street,  
Phoenix, Arizona 85007.

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above Notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Industrial Commission for abatement of the violation has been contested and will be the subject of a hearing before the Industrial Commission.

- G. Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.
- H. The authorized employee representative, if any, shall be served with the notice set forth in subsection (G) and with a copy of the Notice of the Date of Hearing.
- I. A copy of the Notice of the Date of Hearing shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the Notice of such hearing at or near the place where the citation is required to be posted.
- J. A copy of the Notice of the Date of Hearing shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subsection (C) of this Section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such Notice is received by the employer.
- K. Where a petition for hearing is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the

unrepresented employee shall, upon receipt of the Notice of the Date of Hearing, serve a copy thereof on such authorized employee representative in the manner prescribed in subsection (C) of this Section and shall file proof of such service.

- L. Where a Petition for Hearing is filed by an affected employee or an authorized employee representative, a copy of the Petition for Hearing shall be provided to the employer for posting by the employer at the place the citation is required to be posted.
- M. An authorized employee representative who files a Notice of Contest shall be responsible for serving any other authorized employee representative whose members are affected employees.
- N. Where posting is required by this Section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-806 recodified from R4-13-806 (Supp. 95-1).

#### R20-5-807. Consolidation

Cases may be consolidated on the motion of any party, or on the hearing officer's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-807 recodified from R4-13-807 (Supp. 95-1).

#### R20-5-808. Severance

Upon its own motion, or upon motion of any party, the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-808 recodified from R4-13-808 (Supp. 95-1).

#### R20-5-809. Election to Appear

- A. Affected employees may elect to appear at a hearing for the purpose of testifying or stating their position concerning the subject matter of the hearing.
- B. If affected employees desire to appear at the hearing they must so notify in writing the Commission or the hearing officer, if the case has been assigned.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-809 recodified from R4-13-809 (Supp. 95-1).

#### R20-5-810. Employee Representatives

- A. Employees may appear in person or through a representative.
- B. An authorized employee representative shall be deemed to control all matters respecting the interest of such employees in the proceeding.
- C. Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.
- D. Withdrawal of appearance of any representative may be effected by filing a written Notice of Withdrawal and by serving a copy thereof on all parties.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-810 recodified from R4-13-810 (Supp. 95-1).

#### R20-5-811. Form of Pleadings

- A. Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required

to contain a caption sufficient to identify the parties in accordance with R20-5-812, which shall include the Commission's citation number, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

- B. Pleadings and other documents (other than exhibits and petitions for hearing) shall be typewritten and double spaced, on letter size opaque paper (approximately 8 1/2 inches by 11 inches). The left margin shall be 1 1/2 inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.
- C. Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.
- D. The Commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (A), (B), and (C) of this Section.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-811 recodified from R4-13-811 (Supp. 95-1).

#### R20-5-812. Caption; Titles of Cases

- A. Cases initiated by the cited employer filing a Petition for Hearing contesting the violations cited shall be titled:  
Division of Occupational Safety and Health of the Industrial Commission of Arizona, Complainant, vs. (name of employer), Respondent.
- B. Cases initiated by the cited employer filing a Petition of Hearing for modification of the abatement period shall be titled:  
(name of employer), Petitioner vs. Division of Occupational Safety and Health of the Industrial Commission of Arizona, Respondent.
- C. Cases initiated by an affected employee filing a Petition for Hearing for modification of the abatement period shall be titled:  
(name of affected employee or authorized employee representative), Petition vs. Division of Occupational Safety and Health of the Industrial Commission of Arizona, Respondent, and (employer), Respondent.
- D. The Titles listed in subsections (A) and (B) of this Section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits and Petitions for Hearing filed).
- E. The initial page of any pleading or document (other than exhibits and requests for hearing) shall show the citation number at the upper right of the page, opposite the title.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-812 recodified from R4-13-811 (Supp. 95-1).

#### R20-5-813. Requests for Hearing

- A. Requests for hearing shall be filed with the Commission.
- B. Requests for hearing shall be in writing and contain a clear and plain statement of the relief that is sought, together with the grounds thereof.
- C. The Commission shall, after receipt of a request for hearing, refer the file to the Hearing Officer Division for determination.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-813 recodified from R4-13-813 (Supp. 95-1).

#### R20-5-814. Pre-hearing Conference

- A. At any time before a hearing, the hearing officer, on his own motion or on motion of a party, may direct the parties, or their representatives, to exchange information or to participate in a

pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

- B. The hearing officer may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-814 recodified from R4-13-814 (Supp. 95-1).

#### R20-5-815. Payment of Witness Fees and Mileage

Witnesses summoned before the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of Arizona. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-815 recodified from R4-13-815 (Supp. 95-1).

#### R20-5-816. Expired

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-816 recodified from R4-13-816 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 8, 2016 (Supp. 16-4).

#### R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing

- A. The failure of a party who has requested a hearing to appear at such scheduled hearing shall be deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and additionally a waiver of all rights except the right to be served with a copy of the decision of the hearing officer and to request review.
- B. Withdrawal of request for hearing shall be construed as an admission of the validity of any citation, abatement period or penalty issued or proposed. No decision need be issued in this case as the subject instrument is deemed to be admitted.

#### Historical Note

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-817 recodified from R4-13-817 (Supp. 95-1).

#### R20-5-818. Duties and Powers of Hearing Officers

It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issued his decision, subject to the rules and regulations of the Commission, to:

1. Administer oaths and affirmations;
2. Rule upon admissibility of exhibits;
3. Rule upon applications for depositions;
4. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
5. Call and examine witnesses;
6. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
7. Adjourn the hearing as the needs of justice and good administration require;
8. Issue appropriate orders for protection of trade secrets;
9. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission.

**Historical Note**

Adopted effective August 27, 1975 (Supp. 75-1). R20-5-818 recodified from R4-13-818 (Supp. 95-1).

**R20-5-819. Witnesses' Oral Deposition; In State**

- A. After a request for hearing has been filed with the Commission, any party desiring to take the oral deposition of any other party or witness residing within the state of Arizona shall file with the hearing officer, in duplicate, notice of taking deposition by oral examination. Copies of such Notice shall be served at least five days prior to the date of the deposition upon the deponent and upon every party by the party desiring to take the oral deposition.
- B. If any party or the deponent has any objection to the taking of the oral deposition of the party or witness, he shall file with the presiding hearing officer and serve on all parties written objections thereto setting forth the basis of the opposition to the deposition. Such objection shall be filed with the hearing officer within two days after the notice of taking deposition by oral examination is served.
- C. If objections to the taking of the oral deposition are filed with the hearing officer as provided in subsection (B) hereof, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the hearing officer. The hearing officer shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate.
- D. The party taking the deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.
- E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other party.
- F. No scheduled hearing shall be cancelled or continued for failure to take or complete a deposition taken pursuant to the provisions of this rule.
- G. Depositions taken pursuant to the provisions of this rule shall only be used at the time of a hearing for impeachment of a witness, unless the deponent is deceased at the time of the scheduled hearing, in which event it may be admitted into evidence.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-819 recodified from R4-13-819 (Supp. 95-1).

**R20-5-820. Witnesses' Oral Deposition; Out-of-State**

- A. After a request for hearing is filed with the Commission, any party desiring to take the oral deposition of any other party or witness residing without the state of Arizona shall file with the hearing officer, in duplicate, a request for permission to take the deposition of such witness or witnesses. Such request shall show the name and address of such witness or witnesses and set forth the reason why said witness or witnesses' testimony is necessary for an adjudication of the issue. Copies of such request shall be served upon each party by the party requesting permission to take the deposition. If no objection to the request for permission to take the deposition is filed as provided in subsection (B) hereof, the hearing officer may, within 10 days, in his discretion, grant or deny the permission to take the deposition. If the hearing officer permits the taking of the deposition, the party may proceed in the manner provided by and subject to the limitations of subsections (A), (D), (E), and (F).
- B. If any party has any objections to the taking of the oral deposition of the party or witness, he shall file with the hearing officer and serve on all other parties written objections thereto setting forth the basis for the opposition to the deposition. Such objection shall be filed with the hearing officer within five days after the request to take the deposition is served.

- C. If objections to the taking of the oral deposition are filed with the hearing officer as provided in subsection (B) hereof, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the hearing officer. The hearing officer shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate. If the hearing officer orders that the deposition proceed, the party may proceed to take the deposition in the manner provided by and subject to the limitation of R20-5-819, subsections (A), (D), (E), and (F).
- D. Any deposition taken pursuant to the provisions of this rule shall be filed with the Commission at least five days prior to the hearing date or any scheduled hearing and may be admitted into evidence. If the deposition is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the hearing officer.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-820 recodified from R4-13-820 (Supp. 95-1).

**R20-5-821. Parties' Disposition upon Written Interrogatories**

- A. After a request for hearing is filed with the Commission, any party desiring to take the deposition of another party upon written interrogatories shall file with the hearing officer, in duplicate, copies of the interrogatories sought to be submitted to the party. The written interrogatories submitted pursuant to this rule shall be limited to 25 in number with no subsections. Copies of such interrogatories shall be filed at least five days prior to any scheduled hearing.
- B. Answers to the interrogatories shall be served on all parties by the party answering the interrogatories within 10 days after service of the interrogatories, or within 10 days after a ruling by the hearing officer that the interrogatories be answered.
- C. No scheduled hearing shall be cancelled or continued for failure to take or complete the taking of a deposition taken pursuant to the provisions of this rule.
- D. Depositions taken pursuant to the provisions of this rule shall only be used at the time of hearing for impeachment of a witness unless the deponent is deceased at the time of the scheduled hearing in which event they may be admitted into evidence.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-821 recodified from R4-13-821 (Supp. 95-1).

**R20-5-822. Refusal to Answer; Refusal to Attend**

- A. If a party or other deponent refuses to answer any question propounded upon oral examination pursuant to R20-5-819 and R20-5-820, the examination shall be completed in other matters or adjourned, as the proponent of the question may prefer. Thereafter on reasonable notice to all persons affected thereby the proponent of the question may apply to the hearing officer for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under R20-5-821, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the hearing officer finds that the refusal was without substantial justification, the hearing officer shall require the refusing party, or deponent and the party, or representative advising the refusal or either of them to pay to the examining party the amount of the reasonable attorney's fees incurred in obtaining the order and the reasonable expenses which will be incurred to obtain the requested answers. If the motion is denied and if

the hearing officer finds that the motion was made without substantial justification, the hearing officer shall require the examining party or the representative advising the motion, or both of them, to pay to the refusing party or witness the amount of the reasonable attorney's fees incurred in opposing the motion.

- B.** If a party or an officer or managing agent of a party wilfully fails to appear before an officer who is to take his deposition after being served with the proper notice, or fails to serve answers to interrogatories after proper service of such interrogatories, the hearing officer, on motion and notice, may strike out all or any part of any pleading of that party, dismiss the action or proceeding or any part thereof, or preclude the introduction of evidence.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-822 recodified from R4-13-822 (Supp. 95-1).

**R20-5-823. Burden of Proof**

- A.** In all proceedings other than those stated in subsection (B) commenced by the filing of a request for hearing, the burden of proof shall rest with the Commission.
- B.** In proceedings commenced by a request for hearing requesting modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-823 recodified from R4-13-823 (Supp. 95-1).

**R20-5-824. Intermediary Rulings or Orders by the Hearing Officer**

No intermediary rulings or orders by the hearing officer may be appealed to the Review Board but shall become a part of the record.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-824 recodified from R4-13-824 (Supp. 95-1).

**R20-5-825. Legal Memoranda**

Legal memoranda may be filed if request is granted by the hearing officer. If such request is granted the hearing officer shall establish a reasonable time for such filing and response or simultaneous filing.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-825 recodified from R4-13-825 (Supp. 95-1).

**R20-5-826. Decisions of Hearing Officers**

- A.** The decision of the hearing officer shall include findings and conclusions of fact and law, and an order.
- B.** The hearing officer shall sign the decision. Upon issuance of the decision, jurisdiction shall rest solely in the Commission, and if a request for review is filed it shall be addressed to the Commission.

**Historical Note**

Amended effective August 27, 1975 (Supp. 75-1). R20-5-826 recodified from R4-13-826 (Supp. 95-1).

**R20-5-827. Settlement**

- A.** Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.
- B.** Settlement agreement submitted by the parties shall be accompanied by an appropriate proposed order which shall be signed by the assigned hearing officer or chief hearing officer.

- C.** Where parties to the settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in R20-5-806. Proof of such service shall accompany the proposed settlement when submitted to the Commission or the hearing officer.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-827 recodified from R4-13-827 (Supp. 95-1).

**R20-5-828. Special Circumstances; Waiver of Rules**

In special circumstances, or for good cause shown, the hearing officer may, upon application by any party, or on his own motion, waive any rule or make such orders as justice or the administration of the Act requires.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-828 recodified from R4-13-828 (Supp. 95-1).

**R20-5-829. Variances**

- A.** Any hearing concerning variances shall be filed before the Commissioners at a time set by the Commission.
- B.** Such proceeding shall be informal but shall be transcribed at the expense of the person seeking the variance if a written record of the proceeding is desired.

**Historical Note**

Adopted effective March 20, 1975 (Supp. 75-1). R20-5-829 recodified from R4-13-829 (Supp. 95-1).

**ARTICLE 9. EXPIRED**

**R20-5-901. Expired**

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-901 repealed, new Section R4-13-901 adopted effective May 27, 1977 (Supp. 77-3). R20-5-901 recodified from R4-13-901 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-902. Expired**

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-902 repealed, new Section R4-13-902 adopted effective May 27, 1977 (Supp. 77-3). R20-5-902 recodified from R4-13-902 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-903. Expired**

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-903 repealed, new Section R4-13-903 adopted effective May 27, 1977 (Supp. 77-3). R20-5-903 recodified from R4-13-903 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-904. Expired**

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-904 repealed, new Section R4-13-904 adopted effective May 27, 1977 (Supp. 77-3). R20-5-904 recodified from R4-13-904 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the



Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-905. Expired**

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-905 repealed, new Section R4-13-905 adopted effective May 27, 1977 (Supp. 77-3). R20-5-905 recodified from R4-13-905 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-906. Expired**

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R4-13-906 repealed, new Section R4-13-906 adopted effective May 27, 1977 (Supp. 77-3). R20-5-906 recodified from R4-13-906 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-907. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-907 recodified from R4-13-907 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-908. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-908 recodified from R4-13-908 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-909. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-909 recodified from R4-13-909 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-910. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-910 recodified from R4-13-910 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-911. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-911 recodified from R4-13-911 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-912. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-912 recodified from R4-13-912 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-913. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-913

recodified from R4-13-913 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**R20-5-914. Expired**

**Historical Note**

Adopted effective May 27, 1977 (Supp. 77-3). R20-5-914 recodified from R4-13-914 (Supp. 95-1). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

**ARTICLE 10. WAGE CLAIMS**

**R20-5-1001. Definitions**

In this Article, unless the context otherwise requires:

1. "Claim" means a wage claim pursuant to A.R.S. § 23-356.
2. "Claimant" means an individual who files a claim.
3. "Day" means calendar day.
4. "Department" means the Labor Department of the Industrial Commission of Arizona.
5. "Determination" means a finding by the Department under A.R.S. § 23-357 that a claim is either valid or invalid or that the Department cannot resolve the dispute.
6. "Director" means the Director of the Department.
7. "Dismissal" means an action by the Department in which the Department dismisses the claim and refers the claimant to other statutory remedies.
8. "Notice" or "notification" when made by the Department or the Director means a written communication transmitted to the employer or claimant, or both, by regular mail.

**Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1001 recodified from R4-13-1001 (Supp. 95-1). Amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

**R20-5-1002. Forms**

The following forms are available upon request from the Department or from the Industrial Commission's Internet web site at [www.ica.state.az.us](http://www.ica.state.az.us):

1. Wage claim. When making a claim, a claimant shall provide the following information to the Department:
  - a. Claimant's name, address, telephone number, and date of birth;
  - b. Employer's name, address, telephone number, and description of business;
  - c. Claimant's dates of employment, position, and pay;
  - d. The amount of the wages claimed and whether the claimant requested payment of the wages from employer; and
  - e. Claimant's signature and signature date.
2. Employer response. The employer responding to a claim shall provide the following information to the Department:
  - a. Employer's name, address, telephone number, and description of business;
  - b. Claimant's dates of employment, position, and pay;
  - c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and
  - d. Employer's signature and signature date.

**Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1002 recodified from R4-13-1002 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12

A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

**R20-5-1003. Filing Requirements; Time for Filing; Computation of Time**

- A. A claimant shall file a claim with the Department within one year of the date of the accrual of the claim.
- B. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period and Saturdays, Sundays, and legal holidays are included in the computation of time.
- C. The date of filing of the claim is the date the claimant's wage claim form is received by the Department.
- D. The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.
- E. An individual filing a form or document related to a claim shall legibly fill out the form or document in ink or type.
- F. If the wage claim form received from a claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant by regular mail with a request that the claimant provide the required information and return the completed wage claim form to the Department within 10 days from the date of the Department's request. If the Department does not receive the completed wage claim form within 10 days, the Department shall not initiate an investigation of the claim and the Department shall consider the claim withdrawn without prejudice. The claimant may re-file a withdrawn wage claim with the information required by R20-5-1002(1), if the claim is re-filed within one year of the date of the accrual of the claim.

**Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1003 recodified from R4-13-1003 (Supp. 95-1). Former R20-5-1003 renumbered to R20-5-1004; new R20-5-1003 made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

**R20-5-1004. Investigation of Claim**

- A. The Department shall mail a copy of a claimant's wage claim form within 10 days after the Department's receipt of the form to the employer listed on the wage claim, with a request that the employer complete and file the employer response form within 10 days of the date of the Department's mailing.
- B. If the Department does not receive the employer response form under subsection (A), the Department shall provide written notice to the employer stating that the employer must pay the amount claimed or file a written response to the wage claim within 10 days of the date of the Department's written notice.
- C. If the employer timely files the employer response under subsection (A), but the response is incomplete, the Department shall mail the employer a notice requesting that the employer file the required information within 10 days of the date of the Department's notice. If the Department does not receive the required information within 10 days, the Department shall make a determination regarding the claim based on the evidence in the file.
- D. If the employer's response disputes the amount of wages claimed by the claimant, the Department shall mail a copy of the employer's response to the claimant and offer the claimant the opportunity to file a written reply to the employer's response within 10 days from the date of the Department's mailing. If the Department does not receive claimant's reply within 10 days, the Department shall make a determination of the claim based on the evidence in the file.

- E. If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department shall make a determination of the claim based on the evidence in the file.
- F. Upon request from the Department, and if necessary to complete the Department's investigation, the claimant, the employer, or both, shall submit further written information or meet with the Director or his designee. Except for statements made during settlement, mediation, or an informal conference, the Director or his designee shall administer oaths for the purpose of taking affidavits and shall tape record the meeting.
- G. Upon completion of its investigation, the Department shall notify the parties to the claim of the Department's determination in writing.

**Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1004 recodified from R4-13-1004 (Supp. 95-1). Former R20-5-1004 renumbered to R20-5-1005; new R20-5-1004 renumbered from R20-5-1003 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

**R20-5-1005. Mediation of Disputes**

- A. During the investigation of a claim, the Department may mediate and conciliate a dispute between the claimant and the employer.
- B. If mediation results in an informal resolution of the claim, the Director or the Director's designee shall prepare and ensure execution of documents providing for the resolution of the claim.

**Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1005 recodified from R4-13-1005 (Supp. 95-1). Former R20-5-1005 renumbered to R20-5-1006; new R20-5-1005 renumbered from R20-5-1004 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

**R20-5-1006. Dismissal of Claim**

- A. The Department shall dismiss a claim if:
  - 1. The claim is filed more than one year after the date of the accrual of the claim,
  - 2. The claimant does not comply with R20-5-1003(F),
  - 3. The amount of wages claimed exceeds \$2,500.00,
  - 4. The Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.,
  - 5. The claimant has filed a civil action regarding the same claim,
  - 6. The employer listed on the claim is in bankruptcy,
  - 7. The Department is unable to locate the employer based on the information provided by the claimant, or
  - 8. The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.
- B. The Department shall send a notice of dismissal to the claimant and, except as provided in subsections (A)(1) through (A)(3) and (7), the Department shall send a notice of dismissal to the employer. Notices of dismissal shall notify the claimant of the availability of other remedies.

**Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1006 recodified from R4-13-1006 (Supp. 95-1). Former R20-5-1006 renumbered to R20-5-1007; new R20-5-1006 renumbered from R20-5-1005 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006

(Supp. 06-2).

#### **R20-5-1007. Notice of Right of Review**

- A. A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq.
- B. The Department shall serve a determination on the parties by regular mail.

#### **Historical Note**

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1007 recodified from R4-13-1007 (Supp. 95-1). Former R20-5-1007 renumbered to R20-5-1008; new R20-5-1007 renumbered from R20-5-1006 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

#### **R20-5-1008. Payment of Claim**

- A. The Department shall send any payment of a wage claim received by the Department to the claimant by certified mail, return receipt requested.
- B. If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department shall verify the payment by sending a letter to the claimant by regular mail. If the claimant does not respond to the Department's letter within 10 days of the date of the Department's letter, the Department shall deem the claim to have been paid.
- C. Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.
- D. In the case of a determination and directive for payment issued by the Department under A.R.S. § 23-357, the Department shall, if the employer agrees and with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

#### **Historical Note**

New R20-5-1008 renumbered from R20-5-1007; Section amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

#### **R20-5-1009. Service of Determinations, Notices, and Other Documents**

- A. A determination, notice, or other document required by this Article or other law to be mailed or served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.
- B. Service may be made and is deemed complete by depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.

#### **Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2).

### **ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS**

#### **R20-5-1101. Definitions**

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Act" means the Arizona Workers' Compensation Act, A.R.S. § 23-901 et seq.

"Affiliate" or "affiliate relationship" means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.

"Anniversary date" means the date beginning one year from the initial effective date of the Authorization to Self-insure.

"Applicant" means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.

"Authorized signature" means the signature of an officer of the self-insurer.

"Cash-flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by current liabilities.

"Chief counsel" means the chief counsel for the Industrial Commission of Arizona.

"Claim" means a worker's compensation claim.

"Claims Division," means the Claims Division of the Industrial Commission of Arizona.

"Classification code" means a number assigned by an approved rating organization that classifies employees by type of job performed.

"Control" means the possession, direct or indirect, of power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt-status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Accounting Division of the Industrial Commission of Arizona.

"Ex-medical plan" means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer's employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.

"Excess insurance carrier" means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Fixed premium plan" means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.

"Fully-funded risk management fund" means a fund that maintains a positive equity balance that is sufficient to cover all of the fund's actuarial losses.

"Guaranteed cost plan" means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.

“Individual employer” means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. § 23-961.01; § 11-952.01; or § 41-621.01.

“Parent company” means one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as “control” is defined in this Article.

“Profitability ratio” means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.

“Public entity” means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.

“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.

“Rating organization,” means an entity that meets the requirements of A.R.S. § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Resolution of Authorization” means a document issued by the Commission that grants authority to self-insure for purposes of workers’ compensation.

“Retrospective rating plan” means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.

“Securities” or “security” means a guaranty bond, a bond of the United States or its agencies, United States’ Treasury Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.

“Self-insurer” or “self-insured” means an individual employer that the Commission authorizes to self-insure for workers’ compensation insurance under A.R.S. § 23-961.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is calculated by subtracting current liabilities from current assets.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1102. Computation of Time

- A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.
- B. Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to

the Division in writing at least 10 days before the expiration of the time limit for which an extension is sought.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1103. Forms

The following forms are available upon request from the Division or from the Commission’s Internet site at [www.ica.state.az.us](http://www.ica.state.az.us), and include the following information for each:

- A. Initial application for authority to self-insure:
  1. Legal name of the applicant and requested effective date for authority to self-insure;
  2. Mailing address and telephone number of applicant’s principal Arizona office and home office;
  3. Name of state under which applicant is incorporated, if applicant is a corporation;
  4. Name of parent company, if applicant is a subsidiary;
  5. Name, address, and status of partners (general, special, and limited), if applicant is a partnership;
  6. Length of time in business in Arizona and elsewhere, if applicable;
  7. Nature or type of business in Arizona;
  8. Arizona payroll data;
  9. Current workers’ compensation insurance data, including current expiration date;
  10. Statement of reasons for rejection or cancellation if an application for worker’s compensation insurance submitted by applicant has ever been rejected or a policy of workers’ compensation insurance held by the applicant has ever been cancelled;
  11. Listing of states where self-insurance was denied, if any, and where the applicant is currently self-insured;
  12. Arizona claims history and data for three years preceding application date;
  13. Arizona loss history and experience modification rates for three years preceding application date;
  14. Name of excess insurance carrier;
  15. Name, address, and telephone number of third-party administrator or individual responsible for processing Arizona workers’ compensation claims;
  16. Name and address of Arizona agent upon whom legal notice may be served;
  17. Selection of tax plan;
  18. Name, address, telephone and facsimile number, and e-mail address of person responsible for completing the premium tax information;
  19. Name, address, and telephone number of claims office where Arizona workers’ compensation claims will be processed;
  20. Name, address, telephone and facsimile number, and e-mail address of the primary and secondary points of contact for the application and self-insurance process;
  21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
  22. Listing of required attachments.
- B. Workers’ compensation liability form:
  1. Name of self-insurer;
  2. Selection and calculation of required securities and excess insurance, which includes calculation and reporting the following:
    - a. For all claims reported in the current calendar year, the number of open claims, total incurred liability, both medical and compensation, less the amount

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- paid on these claims to equal the remaining liability or amount owing on these claims;
  - b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
  - c. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims; and
  - d. The amount calculated in subsection (B)(2)(c) multiplied by 125%;
- 3. Name of excess insurance carrier that provides reimbursement to self-insurer; and
- 4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers' Compensation Liability Form;
- C. Self-insurance workers' compensation guaranty bond:**
  - 1. Name of self-insurer;
  - 2. Name of the surety insurance company;
  - 3. Description of the bond, bond number, amount, and conditions of obligation;
  - 4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety; and
  - 5. Request for authorized signatures and titles of self-insurer, surety, and agent or attorney-in-fact, and a notarized power of attorney, and date of signing.
- D. Parent company guaranty:**
  - 1. Name and state of incorporation of parent company;
  - 2. Name of self-insured subsidiary to be included in the guaranty;
  - 3. Statement that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary; and
  - 4. Corporate seal.
- E. Self-insured payroll report:**
  - 1. Name of self-insured;
  - 2. Tax plan selection;
  - 3. Period covered by report;
  - 4. Payroll description (classification codes, methods, and types of pay);
  - 5. Amount paid for period covered by the report;
  - 6. Statement that all information contained in the report is correct; and
  - 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- F. Self-insured medical report:**
  - 1. Name of self-insured;
  - 2. Period covered by report;
  - 3. Amount paid relating to treatment of industrial injuries, including payment of medical personnel employed by the self-insurer and medical providers providing outside services;
  - 4. Compensation paid to worker's compensation claimants;
  - 5. Insurance premiums paid;
  - 6. Total expenditures for workers' compensation and occupational disease claims;
  - 7. Statement that all information contained in the report is correct; and
- 8. Request for authorized signature, date, title, and telephone number of person signing the form.
- G. Self-insured hospital report:**
  - 1. Name of self-insurer;
  - 2. Period covered by report;
  - 3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;
  - 4. Amount of revenue, including charges for inpatient and outpatient care, miscellaneous revenue, employee-paid premiums, and employer-paid premiums;
  - 5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;
  - 6. Statement that all information contained in the report is correct; and
  - 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- H. Self-insured injury report:**
  - 1. Name of self-insurer;
  - 2. Period covered by report;
  - 3. Description of individual claims for the current year and three preceding years requiring payment greater than \$5,000.00 for each claim, including name of claimant, date of injury, nature of injury, accumulated amount paid, and the amount of any expenses incurred but not paid;
  - 4. The total amount paid, and the amount of any expenses incurred but not paid, for the current year and three preceding years for all claims requiring a total payment less than \$5,000.00 for each claim;
  - 5. Statement that all information contained in the report is correct; and
  - 6. Request for authorized signature, date, title, and telephone number of person signing the form.
- I. Quarterly tax payment:**
  - 1. Name and address of the self-insurer;
  - 2. Designation of the applicable quarter;
  - 3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for any change in the tax rate for the applicable quarter;
  - 4. Statement that all information contained in the form is correct; and
  - 5. Request for authorized signature, date, title, and telephone number of person signing the form.
- J. Notice of self-insurer's termination of self-insurance:**
  - 1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
    - a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
    - b. Names and addresses of all partners, if self-insurer is a partnership; and
    - c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure;
  - 2. Effective date of termination of authority to self-insure;
  - 3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
  - 4. For the new coverage; effective date of workers' compensation coverage;
  - 5. Statement that all information contained in the form is correct; and
  - 6. Request for authorized signature, date, title, and telephone number of person signing the form.

**K. Self-provider of medical benefits:**

1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
2. If the self-insurer is directing medical care for its employees, the self-insurer shall:
  - (a) Attach a copy of all contracts between the self-insurer and the medical providers; or
  - (b) Submit a list of names and addresses of all medical providers with whom the self-insurer contracts; and
  - (c) The effective date of the agreements between the employer and medical provider; and
3. Authorized signature, date, and title of person signing the form.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1104. Commission Approval to Act as Self-insurer**

An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:

1. The Commission authorizes the employer to be self-insured; and
2. Except as provided in R20-5-1114, the employer posts security in an amount as required under this Article.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1105. Resolution of Authorization**

The Commission shall issue a Resolution of Authorization to an applicant that meets the requirements of this Article. The Commission shall annually review and renew a Resolution of Authorization to self-insure. The authority to self-insure is valid and continues in effect until the Commission takes action under this Article or the self-insured terminates its authorization to self-insure under R20-5-1136.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1106. Time-frames****A. Administrative completeness review.**

1. Initial application.
  - a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
  - b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.
  - c. The Division shall deem the application withdrawn if the applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Request for renewal.
  - a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information in A.R.S. § 23-961 and this Article.

- b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).

**B. Substantive review.**

1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether the initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.
2. Request for renewal. Within 60 days after the Division receives all the required information under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.

**C. Overall time-frame.**

1. Initial application. The overall time-frame is 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Request for renewal. The overall time-frame is 70 days, unless extended under A.R.S. § 41-1072 et seq.

- D. If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1107. Initial Application under A.R.S. § 23-961**

- A. A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the public entity:
  1. Provides an annual payroll in Arizona of at least \$2,000,000; and
  2. Has total assets of at least \$50,000,000.
- B. An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the employer:
  1. Is engaged in business in Arizona and has been for at least five years before the date of the initial application;
  2. Provides an annual payroll in Arizona of at least \$2,000,000, including the combined payrolls of all subsidiary companies that will be under the self-insurance authorization;
  3. Meets either of the following thresholds:
    - a. Has assets of at least \$50,000,000; or
    - b. Has \$10,000,000 in net worth and a cash flow ratio of at least .25.
- C. The applicant for authority to self-insure shall complete and file with the Division a typewritten application form approved by the Division. An application is considered filed when it is received at the Division.

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- D.** The authorized representative of the applicant shall sign and date the initial application.
- E.** The authorized representative signing the initial application shall verify, in writing, that the information submitted with the application is correct.
- F.** The Division shall deem an initial application for authority to self-insure complete if an applicant that is not a subsidiary company provides the following information with the initial application:
1. A statement from the board of directors or governing body:
    - a. Authorizing the filing of the application, and
    - b. Designating the person given authority to sign the application on behalf of the applicant;
  2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;
  3. A copy of the applicable hospital or medical agreement or a detailed statement of the arrangements between the employer and the medical provider, if medical care is directed under A.R.S. § 23-1070;
  4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally-reviewed and signed financial statements for the most current and prior two fiscal years, including any notes to the financial statements;
  5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and
  6. If the applicant is a public entity that qualifies for exemption under R20-5-1114(A), the certified statement required under R20-5-1114(B).
- G.** The Division shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary company provides the following information with the initial application:
1. The information required in Section (F);
  2. A completed Parent Company Guaranty form signed by the authorized representative of the subsidiary's parent company;
  3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form; and
  4. A copy of the parent company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements.
- authorized representative of the parent company, or if the parent company of the subsidiary is different from the last filing approved by the Commission, a certified copy of the parent company board of director's resolution authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form;
3. Per claim data to support the summary information on the Workers' Compensation Liability form. The self-insurer shall provide this information in the same format as in R20-5-1103(B)(2)(a) and (b);
  4. Deposit of security as shown on the completed Worker's Compensation Liability form no later than the self-insurer's anniversary date subject to R20-5-1127 and R20-5-1128;
  5. A certificate of excess insurance or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109;
  6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement, or detailed statement of the arrangements, if not previously provided;
  7. A statement of the total number of full-time and part-time Arizona employees;
  8. If the Division determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;
  9. If the Division determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for that level of losses;
  10. Name of the third-party administrator;
  11. Principal location of the self-insurer in Arizona;
  12. A description of the self-insurer's current business in Arizona and a description of any changes in the nature of business in Arizona in the past year;
  13. List of any subsidiary company located in Arizona; and
  14. Primary and secondary points of contact, including addresses, telephone numbers, facsimile numbers, and e-mail information.
- B.** A self-insurer that is exempt from the requirement to post security, shall request renewal of authorization to self-insure by filing an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following:
1. Information required under subsections (A)(1), (A)(7) through (A)(10) and (A)(14); and
  2. A certified statement that contains the information described in R20-5-1114 (A) and (B).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1108. Self-insurance Renewal**

- A.** A self-insurer that is required to post security under this Article shall request renewal of authorization to self-insure with the Division 30 days before the self-insurer's anniversary date, by filing a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following:
1. A copy of the self-insurer's most recent audited annual financial statement or internally reviewed and signed financial statement or annual report. A parent company shall submit a copy of its most recent audited annual financial statement or annual report;
  2. If the self-insured company is a subsidiary, a completed Parent Company Guaranty form signed and dated by the

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1109. Security Deposit; Excess Insurance Policy**

- A.** Except as provided in R20-5-1114, an applicant authorized to self-insure under this Article shall post security in the amount of at least \$100,000.00 under A.R.S. § 23-961. The self-insurer shall not reduce or offset this minimum amount by any credit for excess insurance.
- B.** Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer filing a request to renew its authority to self-insure under R20-5-1108 shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1127.

- C. Subject to review by the Commission, the self-insurer shall determine its total estimated liability by using the Workers' Compensation Liability form.
- D. The Commission shall approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:
  1. The self-insurer satisfies the minimum-security requirement of A.R.S. § 23-961,
  2. The self-insurer does not reduce or offset the minimum-security amount by an excess insurance,
  3. The self-insurer calculates the credit on the Workers' Compensation Liability form,
  4. The excess insurance policy contains a 60-day notice of termination,
  5. The excess insurer does not have an affiliate relationship with the self-insurer,
  6. The excess insurance policy provides that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy, and
  7. The excess insurer posts a deposit under A.R.S. § 23-961(D).
- E. If an excess insurance provider gives the self-insurer notice of its intent to terminate the policy, the self-insurer shall immediately:
  1. Provide written notice of the notice of termination to the Division, and
  2. Deposit security as shown on the Worker's Compensation Liability form without credit for the excess insurance.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.  
1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date**

- A. A self-insurer shall ensure that a guaranty bond or rider for the guaranty bond filed with the Division bears the same effective date as the effective date of the Resolution of Authorization to self-insure.
- B. The Commission shall permit the self-insurer to post a guaranty bond or rider of the guaranty bond instead of other security if:
  1. The insurance carrier providing the guaranty bond or rider submits the bond or rider to the Division on a form approved for use by the Division;
  2. The guaranty bond is continuous in form;
  3. The penal sum of the guaranty bond or rider equals the amount the self-insured must post as security under this Article;
  4. The company issuing the guaranty bond or rider is authorized and licensed to transact the business of surety insurance in Arizona;
  5. An authorized agent of the surety executes the guaranty bond or rider;
  6. The bond is signed and dated by an authorized representative of the self-insurer;
  7. The surety issuing the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and
  8. The surety issuing the guaranty bond or rider has a rating with A.M. Best of at least A-.
- C. A guaranty bond or rider is subject to annual change based on unpaid liabilities as reported by the self-insurer on the Workers' Compensation Liability form.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit**

- A. Instead of providing a guaranty bond under R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States of America if the bonds or treasury notes are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality of the United States of America.
- B. The self-insurer shall ensure that bonds or treasury notes of the United States of America deposited with Commission under this subsection are registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." The self-insured shall ensure that any contract between the self-insured and the custodial bank provides that the bonds or treasury notes are held for: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
- C. If one or more of the self-insurer's claims are assigned to the state compensation fund under A.R.S. § 23-966, the Commission shall:
  1. Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;
  2. Sell or order the sale of the security or any part of the security; or
  3. Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.
- D. The self-insurer may arrange for interest on bonds or treasury notes of the United States of America deposited under this subsection to be paid to the self-insurer.
- E. Bonds or treasury notes deposited according to this Article by a self-insurer shall be in an amount not less than the security deposit amount required under R20-5-1109.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.  
1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)**

- A. Letter of Credit:
  1. A self-insurer may satisfy the provision of R20-5-1110 by filing a letter of credit.
  2. The self-insurer shall ensure that the letter of credit is registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
  3. The self-insurer shall ensure that the letter of credit is issued by a federal or Arizona chartered bank with an Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.
  4. The letter of credit is acceptable only if:
    - a. The letter includes the name and address of the self-insurer, including all Arizona subsidiaries;
    - b. Is for a period of one year from the effective date;
    - c. Includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Division 30 days before the expiration of any one-year term that the issuing bank will not renew the letter of credit for the additional period;



- d. Includes a provision that the written notice required in subsection (A)(4)(d) may be delivered to the Division or sent to the Division by United States Mail, certified mail return receipt requested;
- e. The letter of credit states the amount available under the letter of credit; and
- f. The self-insurer ensures that the letter of credit includes a statement that the sum available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt by the issuing bank of a signed statement by an official of the Commission stating the following:
  - i. The self-insurer has failed to comply with its workers' compensation obligations; or
  - ii. The self-insurer has failed to renew or substitute acceptable security for its workers' compensation liability 15 days before the expiration of the letter of credit.

**B. Local Government Investment Pool Funds (LGIP):**

- 1. Instead of posting a guaranty bond, letter of credit, or United States of America bonds or Treasury Notes, a self-insured public agency may post a local government investment pool (LGIP) fund only if:
  - a. The self-insurer ensures that the funds are deposited through the Arizona State Treasurer as custodian subject to the order of, and in trust for, the Industrial Commission of Arizona, registered and assigned to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws;"
  - b. The LGIP funds posted as security in compliance with this Section are in an amount not less than the security deposit amount required under R20-5-1109;
  - c. The Commission has the ability to:
    - i. Collect or order collection of the funds; and
    - ii. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, if the self-insurer defaults in any of its obligations;
  - d. The self-insurer submits an assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the State of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language: Receipt is hereby acknowledged by the Treasurer of the State of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.
- 2. Interest on the funds deposited under this Section may be remitted by the State of Arizona Treasurer directly to the self-insurer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1113. Substitution of Securities**

The Commission may authorize the return a self-insurer's security deposit with written approval from the Division. The Commission shall not authorize the return or release of security unless the self-insurer substitutes the security with new security in an amount sufficient to satisfy the self-insurer's obligations under R20-5-1109.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R.  
1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1114. Exemption from Requirement to Post Security**

- A.** Conditions to qualify for exemption. A public entity applicant or public entity self-insurer is exempt from the requirements under this Article to post or provide security if the public entity:
  - 1. Has a fully-funded risk management fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10; and
  - 2. Provides funding to the risk management fund each year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10.
- B.** Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption from posting security shall file a certified statement along with its Workers' Compensation Liability form with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal, that contains the following:
  - 1. A statement that the public entity meets the conditions required under subsection (A);
  - 2. A statement that the governing body of the public entity shall immediately notify the Commission and provide security required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;
  - 3. The signatures of a majority of the members of the public entities' governing body; and
  - 4. If the Commission has previously authorized the public entity to self-insure its workers' compensation obligations, a statement requesting the return of security previously posted or provided to the Commission, including a specific description of the type and amount of security previously posted or provided.
- C.** Approval or denial of request for exemption.
  - 1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer security previously posted or provided to the Commission, within 30 days after receiving written notice under subsection (B).
  - 2. If the Commission denies a request for exemption under this subsection, the Commission shall provide written notice to the public entity within 10 days of the initial written request. The applicant or self-insurer has 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.
- D.** Failure to comply with conditions of exemption. The Commission shall order a self-insurer exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or pro-

vide security as required under this Article if any of the following occurs:

1. The self-insurer fails to file the certified statement to request renewal of self-insurance authority;
2. The self-insurer fails to comply with the conditions in subsection (A); or
3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1115. Rating Plans Available for a Self-insurer

- A. A self-insurer shall use one of the following rating plans to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065:
  1. Fixed-premium plan;
  2. Ex-medical plan;
  3. Guaranteed-cost plan; or
  4. Retrospective-rating plan.
- B. The provisions of the rating plans apply only to operations and payroll in Arizona. The self-insurer shall combine all operations in Arizona as a single base to calculate any premium modification.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a fixed-premium plan as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.
- B. A self-insurer shall use a fixed-premium plan to calculate its net taxable premium if:
  1. The self-insurer elects this plan;
  2. The self-insurer's annual net taxable premium does not exceed \$100,000; or
  3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.
- C. A self-insurer shall provide the following information in support of the fixed-premium plan:
  1. Self-insurer's Payroll Report,
  2. Self-insurer's Medical Report, and
  3. Self-insurer's Quarterly Tax Payment form.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under an ex-medical plan as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.
- B. A self-insurer may use the ex-medical plan if:
  1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S. § 23-1070; and
  2. The self-insurer's annual net taxable premium exceeds \$100,000.

- C. A self-insurer shall provide the following information in support of the plan submitted under this Section:

1. Self-insurer's Payroll Report,
2. Self-insurer's Hospital Report,
3. Self-insurer's Medical Report, and
4. Self-insurer's Quarterly Tax Payment form.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a guaranteed-cost plan as follows: [(payroll multiplied by the applicable worker's compensation rate) multiplied by (the experience modification rate) minus the premium discount].
- B. A self-insurer may use the guaranteed-cost plan if:
  1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
  2. Uses an experience modification rate calculated as follows:
    - a. In the first year of self-insurance, the experience modification rate is 1.0;
    - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
    - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.
- C. A self-insurer shall provide the following information in support of the guaranteed-cost plan:
  1. Self-insurer's Payroll Report,
  2. Self-insurer's Medical Report,
  3. Self-insurer's Injury Report, and
  4. Self-insurer's Quarterly Tax Payment form.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a retrospective-rating plan as follows: [(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier. The net taxable premium is subject to a maximum and minimum premium level.
- B. A self-insurer may use the retrospective-rating plan if:
  1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
  2. The Division calculates the experience modification rate as follows:
    - a. In the first year of self-insurance, the experience modification rate is 1.0;
    - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
    - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and

cation rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year. The Division shall use the most recent year's data to calculate the actual premium tax.

- C. A self-insurer shall provide the following information in support of the retrospective-rating plan:
1. Self-insurer's Payroll Report;
  2. Self-insurer's Medical Report;
  3. Self-insurer's Injury Report; and
  4. Self-insurer's Quarterly Tax Payment form.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065**

- A. A self-insurer shall submit to the Division the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.
- B. After receiving the information required under A.R.S. § 23-961, § 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. The Division shall determine whether the self-insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the self-insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, then the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065 as applicable.
- C. A self-insurer shall pay to the Commission the self-insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A self-insurer shall pay a premium tax of at least \$250.00 per calendar year.
- D. The Division shall calculate a self-insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:
1. 25% of the tax calculated for the previous year; or
  2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the self-insurer shall submit quarterly payroll and loss information by classification code.
- E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
- F. If the self-insurer fails to pay the annual or quarterly taxes to the Commission when due, the self-insurer shall pay a penalty of \$25.00 or 5% of the tax or payment due, whichever is more, plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans**

The Division shall use the definitions, classifications, rating procedures, and plans specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S.

Title 20, Chapter 2, Article 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1122. Report, Book, Record, and Data Review by the Commission**

- A. All reports, books, records, and data of a self-insurer relating to classifications, payroll, incurred-loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representative upon request.
- B. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are readily available for review by the Commission.
- C. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are clear, valid, and understandable.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1123. Audit and Cost of Audit**

The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of a self-insurer for the purpose of determining the scope and adequacy of the records. The entire cost of the audit shall be borne by the self-insurer.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1124. Requirement to Provide Information to the Commission**

A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files**

In addition to the requirements found in 20 A.A.C. 5, Article 1, a self-insurer shall advise the Claims Manager of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under R20-5-131(C), if a self-insurer or third-party administrator intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer**

The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;

2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding the Arizona Workers' Compensation Act; and
3. The persons processing the self-insurer's workers' compensation claims attend and complete training provided by the Claims Division.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure**

A. Upon the filing of a completed initial application or request for renewal, the Division shall:

1. Determine whether the applicant or self-insurer meets the requirements of A.R.S. § 23-961;
2. Determine whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, the self-insurer shall post security according to R20-5-1109 that is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional security, and the self-insurer shall post the additional security before the Commission makes its decision under R20-5-1128;
3. If a self-insurer requests a decrease of 10% or greater in the value or amount of security provided in the prior year, perform an additional review to determine the adequacy of the security deposit, including:
  - a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
  - b. Review of claims filed for the three preceding years;
  - c. Review of changes in the payroll of the self-insurer to determine changes in employment levels;
  - d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and
  - e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years;
4. Determine whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
  - a. For an applicant that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
    - i. Reviewing the financial statements to determine the current ratio, quick ratio, cash-flow ratio, working-capital ratio, debt-status ratio, profitability ratio, and the applicant's net profit or loss;
    - ii. Comparing the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;
    - iii. Reviewing notes to the financial statements;
    - iv. Reviewing management reports of operations and other information provided by the self-insurer; and
    - v. Comparing the applicant's ratio of claims filed to total employees with that of other employers within the same or closely related industry;

- b. For an applicant that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
  - i. Reviewing the public entity's general fund financial statement to determine the cash ratio and fund equity ratio;
  - ii. Reviewing excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;
  - iii. Reviewing notes to the self-insurer's financial statements;
  - iv. Reviewing management reports of operations and other information provided by the self-insurer;
  - v. Comparing the public entity's ratio of claims filed to total employees with that of other public entities;
  - vi. Comparing cash and fund equity ratios with that of other self-insured public entities; and
  - vii. Reviewing the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities;
- c. For a self-insurer requesting renewal that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
  - i. Reviewing the information in subsection (A)(4)(a);
  - ii. Reviewing the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
  - iii. Reviewing of the self-insurer's experience modification rate;
  - iv. Comparing of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and
  - v. Reviewing the Parent Company Guaranty form; and
- d. For a self-insurer requesting renewal that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
  - i. Reviewing the information in subsection (A)(4)(b);
  - ii. Reviewing the claims profile for the past three years, including a review of the claims filed, claims denied, and denial rate;
  - iii. Reviewing the self-insured's experience modification rate; and
  - iv. Comparing the self-insurer's ratio of claims filed to total employees with that of other self-insured public entities of similar size.

B. The Division shall present the findings and recommendations of its review to the Commission, and may include a recommendation regarding the adequacy of the security based on its review and determination whether the self-insurer has the ability to process and pay as set forth in subsection (A)(3).

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure**

A. The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:

1. The information submitted by an applicant or self-insurer;

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2. The information and recommendations of the Division; and
  3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for posting additional security as recommended by the Division under R20-5-1127.
- B.** The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:
1. The applicant or self-insurer does not meet the requirements of A.R.S. § 23-961,
  2. The applicant or self-insurer does not meet the requirements of this Article, or
  3. The applicant or self-insurer is unable to process and pay benefits under the Arizona Workers' Compensation Act.
- C.** The Commission may table consideration of, or action on, a request for renewal pending the self-insurer posting additional security based on a Division decision under R20-5-1127 that the posted security is insufficient.
- D.** Whether to grant, deny, or table an application for self-insurance authority shall be made by a majority vote of a quorum of Commission members present when the application for initial authority or renewal is presented at a public meeting.
- E.** If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114:
1. The approval is contingent upon the self-insurer posting the required security;
  2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission approves the application for self-insurance authority effective on a date certain;
  3. The applicant shall provide to the Commission the required security before the effective date of the authority to self-insure; and
  4. After the applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant.
- F.** If an applicant fails to comply with the requirements of subsection (E)(3), the Commission shall not grant authority to self-insure and the Commission shall deem the initial application withdrawn.
- G.** If the Commission approves an initial application of an applicant exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant.
- H.** If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer.
- I.** If the Commission denies authority to self-insure, the Commission shall issue and mail written findings and an order to the last known business address of the applicant or self-insurer no later than 10 days after the Commission denies authority to self-insure.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1129. Right to Request a Hearing**

- A.** An applicant or self-insurer has 15 days from the date the Commission's findings and order is mailed to request a hearing.
- B.** A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representa-

tive. The applicant or self-insurer shall file the request for hearing with the Division.

- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1130. Hearing Rights and Procedures**

- A.** Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer has the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
  2. In a revocation hearing, the Commission has the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1133.
- B.** Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
  2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.
- C.** Appearance by a party.
1. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through counsel.
  2. When an attorney appears or intends to appear before the Commission, the attorney shall file a notice of appearance.
- D.** Filing and service.
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed under this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.
  2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant, or self-insurer shall be by personal service or mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E.** Notice of hearing.
1. The Commission shall give the parties at least 20 days notice of hearing.
  2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.
  3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.
- F.** Evidence.
1. The civil rules of evidence do not apply to hearings held under this Section.
  2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that

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the statement will be helpful to a determination of the issues.

3. All witnesses at a hearing shall testify under oath or affirmation.
  4. A party may present evidence and conduct cross-examination of witnesses.
  5. The Commission Chair may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Commission Chair, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
  6. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A party shall submit its subpoena request no later than 10 days before the date of the hearing.
  7. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.
- G.** Transcript of Proceedings. The Commission shall stenographically report or electronically record hearings. Any party desiring a copy of transcript shall obtain a copy from the court reporter. Any party desiring a copy of an electronic recording may obtain a copy from the Commission.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1131. Decision Upon Hearing by the Commission**

- A.** A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1128 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1133 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
- C.** The Commission shall issue a written decision after the hearing that shall include findings of fact and conclusions of law, separately stated.
- D.** The Commission decision is final unless an applicant or self-insurer requests review under R20-5-1132 no later than 15 days after the written decision is mailed to the parties.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1132. Request for Review**

- A.** A party may request review of a Commission decision issued under R20-5-1131 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B.** A request for review of a Commission Decision shall be based upon one or more of the following grounds, which have materially affected the rights of a party:
  1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;

2. Accident or surprise, which could not have been prevented by ordinary prudence;
  3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
  4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;
  5. Bias or prejudice of the Division or Commission; and
  6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E.** The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

**R20-5-1133. Revocation of Authorization to Self-insure**

- A.** The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:
  1. An inability or failure to process and pay any claim under the Arizona Workers' Compensation Act;
  2. Failure of the self-insurer to pay any taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;
  3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
    - a. Promptly provide the Commission reports or other information required under this Article; and
    - b. File the written Letter of Intent required under R20-5-1135;
  4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq.;
  5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;
  6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;
  7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
  8. Failure to deposit or file security timely as specified in this Article; or
  9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.
- B.** Upon receiving information that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, the Division shall present its findings to the Commission.
- C.** The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.
- D.** The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon

the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.

- E. A self-insurer has 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address**

- A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business address of the employer.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy**

- A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code.
  1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
  2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
  3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.
- B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.
- C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.
- D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.
- E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.

- F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

#### **R20-5-1136. Notice of Self-insurer's Termination of Self-insurance**

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
  1. Are pending at that time the self-insurer terminates self-insurance; and
  2. Occur after the effective date of the termination of self-insurance.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

### **ARTICLE 12. ARIZONA MINIMUM WAGE ACT PRACTICE AND PROCEDURE**

#### **R20-5-1201. Notice of Rules**

- A. This Article applies to all actions and proceedings before the Commission arising under the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
- B. The Commission shall provide a copy of this Article upon request to any person free of charge.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### **R20-5-1202. Definitions**

In this Article, the definitions of A.R.S. § 23-362 (version two) apply. In addition, unless the context otherwise requires:

1. "Act" means the Raise the Arizona Minimum Wage for Working Arizonans Act, as added by 2006 Proposition 202, § 2.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.
4. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.
5. "Commission" means monetary compensation based on:
  - a. A percentage of total sales,

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- b. A percentage of sales in excess of a specified amount,
- c. A fixed allowance per unit, or
- d. Some other formula the employer and employee agrees as a measure of accomplishment.
- 6. "Complainant" means a person or organization filing an administrative complaint under the Act.
- 7. "Department" means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
- 8. "Filing" means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
- 9. "Hours worked" means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
- 10. "Minimum wage" means the lowest rate of monetary compensation required under the Act.
- 11. "Monetary compensation" means cash or its equivalent due to an employee by reason of employment.
- 12. "On duty" means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee's own purpose.
- 13. "Tip" means a sum a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, including theater tickets, passes, or merchandise, are not tips.
- 14. "Violation" means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
- 15. "Willfully" means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
- 16. "Workday" means any fixed period of 24 consecutive hours.
- 17. "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1203. Duty to Provide Current Address**

- A. A complainant shall provide and keep the Labor Department advised of the complainant's current mailing address and telephone number.
- B. An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer's current mailing address and telephone number.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785,

effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1204. Forms Prescribed by the Department**

Forms prescribed by the Department, including the poster required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1205. Determination of Employment Relationship**

- A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include:
  - 1. The degree of control the alleged employer exercises over the individual,
  - 2. The individual's opportunity for profit or loss and the individual's investment in the business,
  - 3. The degree of skill required to perform the work,
  - 4. The permanence of the working relationship, and
  - 5. The extent to which the work performed is an integral part of the alleged employer's business.
- B. An individual that works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the same type of services as those which the individual proposes to volunteer.
- C. An individual that works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1206. Payment of Minimum Wage; Commissions; Tips**

- A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.



- C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E. An employer is allowed to:
  1. Require or permit employees to pool, share, or split tips; and
  2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1207. Tip Credit Toward Minimum Wage

- A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.
- B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:
  1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
  2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
  3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
  4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and
  5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.
- C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315,

effective January 13, 2008 (Supp. 07-4).

#### R20-5-1208. Posting Requirements

Every employer subject to the Act shall place a poster prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notice is not removed, altered, defaced, or covered by other material.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. Employers who use microfilm or another method for recordkeeping purposes shall make available to the Department any equipment that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:
  1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part the pay period wages of those employees;
  2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
  3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
  1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
  2. Home address, including zip code;

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3. Date of birth, if under 19;
  4. Occupation in which employed;
  5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
  6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
  7. Hours worked each workday and total hours worked each workweek;
  8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
  9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
  10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
  11. Total wages paid each pay period; and
  12. Date of payment and the pay period covered by payment.
- C.** For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:
1. Records containing the information and data required under subsections (B)(1) through (B)(5), (B)(11) and (B)(12) of this Section; and
  2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.
- D.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:
1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
  2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.
- E.** With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:
1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
  2. Amount of tips the employee reports to the employer;
  3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
  4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
  5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
  6. Copy of the notice required under R20-5-1207(C).
- F.** An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1211. Administrative Complaints**

- A.** A person or organization alleging a minimum wage violation, shall file a complaint with the Labor Department within one year from the date the wages were due.
- B.** A person or organization alleging retaliation shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.
- C.** The person or organization filing a complaint with the Labor Department shall sign the complaint.
- D.** Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.
- E.** For good cause, and upon its own complaint, the Department may investigate violations under the Act.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1212. Conduct that Hinders Investigation**

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315,

effective January 13, 2008 (Supp. 07-4).

**R20-5-1213. Findings and Order Issued by the Department**

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the minimum wage requirement of the Act, or alleging retaliation under the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.
- B. If the Department determines that an employer has violated the minimum wage payment requirement, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages.
- C. If the Department determines that a retaliation violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
  1. Rehiring or reinstatement,
  2. Reimbursement of lost wages and interest,
  3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
  4. Posting of notices to employees.
- D. If the Department determines that no retaliation has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23-364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing**

- A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
- B. A request for hearing shall be in writing and contain:
  1. The name and address of the party requesting the hearing,
  2. The signature of the party or the party's authorized representative, and

3. A statement that a hearing is requested.
- C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.
- E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.
- G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

**Historical Note**

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

**R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing**

- A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.
- B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:
  1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
  2. Accident or surprise that could not have been prevented by ordinary prudence;
  3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
  4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
  5. Bias or prejudice of the Department or administrative law judge; and
  6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.
- C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to file a response within the time period shall constitute a waiver of the right to rehearing or review.

ure to respond shall not be deemed an admission against interest.

- E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.
- F. A decision upon review is final unless a party seeks judicial review as provided in R20-5-1216.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

- A. A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is served personally or by regular first class mail upon the party affected.
- B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1218. Collection of Wages or Penalty Payments Owed

- A. Upon determination that wages or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the

order, the Department may apply to the clerk of the superior court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

#### R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

- A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
  1. State the reasons for the request for relief;
  2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
  3. Include the signature of the employer or an authorized representative of the employer.
- C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
  1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
  2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.
- D. For good cause, the Department may rescind a prior order granting relief under this Section.
- E. Relief under this Section is effective upon the Department's written authorization.

#### Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

### ARTICLE 13. TREATMENT GUIDELINES

#### R20-5-1301. Adoption and Applicability of the Article

- A. The Industrial Commission of Arizona (Commission) has adopted the Work Loss Data Institute's *Official Disability Guidelines – Treatment in Workers Compensation (ODG)* as

the standard reference for evidence-based medicine used in treating injured workers within the context of Arizona's workers' compensation system. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated *Official Disability Guidelines*, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers.

- B. Until further action of the Commission, the guidelines shall apply to the management of chronic pain and the use of opioids for all stages of pain management. For purposes of this process, chronic pain shall be defined by the guidelines.
- C. The Commission may modify or change the applicability of the guidelines as described in subsection (B) if the Commission determines that modification or changing the applicability of the guidelines will: 1) improve medical treatment for injured workers, 2) make treatment and claims processing more efficient and cost effective, and 3) the guidelines adequately cover the body parts or conditions. Before taking action to modify or change the applicability of the guidelines, the Commission shall provide an opportunity for public comment and hold a public hearing. A decision of the Commission under this subsection shall be made by a majority vote of a quorum of Commission members present at a public meeting.
- D. Action taken by the Commission to modify or change the applicability of the guidelines under subsection (C) shall be published in the minutes of the Commission meeting when such action was taken. The minutes of this action shall be published on the Commission's website and shall be available from the Commission upon request.
- E. The guidelines shall apply prospectively. Recommendations provided in the guidelines shall apply to medical treatment or services occurring on or after the effective date of this Article.
- F. This Article applies to all claims filed with the Commission.
- G. This Article only applies to medical treatment and services for body parts and conditions that have been accepted as compensable.
- H. The guidelines are to be used as a tool to support clinical decision making and quality health care delivery to injured employees. The guidelines set forth care that is generally considered reasonable and are presumed correct if the guidelines provide recommendations related to the requested treatment or service. This is a rebuttable presumption and reasonable medical care may include deviations from the guidelines. To support a request to deviate from the guidelines, the provider must produce documentation and justification that demonstrates by a preponderance of credible medical evidence a medical basis for departing from the guidelines. Credible medical evidence may include clinical expertise and judgment.
- I. The Commission shall provide administrative review and oversight of this Article.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R.  
1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1302. Definitions

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A.R.S. Title 23, Ch. 6, Articles 1 through 11.

"Active Practice" means performing patient care for a minimum of eight hours per week in one of the five preceding years.

"Administrative Law Judge" or "ALJ" means a hearing officer appointed under A.R.S. § 23-108.02.

"Administrative Review" means a process that includes a peer review for preauthorization of a request for medical treatment or services that has been denied or partially denied by a payer. The administrative review process will be managed by the Medical Resource Office (MRO) at the Industrial Commission of Arizona.

"American Board of Medical Specialties" means the organization that develops a uniform system for specialty boards to administer examinations for certification of physicians within specific medicine specialties.

"American Osteopathic Association" means the organization that develops a uniform system for specialty boards to administer examinations for certification of osteopathic physicians within specific osteopathic medicine specialties.

"Applicability" means the medical conditions that are covered under this Article and authorized by the Commission under R20-5-1301(B) and (C).

"Claim" means the workers' compensation claim filed by the injured employee under the Act.

"Contractor" means an independent peer review organization accredited by URAC.

"Fast Track ALJ Dispute Resolution Program" or "fast track process" means the voluntary dispute resolution process set forth in R20-5-1312(B).

"International Classification of Diseases Code" or "ICD Code" means a set of medical diagnostic codes that creates a universal language for reporting diseases and injury.

"International Classification of Diseases" or "ICD" means an official list of categories of diseases, physical and mental, that is issued and maintained by the World Health Organization.

"IME" means an independent medical examination scheduled under R20-5-114.

"Injured Employee" means a person defined in A.R.S. § 23-901 whose claim has been accepted for workers' compensation benefits.

"Medical File Review Opinions" means a formal examination of patient data and medical records for the purpose of determining the need for medical treatment, services or both.

"Payer" means an insurance carrier defined under A.R.S. § 23-901, a self-insured employer defined in R20-5-102, a third-party administrator, and the Special Fund of the Industrial Commission of Arizona.

"Peer Review" means an independent medical review conducted by an individual meeting the requirements of R20-5-1311(I).

"Preauthorization" means a request from a provider to a payer requesting approval to provide medical treatment or services to an injured employee.

"Provider" means a physician as defined in R20-5-102.

"Reconsideration" means a written request to the payer or identified review organization by an injured employee or medical provider to reconsider a previous payer decision to deny medical treatment or services and that identifies the specific justification to support the request.

"Third-Party Administrator" or "TPA" means an organization that processes insurance or employee benefit claims for a separate entity.

“Treatment Guidelines” or “guidelines” means medical treatment guidelines that are used as a tool to support clinical decision making and quality health care delivery to injured employees.

“URAC” refers to URAC, a non-profit organization formerly known as the Utilization Review Accreditation Commission.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1303. Provider Request for Preauthorization

- A. No preauthorization is required under the Act to ensure payment for reasonably required medical treatment or services. While preauthorization is not required under the Act, a provider may seek preauthorization as provided in this subsection.
- B. A provider shall submit a request for preauthorization in writing, which shall include the following information:
  - 1. Patient information (including date of injury, date of birth, and payer claim number);
  - 2. Diagnosis and ICD code;
  - 3. Date of request;
  - 4. Type of request - Initial, Routine, Urgent, or Life Threatening;
  - 5. A statement of the treatment or services requested. Where appropriate, information about quantity, strength, duration and frequency of the treatment or services should be included. Use of the applicable codes should also be included and will facilitate the process; and
  - 6. Documentation, if not already provided, that supports the medical necessity and appropriateness of the treatment or services requested, such as office notes and diagnostic reports.
- C. A provider may submit the request by mail, electronically or by fax.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1304. Payer Denial of Request for Preauthorization

- A. A payer shall not deny a request for preauthorization solely because the guidelines do not address the requested treatment or services.
- B. A payer shall not deny a request for preauthorization that is supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a contraindication or significant medical or psychological reason not to authorize the requested treatment or services. Upon request by the provider or injured employee, a denial of preauthorization in this situation shall be processed as an immediate referral to the Commission for administrative review as provided in R20-5-1311 unless the payer obtains an IME in support of its denial. If the payer obtains an IME which serves as the basis for the denial, then review of the payer's decision shall be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by the injured employee.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1305. Payer Denial of Payment for Provided Treatment or Services

- A. A payer shall not deny payment for provided treatment or services solely because the guidelines do not address the requested treatment or services.
- B. A payer shall not deny payment for provided treatment or services supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a medical contraindication or significant medical or psychological reason not to pay for the treatment or services.
- C. A dispute related to a payer's failure to pay for provided treatment or services may be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by an injured employee.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1306. Payer Reversal of Decision to Deny Treatment or Services

A payer may reverse its decision to deny treatment or services at any time throughout the process described in this Article. In this situation, the payer's subsequent authorization or agreement to pay for the treatment or services at issue shall end this process.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1307. Payer Decision, In Whole or In Part

A payer may issue a decision approving or denying a request for preauthorization in whole, or in part.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1308. Failure to Comply with Required Time Limits

A payer's failure to comply with the required time limits of this process may be considered unreasonable delay under R20-5-163.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1309. Payer Decision on Request for Preauthorization

- A. Except as provided in subsection (D), a payer shall communicate to the provider its decision on a request for preauthorization no later than 10 business days after the request is received. This decision shall comply with the requirements set forth in subsection (H). For purposes of this Section, the 10 business days begin to run the day after the payer receives the request.
- B. If a payer fails to communicate to a provider its decision on request for preauthorization within 10 business days, then the payer's failure to take action is deemed a “no response” and the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1311.
- C. If a payer receives a request for preauthorization that fails to meet the requirements of R20-5-1303, the payer may, in its discretion:
  - 1. Act on the incomplete request for preauthorization; or
  - 2. No later than 10 business days after the request is received, notify the provider that the request for preauthorization is incomplete.
- D. If, no later than 10 business days after a request for preauthorization has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for preauthorization shall be issued no later than 10 business days after the final IME report

has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the IME report.

- E. Unless the payer decision was supported by an IME or otherwise falls within subsection R20-5-1304(B), an injured employee or provider may seek reconsideration of a payer decision by submitting a written request to the payer (or review organization identified by the payer) that states the specific reasons and justifications to support the request. If not previously provided, the injured employee or provider shall include supporting medical documentation with their written request.
- F. An injured employee may seek review of a payer decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).
- G. Unless the decision was supported by an IME, an injured employee or provider may seek review of a payer decision issued under R20-5-1304(B) by requesting administrative review by the Commission as provided in R20-5-1311.
- H. A payer shall include the following information in its written decision to approve or deny, in whole or in part, the request for preauthorization to provide treatment or services:
  1. The date on which the request for preauthorization was received;
  2. Patient information, including date of injury, date of birth, payer claim number and Commission claim number;
  3. The date on which an IME was completed, if applicable;
  4. A statement of what has been authorized, including if applicable, a partial authorization;
  5. A statement of explanation if the request for preauthorization is denied, in whole or in part, which should include the medical reason supporting the payer's decision;
  6. A statement of the process under which a provider or injured employee may request reconsideration or review of the payer's denial, in whole or in part, of a request for preauthorization, which shall include the following information:
    - a. For a decision that is issued without obtaining an IME that is not subject to R20-5-1304(B):  
 "If you wish to request reconsideration of the decision regarding your request for preauthorization to provide treatment or services, you must send a written request for reconsideration to:  
     Name of Payer or Review Organization Identified by Payer  
     Commission Address  
     Phone  
     Fax  
     E-mail  
 You must include the specific reason and justification to support your request. Please include additional supporting medical documentation if not previously provided."
    - b. For a decision that is supported by an IME:  
 "If you wish review of the decision regarding your request for preauthorization to provide treatment or services, then the injured employee is required to file a request for investigation under A.R.S. § 23-1061(J)."
    - c. For a decision that is issued without obtaining an IME that is subject to R20-5-1304(B):  
 "If you disagree with this decision and wish to request review by the Industrial Commission of Arizona, then you may submit a request for administrative review under R20-5-1311 to:

Industrial Commission of Arizona  
Attn: Medical Resource Office  
Commission Address  
Commission Telephone Number

The provider shall file this request promptly and include the following information: patient information, including name, address, payer claim number, Commission claim number, and date of injury; diagnosis or ICD code; employer, insurance carrier or TPA information; provider information; information pertaining to request for treatment, including the justification for treatment; applicable treatment guideline or guidelines; denial of treatment by payer; copies of relevant medical information or records; and whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition."

- I. A payer shall provide a copy of its written decision to deny treatment or services to the injured employee.

#### Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

#### R20-5-1310. Payer Reconsideration on Request for Preauthorization

- A. Except as provided in subsection (C), a payer shall communicate to the provider its decision on a request for reconsideration no later than 10 business days after the request is received. This decision shall comply with the requirements set forth in subsection (E). For purposes of this subsection, the 10 business days begin to run the day after the payer receives the request for reconsideration.
- B. If a payer fails to respond to a request for reconsideration within 10 business days, the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1311.
- C. If, no later than 10 business days after a request for reconsideration has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for reconsideration shall be issued no later than 10 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the report.
- D. Commission Review of Payer Reconsideration Decision:
  1. An injured employee or provider may seek review of a payer reconsideration decision by requesting an administrative review by the Commission as provided in R20-5-1311 unless the payer decision was supported by an IME.
  2. An injured employee may seek review of a payer reconsideration decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).
- E. A payer shall include the following information in its written decision to approve or deny, in whole or in part, a request for reconsideration of a denial of preauthorization:
  1. The date on which the request for reconsideration was received;
  2. Patient information, including date of injury, date of birth, payer claim number and Commission claim number;
  3. The date on which an IME was completed, if applicable;
  4. A statement of what has been authorized including, if applicable, a partial authorization;
  5. A statement of explanation if the request for treatment is denied, in whole or in part; and

## Industrial Commission of Arizona

6. A statement of the process under which a provider or injured employee may request Commission review of the payer's denial, in whole or in part, of a request for preauthorization, which shall include the following information:
    - a. For a reconsideration decision that is issued without obtaining an IME:  
 "If you disagree with this reconsideration decision and wish to request review by the Commission, then you may submit a request for administrative review under R20-5-1311 to:  
 Industrial Commission of Arizona  
 Attn: Medical Resource Office  
 Commission Address  
 Commission Telephone Number.  
 The provider shall file this request promptly and include the following information: patient information, including name, address, payer claim number, Commission claim number, and date of injury; diagnosis or ICD code; employer, insurance carrier or TPA information; provider information; information pertaining to request for treatment, including the justification for treatment; applicable treatment guideline and denial of treatment by payer; copies of relevant medical information or records; copies of relevant documentation related to the payer reconsideration decision; and whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition."
    - b. For reconsideration of a decision that is supported by an IME:  
 "If you disagree with this reconsideration decision and wish review by the Commission, then the injured employee is required to file a request for investigation under A.R.S. § 23-1061(J)."
  - F. A payer shall provide a copy of its written reconsideration decision to deny treatment or services to the injured employee.
- Historical Note**  
 New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).
- R20-5-1311. Administrative Review by Commission**
- A. Until further action of the Commission under R20-5-1301(C), administrative review under this Article is limited to requests for medical treatment or services related to the management of chronic pain and the use of opioids for all stages of pain management.
  - B. A request for administrative review shall be in writing and submitted by mail, electronically or by fax. The request shall include the following information:
    1. Identifying information of the injured employee and claim, including the injured employee's name, address, commission claim number, and date of injury;
    2. Diagnosis and ICD code;
    3. Identifying information of the employer, insurance carrier or TPA;
    4. Identifying information of the provider;
    5. Information pertaining to request for treatment, such as the justification for treatment, applicable treatment guideline and, if applicable, the payer's denial of treatment;
    6. Copies of relevant medical information or records;
    7. Copies of documentation related to the payer's decision or non-response; and
    8. Whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition.
  - C. Upon receipt of a request for administrative review, the Commission shall determine whether the administrative review is available under this Article.
    1. If administrative review is not available, then no later than three business days after receiving a request for administrative review, the Commission shall send notice to the injured employee and payer that administrative review is not available.
    2. If administrative review is available, then no later than three business days after receiving the request, the Commission shall send notice to the payer that a request for administrative review has been received and provide information on how to participate in the process.
  - D. The administrative review conducted under this Section shall apply the guidelines as described in this Article and include a peer review performed by an individual meeting the requirements of subsection (I). The peer review shall consist of a records review and, when possible as described in subsection (I)(5), a conversation between the provider and individual conducting the peer review.
  - E. The Commission may enter into an agreement with one or more contractors, who shall be URAC accredited, to provide the review described in subsection (D).
  - F. The payer shall pay for the costs of the peer review conducted by the contractor.
  - G. To assist in its review, the Commission or its contractor may request or receive additional information and documentation from the provider, injured employee or payer, who shall cooperate and provide the Commission or its contractor with any necessary medical information, including information pertaining to the payer's decision.
  - H. Before the Commission or its contractor issues a determination denying the request for treatment or services, a good faith effort shall be made to conduct a peer review with the provider requesting authorization to perform the treatment or services.
  - I. The individual conducting the peer review shall:
    1. Hold an active, unrestricted license or certification to practice medicine or a health profession and be involved in the active practice of medicine or a health profession during the five preceding years. For purposes of this subsection, "active practice" means performing patient care for a minimum of eight hours per week in one of the five preceding years;
    2. Be licensed in Arizona, unless the Commission or its contractor is unable to find such an individual, in which case the peer review may be conducted by an individual who is licensed in another state of the United States and who meets the other requirements of this subsection;
    3. For a review of a request from an allopathic or osteopathic physician, nurse practitioner, physician assistant, or other mid-level provider, hold a current certification from the American Board of Medical Specialties or the American Osteopathic Association in the area or areas appropriate to the condition, procedure or treatment under review;
    4. Be in the same profession and the same specialty or subspecialty as typically performs or prescribes the medical procedure or treatment requested; and
    5. Make a good faith effort to contact the provider requesting the preauthorization. This good faith effort shall include making telephone contact during the provider's normal business hours and offering to schedule the peer review at a time convenient for the provider.
  - J. A provider may bill the payer for time spent participating in a peer review under this Section.



- K.** The Commission or its contractor shall issue a written determination of its administrative review that contains the name and title of the person that performed the administrative review, and includes the following information:
1. Whether the request for treatment or services is authorized or denied, in whole or in part;
  2. The information reviewed;
  3. The principle reason for the decision; and
  4. The clinical basis and rationale for the decision.
- L.** An interested party dissatisfied with the administrative review determination may request that the dispute be referred to the Commission's Administrative Law Judge Division for hearing. This request for hearing shall:
1. Be in writing;
  2. Filed no later than 10 business days after the administrative review determination is issued; and
  3. State whether the party requests to participate in the Fast Track ALJ Dispute Resolution Program by stipulation, or declines to participate in the Fast Track ALJ Dispute Resolution Program.
- M.** If a timely request for hearing is filed, the administrative review determination is deemed null and void and shall serve no evidentiary purpose.
- N.** The information provided by the parties under this Section and the determination issued by the Commission shall become a part of the Commission claims file for the injured employee.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

**R20-5-1312. Hearing Process**

- A.** A referral of a request for hearing under R20-5-1311(L) shall be processed as provided for in the Act unless all parties agree to participate in the fast track process.

- B.** The following applies only to the Fast Track ALJ Dispute Resolution Program:

1. Parties must agree to participate in the Fast Track ALJ Dispute Resolution Program with the understanding that a short form decision will be issued.
2. Review by the presiding ALJ shall be limited to the treatment or service dispute considered at the administrative review under R20-5-1311.
3. The presiding ALJ shall issue a notice of hearing within 10 business days of the receipt of the fully executed agreement to participate and certificate of readiness.
4. The hearing shall be held within 30 calendar days from the day that the notice of hearing is issued to the extent practicable.
5. Discovery is limited to five interrogatories and no depositions are permitted.
6. The presiding ALJ shall take all lay witness testimony at the time of the hearing and will not hold any further hearings.
7. The presiding ALJ shall consider documentary medical evidence only; no medical testimony shall be taken.
8. Medical file review opinions shall be deemed to constitute substantial evidence to support the requested treatment or service.
9. All documentary evidence shall be submitted no later than 10 business days before the scheduled hearing.
10. The hearing shall be recorded, but not transcribed, unless one or more of the parties files a request for review under A.R.S. § 23-942 and A.R.S. § 23-943.
11. The presiding ALJ shall issue a short form decision within five business days after the matter is deemed submitted.

**Historical Note**

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

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## **Replacement Check List**

For rules filed within the

4th Quarter

October 1 – December 31, 2016

# **THE ARIZONA ADMINISTRATIVE CODE**

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

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

Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

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## **Title 20. Commerce, Financial Institutions, and Insurance**

### **Chapter 6. Department of Insurance**

#### **Supplement 16-4**

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

R20-6-111, R20-6-112, R20-6-204, R20-6-206, R20-6-308

REMOVE Supp. 15-4  
Pages: 1 - 130

REPLACE with Supp. 16-4  
Pages: 1 - 128

*The agency's contact person who can answer questions about expired rules in Supp. 16-4:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402, Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.*

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## **PUBLISHER**

**Arizona Department of State**

**Office of the Secretary of State, Public Services Division**

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
PUBLIC SERVICES DIVISION  
December 31, 2016

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### RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

### ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/services/legislative-filings).

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE****CHAPTER 6. DEPARTMENT OF INSURANCE**

Authority: A.R.S. § 20-101 et seq.

20 A.A.C. 6, consisting of R20-6-101 through R20-6-159, R20-6-201 through R20-6-218, R20-6-301 through R20-6-308, R20-6-401 through R20-6-409, R20-6-501, R20-6-601 through R20-6-607, R20-6-701 through R20-6-709, R20-6-801 through R20-6-802, R20-6-901, R20-6-1001 through R20-6-1016, R20-6-1101 through R20-6-1120, R20-6-1201 through R20-6-1205, R20-6-1401 through R20-6-1408, R20-6-1601 through R20-6-1607, and R20-6-1701 through R20-6-1704 recodified from 4 A.A.C. 14, consisting of R4-14-101 through R4-14-159, R4-14-201 through R4-14-218, R4-14-301 through R4-14-308, R4-14-401 through R4-14-409, R4-14-501, R4-14-601 through R4-14-607, R4-14-701 through R4-14-709, R4-14-801 through R4-14-802, R4-14-901, R4-14-1001 through R4-14-1016, R4-14-1101 through R4-14-1120, R4-14-1201 through R4-14-1205, R4-14-1401 through R4-14-1408, R4-14-1601 through R4-14-1607, and R4-14-1701 through R4-14-1704, pursuant to R1-1-102 (Supp. 95-1).

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*Article 10, consisting of Sections R4-14-1001 through R4-14-1016 and Appendices A through C, adopted effective August 10, 1992 (Supp. 92-2). R20-6-1001 through R20-6-1016 recodified from R4-14-1001 through R4-14-1016 (Supp. 95-1).*

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*Article 11, consisting of Sections R4-14-1101 through R4-14-1120 and Appendices A through E, adopted again by emergency effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).*

*Article 11, consisting of Sections R4-14-1101 through R4-14-1120 and Appendices A through E, adopted by emergency effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). R20-6-1101 through R20-6-1120 recodified from R4-14-1101 through R4-14-1120 (Supp. 95-1).*

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*Article 14, consisting of Sections R4-14-1401 through R4-14-1408 and Appendices A through E, adopted effective February 22, 1993 (Supp. 93-1). R20-6-1401 through R20-6-1408 recodified from R4-14-1401 through R4-14-1408 (Supp. 95-1).*

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*93-1). R20-6-1601 through R20-6-1607 recodified from R4-14-1601 through R4-14-1607 (Supp. 95-1).*

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**ARTICLE 1. HEARING PROCEDURES AND RULEMAKING PETITIONS****R20-6-101. Scope of Article; Definitions**

- A.** Scope. This Article and Title 20 of the Arizona Revised Statutes govern contested cases before the Department. Except as otherwise provided in R20-6-160 for rulemaking petitions, this Article does not apply to rulemaking or investigative proceedings before the Department. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to contested cases.
- B.** Definitions. In this Article, the following definitions apply:
1. "Attorney General" means the Attorney General of Arizona, and the Attorney General's assistants or special agents.
  2. "Contested case" means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the Director after an opportunity for hearing.
  3. "Department" means the Arizona Department of Insurance.
  4. "Hearing Officer" means a person appointed by the Director to hear a contested case and make recommendations.
  5. "Party" has the meaning prescribed in A.R.S. § 41-1001(12).
  6. "Person" has the meaning prescribed in A.R.S. § 41-1001(13).
  7. "Director" means the Director of the Department or a hearing officer or any deputy, assistant or examiner of the Director acting in the Director's name in accordance with A.R.S. § 20-150.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-101 recodified from R4-14-101 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1).

**R20-6-102. Appearance and Practice before the Director**

- A.** Any person may appear in his own behalf or through counsel. An insurer may appear through legal counsel or through a duly authorized officer of the corporation.
- B.** When an attorney other than the Attorney General appears or intends to appear before the Director, he shall promptly advise the Director of his name, address and telephone number and the name and address of the person on whose behalf he intends to appear.
- C.** Conduct at any hearing which, in the discretion of the Director, is deemed contemptuous shall be grounds for exclusion from the hearing. Contemptuous conduct shall include willful noncompliance with an order of the Director or hearing officer, willful disruption or obstruction of any hearing, or any other willful conduct during any hearing which lessens the dignity or authority of the Director or hearing officer.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-102 recodified from R4-14-102 (Supp. 95-1).

**R20-6-103. Filing; Service**

- A.** No paper shall be deemed filed until received by the Director.
- B.** Unless otherwise provided by these rules, copies of all papers filed shall, at or before the time of filing, be served on the hearing officer, the Attorney General, and all parties to the proceeding.
- C.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney.

- D.** Service upon the attorney, or upon a party, shall be made personally in accordance with Rule 5(c) of the Arizona Rules of Civil Procedure, or by mail by enclosing a copy thereof in a sealed envelope and depositing same, postage prepaid, in the United States mail, addressed to the party to be served or his attorney at the address as shown by the records of the Director. Service by mail is complete upon deposit in the United States Mail.
- E.** All notices of hearing and final decisions issued by the Director shall be served by mail.
- F.** Proof of service shall be made by filing with the Director a written statement that service was made.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-103 recodified from R4-14-103 (Supp. 95-1).

**R20-6-104. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-104 recodified from R4-14-104 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-105. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-105 recodified from R4-14-105 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-106. Answer to Notice of Hearing**

- A.** In any notice of hearing, the Director may require that one or more parties shall file a written answer to the allegations contained in the notice of hearing. Even if not directed to do so, any party may file such an answer.
- B.** Except where a different period is provided by the notice of hearing, a party directed to file a written answer shall do so within 20 days after issuance of the notice of hearing. Where amendments to the assertions contained in the notice of hearing are made subsequent to service of the notice of hearing, one or more of the parties may be required to answer within a reasonable time the amended assertions.
- C.** Unless otherwise directed by the Director, an answer filed under this rule shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the assertions contained in the notice of hearing. If the answering party is without or is unable to reasonably obtain knowledge or information sufficient to form a belief as to the truth of an assertion, he shall so state, which shall have the effect of a denial. Any assertion not denied shall be deemed to be admitted. When answering party intends in good faith to deny only a part of an assertion, he shall specify so much of it as is true and shall deny only the remainder.
- D.** If a party fails to file an answer required by the Director within the time provided, such person shall be deemed in default and the proceeding may be determined against him by the Director and one or more of the assertions contained in the notice of hearing may be deemed to be admitted.
- E.** Any defenses not raised in the answer shall be deemed to be waived.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-106 recodified from R4-14-106 (Supp. 95-1).

**R20-6-107. Expired**

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-107 recodified from R4-14-107 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-108. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-108 recodified from R4-14-108 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-109. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-109 recodified from R4-14-109 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-110. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-110 recodified from R4-14-110 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-111. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-111 recodified from R4-14-111 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**R20-6-112. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-112 recodified from R4-14-112 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**R20-6-113. Expired****Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-113 recodified from R4-14-113 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1421, effective May 31, 2011 (Supp. 11-3).

**R20-6-114. Request for Rehearing or Review**

- A. Within 30 days after service of the Director's order on the hearing, any aggrieved party may request a rehearing or review of the order. The request shall be in writing and shall be served upon the Director as provided by R20-6-103, and a copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the request.
- B. A request for rehearing or review shall be based upon one or more of the following grounds which have materially affected the rights of a party:
  1. Irregularity in the hearing proceedings, or any order or abuse of discretion whereby the party seeking rehearing or review was deprived of a fair hearing;
  2. Misconduct by the Director, the hearing officer or any party to the hearing;

3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not have been discovered with reasonable diligence and produced at the hearing;
5. Excessive or insufficient sanctions or penalties imposed;
6. Error in the admission or rejection of evidence, or errors of law occurring at the hearing or during the course of the hearing;
7. Bias or prejudice of the Director or hearing officer;
8. That the order, decision, or findings of fact are not justified by the evidence or are contrary to law.

- C. A request for rehearing or review shall specify which of the grounds listed in subsection (B) it is based upon and shall set forth specific facts and laws in support of the request. A request may cite relevant portions of testimony from the hearing by referring to the pages or lines of the reporter's transcript of the hearing and may cite hearing exhibits by reference to the exhibit number.
- D. A request for rehearing shall specify the relief sought by the request, such as a different finding of fact, conclusion of law or order. A request for rehearing or review may seek multiple forms of relief in the alternative.
- E. When a request for rehearing is based upon affidavits, they shall be attached to and filed with the request unless leave for later filing of affidavits is granted by the Director or hearing officer. Leave may be granted ex parte.
- F. A request for rehearing or review of the Director's order on the hearing which is not timely made is deemed waived for the purpose of judicial review. A party who fails to request rehearing or review of the Director's order on the hearing shall be barred from raising a claim in any proceeding in which the Director, the hearing officer or the Department of Insurance is a party, except as otherwise required by law.
- G. A party may file a written request for a stay of the Director's decision. An order entered by the Director shall not be stayed by the filing of a stay request or a request for rehearing or review. The Director may stay an order pending the resolution of a request for rehearing or review or when justice requires.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-114 recodified from R4-14-114 (Supp. 95-1). Amended effective June 15, 1998 (Supp. 98-2).

**R20-6-115. Response to Request for Rehearing**

- A. Each party served with a request for rehearing pursuant to R20-6-114 shall be permitted to file a response within 15 days after the request for rehearing has been filed. This response shall be designated as a "response to request for rehearing or review" and shall be in writing. Affidavits may be attached to and filed with the response. If not filed in this manner, an affidavit shall be filed only if leave for later filing of affidavits is granted by the hearing officer or Director. Leave may be granted ex parte. The original response shall be filed with the Department as provided in R20-6-103, and one copy shall be served upon all other parties to the hearing, including the Attorney General if the Attorney General is not the party filing the response.
- B. The hearing officer or Director has the discretion to convene a hearing or hear oral argument to consider a request for rehearing.

**Historical Note**

Adopted effective January 23, 1992 (Supp. 92-1). R20-6-115 recodified from R4-14-115 (Supp. 95-1). Amended

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effective June 15, 1998 (Supp. 98-2).

**R20-6-116. Reserved**  
**through**

**R20-6-158. Reserved**

**R20-6-159. Repealed**

**Historical Note**

Adopted effective February 17, 1977 (Supp. 77-1). R20-6-159 recodified from R4-14-159 (Supp. 95-1). Repealed effective June 15, 1998 (Supp. 98-2).

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

- A.** The following definitions apply in this Section.
1. "Department" means the Arizona Department of Insurance.
  2. "Director" means the Director of the Department of Insurance.
  3. "Petitioner" means a person who petitions the Department for rulemaking action.
  4. "Rulemaking action" means the process for formulation and finalization of a new rule, or amendment or repeal of an existing rule.
- B.** Any person may petition the Department under A.R.S. § 41-1033 for rulemaking action.
- C.** A person who seeks rulemaking action shall file, with the Director, a petition with the following information:
1. The petitioner's name, address, and telephone number;
  2. The name and address of any organization the petitioner represents;
  3. A statement of the rulemaking action the petitioner seeks, including:
    - a. A citation to any existing rule, substantive policy statement, or Department practice to be amended or repealed; and
    - b. The specific language of a proposed new rule or rule amendment;
  4. The reasons for the rulemaking action, including an explanation of why an existing rule, substantive policy statement, or Department practice is inadequate, unreasonable, unduly burdensome, or unlawful; and
  5. The petitioner's dated signature.
- D.** The petitioner may submit additional supporting information, including:
1. Statistical data; and
  2. A list of other persons and entities likely to be affected by the proposed rulemaking action, with an explanation of the likely effects.
- E.** Within 60 days of the date the Department receives the petition, the Department shall send the petitioner a written decision indicating whether the Department is denying the petition or will initiate the requested rulemaking action, with the reasons for the decision.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Section heading corrected at Department Request, Office File No. M11-401, filed October 27, 2011 (Supp. 11-3).

**ARTICLE 2. TRANSACTION OF INSURANCE**

**R20-6-201. Advertisements of Health**

- A.** Definitions. The following definitions apply to this Section and to R20-6-201.01, R20-6-201.02, and R20-6-203:
1. "Advertisement" means materials and information used by an insurer to generate insurance business.

- a. Advertisement includes the following information:
    - i. Printed and published material, audio visual material, or other forms of electronic communication that an insurer uses or displays in direct mail, newspapers, magazines, radio, television, billboards, Internet web sites, and similar media to inform the public about the insurer or its products;
    - ii. Descriptive literature and sales aids an insurer issues or releases for presentation to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and form letters;
    - iii. Prepared sales talks and presentations and material for use by an insurer or prepared by an insurer for use by authorized producers; and
    - iv. Material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements;
  - b. "Advertisement" does not include the following:
    - i. Material used solely for training and educating an insurer's employees or producers;
    - ii. Material used in-house by insurers;
    - iii. Communications within an insurer's own organization not intended for dissemination to the public;
    - iv. Individual communications with current policy holders regarding a member's personal information other than material urging the policyholders to increase or expand coverages;
    - v. Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;
    - vi. Court-approved material ordered by a court to be disseminated to policyholders;
    - vii. Material in connection with promotion or sponsorship of a charitable event in which only the name of the insurer is displayed;
    - viii. A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged. The announcement shall clearly indicate that it is preliminary to the issuance of a booklet and that does not describe the specific benefits under the contract or program nor the advantages as to the purchase of the contract or program;
    - ix. A general announcement by the sponsor that endorses the program;
    - x. Health and wellness material with general health and wellness information; or
    - xi. Press releases and news releases not intended to generate business.
2. "Disability insurance" has the same meaning prescribed in A.R.S. § 20-253.
  3. "Elimination period" means the time between the date a loss occurs and the date that benefits begin to accrue for that loss.
  4. "Exclusion" means a policy term stating a risk that an insurer has not assumed.
  5. "Health insurance" means:
    - a. Disability insurance;
    - b. Insurance provided by a service corporation regulated under A.R.S. § 20-821 et seq.;

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- c. Insurance provided by a prepaid dental plan organization regulated under A.R.S. § 20-1001 et seq.; and
    - d. Insurance provided by a health care services organization regulated under A.R.S. § 20-1051 et seq.
  - 6. "Insurance administrator" or "administrator" has the meaning prescribed in A.R.S. § 20-485(A)(1).
  - 7. "Insurer" has the same meaning prescribed in A.R.S. § 20-104.
  - 8. "Limitation" means a policy term, other than an exclusion or reduction, that decreases the risk assumed by the insurer or the insurer's obligation to provide benefits.
  - 9. "Person" has the meaning in A.R.S. § 20-105.
  - 10. "Policy" means any plan, certificate, contract, agreement, statement of coverage, evidence of coverage, subscription contract, membership coverage, rider, or endorsement that provides disability benefits, health insurance, medical, surgical or hospital expense benefits, long-term care benefits, or Medicare supplement benefits in the form of a cash indemnity, reimbursement, or service.
  - 11. "Reduction" means a policy term that reduces the amount of an insured's benefits. A reduction means that the insurer has assumed the risk of a particular loss, but the amount or period of the insurer's coverage is less than what the insurer would have paid for the loss without the reduction.
  - 12. "Spokesperson" means a person making a testimonial about or an endorsement of an insurer's product who:
    - a. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or independent contractor;
    - b. Has been formed by the insurer, is owned or controlled by the insurer or its employees, or is a person who owns or controls an insurer;
    - c. Is in a policy-making position and affiliated with the insurer in any capacity described in subsections (a) or (b); or
    - d. Is directly or indirectly compensated for making the testimonial or endorsement.
- B. Scope.**
- 1. This Section applies to all advertisements for health insurance.
  - 2. This Section applies to the conduct of insurers, producers, and third-party administrators.
- C. General requirements.** Insurers, producers, and third-party administrators shall ensure that health insurance advertisements meet the requirements of this Section.
- 1. Advertisements shall be truthful and not misleading. The insurer shall not use words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology.
  - 2. An advertisement shall not omit information or use words, phrases, statements, references, or illustrations if the omission of information or use of words, phrases, statements, references, or illustrations may mislead or deceive purchasers or prospective purchasers.
  - 3. The words and phrases used to describe a policy shall accurately describe the benefits of the policy and not exaggerate any benefit through the use of phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will pay your hospital and surgical bills" or "this policy will replace your income," or similar words and phrases.
  - 4. If a policy covers only one disease or a list of specified diseases, any advertisement for the policy shall not imply coverage beyond the specified diseases.
  - 5. If a policy pays varying amounts for the same loss occurring under different conditions or pays benefits only when a loss occurs under certain conditions, any advertisement for the policy shall disclose the limited conditions.
  - 6. If an advertisement specifies payment of a particular dollar amount for hospital room and board expenses, the advertisement shall also include the maximum daily benefit and the maximum time limit for which those expenses are covered.
  - 7. An advertisement that refers to any dollar amount, period of time for which a benefit is payable, cost of policy, or specific policy benefit or the loss for which a benefit is payable shall also disclose any related exclusions, reductions, and limitations without which the advertisement would have the capacity and tendency to mislead or deceive.
  - 8. An advertisement covered by subsection (C)(7) shall disclose the existence of a waiting period if a policy contains a period between the effective date of the policy and the effective date of coverage under the policy. The advertisement shall disclose the existence of an elimination period.
  - 9. An advertisement shall disclose any exclusion, reduction, or limitation applicable to a pre-existing condition; however, an insurer is not required to make disclosure in an advertisement that does not reference specific product information, benefit level, or dollar amounts.
  - 10. If a policy has an exclusion, reduction, or limitation applicable to a preexisting condition, an advertisement shall not state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim and shall not use the phrase "no medical examination required" or other similar phrase.
  - 11. If an advertisement refers to renewability, cancellation, or termination of a policy, or states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, the advertisement shall disclose the provisions relating to renewability, cancellation, and termination and any modification of benefits, losses covered, or premiums because of age or for other reasons, in a manner that does not minimize or obscure the qualifying conditions.
  - 12. An advertisement shall not make any offer prohibited under A.R.S. § 20-452(4).
  - 13. An advertisement shall not advertise any health insurance policy or form that has not been approved by the Department, unless the policy or form being advertised is exempt from approval or not subject to approval by order or statute.
  - 14. An advertisement shall not state or imply that a product being offered is an introductory, special, or initial offer that will entitle the applicant to receive advantages not described in the policy by accepting the offer.
  - 15. An advertisement designed to produce leads either by use of a coupon, a request to write or call the company, or subsequent advertisement before contact, shall disclose that a producer may contact the potential applicant.
- D. Method of disclosure of required information.** If an insurer is required by law to disclose particular information, the information shall be conspicuous and in close proximity to the statements to which the information relates, or under a prominent caption so that the required disclosure is not minimized, obscured, presented in an ambiguous fashion, or intermingled with the content of the advertisement.

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**E. Testimonials.**

1. Testimonials used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer shall provide the Department with the full name of the author and a copy of the full testimonial if the advertisement is filed with the Department or requested by the Department. If an insurer uses a testimonial, the insurer adopts the statements in the testimonial as the insurer's own statements. If a testimonial or endorsement is used more than one year after it is given, the insurer shall obtain a written confirmation from the author that the testimonial represents the current opinion of the author.
2. The insurer shall disclose that a spokesperson has a financial interest or the proprietary or representative capacity of a spokesperson in an advertisement in the introductory portion of a testimonial or endorsement in the same form and with equal prominence as the endorsement. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, the insurer shall disclose that fact in the advertisement by language that states, "Paid Endorsement," or words of similar import in type, style, and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger. For television or radio advertising, the insurer shall place the required disclosure prominently in the introductory portion of the advertisement.

**F. Statistics.** An advertisement with information on the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use facts that are irrelevant to the sale of insurance and shall accurately reflect all of the relevant facts specific to the advertised policy or insurer. An advertisement shall not state or imply that statistics are derived from the policy being advertised unless that is true. The insurer shall identify in the advertisement the source of any statistics used.**G. Inspection of policy.** An offer in an advertisement of free inspection of a policy or offer of a premium refund does not cure misleading or deceptive statements in the advertisement.**H. Identification of plan or number of policies.**

1. If an advertisement offers a choice in the amount of benefits the advertisement shall disclose that the amount of benefits depends on the policy selected and that the premium will vary with the amount of the benefits.
2. If an advertisement refers to benefits contained in more than one policy, other than a group master policy, the advertisement shall disclose that the benefits are provided only if multiple policies are purchased.

**I. Disparaging comparisons and statements.** An advertisement shall not make unfair, incomplete, or unsubstantiated comparisons of other insurers' policies or benefits or falsely disparage other insurers' policies, services, or business methods. A comparison is unsubstantiated if the insurer has no empirical study, analysis, or documentation supporting the comparative statement or comparison of policies or benefits.**J. Jurisdictional limits.** If an insurer has an advertisement that is meant to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed, the advertisement shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of language such as "This Company is licensed only in State A" or "This Company is not licensed in State B."**K. Identity of insurer.** The insurer shall state the name of the actual insurer in all of its advertisements. An advertisement

shall clearly identify the insurer and shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol, or other device that may mislead or deceive the public as to the insurer's identity.

**L. Group insurance.** An advertisement shall not state or imply that prospective policyholders become group or quasi-group members and enjoy special rates or underwriting privileges, unless it is true. An advertisement to join an association, trust, or group that is also an invitation to contract for insurance coverage shall disclose that the applicant will be purchasing both membership in the association, trust, or group and insurance coverage.**M. Government approval.** An advertisement shall not state or imply any of the following:

1. That a governmental agency or regulator is connected with or has provided or endorsed a policy or endorsed an insurer;
2. That a governmental agency or regulator has examined an insurer's financial condition and found it satisfactory. This subsection does not apply if an insurer is responding to a specific documented, public, false allegation about its financial condition.

**N. Endorsements.** An advertisement may state that an individual, group, society, association, or other organization has approved or endorsed the insurer or its policy if the organization or group has done so in writing and if any proprietary relationship between the organization and the insurer is disclosed.**O. Claims handling.** An advertisement shall not contain false statements about the time within which claims are paid or statements that imply that claim settlements will be liberal or generous beyond the terms of the policy.**P. Statements about the insurer.** An advertisement shall not contain false or misleading statements about an insurer's assets, corporate structure, financial standing, length of time in business, or relative position in the insurance business.**Historical Note**

Former General Rule Number 2. R20-6-201 recodified from R4-14-201 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-201.01. Insurer Advertising Responsibility and Records****A.** An insurer shall establish, and at all times maintain, a system of control over the content, form, and method of dissemination of all advertisements. The insurer whose policies are advertised is responsible for the advertisements, regardless of who writes, creates, designs, or presents the advertisement, except the insurer is not responsible for any advertisement placed by a person to whom the insurer gave no actual or apparent authority. Before using an advertisement about an insurer or its products, a producer shall get written approval from the insurer for use of advertisements that were not supplied by the insurer.**B.** An insurer shall maintain, at its home or principal office, the following:

1. Advertisements disseminated by the insurer in Arizona or any other state, including:
  - a. Each printed, published, recorded, or prepared advertisement of individual policies; and
  - b. Typical printed, published, recorded, or prepared advertisements of blanket, franchise, and group policies.
2. A notation attached to each advertisement specifying the manner and extent of distribution and the form number of any policy advertised; and

3. Documentation supporting any testimonials, statistical claims, or comparisons shown in the advertising.
- C. An insurer shall maintain the advertisements, notations, and supporting documentation for at least three years from the date of first dissemination.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-201.02. Procedures for Filing Advertising Materials; Transmittal Form

- A. An insurer that is required to file a health insurance advertisement with the Department as specified in A.R.S. §§ 20-826(T), 20-1018, 20-1057(X), 20-1110(E), or 20-1662 shall file the advertisement with a transmittal form prescribed by the Department.
- B. The transmittal form shall include the following information:
  1. Identifying information of the insurer, including name, address, National Association of Insurance Commissioners' identification number, and type of insurer;
  2. A contact person at the insurer with whom the Department can communicate about the advertisement;
  3. Description of the type of advertisement being filed;
  4. Planned use and dissemination of the advertisement, including date of first use, or a statement that the advertisement will not be used any earlier than a specified date;
  5. Description of product being advertised;
  6. Form number and name for the advertised product;
  7. A certification from an officer of the insurer that the advertisement complies with applicable laws; and
  8. The dated signature of the insurer's officer.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-202. Advertising, Solicitation, and Transaction of Life Insurance

- A. The definitions in R20-6-201(A) and the following definition apply in this Section:
 

"Life insurance" means a life insurance contract, including all benefits payable under the policy.
- B. Applicability
  1. This Section applies to:
    - a. All persons subject to regulation under A.R.S. Title 20; and
    - b. Advertising, promotion, solicitation, negotiation, and sale of life insurance policies, regardless of the form of dissemination.
  2. This Section does not apply to group insurance, franchise insurance, or to annuities without life contingencies.
- C. General provisions. A life insurance advertisement shall not mislead the public by:
  1. Omitting information that fairly describes the subject matter as a life insurance policy and the benefits available under the policy;
  2. Placing undue emphasis on facts that, even if true, are not relevant to the sale of life insurance; or
  3. Placing undue emphasis on features of incidental or secondary importance to the life insurance aspects of the policy.
- D. The Department deems the following acts misleading and deceptive:
  1. Using any statement, including phrases such as "investment," "investment plan," "founders plan," "charter plan," "expansion plan," "profit," "profits," or "profit sharing," in a context or under circumstances or condi-

- tions that may mislead a purchaser or prospective purchaser to believe that the insurer is selling something other than a life insurance policy or will provide some benefit not included in the policy, or not available to other persons of the same class and equal expectation of life;
2. Using any phrase as the name or title of a life insurance policy if the phrase does not include the words "life insurance," unless other language in the same document expressly provides that the contract is a life insurance policy;
3. Making any statement relating to the growth or earnings of the life insurance industry or to the tax status of life insurance companies in a context that would reasonably be understood as attempting to interest a prospective applicant in the purchase of shares of stock in the insurance company rather than in the purchase of a life insurance policy;
4. Making any statement that reasonably tends to imply that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurance company by purchasing the policy, unless the statement is made with reference to policies of domestic life insurers engaged in a program allowed under A.R.S. § 20-453;
5. Providing a policyholder with a premium receipt book, policy jacket, return envelope, or other printed or electronic material referring to the insurer's "investment department," "insured investment department," or similar terminology in a manner implying that the policy is sold, issued, or serviced by the insurer's investment department;
6. Making any statement that reasonably tends to imply that, by purchasing a policy, the purchaser or prospective purchaser will become a member of a limited group of persons who may receive the payment of dividends, special advantages, benefits, or favored treatment unless the insurance contract specifically provides for the described payment of dividend, special advantages, benefits, or favored treatment;
7. Stating or implying that only a limited number of persons or limited class of persons may buy a particular kind of policy, unless the limitation is related to recognized underwriting practices or specifically stated in the policy or rider;
8. Describing premium payments in language that states the payment is a "deposit," unless:
  - a. The payment establishes a debtor-creditor relationship between the insurance company and the policyholder; or
  - b. The term is used with the word "premium" in a manner as to clearly indicate the true character of the payment;
9. Providing any illustration or projection of future dividends that:
  - a. Is not based on the company's actual scale for payment of current dividends, and
  - b. Does not clearly indicate that the dividends are not guarantees;
10. Using the words "dividends," "cash dividends," "surplus," or similar phrases in a manner that states or implies that the payment of dividends is guaranteed or certain to occur;
11. Stating, without qualification, that a purchaser of a policy will share in a stated percentage or portion of the insurer's earnings;
12. Making any statement that projected dividends under a participating policy will be or can be sufficient at any

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future time to assure the receipt of benefits such as a paid-up policy without further payment of premiums unless the statement also explains:

- a. The benefits or coverage that would be provided at the future time, and
  - b. The conditions under which the receipt of benefits without further payment of premiums would occur;
13. Describing a life insurance policy or premium payments in terms of "units of participation," unless accompanied by other language clearly indicating that the references are to a life insurance policy or to premium payments, as applicable.
  14. Advising producers to avoid disclosing that life insurance is the subject of the solicitation or sale;
  15. Stating that an insured is guaranteed certain benefits if the policy is allowed to lapse, without explaining the non-forfeiture benefits;
  16. Using a dollar amount in printed material to be shown to a prospective policyholder, unless the amount is accompanied by language that:
    - a. States the nature of the dollar amount,
    - b. Prohibits including the use of dollar amounts not related to guaranteed values and properly projected dividend figures, and
    - c. Prohibits the use of figures showing growth of stock values, or other values not a part of the life insurance contract.
  17. Stating that a policy provides features not found in any other insurance policy, unless the insurer can demonstrate that other policies do not have the same feature;
  18. Making any statement or implication about an insurance policy that cannot be verified by reference to the policy contract, a sample of the policy being described, or the company's officially published rate book and dividend illustrations;
  19. Stating that life insurance is "loss proof" or "depression proof," except that an insurer may make statements that life insurance benefits, other than dividends, are guaranteed by the company regardless of economic conditions;
  20. Making any statement that a company makes a profit as a result of policy lapses or surrenders;
  21. Making comparisons to the past experience of other life insurance companies as a means of projecting possible experience for the company issuing the advertising; and
  22. Conduct or statements designed to mislead a prospective applicant or purchaser.

**Historical Note**

Former General Rule Number 68-14. R20-6-202 recodified from R4-14-202 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-203. Form Filings; Translations**

- A. An insurer, rate service organization, or rating organization shall provide to the Department, at the time of filing, an English language translation of each form, advertisement, or other document or material that the insurer is required by statute or rule to file with the Department, if the filed document or material contains communication in a language other than English.
- B. The translation filed under subsection (A) shall compare the foreign language version in a side-by-side format with the English language translation. An insurer, rate service organization, or rating organization shall ensure that the translation is performed by a person with formal college-level or specialized

training in the foreign language, including training in grammar and sentence syntax.

- C. With each translation, an insurer, rate service organization, or rating organization shall also provide to the Department a sworn statement signed by the translator who translated the document that includes the qualifications of the translator under subsection (B) and attests that the translation is identical in substance to the English document or material.
- D. If an insurer, rate service organization, or rating organization files a foreign language version of a document or material that the insurer has previously filed in English, the insurer is not required to refile the English version, but shall identify the English version, provide the side-by-side comparison under subsection (B), and file the sworn statement required under subsection (C).

**Historical Note**

Former General Rule Number 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-203 recodified from R4-14-203 (Supp. 95-1). New Section made by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-204. Expired****Historical Note**

Former General Rule Number 71-24; Former Section R4-14-204 repealed, new Section R4-14-204 adopted effective January 1, 1981 (Supp. 80-6). R20-6-204 recodified from R4-14-204 (Supp. 95-1). Amended effective July 14, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 475, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 136, effective December 15, 2016 (Supp. 16-4).

**R20-6-205. Local or Regional Retaliatory Tax Information****A. Definitions.**

1. "Addition to the rate of tax" means the tax rate determined under subsection (D) to be applied under A.R.S. 20-230(A) and this Section to foreign or alien insurers domiciled in a foreign country or other state that impose local or regional taxes.
2. "Alien insurer" has the meaning prescribed in A.R.S. § 20-201.
3. "Arizona life insurer" means a domestic insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.
4. "Department" means the Arizona Department of Insurance.
5. "Director" has the meaning prescribed in A.R.S. § 20-102.
6. "Domestic insurer" has the meaning prescribed in A.R.S. § 20-203.
7. "Foreign insurer" has the meaning prescribed in A.R.S. § 20-204.
8. "Foreign or alien life insurer" means a foreign or alien insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 or annuities within the meaning of A.R.S. § 20-254.01, regardless of whether the insurer is authorized to transact disability insurance in this state.

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9. "Local or regional taxes" means any tax, license, or other obligation imposed upon domestic insurers or their producers by any:
    - a. City, county, or other political subdivision of a foreign country or other state; or
    - b. Combination of cities, counties, or other political subdivisions of a foreign country or other state.
  10. "Other Arizona insurer" means a domestic insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
  11. "Other foreign or alien insurer" means a foreign or alien insurer authorized to transact one or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
  12. "Other state" means any state in the United States, the District of Columbia, and territories or possessions of the United States, excluding Arizona.
  13. "Premium Tax and Fees Report," includes the "Survey of Arizona Domestic Insurers" and the "Retaliatory Taxes and Fees Worksheet," and means the form prescribed by the Director and filed annually by insurers under A.R.S. § 20-224.
- B.** Scope. This Section applies to all foreign, alien, and domestic insurers and to Premium Tax and Fees Reports filed by all insurers.
- C.** Data to be reported by domestic insurers. As a part of its Premium Tax and Fees Report, each domestic insurer shall file a Survey of Arizona Domestic Insurers that reports the following data for the calendar year covered by the insurer's Premium Tax and Fees Report with respect to each foreign country or other state in which the insurer was required to pay any local or regional taxes:
1. Total local or regional taxes paid; and
  2. Total premiums taxed under the premium taxing statute of the foreign country or other state, as reported by the insurer in any premium tax report filed under the laws of the foreign country or other state.
- D.** Computation of statewide and foreign countrywide additions to the rate of tax. For each foreign country or other state having one or more local or regional taxes on domestic insurers, the Department shall compute on a statewide or foreign countrywide basis an addition to the rate of tax. The Department shall compute the addition to the rate of tax payable by Arizona life insurers separately from the addition to the rate of tax payable by other Arizona insurers. The addition to the rate of tax payable by each category of Arizona domestic insurers shall be the quotient of:
1. The aggregate local or regional taxes reported as paid to the foreign country or other state by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report divided by,
  2. The aggregate statewide or foreign countrywide premiums taxed under the premium taxing statute of the other state or foreign country reported by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report.
- E.** Publication of additions to the rate of tax. The Department shall publish additions to the rate of tax determined under A.R.S. § 20-230(A) and this Section, based upon the survey information gathered from domestic insurers for the preceding calendar year under subsection (C). The Department shall publish the information annually on the Department web site, on or before November 1, and in the Retaliatory Taxes and Fees Worksheet for the next year's Premium Tax and Fees Report.
- F.** Foreign and Alien Insurers' Report of the Effect of Local or Regional Taxes. Each foreign or alien insurer domiciled in a foreign country or other state for which the Department publishes an addition to the rate of tax shall include in the "State or Country of Incorporation" column of its Retaliatory Taxes And Fees Worksheet for the calendar year covered by its Premium Tax and Fees Report an amount equal to:
1. The total premiums received in Arizona that would be taxed under the laws of the domiciliary jurisdiction, as reported in the "State or Country of Incorporation" column of its premium tax and fees report multiplied by,
  2. The applicable addition to the rate of tax published by the Department for the calendar year covered by the insurer's Premium Tax and Fees Report.
- G.** Contesting computation. A foreign or alien insurer subject to this Section may preserve the right to contest the computation of the addition to the rate of tax by submitting a notice of appeal under A.R.S. Title 41, Chapter 6, Article 10 before or at the time the retaliatory tax is paid. Subject to A.R.S. § 20-162, the filing of a notice of appeal to contest the computation of the applicable addition to the rate of tax does not relieve a foreign or alien insurer of the obligation to timely pay the retaliatory tax, and does not stay accrual of any applicable interest and penalties.

**Historical Note**

Former General Rule Number 71-25; Repealed effective March 19, 1976 (Supp. 76-2). R20-6-205 recodified from R4-14-205 (Supp. 95-1). Section R20-6-205 renumbered from R20-6-206 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-206. Expired****Historical Note**

Former General Rule Number 72-30. Repealed effective February 22, 1993 (Supp. 93-1). R20-6-206 recodified from R4-14-206 (Supp. 95-1). New Section adopted effective December 29, 1995 (Supp. 95-4). Amended effective November 5, 1998 (Supp. 98-4). Former R20-6-206 renumbered to R20-6-205; new R20-6-206 renumbered from R20-6-207 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**R20-6-207. Gender Discrimination**

**A.** The following definitions apply to this Section:

1. "Applicant" means a person who is applying for a policy.
2. "Policy" means an insurance policy, plan, contract, certificate, evidence of coverage, subscription contract, or binder, including a rider or endorsement offered by an insurer.
3. "Insurer" means any company that issues a policy.

**B.** Applicability and scope. This Section applies to any policy or certificate delivered or issued for delivery in this state.

**C.** Availability requirements.

1. An insurer shall not deny availability of any insurance policy on the basis of the gender or marital status of the insured or prospective insured.
2. An insurer shall not restrict, modify, exclude, reduce, or limit the amount of benefits payable, or any term, conditions or type of coverage on the basis of an applicant's or insured's gender or marital status, except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under A.R.S. Title 20.



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3. An insurer may consider marital status to determine whether a person is eligible for dependent coverage or benefits.
- D. Prohibited practices. The following practices and any other practice that treats similarly situated persons differently based on gender unless the different treatment is specifically allowed by law, is prohibited.
  1. Denying coverage to a person of one gender who is self-employed, employed part-time, or employed by relatives, if coverage is offered to a person of the opposite gender who is similarly employed;
  2. Denying a policy rider to a person of one gender if the rider is available to a person of the opposite gender;
  3. Denying maternity benefits to an applicant or insured who buys a policy for individual coverage if the insurer offers comparable family coverage policies with maternity benefits;
  4. Denying, under group policies, dependent coverage to an employee of one gender if dependent coverage is available to an employee of the opposite gender;
  5. Denying a disability income policy to an employed person of one gender if a policy is offered to a person of the opposite gender who is similarly employed;
  6. Treating complications of pregnancy differently from any other illness or sickness covered under a policy;
  7. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one gender;
  8. Offering lower maximum monthly benefits to a person of one gender than to a person of the opposite gender who is in the same classification under a disability income policy;
  9. Offering more restrictive benefit periods or more restrictive definitions of disability to a person of one gender than to a person of the opposite gender who is in the same classification under a disability income policy;
  10. Establishing different conditions for a policyholder of one gender to exercise benefit options contained in the policy than for a person of the opposite gender;
  11. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless the limitation is for the purpose of defining persons eligible for dependent's benefits; and
  12. Otherwise restricting, modifying, excluding or reducing the availability of any insurance contract, the amount of benefits payable, or any term, condition or type of coverage on account of gender or marital status in all lines of insurance.
- b. The coverage is not available to the general public and can be obtained and maintained only because of the covered person's membership in or connection with the particular organization or group;
- c. Coverage is paid for by bulk payment of premiums to the insurer; and
- d. An employer, union, or association sponsors the plan.
2. "Health insurance coverage" means a hospital and medical expense incurred policy, a nonprofit health care service plan contract, a health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services whether by insurance or otherwise, but does not include the following:
  - a. Coverage only for accident, or disability income insurance, or any combination of accident and disability income insurance;
  - b. Coverage issued as a supplement to liability insurance;
  - c. Liability insurance, including general liability insurance and automobile liability insurance;
  - d. Workers' compensation or similar insurance;
  - e. Automobile medical payment insurance;
  - f. Credit-only insurance;
  - g. Coverage for onsite medical clinics; and
  - h. Other insurance coverage similar to the coverage specified in subsections (2)(a) through (g), of the Health Insurance Portability and Accountability Act of 1996 (Pub.L.No. 104-191) (HIPAA), under which benefits for medical care are secondary or incidental to other insurance benefits.
  - i. The following benefits, if the benefits are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the coverage:
    - i. Limited-scope dental or vision benefits;
    - ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of those benefits;
    - iii. Other similar, limited benefits specified in federal regulations issued under HIPAA.
  - j. The following benefits if provided under a separate policy, certificate, or contract of insurance with no coordination between provision of benefits and any exclusion of benefits under a group health plan maintained by the same plan sponsor and if the benefits are paid for an event regardless of whether the benefits are provided under a group health plan maintained by the same plan sponsor:
    - i. Coverage only for a specified disease or illness, or
    - ii. Hospital indemnity or other fixed indemnity insurance.
  - k. The following benefits if the benefits are offered as a separate policy, certificate, or contract of insurance:
    - i. Medicare supplemental policy as defined under § 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss;
    - ii. Coverage supplemental to the coverage provided under, 10 U.S.C. Title 10, Chapter 55; or
    - iii. Similar supplemental coverage provided to coverage under a group health plan.
3. "Health status-related factor" means any of the following:
  - a. Health status;

**Historical Note**

Former General Rule Number 73-32. R20-6-207 recodified from R4-14-207 (Supp. 95-1). Former R20-6-207 renumbered to R20-6-206; new R20-6-207 renumbered from R20-6-209 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

**R20-6-208. Group Coverage Discontinuance and Replacement**

- A. Definitions. The following definitions apply in this Section:
  1. "Group insurance" means an insurance benefit that meets all the following conditions:
    - a. Coverage is provided through insurance policies or subscriber contracts to classes of employees or members defined in terms of conditions pertaining to employment or membership;

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- b. Medical condition, including a physical or mental illness;
  - c. Claims experience;
  - d. Receipt of health care;
  - e. Medical history;
  - f. Genetic information;
  - g. Evidence of insurability, including conditions arising out of acts of domestic violence; or
  - h. Disability.
- 4. "Insurer" means an insurer that offers or provides group health insurance coverage, and includes an insurer that issues disability insurance as defined in A.R.S. § 20-253, a medical, dental, or optometric service corporation as defined in A.R.S. § 20-822, and a health care services organization as defined in A.R.S. § 20-1051.
- B.** This Section applies to all group insurance issued by an insurer.
- C.** Effective date of discontinuance for non-payment of premium.
  - 1. If a group insurance policy provides for automatic discontinuance of the policy after a premium remains unpaid through the grace period allowed for payment, the insurer is liable for valid claims for covered losses incurred before the end of the grace period.
  - 2. If the insurer's actions after the end of the grace period indicate that the insurer considers the group insurance policy as continuing in force beyond the end of the grace period the insurer is liable for valid claims for losses beginning before the effective date of written notice of discontinuance to the policyholder or other entity responsible for paying premiums.
    - a. The following actions indicate that the insurer considers the policy in force:
      - i. Continued recognition, acknowledgement, or payment of subsequently incurred claims, or
      - ii. Continued enrollment of employees or dependents.
    - b. The following actions shall not indicate that the insurer considers that policy in force:
      - i. Recognition, payment, or acknowledgement of a claim by an insurer or processing a denial based on eligibility or other denial reasons set forth in the group benefit plan booklet; or
      - ii. Recognition, payment, or acknowledgement of claims due to the group's failure to notify the insurer that the employee or member is no longer eligible for coverage or the group policy is terminated.
  - 3. The effective date of discontinuance shall not be before midnight at the end of the third scheduled work day after the date on which the notice of discontinuance is delivered.
- D.** Requirements for notice of discontinuance.
  - 1. An insurer's notice of discontinuance shall include a request to the group policyholder to notify covered employees of the date when the group policy or contract will discontinue and to advise that, unless otherwise provided in the policy or contract, the insurer is not liable for claims for losses incurred after the date of discontinuance. If the plan involves employee contributions, the notice of discontinuance shall also advise that if the policyholder continues to collect employee contributions beyond the date of discontinuance, the policyholder is solely liable for benefits for the period which contributions were collected.
  - 2. The insurer shall also provide the policyholder with a supply of notice forms that the policyholder can distribute to the covered employees. The notice forms shall explain the discontinuance and the effective date, and advise employees to refer to their certificates or contracts to determine their rights on discontinuance.
- E.** Extension of benefits.
  - 1. A group policy shall provide a reasonable provision for extension of benefits for an employee or dependent who is totally disabled on the date of discontinuance as follows:
    - a. For a group life plan with a disability benefit extension of any type such as a premium waiver extension, extended death benefit in the event of total disability, or payment of income for a specified period during total disability, the discontinuance of the group policy shall not terminate the benefit extension.
    - b. For a group plan providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability or hospital confinement shall not effect benefits payable for that disability or hospital confinement.
    - c. A hospital or medical expense coverage, other than dental and maternity expense, shall include a reasonable extension of benefits or accrued liability provision. A provision is reasonable if:
      - i. It provides an extension of at least 12 months under "major medical" and "comprehensive medical" type coverage; or
      - ii. Under other types of hospital or medical expense coverage, it provides either an extension of at least 90 days or an accrued liability for expenses incurred during a period of disability or during a period of at least 90 days starting with a specific event that occurred while coverage was in force, such as an accident.
  - 2. An insurer shall ensure that the policy and group insurance certificates includes a description of the extension of benefits or accrued liability provision.
  - 3. An insurer shall ensure that benefits payable during a period of extension or accrued liability are subject to the policy's regular benefit limits, such as benefits ceasing at exhaustion of a benefit period or of maximum benefits.
  - 4. For hospital or medical expense coverage, an insurer may limit benefit payments to payments applicable to the disabling condition only.
- F.** Continuance of coverage in situations involving replacement of one plan by another.
  - 1. When a group policyholder secures replacement coverage with a new insurer, self-insures, or foregoes provision of coverage, the replaced insurer is liable only to the extent of its accrued liabilities and extensions of benefits after the date of discontinuance.
  - 2. The succeeding insurer shall cover each individual who:
    - a. Was eligible for coverage under the prior plan on the date of discontinuance, and
    - b. Is eligible for coverage according to the succeeding insurer's plan of benefits with respect to a class of individuals eligible for coverage.
  - 3. For the purpose of successive health insurance coverage under subsection (F)(2), a succeeding insurer's plan of benefits shall:
    - a. Not have any non-confinement rules; and

- b. Provide, as to any actively-at-work rules, that absence from work due to a health status-related factor is treated as being actively-at-work.
- 4. Nothing in subsection (F)(2) prohibits an insurer from performing coordination of benefits.
- 5. A succeeding insurer shall cover each individual not covered under the succeeding insurer's plan of benefits under subsection (F)(2) according to subsections (a) and (b) if the individual was validly covered, including benefit extension, under the prior plan on the date of discontinuance and is a member of a class of individuals eligible for coverage under the succeeding insurer's plan. Any reference in subsection (a) or (b) to an individual who was or was not totally disabled is a reference to the individual's status immediately before the effective date of coverage for the succeeding insurer.
  - a. The minimum level of benefits to be provided by the succeeding insurer shall be the level of benefits of the prior insurer's plan reduced by any benefits payable by the prior plan.
  - b. The succeeding insurer shall provide coverage until at least the earliest of the following dates:
    - i. The date the individual becomes eligible under the succeeding insurer's plan as described in subsection (F)(2);
    - ii. The date the individual's coverage would terminate according to the succeeding insurer's plan provisions applicable to individual termination of coverage such as at termination of employment or ceasing to be eligible dependent; or
    - iii. For an individual who was totally disabled, and covered by a type of coverage for which subsection (E) requires an extension of accrued liability, the end of any period of extension of benefits or accrued liability that is required of the prior insurer under subsection (E), or if the prior insurer's policy is not subject to subsection (E), would have been required of the insurer had its policy been subject to subsection (E) at the time the prior plan was discontinued and replaced by the succeeding insurer's plan;
  - c. For health insurance coverage, if an individual who was totally disabled at the time the prior insurer's plan was discontinued and replaced by the succeeding insurer's plan, and if subsection (E) requires an extension of benefits or accrued liability, the minimum level of benefits to be provided by the succeeding insurer shall be the level of benefits of the prior insurer's plan, reduced by any benefits paid by the prior plan.
  - d. If the succeeding insurer's plan has a preexisting conditions limitation, the level of benefits applicable to preexisting conditions of persons becoming covered by the succeeding insurer's plan according to subsection (F) during the period the limitation applies under the new plan shall be the lesser of:
    - i. The benefits of the new plan determined without application of the preexisting conditions limitation, or
    - ii. The benefits of the prior plan.
  - e. The succeeding insurer, in applying any deductibles, coinsurance amounts applicable to out-of-pocket maximums, or waiting periods, shall give credit for the satisfaction or partial satisfaction of the same or similar provisions under a prior plan providing simi-

lar benefits. For deductibles or coinsurance amounts applicable to out-of-pocket maximums, the credit shall apply for the same or overlapping benefit periods and shall be given for expenses actually incurred and applied against the deductible or coinsurance provisions of the prior plan during the 90 days before the effective date of the succeeding insurer's plan but only to the extent these expenses are recognized under the terms of the succeeding insurer's plan and are subject to similar deductible or coinsurance provisions.

- f. If the succeeding insurer is required under this Section to make a determination about the benefits in the prior plan, the succeeding insurer may ask the prior plan to provide a statement of the benefits available or other pertinent information sufficient to permit the succeeding insurer to verify the benefit determination. For the purposes of this Section, all definitions, conditions, and covered-expense provisions of the prior plan shall govern the benefit determination. The benefit determination is made as if the succeeding insurer had not replaced coverage.

#### Historical Note

Former General Rule Number 73-34. R20-6-208 recodified from R4-14-208 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1). Section R20-6-208 renumbered from R20-6-210 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-209. Life Insurance Solicitation

##### A. Scope.

- 1. This Section applies to any solicitation, negotiation, or procurement of life insurance occurring in Arizona. This Section applies to any issuer of life insurance contracts, including fraternal benefit societies.
- 2. Unless otherwise specifically included, the Section does not apply to:
  - a. Annuities,
  - b. Credit life insurance,
  - c. Group life insurance,
  - d. Life insurance policies issued in connection with a pension and welfare plan as defined by and subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq.; or
  - e. Variable life insurance under which the death benefits and cash values vary according to unit values of investments held in a separate account.

##### B. In this Section, the following apply:

- 1. "Buyer's Guide" means a document that contains the language in the Appendix to this Section or language approved by the Director.
- 2. "Cash dividend" means the current illustrated dividend that can be applied toward payment of the gross premium.
- 3. "Equivalent Level Annual Dividend" is calculated as follows:
  - a. Accumulate the annual cash dividends at 5% interest compounded annually to the end of the 10th and 20th policy years;
  - b. Divide each accumulation in subsection (a) by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in subsection (a) over the periods stipulated in

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- subsection (a). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
- c. Divide the results in subsection (b) by the number of thousands of the Equivalent Level Death Benefit to arrive at the "Equivalent Level Annual Dividend."
  4. "Equivalent Level Death Benefit" means the amount of benefit of a policy or term life insurance rider calculated as follows:
    - a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for 10 and 20 years at 5% interest compounded annually to the end of the 10th and 20th policy years, respectively.
    - b. Divide each accumulation in subsection (a) by an interest factor that converts the accumulation into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subsection (a) over the periods stipulated in subsection (a). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
  5. "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.
  6. "Life Insurance Surrender Cost Index" means the cost index that is calculated as follows:
    - a. Determine the guaranteed cash surrender value, if any, available at the end of the 10th and 20th policy years.
    - b. For policies participating in dividends, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at 5% interest compounded annually to the end of the period selected and add this sum to the amount determined in subsection (a).
    - c. Divide the result in subsection (b) (subsection (a) for guaranteed-cost policies) by an interest factor that converts into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in subsection (b) or subsection (a) for guaranteed cost policies, over the periods stipulated in subsection (a)). If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
    - d. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at 5% interest compounded annually to the end of the period stipulated in subsection (a) and dividing the result by the respective factors stated in subsection (c). This amount is the annual premium payable for a level premium plan.
    - e. Subtract the result of subsection (c) from subsection (d).
    - f. Divide the result of subsection (e) by the number of thousands of the Equivalent Level Death Benefit to arrive at the Life Insurance Surrender Cost Index.
  7. The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Cost Index except that the cash surrender value and any terminal dividend are set at zero.
  8. "Policy Summary" means a written statement describing elements of the policy, including:
    - a. The following prominently placed title: Statement of Policy Cost and Benefit Information.
    - b. The name and address of the insurance producer, or, if no producer is involved, a statement of the procedure to be followed to receive responses to inquiries regarding the Policy Summary.
  - c. The full name and home office or administrative office address of the company by which the life insurance policy is to be or has been written.
  - d. The generic name of the basic policy and each rider.
  - e. For the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including the years for which Life Insurance Cost Indexes are displayed and at least one age from 60 through 65 or maturity, whichever is earlier, the following amounts, where applicable:
    - i. The annual premium for the basic policy;
    - ii. The annual premium for each optional rider;
    - iii. Guaranteed amount payable upon death at the beginning of the policy year regardless of the cause of death except for suicide, or other specifically enumerated exclusions provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;
    - iv. Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
    - v. Cash dividends payable at the end of the year with values shown separately for the basic policy and each rider. Dividends need not be displayed beyond the twentieth policy year; and
    - vi. Guaranteed endowment amounts payable under the policy that are not included under guaranteed cash surrender values in subsection (iv).
  - f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears. If the policy loan interest rate is variable, the Policy Summary shall include the maximum annual percentage rate.
  - g. Life Insurance Cost Indexes for 10 and 20 years but not beyond the premium-paying period. Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. The indexes need not be included for optional riders that are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months, and guaranteed insurability benefits, nor for basic policies or optional riders covering more than one life.
  - h. The Equivalent Level Annual Dividend in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which Life Insurance Cost Indexes are displayed.
  - i. If the Policy Summary includes dividends, a statement that dividends are based on the insurer's current dividend scale and are not guaranteed and a statement in close proximity to the Equivalent Level Annual Dividend as follows: "An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide."
  - j. A statement in close proximity to the Life Insurance Cost Indexes as follows: "An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."

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- k. The date on which the Policy Summary is prepared. The Policy Summary shall consist of a separate document. All information required to be disclosed shall not be minimized or obscure. Any amounts that remain level for two or more years of the policy may be represented by a single number that clearly indicates the amounts that are applicable for each policy year. Amounts in subsection (8)(e) shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.
- C. Disclosure requirements.
1. The insurer shall provide to all prospective purchasers, a Buyer's Guide and a Policy Summary before accepting the applicant's initial premium or premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least 10 days or unless the Policy Summary contains an unconditional refund offer, in which case the Buyer's Guide and Policy Summary shall be delivered with the policy or before delivery of the policy.
  2. The insurer shall provide a Buyer's Guide and a Policy Summary to any prospective purchaser upon request.
  3. If the Equivalent Level Death Benefit of a policy does not exceed \$5,000, the requirement for providing a Policy Summary is satisfied by delivery of a written statement containing the information described in subsections (D)(8)(b), (c), (d), (e)(i) through (e)(iii), (f), (g), (j), and (k).
- D. General rules.
1. Each insurer shall maintain at its home office or principal office for at least three years after its last authorized use a copy of each form the insurer authorized for use.
  2. A producer shall inform a prospective purchaser, before commencing a life insurance sales presentation, that the producer is acting as a life insurance producer and inform the prospective purchaser of the full name of the insurance company that the producer is representing. If an insurance producer is not involved in the sale, the insurer shall inform the prospective purchaser of the insurance company's full name.
  3. An insurer or producer shall not use terms such as financial planner, investment advisor, financial consultant, or financial counseling to imply that the insurance producer is generally engaged in an advisory business in which compensation is unrelated to sales unless that is true.
  4. If an insurer or producer refers to policy dividends, the reference shall include a statement that dividends are not guaranteed.
  5. An insurer shall not use a system or presentation that does not recognize the time value of money through the use of appropriate interest adjustments for comparing the cost of two or more life insurance policies unless the system or presentation is used to demonstrate the cash flow pattern of a policy and the presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.
  6. In a presentation of benefits, an insurer shall not display guaranteed and non-guaranteed benefits as a single sum unless they are shown separately and in close proximity.
  7. An insurer shall include with a statement regarding the use of the Life Insurance Cost Indexes an explanation that the indexes are useful only for the comparison of the relative costs of two or more similar policies.
  8. An insurer shall include with a Life Insurance Cost Index that reflects dividends or an Equivalent Level Annual Dividend a statement that it is based on the company's current dividend scale and is not guaranteed.
  9. If an insurer reserves the right to change the premium for a basic policy or rider, the annual premium shall be the maximum annual premium.
- E. An insurer's failure to provide or deliver a Buyer's Guide or a Policy Summary as provided in subsection (C) constitutes an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.
- Appendix. Life Insurance Buyers Guide**
- Life Insurance Buyer's Guide
- The face page of the Buyer's Guide shall read as follows:
- Life Insurance Buyer's Guide
- This guide can show you how to save money when you shop for life insurance. It helps you to:
- Decide how much life insurance you should buy,
  - Decide what kind of life insurance policy you need, and
  - Compare the cost of similar life insurance policies.
- Prepared by the National Association of Insurance Commissioners
- Reprinted by (Company Name)
- (Month and year of printing)
- The Buyer's Guide shall contain the following language at the bottom of page 2:
- The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various Insurance Departments to coordinate insurance laws for the benefit of all consumers. You are urged to use this Guide in making a life insurance purchase.
- Buying Life Insurance
- When you buy life insurance, you want a policy that fits your needs without costing too much. Your first step is to decide how much you need, how much you can afford to pay and the kind of policy you want. Then, find out what various companies charge for that kind of policy. You can find important differences in the cost of life insurance by using the life insurance cost indexes that are described in this guide. A good life insurance producer or company will be able and willing to help you with each of these shopping steps.
- If you are going to make a good choice when you buy life insurance, you need to understand what kinds are available. If one kind does not seem to fit your needs, ask about the other kinds that are described in this guide. If you feel that you need more information than is given here, you may want to check with a life insurance producer or company or books on life insurance in your public library.
- This guide does not endorse any company or policy.
- The remaining text of the buyer's guide shall begin on page 3 as follows:
- Choosing the Amount
- One way to decide how much life insurance you need is to figure how much cash and income your dependents would need if you were to die. You should think of life insurance as a source of cash needed for

expenses of final illnesses, paying taxes, mortgages or other debts. It can also provide income for your family's living expenses, educational costs and other future expenses. Your new policy should come as close as you can afford to making up the difference between (1) what your dependents would have if you were to die now, and (2) what they would actually need.

### Choosing the Right Kind

All life insurance policies agree to pay an amount of money if you die. But all policies are not the same. There are three basic kinds of life insurance.

1. Term insurance
2. Whole life insurance
3. Endowment insurance

Remember, no matter how fancy the policy title or sales presentation might appear, all life insurance policies contain one or more of the three basic kinds. If you are confused about a policy that sounds complicated, ask the producer or company if it combines more than one kind of life insurance. The following is a brief description of the three basic kinds:

#### Term Insurance

Term insurance is death protection of a "term" of one or more years. Death benefits will be paid only if you die within that term of years. Term insurance generally provides the largest immediate death protection for your premium dollar.

Some term insurance policies are "renewable" for one or more additional terms even if your health has changed. Each time you renew the policy for a new term, premiums will be higher. You should check the premiums at older ages and the length of time the policy can be continued.

Some term insurance policies are also "convertible." This means that before the end of the conversion period, you may trade the term policy for a whole life or endowment insurance policy even if you are not in good health. Premiums for the new policy will be higher than you have been paying for the term insurance.

#### Whole Life Insurance

Whole life insurance gives death protection for as long as you live. The most common type is called "straight life" or "ordinary life" insurance, for which you pay the same premiums for as long as you live. These premiums can be several times higher than you would pay initially for the same amount of term insurance. But they are smaller than the premiums you would eventually pay if you were to keep renewing a term insurance policy until your later years.

Some whole life policies let you pay premiums for a shorter period such as 20 years, or until age 65. Premiums for these policies are higher than for ordinary life insurance since the premium payments are squeezed into a shorter period.

Although you pay higher premiums, to begin with, for whole life insurance than for term insurance, whole life insurance policies develop "cash values" which you may have if you stop paying premiums. You can generally either take the cash, or use it to buy some continuing insurance protection. Technically speaking, these values are called "nonforfeiture benefits." This refers to benefits you do not lose (or "forfeit") when you stop paying premiums. The amount of these benefits depends on the kind of policy you have, its size, and how long you have owned it.

A policy with cash values may also be used as collateral for a loan. If you borrow from the life insurance company, the rate of interest is shown in your policy. Any money that you owe on a policy loan would be deducted from the benefits if you were to die, or from the cash value if you were to stop paying premiums.

#### Endowment Insurance

An endowment insurance policy pays a sum or income to you – the policyholder – if you live to a certain age. If you were to die before then, the death benefit would be paid to your beneficiary. Premiums and cash values for endowment insurance are higher than the same amount of whole life insurance. Thus endowment insurance gives you the least amount of death protection for your premium dollar.

### Finding a Low Cost Policy

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. **LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS.**

#### What is Cost?

"Cost" is the difference between what you pay and what you get back. If you pay a premium for life insurance and get nothing back, your cost for the death protection is the premium. If you pay a premium and get something back later on, such as a cash value, your cost is smaller than the premium.

The cost of some policies can also be reduced by dividends; these are called "participating" policies. Companies may tell you what their current dividends are, but the size of future dividends is unknown today and cannot be guaranteed. Dividends actually paid are set each year by the company.

Some policies do not pay dividends. These are called "guaranteed cost" or "non participating" policies. Every feature of a guaranteed cost policy is fixed so that you know in advance what your future cost will be.

The premiums and cash values of a participating policy are guaranteed, but the dividends are not. Premiums for participating policies are typically higher than for guaranteed cost policies, but the cost to you may be higher or lower, depending on the dividends actually paid.

#### What Are Cost Indexes?

In order to compare the cost of policies, you need to look at:

1. Premiums
2. Cash values
3. Dividends

Cost indexes use one or more of these factors to give you a convenient way to compare relative costs of similar policies. When you compare costs, an adjustment must be made to take into account that money is paid and received at different times. It is not enough to just add up the premiums you will pay and subtract the cash values and dividends you expect to get back. These indexes take care of the arithmetic for you. Instead of having to add, subtract, multiply and divide many numbers yourself, you just compare the index numbers which you can get from life insurance producers and companies:

1. Life Insurance Surrender Cost Index. This index is useful if you consider the level of the cash values to be of primary importance to you. It helps you compare costs if at some future point in time, such as 10 or 20 years, you were to surrender the policy and take its cash value.  
Life Insurance Net Payment Cost Index. This Index is useful if your main concern is the benefits that are to be paid at your death and if the level of cash values is of secondary importance to you. It helps you compare costs at some future point

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in time, such as 10 or 20 years, if you continue paying premiums on your policy and do not take its cash value.

There is another number called the Equivalent Level Annual Dividend. It shows the part dividends play in determining the cost index of a participating policy. Adding a policy's Equivalent Level Annual Dividend to its cost index allows you to compare total costs of similar policies before deducting dividends. However, if you make any cost comparisons of a participating policy with a non participating policy, remember that the total cost of the participating policy will be reduced by dividends, but the cost of the non participating policy will not change.

#### How Do I Use Cost Indexes?

The most important thing to remember when using cost indexes is that a policy with a small index number is generally a better buy than a comparable policy with a larger index number. The following rules are also important:

- (1) Cost comparisons should only be made between similar plans of life insurance. Similar plans are those which provide essentially the same basic benefits and require premium payments for approximately the same period of time. The closer policies are to being identical, the more reliable the cost comparison will be.
- (2) Compare index numbers only for the kind of policy, for your age and for the amount you intend to buy. Since no one company offers the lowest cost for all types of insurance at all ages and for all amounts of insurance, it is important that you get the indexes for the actual policy, age and amount which you intend to buy. Just because a "Shopper's Guide" tells you that one company's policy is a good buy for a particular age and amount, you should not assume that all of that company's policies are equally good buys.
- (3) Small differences in index numbers could be offset by other policy features, or differences in the quality of service you may expect from the company or its producer. Therefore, when you find small differences in cost indexes, your choice should be based on something other than cost.
- (4) In any event, you will need other information on which to base your purchase decision. Be sure you can afford the premiums, and that you understand its cash values, dividends and death benefits. You should also make a judgment on how well the life insurance company or producer will provide service in the future, to you as a policyholder.
- (5) These life insurance cost indexes apply to new policies and should not be used to determine whether you should drop a policy you have already owned for awhile, in favor of a new one. If such a replacement is suggested, you should ask for information from the company that issued the old policy before you take action.

#### Important Things To Remember – A Summary

The first decision you must make when buying a life insurance policy is choosing a policy whose benefits and premiums must closely meet your needs and ability to pay. Next, find a policy which is also a relatively good buy. If you compare Surrender Cost Indexes and Net Payment Cost Indexes of similar competing policies, your chances of finding a relatively good buy will be better than if you do not shop. REMEMBER, LOOK FOR POLICIES WITH LOWER COST INDEX NUMBERS. A good life insurance producer can help you to choose the amount of life insurance and kind of policy you want and will give you cost indexes so that you make cost comparisons of similar policies.

Don't buy life insurance unless you intend to stick with it. A policy which is a good buy when held for 20 years can be very costly if you quit during the early years of the policy. If you surrender such a policy

during the first few years, you may get little or nothing back and much of your premium may have been used for company expenses.

Read your new policy carefully, and ask the producer or company for an explanation of anything you do not understand. Whatever you decide now, it is important to review your life insurance program every few years to keep up with changes in your income and responsibilities.

#### Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). R20-6-209 recodified from R4-14-209 (Supp. 95-1). Former R20-6-209 renumbered to R20-6-207; new R20-6-209 renumbered from R20-6-211 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### **R20-6-210. Readable and Understandable Policy: Private Passenger Automobile, Homeowner, Personal Line Dwelling, and Mobile Homeowner**

##### **A. Definitions.** The following definitions apply in this Section:

1. "Readable insurance policy" means a policy that can be read and reasonably understood by a person without special knowledge or training.
2. "Policy" means a contract or agreement for insurance, or an insurance certificate regardless of the name used, and includes all clauses, endorsements, and papers attached or incorporated.

##### **B. Scope.** This Section applies to private passenger motor vehicle policies, homeowner policies, personal line dwelling policies, for four family units or less, and mobile homeowner policies delivered or issued for delivery in Arizona.

##### **C. Compliance.**

1. An insurer shall test the readability of its policy by use of the Flesch Readability Formula as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974).
2. An insurer shall not use a policy unless the policy has a total readability score of 40 or more on the Flesch scale.
3. An insurer shall include with each policy form filing required to be filed with the Director a checklist for the line of insurance setting forth the Flesch score.

##### **D. Readability guidelines.**

1. General organization of text.
  - a. A policy shall be divided into logically arranged sections for ease of locating content.
  - b. Each section shall be self-contained as to provisions relating solely to that section (for example, an exclusion section shall not be mixed with other parts of a policy).
  - c. General policy provisions applying to all or several like coverages shall be located in a common area.
  - d. The policy shall not contain non-essential provisions.
  - e. Defined words and terms shall be placed in a separate section at the beginning of the policy.
2. Visual aids to readability. The insurer shall ensure that each policy meets the following format requirements:
  - a. Type size shall be at least eight point.
  - b. The font shall be block print rather than script, and legible.
  - c. Captions and headings shall be distinguishable from the general text.
  - d. White space separating coverages, policy sections, and columns shall be sufficient to make a distinct separation.
  - e. Defined words and terms shall be distinguishable from the general text.

3. Language usage. The insurer shall ensure that each policy:
  - a. Is written in everyday, conversational language;
  - b. Uses short, simple sentences and words in common usage;
  - c. Uses an easy-to-read style, personal pronouns, and present tense active verbs.

#### Historical Note

Adopted effective May 28, 1979 (Supp. 79-1). R20-6-210 recodified from R4-14-210 (Supp. 95-1). Former R20-6-210 renumbered to R20-6-208; new R20-6-210 renumbered from R20-6-212 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-211. Discrimination on the Basis of Blindness or Partial Blindness

- A. Definitions. The following definitions apply in this Section:
  1. "Policy" means a contract or agreement for or effecting insurance, or a certificate of insurance, regardless of the name used, and includes all clauses, riders, endorsements, and attached papers.
  2. "Person" has the same meaning prescribed in A.R.S. § 20-105.
- B. Scope. This Section applies to all policies delivered or issued for delivery in this state.
- C. Prohibition. An insurer shall not engage in the following prohibited acts or practices that constitute unfair discrimination between individuals of the same class:
  1. Refusal to insure or refusal to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual solely because of blindness or partial blindness; or
  2. Charging an individual a different rate for the same coverage solely because of blindness or partial blindness.
- D. In this subsection, "refusal to insure" includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed if the insured loses eyesight. An insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness if the insured was blind or partially blind when the policy was issued.
- E. For all other conditions, including the underlying cause of the blindness or partial blindness, a person who is blind or partially blind is subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as a sighted person.

#### Historical Note

Adopted effective August 1, 1977 (Supp. 77-4). Amended effective March 27, 1976 (Supp. 78-2). Correction, Historical Note for Supp. 77-4 should read adopted effective January 1, 1979 filed August 1, 1977. Historical Note for Supp. 78-2 should read Appendix amended effective January 1, 1979 filed March 27, 1978 (Supp. 79-5). Editorial correction, (D)(7)(a), title now shown in italics (Supp. 81-1). R20-6-211 recodified from R4-14-211 (Supp. 95-1). Former R20-6-211 renumbered to R20-6-209; new R20-6-211 renumbered from R20-6-213 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-212. Forms for Replacement of Life Insurance Policies and Annuities

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future

editions or amendments), which are incorporated by reference and available at the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108:

1. For the purpose of meeting the requirements of A.R.S. § 20-1241.03(C): Life Insurance and Annuities Replacement Model Regulation, Appendix A – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-11 through 613-12, July 2000.
2. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(A): Life Insurance and Annuities Replacement Model Regulation, Appendix B – Notice Regarding Replacement: Replacing Your Life Insurance Policy or Annuity?, Volume III, pp. 613-13, July 2000.
3. For the purpose of meeting the requirements of A.R.S. § 20-1241.07(B)(2): Life Insurance and Annuities Replacement Model Regulation, Appendix C – Important Notice: Replacement of Life Insurance or Annuities, Volume III, pp. 613-14 through 613-15, 1998.

#### Historical Note

Adopted effective March 27, 1978 (Supp. 78-2). Editorial correction see subsection (A) citation to A.R.S. (Supp. 78-4). Editorial correction see subsections (B) and (F) citation to A.R.S. (Supp. 78-6). R20-6-212 recodified from R4-14-212 (Supp. 95-1). Former R20-6-212 renumbered to R20-6-210; new R20-6-212 renumbered from R20-6-215 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-212.01. Forms for Buyer's Guide for Annuities

An insurer shall use the following forms of the National Association of Insurance Commissioners Model Regulations (and no future editions or amendments), which are incorporated by reference and available at the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108:

For the purpose of meeting the requirements of A.R.S. § 20-1242.02 regarding a Buyer's Guide: Annuity Disclosure Model Regulation, Appendix - Buyer's Guide to Fixed Deferred Annuities, Volume II, pp. 245-6 through 245-13, 1999, with attached Appendix I - Equity-Indexed Annuities, Volume II, pp. 245-14 through 245-20, 1999.

#### Historical Note

Section R20-6-212.01 renumbered from R20-6-215.01 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### R20-6-213. Life and Disability Insurance Policy Language Simplification

- A. Definitions. The following definitions apply in this Section:
  1. "Company" or "insurer" means any life or disability insurance company, benefit insurer, benefit stock insurer, prepaid dental plan organizations, health care service organizations, and all similar type organizations.
  2. "Director" means the Director of Insurance of Arizona.
  3. "Policy" or "policy form" means any policy, contract, plan or agreement of life or disability insurance, including credit life insurance and credit disability insurance, delivered or issued for delivery in the state by any company subject to this rule; and any certificate issued under a group insurance policy delivered or issued for delivery in this state.
- B. Applicability.



1. This Section and R20-6-212 apply to all life and disability insurance policies delivered or issued for delivery in this state by any company but do not apply to:
    - a. Any policy that is a security subject to federal jurisdiction;
    - b. Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit disability insurance policy however, this shall not exempt any certificate issued under a group policy delivered or issued for delivery in this state; or
    - c. Any group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;
  2. Except as provided in R20-6-210, no other rule of this state setting language simplification standards shall apply to any policy forms.
- C. Minimum policy language simplification standards.**
1. Except as stated in subsection (B), an insurer shall not deliver or issue for delivery a policy form that has not been approved by the Director unless:
    - a. The text achieves a minimum score of 40 on the Flesch reading ease test or an equivalent score on any other comparable test as provided in subsection (3);
    - b. It is printed, except for specification pages, schedules, and tables, in no less than 10 point type, one point leaded;
    - c. The style, arrangement and overall appearance of the policy do not give undue prominence to any portion of the text of the policy or to any endorsements or riders; and
    - d. The policy, if the policy has more than 3,000 words printed on three or fewer pages of text or if the policy has more than three pages regardless of the number of words, contains a table of contents or an index of the principal sections of the policy.
  2. An insurer shall measure a Flesch reading ease test score as follows:
    - a. For policy forms containing 10,000 words or less of text, an insurer shall analyze the entire form. For policy forms containing more than 10,000 words, an insurer may analyze the readability of two, 200-word samples per page instead of the entire form. The insurer shall separate the samples by at least 20 printed lines.
    - b. The insurer shall count the number of words and sentences in the text, then divide the total number of words by the total number of sentences, then multiply that figure by a factor of 1.015.
    - c. The insurer shall count and divide the total number of syllables by the total number of words, then multiply that figure by a factor of 84.6.
    - d. The sum of the figures computed under subsections (b) and (c) subtracted from 206.835 equals the Flesch reading ease score for the policy form.
    - e. For subsections (b), (c), and (d), the insurer shall use the following procedures:
      - i. A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one word;
      - ii. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence; and
      - iii. A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. If the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.
- f. The term "text" as used in this subsection shall include all printed matter except the following:
- i. The name and address of the insurer, the name, number or title of the policy, the table of contents or index, captions and subcaptions, specification pages, schedules or tables; and
  - ii. Policy language that is drafted to conform to the requirements of a federal law, regulation, or agency interpretation, policy language required by a collectively bargained agreement, medical terminology, words defined in the policy, and policy language required by law or regulation, if the insurer identifies the language or terminology excepted by this subsection and certifies, in writing, that the language or terminology is entitled to be excepted by this subsection.
3. Any other reading test may be approved by the Director for use as an alternative to the Flesch reading test if it is comparable in result to the Flesch reading ease test.
  4. Filings subject to this subsection shall be accompanied by a certificate signed by an officer of the insurer stating that the filing meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required but should be approved under subsection (G) of this Section. To confirm the accuracy of any certification, the Director may require the submission of further information to verify the certification in question.
  5. At the option of the insurer, riders, endorsements, applications and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they may be used.
- D.** The Director may authorize a lower score than the Flesch reading ease score required in subsection (C)(1)(a) if a lower score:
1. Provides a more accurate reflection of readability of a policy form;
  2. Is warranted by the nature of a particular policy form or type or class of policy forms; or
  3. Is caused by certain policy language drafted to conform to the requirements of any state statute, rule, or agency interpretation of law.

#### Historical Note

Adopted effective November 21, 1977 (Supp. 77-6).

Amended effective March 27, 1978 (Supp. 78-2).

Amended subsection (E), deleted subsection (F) and added new subsections (F) and (G) effective December 3, 1986 (Supp. 86-6). R20-6-213 recodified from R4-14-213 (Supp. 95-1). Former R20-6-213 renumbered to R20-6-211; new R20-6-213 renumbered from R20-6-216 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2). Corrected error in R20-6-213(D) that referenced subsection (E)(1)(a), which was relabeled as (C)(1)(a) in Supp. 07-2 (Supp. 08-1).

#### R20-6-214. Coordination of Benefits

##### A. Applicability.

1. This Section applies to all:
  - a. Group disability insurance policies;
  - b. Group subscriber contracts of hospital and medical service corporations and health care services organizations;
  - c. Group disability policies of benefit insurers; and

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- d. Group-type contracts that contain a coordination of benefits provision, are not available to the general public, and can be obtained and maintained only because of the covered person's membership in or connection with a particular organization. Group-type contracts that meet this description are included regardless of whether denominated as "franchise," "blanket," or some other designation.
- 2. This Section does not apply to:
  - a. Individual or family policies or individual or family subscriber contracts except as provided for in subsection (A)(1);
  - b. Group or group-type hospital indemnity benefits, written on a non-expense incurred basis, of \$30 per day or less unless characterized as reimbursement-type benefits and designed or administered to give the insured the right to elect indemnity-type benefits, instead of the reimbursement type benefits at the time of claim; or
  - c. School accident type coverages, written on a blanket, group, or franchise basis.
- B. Definitions.** In this Section, the following definitions apply:
  - 1. "Allowable expense" means any necessary, reasonable, and customary item of expense, at least a portion of which is covered under one or more of the plans covering the person for whom claim is made or service provided.
    - a. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service rendered is deemed to be both an allowable expense and a benefit paid.
    - b. A plan that takes Medicare or similar government benefits into consideration when determining the application of its coordination of benefits provision does not expand the definition of an allowable expense.
  - 2. "Claim determination period" means an appropriate period of time such as "calendar year" or "benefit period" as defined in the policy.
  - 3. "Plan," within the coordination of benefits provisions of a group policy or subscriber contract, means the types of coverage that the insurer may consider in determining whether overinsurance exists with respect to a specific claim.
  - 4. "School accident-type coverage" means coverage of grammar school and high school students for accidents only, including athletic injuries, either on a 24-hour basis or "to-and-from school," for which the parent pays the entire premium.
- C. Order-of-benefit determination.**
  - 1. When a claim under a plan with a coordination of benefit provision involves another plan that also has a coordination of benefit provision, the insurer shall make the order-of-benefit determination as follows:
    - a. The plan that covers the person claiming benefits other than as a dependent shall determine benefits before those of the plan that covers the person as a dependent.
    - b. The plan of a parent whose birthday occurs earlier in a calendar year shall cover a dependent child before the benefits of a plan of a parent whose birthday occurs later in a calendar year. The word "birthday" as used in this subsection refers only to month and day in a calendar year, not the year in which the person was born.
  - c. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in the following order:
    - i. First, the plan of the parent with custody of the child;
    - ii. Then, the plan of the spouse of the parent with custody of the child; and
    - iii. Finally, the plan of the parent not having custody of the child.
  - d. Notwithstanding subsection (c), if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first.
- 2. The benefits of a plan that covers a person as an employee (or as that employee's dependent) are determined before those of a plan that covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this provision and if, as a result, the plans do not agree on the order of benefits, this subsection does apply.
- 3. If none of the provisions of subsection (C) determines the order of benefits, the benefits of the plan that covered a claimant longer are determined before those of the plan that covered that person for the shorter time.
- 4. If one of the plans is issued out of this state and determines the order of benefits based upon the gender of a parent and, as a result, the plans do not agree on the order of benefits, the plan with the gender rule shall determine the order of benefits.
- D. Excess and other nonconforming provisions.** A plan with an order of benefit determination provision that complies with this Section, a complying plan, may coordinate its benefits with a plan that is "excess" or "always secondary" or that uses an order-of-benefit determination provision that is inconsistent with this Section, a noncomplying plan, on the following basis:
  - 1. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis.
  - 2. If the complying plan is the secondary plan, it shall pay or provide its benefits first, as the secondary plan. The payment shall be the limit of the complying plan's liability, except as provided in subsection (4).
  - 3. If the noncomplying plan does not provide the information needed by the complying plan to determine its benefits within a reasonable time after it is requested to do so, the complying plan shall assume that the benefits of the noncomplying plan are identical to its own, and shall pay benefits accordingly. The complying plan shall adjust any payments it makes based on the assumption whether information becomes available as the actual benefits of the noncomplying plan.
  - 4. If the noncomplying plan pays benefits so that the claimant receives less in benefits than the claimant would have received had the noncomplying plan paid or provided its benefits as the primary plan, the complying plan shall advance to or on behalf of the claimant an amount equal to the difference. The complying plan shall not have a right to reimbursement from the claimant.

**Historical Note**

Adopted effective October 26, 1979 (Supp. 79-5). R20-6-214 recodified from R4-14-214 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1). Section R20-

6-214 renumbered from R20-6-217 and amended by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### **R20-6-215. Renumbered**

##### **Historical Note**

Adopted effective September 7, 1981 (Supp. 81-3). Amended subsections (D) thru (H), deleted Agent's Statement and Exhibit D effective March 30, 1983 (Supp. 83-2). R20-6-215 recodified from R4-14-215 (Supp. 95-1). Amended by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215 renumbered to R20-6-212 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### **R20-6-215.01. Renumbered**

##### **Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 5595, effective January 1, 2004 (Supp. 03-4). Former R20-6-215.01 renumbered to R20-6-212.01 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### **R20-6-216. Renumbered**

##### **Historical Note**

Adopted effective as set forth in subsection (H) (Supp. 80-6). R20-6-216 recodified from R4-14-216 (Supp. 95-1). Former R20-6-216 renumbered to R20-6-213 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

#### **R20-6-217. Renumbered**

##### **Historical Note**

Adopted effective September 14, 1982 (Supp. 82-3). Amended subsections (C) and (D), deleted (F) effective January 1, 1987, filed December 16, 1986 (Supp. 86-6). R20-6-217 recodified from R4-14-217 (Supp. 95-1). Former R20-6-217 renumbered to R20-6-214 by final rulemaking at 13 A.A.R. 2061, effective August 4, 2007 (Supp. 07-2).

*Editor's Note: The following Section expired under A.R.S. § 41-1056(E) on September 30, 2001 at 8 A.A.R. 491. The Notice of Rule Expiration was not received until January 9, 2002. Therefore, the repeal of the rule noted in the Historical Note is moot (Supp. 02-1).*

#### **R20-6-218. Repealed**

##### **Historical Note**

Adopted effective November 9, 1984 (Supp. 84-6). R20-6-218 recodified from R4-14-218 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 5443, effective November 16, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1) (see Editor's Note above).

### **ARTICLE 3. FINANCIAL PROVISIONS AND PROCEDURES**

#### **R20-6-301. Expired**

##### **Historical Note**

Former General Rule Number 3. R20-6-301 recodified from R4-14-301 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

#### **R20-6-302. Expired**

##### **Historical Note**

Former General Rule 62-11. R20-6-302 recodified from R4-14-302 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).

#### **R20-6-303. Termination of Certificate of Authority and Release of Deposit**

- A. Domestic Insurers.** To request termination of a certificate of authority and, if applicable, release of statutory deposit, a domestic insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
  2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
  3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
  4. A plan of extinguishment for its outstanding liabilities that satisfies the requirements of subsection (C) or a sworn affidavit stating that the insurer has no outstanding liabilities to policyholders or claimants under subsection (C);
  5. A certified copy of the insurer's Board of Directors resolution or other documentation of the insurer's official action taken according to the insurer's statutorily required organizational documents approving the insurer's:
    - a. Withdrawal from the insurance business,
    - b. Dissolution of the insurer,
    - c. Merger with an insurer authorized in Arizona to transact the insurer's previously written and active lines of business of the insurer requesting termination, or
    - d. Transfer of domicile to another state or country.
  6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication, or other documentation that the insurer intends to file with the Arizona Corporation Commission after issuance of the Director's order as provided in subsection (D)(2);
  7. If requested by the director, a written agreement that guarantees payment of substantially all liabilities of the domestic insurer, other than obligations extinguished under subsection (C).
- B. Foreign and Alien Insurers.** To request termination of its certificate of authority and, if applicable, release of its deposit, a foreign or alien insurer shall file all of the following with the director:
1. A written request for termination of certificate of authority and release of deposit;
  2. The insurer's original certificate of authority or an affidavit of lost certificate of authority;
  3. A statement of the insurer's financial condition as of a date within 60 days of the filing date of the request for termination that includes a written statement, signed by two officers of the insurer as authorized on the jurat page of the insurer's most recent annual statement, verifying that the statement of financial condition reflects the insurer's financial position as of the date signed.
  4. A plan of extinguishment for its Arizona liabilities that satisfies the requirements of subsection (C) or a sworn

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- affidavit stating that the insurer has no Arizona liabilities under subsection (C);
5. A copy of an order issued by the insurance director or other appropriate regulatory authority in the insurer's state or country of domicile that approves or authorizes either the insurer's:
    - a. Withdrawal from the insurance business,
    - b. Dissolution of the insurer,
    - c. Merger (approval of the merger from the states of domicile of the insurers), or
    - d. Transfer of domicile, if applicable.
  6. A copy of the insurer's Articles of Dissolution, Articles of Merger, Articles of Amendment, Articles of Redomestication or other required documentation that the insurer filed in its state of domicile; and
  7. If requested by the director, a written agreement that guarantees payment of substantially all Arizona liabilities of the insurer, other than obligations extinguished under subsection (C).
- C. Insurer's Plan for Extinguishment of Liabilities.**
1. To extinguish substantially all liabilities under subsection (A)(4) or subsection (B)(4) as applicable, an insurer may:
    - a. Reinsure the insurer's business in force with another insurer by entering into an agreement of bulk reinsurance that shall be effective when filed with and approved in writing by the director.
      - i. The agreement shall provide for assumption of all policyholder claims by the reinsurer including claims incurred but unreported as of the effective date of the agreement.
      - ii. The agreement may include recapture provisions exercisable by the insurer in the event the termination of its certificate of authority is not completed.
      - iii. Unless the director otherwise approves, the agreement shall provide that the reinsurer be licensed in Arizona for the particular lines of business reinsured.
    - b. Merge with another insurer that:
      - i. Assumes the liabilities of the non-surviving insurer; and
      - ii. Is authorized in Arizona for the previously written and active lines of business assumed, unless otherwise approved by the director.
    - c. Use its deposit, any additional security deposit or both to secure payment of former policyholder, policyholder, or claimant liabilities that are not reinsured or otherwise secured.
  2. For purposes of this Section, "substantially all liabilities" under Title 20 means all policyholder and claimant obligations reported by the insurer in the statement of financial condition, whether or not liquidated in amount, and shall include former policyholder claims and rights to refunds.
- D. Consideration of the Request for Termination of Certificate of Authority and Release of Deposit under subsections (A) and (B).**
1. If the director determines that the insurer has extinguished substantially all liabilities as required under this Section and has otherwise demonstrated compliance with this Section and A.R.S. Title 20, the director shall grant the request to terminate the certificate of authority and, if appropriate, release the insurer's deposit, provided:
    - a. The insurer has no fees, taxes, assessments or filings outstanding to the Department; and
    - b. The insurer is not subject of any pending investigation or examination under Title 20 by the Department.
  2. The director's order shall condition the release of a domestic insurer's deposit upon receipt by the director of evidence of the official filing with the Arizona Corporation Commission of the documentation described in subsection (A)(6).
  3. If the director determines that the insurer is unable to extinguish substantially all liabilities as required under this Section, or otherwise has not complied with this Section or with A.R.S. Title 20, the director shall notify the insured in writing that the request has been denied and the reasons for the denial.
- E. Exclusions.** This Section does not apply to:
1. An insurer's exchange and substitution of cash or eligible securities under A.R.S. § 20-586;
  2. An insurer's withdrawal of excess deposits, either cash or eligible securities, under A.R.S. §§ 20-587 and 20-588(A)(2); or
  3. Releases of deposits made under A.R.S. § 20-588(A)(3).
- Historical Note**
- Former General Rule 72-29. R20-6-303 recodified from R4-14-303 (Supp. 95-1). Section R20-6-303 repealed; new Section R20-6-303 made by final rulemaking at 14 A.A.R. 3432, effective October 4, 2008 (Supp 08-3).
- R20-6-304. Reserved**
- R20-6-305. Expired**
- Historical Note**
- Adopted effective September 13, 1978, except that it shall apply to the accounting treatment for unearned premium reserves and reinsurance premium receivables for credit life disability insurance on January 1, 1979, and all annual statements filed for periods on or after that date (Supp. 78-5). R20-6-305 recodified from R4-14-305 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective September 30, 2001 (Supp. 02-1).
- R20-6-306. Reserved**
- R20-6-307. Life and Disability Reinsurance Agreements**
- A. Scope.** This rule applies to all domestic life and disability insurers and reinsurers, and to all other licensed life and disability insurers and accredited reinsurers that are not subject to a substantially similar rule in their jurisdictions of domicile. This rule applies to the disability business of licensed property and casualty insurers. This rule does not apply to assumption reinsurance, yearly renewable term reinsurance, or nonproportional stop loss or catastrophe reinsurance, or similar forms of nonproportional reinsurance.
- B. Definitions**
1. "Agreement" means a reinsurance agreement and any amendment to a reinsurance agreement.
  2. "Credit Quality" means the risk that invested assets supporting the reinsured business will decrease in value but excludes decreases to changes in interest rate.
  3. "Department" means the Arizona Department of Insurance.
  4. "Director" means the Director of the Arizona Department of Insurance.
  5. "Disintermediation" means the risk that interest rates will rise and policy loans and surrenders will increase or maturing contracts will not renew at anticipated rates of renewal.

6. "Lapse" means the risk that a policy will voluntarily terminate before the recoupment of a statutory surplus strain experienced at issuance of the policy.
7. "Reinvestment" means the risk that interest rates will fall and funds reinvested will therefore earn less than expected.

**C. Accounting Requirements**

1. Unless authorized by the director, an insurer shall not, for reinsurance ceded, reduce any liability, or establish any asset in any statutory financial statement filed with the Department if, by the terms of the agreement, or in effect, any of the following conditions exist:
  - a. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period are not sufficient to cover the ceding insurer's allocable renewal expenses anticipated at the time the business is reinsured on the portion of the business reinsured, unless a liability is established for the present value of the shortfall using assumptions equal to the applicable statutory reserve basis on the business reinsured.
  - b. The ceding insurer is required to reimburse the reinsurer for negative experience under the agreement. Neither the offset of the ceding insurer's experience refunds against current and prior years' losses, nor payment by the ceding insurer of an amount equal to the reinsurer's current and prior years' losses upon voluntary termination of in-force reinsurance by the ceding insurer, shall be considered a reimbursement to the reinsurer for negative experience.
  - c. The ceding insurer may be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of a specified event, including the insolvency of the ceding insurer. Termination of the agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due shall not be considered a deprivation of surplus or assets within the meaning of this subsection.
  - d. The ceding insurer is required, at scheduled times, to terminate the agreement or recapture automatically all or part of the reinsurance ceded.
  - e. The ceding insurer may be required to pay the reinsurer amounts other than from income reasonably expected from the reinsured policies.
  - f. Significant risks inherent in the business reinsured are not transferred to the reinsurer. Table A identifies the risks deemed significant for representative types of business.
  - g. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not transfer the underlying assets to the reinsurer, segregate the underlying assets in a trust or escrow account, or otherwise segregate the underlying assets. The assets that support the reserves for classes of business that do not have a significant credit quality, reinvestment, or disintermediation risk, or for long-term care or long-term disability insurance, traditional non-par permanent, traditional par permanent, adjustable premium permanent, indeterminate premium permanent, or universal life fixed premium with no dump-in

premiums allowed, may be held by the ceding company without segregation. To determine the reserves for classes of business, the supporting assets of which may be held without being segregated, the reserve interest rate adjustment formula shall reflect the ceding company's investment earnings and incorporate all realized and unrealized gains and losses reported in the ceding insurer's statutory financial statement.

- h. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.
  - i. The ceding insurer is required to make representations or warranties unrelated to the business reinsured.
  - j. The ceding insurer is required to make representations or warranties related to future performance of the business reinsured.
2. An agreement entered into after the effective date of this rule to reinsure business issued before the effective date of the agreement shall be filed by the ceding insurer with the Director within 30 days after execution of the agreement. Each filing shall be accompanied by a description of the corresponding reduction in liabilities or other credit for reinsurance, and any other financial impact of the agreement, reported in the ceding insurer's statutory financial statements. When an increase in surplus net of federal income tax results from an agreement falling under this subsection, the ceding insurer shall separately identify the increase as a surplus item in the aggregate write-ins for gains and losses in surplus in the Capital and Surplus account of the ceding insurer's statutory financial statement. As earnings emerge from the business reinsured, the ceding insurer shall report in its statutory financial statement recognition of surplus increase as income on a net of tax basis as reinsurance ceded.

**D. Written Agreements**

1. A ceding insurer shall not reduce any liability or establish any asset in any statutory financial statement filed with the Department, unless the ceding insurer and the reinsurer have executed an agreement or a binding letter of intent by the "as of" date of the statutory financial statement.
2. A ceding insurer shall not be allowed a credit for the reinsurance ceded based on a letter of intent unless the ceding insurer and the reinsurer execute an agreement within 90 days from the execution date of the letter of intent.
3. The agreement shall provide that:
  - a. The agreement constitutes the entire contract between the parties with respect to the business reinsured, and there are no understandings between the parties other than as expressed in the agreement; and
  - b. Any change or modification to the agreement shall be void unless made by written amendment signed by all parties.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-307 recodified from R4-14-307 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4).

**Table A. Risk Categories**

Risk Categories:

- (a). Morbidity                      (d). Credit Quality

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- (b). Mortality (e). Reinvestment  
(c). Lapse (f). Disintermediation

	a	b	c	d	e	f
Disability Insurance, other than long-term care or long-term disability insurance	+	0	+	0	0	0
Long-term care or long-term disability insurance	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-par Permanent Life	0	+	+	+	+	+
Traditional Non-par Term Life	0	+	+	0	0	0
Traditional Par Permanent Life	0	+	+	+	+	+
Traditional Par Term Life	0	+	+	0	0	0
Adjustable Premium Permanent Life	0	+	+	+	+	+
Indeterminate Premium Permanent Life	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium, with dump-in premiums allowed	0	+	+	+	+	+

+ - Significant

0 - Insignificant

**Historical Note**

Adopted effective December 7, 1995 (Supp. 95-4). Corrected misspelled word “adjustable” as submitted in final rule (Supp. 98-3).

**R20-6-308. Expired****Historical Note**

Adopted effective March 22, 1993 (Supp. 93-1). R20-6-308 recodified from R4-14-308 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3374, effective May 31, 2016 (Supp. 16-4).

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**Appendix A. Expired****Table 1. Expired****Table 2. Expired****Table 3. Expired****Table 4. Expired****Table 5. Expired****Table 6. Expired****R20-6-309. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**R20-6-309.01. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**R20-6-309.02. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**R20-6-309.03. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**R20-6-309.04. Expired****Historical Note**

Appendix A adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Appendix A (including Tables 1 through 6) expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**ARTICLE 4. TYPES OF INSURANCE COMPANIES****R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers**

A. The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorizations of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with the Office of the Secretary of State and available from the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108, modified as follows:

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Section 1 A is modified to read: “No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person’s name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation.”

- B.** Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).

**Historical Note**

Former General Rule 57-3. R20-6-401 recodified from R4-14-401 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3). New Section made by final rulemaking at 9 A.A.R. 1086, effective March 6, 2003 (Supp. 03-1).

**R20-6-402. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Exhibit A. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Exhibit B. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-403. Expired****Historical Note**

Former General Rule 69-21. R20-6-403 recodified from R4-14-403 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix A. Expired****Historical Note**

R20-6-403, Appendix A recodified from R4-14-403, Appendix A (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix B. Expired****Historical Note**

R20-6-403, Appendix B recodified from R4-14-403, Appendix B (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix C. Expired****Historical Note**

R20-6-403, Appendix C recodified from R4-14-403, Appendix C (Supp. 95-1). Appendix expired under

A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-404. Repealed****Historical Note**

Former General Rule 73-31; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-404 recodified from R4-14-404 (Supp. 95-1).

**R20-6-405. Health Care Services Organization**

- A.** Authority. This rule is adopted pursuant to A.R.S. §§ 20-142, 20-143, 20-106 and 20-1051 through 20-1068.
- B.** Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 128, Laws of 1973, to regulate and control Health Care Services Organizations in the State of Arizona, (including, but not limited to Certificate of Authority, licensing, fees for licensing, disciplinary procedures for agents and control of solicitation of members and evidences of coverage).
- C.** Scope
1. The scope of this Rule is the scope of A.R.S. Title 20 as it relates to Insurers or Hospital or Medical Service Corporations. As it relates to Health Care Services Organizations, the scope of this rule is the scope of Title 20, Chapter 1 and Title 20, Chapter 4, Article 9, as provided in A.R.S. § 20-1068. This rule is applicable to agents of persons, and persons operating or proposing to operate Health Care Services Organizations in the State of Arizona.
  2. The statutory authority for this rule, A.R.S. Title 20, Chapter 4, Article 9, does not provide for exemptions therefrom for persons or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.
- D.** Repeal. This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.
- E.** Definitions. As used in this rule, unless the context otherwise requires:
1. “Agent” has the meaning of A.R.S. § 20-282.
  2. “Basic Health Care Services” has the meaning of A.R.S. § 20-1051.
  3. “Certificate of Authority” means a Certificate authorizing operation of a Health Care Services Organization.
  4. “Director” means the Director of Insurance of the State of Arizona.
  5. “Enrollee” has the meaning of A.R.S. § 20-1051.
  6. “Evidence of coverage” has the meaning of A.R.S. § 20-1051.
  7. “Health Care Plan” has the meaning of A.R.S. § 20-1051.
  8. “Health Care Services” has the meaning of A.R.S. § 20-1051.
  9. “Health Care Services Organizations” has the meaning of A.R.S. § 20-1051.
  10. “Hospital Service Corporation” has the meaning of A.R.S. § 20-822.
  11. “Insurer” has the meaning of A.R.S. § 20-106(C).
  12. “License” means the authority to act as an agent of a Health Care Services Organization.
  13. “Medical Service Corporation” has the meaning of A.R.S. § 20-822.
  14. “Net charges” means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.

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15. "Person" has the meaning of A.R.S. § 20-1051.
  16. "Physician and patient relationship" has the meaning of A.R.S. § 20-833.
  17. "Prepaid Health Plans" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.
  18. "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.
  19. "Provider" has the meaning of A.R.S. § 20-1051.
  20. "Transact" has the meaning of A.R.S. § 20-106(A) and (B).
  21. "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.
- F. Certificate of Authority**
1. Policy. Persons and agents of persons operating Health Care Services Organizations as of May 7, 1973, shall comply with the application requirements of A.R.S. § 20-1052 on or before August 7, 1973.
  2. A Certificate of Authority shall not be granted until the Director is satisfied that the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  3. An examination of an applicant at the expense of the applicant for a Certificate of Authority may be ordered to be made if the applicant is not a resident, is controlled by a non-resident, or maintains a head or principal office out of its service area, and will be ordered to be made if the applicant contracts with providers, or for services outside a reasonable area, or has contract obligations under its evidence of coverage that are, or appear to be, inequitable or unreasonable as to the enrollees.
- G. Certificate of Authority – Application**
1. A person required to be qualified to do business in this State as a Health Care Services Organization, pursuant to A.R.S. § 20-1052 shall file an application for Certificate of Authority on Department Form E-104.
  2. Applications failing to comply with the requirements of A.R.S. § 20-1053 will be denied without prejudice to the filing of an application complying with such requirements.
  3. Health Care Services Organizations operating in this State as of May 7, 1973, and having submitted a sufficient application for Certificate of Authority as required by this rule, including the disclosure filings of paragraph (7) of this subsection, may continue to operate as an organization until the Director acts upon the application.
  4. The application for Certificate of Authority shall be verified by an authorized and qualified officer of the Health Care Services Organization.
  5. The application for Certificate of Authority shall be accompanied by the fees required for a hospital or medical service corporation by A.R.S. § 20-167 and a tax return or returns on Department Form E-162, for the calendar year previous to the calendar year of application during which the applicant has done business in this State as a Health Care Services Organization, and the amount of tax due thereon after the effective date hereof, if any, as provided by A.R.S. § 20-1060. The filing of such returns or payment of such tax may be adjusted or waived by the Director upon application and affirmative showing in writing therefor justifying the adjustment or waiver.
  6. The Director may, upon written request accompanied by supporting documentation justifying the request, authorize the substitution of public information filed by an applicant under similar statutes or regulations in another state, or under federal requirements, or may waive such information or additional information.
7. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions or principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.
  8. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.
- H. Certificate of Authority – Application. The application for Certificate of Authority shall be accompanied by a power of attorney as required by A.R.S. § 20-1053(A)(10) on Department Form E-128.**
- I. Certificate of Authority – Grounds for denial**
1. Policy. A Certificate of Authority to operate a Health Care Services Organization shall not be granted until the Director is satisfied by the affirmative showing, verified by the applicant, that all of the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  2. Guidelines. The guidelines and standards for determination of appropriate mechanisms to achieve an effective Health Care Plan include, but are not limited to the following:
    - a. Ability to provide basic Health Care Services without undue restrictions, limitations, discrimination, unreasonable fee schedules, or unreasonable administrative costs; an affirmative showing that the form of organization does not evidence any coercion, duress or other compulsion over members;
    - b. The form of organization does not lend itself to practices prohibited by A.R.S. §§ 20-441 through 20-459, and
    - c. The evidence of coverage does not contain provisions or statements which are unjust, inequitable, misleading, deceptive or untrue or encourage misrepresentation.
  3. Failure to pay obligations. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected if the applicant has failed after 30 days from the entry of final judgment, to pay obligations within the provisions of an evidence of coverage issued by such applicant. The provisions of this Section may be waived by the Director upon a clear affirmative showing that the applicant is defending an action or appealing a judgment at law or equity in a court of this state, or is required to obtain a Certificate of Authority so as to maintain such action.
  4. Unauthorized agents. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected, after stated cause and opportunity to answer, if the applicant has, 90 days after the effective date, permitted transactions by an unauthorized agent.
- J. Solicitation requirements**
1. Forms for evidences of coverage, advertising matter, sales material and amendments thereto, will not be approved until the Director is satisfied by filing of Department Form P-107 accompanying the filing of such form and the payment of necessary fees, that the require-



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ments of A.R.S. §§ 20-1057, 20-1054(2), and 20-1061 have been met and will continue to be met.

2. Each Health Care Services Organization shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement brochure, form letter of solicitation, evidence of coverage, certificate, agreement or contract, and a copy of all radio and television forms of the above hereafter disseminated in this or any other State with a notation attached to each such solicitation or inducement to indicate the manner and extent of distribution and the date of approval by the Department of such solicitation. Such advertising file shall be maintained for a period of not less than three years.
- K. Annual report.** Each Health Care Services Organization required to file an annual statement, shall, on or before March 1 of each year, file with the Director, together with its annual statement on Department Form E-13, a certificate executed by an authorized officer of the Health Care Services Organization stating that to the best of his knowledge, information and belief, all written solicitations disseminated during the preceding statement year complied or were made to comply with the provisions of Title 20, Chapter 4, Article 9, and this rule, and that no forms of solicitation were disseminated without the prior approval of the Director.
- L. Taxes**
1. All Health Care Services Organizations operating and transacting business in the State of Arizona shall on or before March 1 and with the filing of the Annual Report, file a tax return on Department Form E-162, and pay the tax due on such return pursuant to A.R.S. § 20-1060.
  2. A tax return required to be filed and filed with an application for Certificate of Authority may cover a period of time of less than a calendar year as specified in the return and approved by the Director. Annual tax returns required to be filed coincident with the annual report shall be for the full calendar year next preceding the date of filing the annual report.
  3. Net charges, as in this rule defined, shall represent the net charges received during the calendar year next preceding the date of filing the annual report and tax return.
- M. Deposit requirements**
1. In the event a Health Care Services Organization determines to maintain statutory deposits by a surety bond, such surety bond shall be in form as approved by the Director guaranteeing the payment of Health Care Services furnished to enrollees, and shall be deposited with the State Treasurer.
  2. In the event a Health Care Services Organization determines to maintain the deposit requirements by filing securities with the State Treasurer, a full and complete statement of the securities proposed to be deposited, together with sufficient information to permit a determination of eligibility of such securities shall be filed with the Director on Department Form E-123, and such securities shall not be deposited until such securities are approved by the Director in writing.
  3. No securities deposited as herein provided shall be exchanged or substituted for similar securities, except upon the prior written approval of the Director.
  4. Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(f) shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.
5. Statutory deposits shall not be withdrawn or a surety bond cancelled until all contingent and perfected liens, including judgments, debts, and other liabilities for payment of Health Care Services to which the enrollee is entitled under the evidence of coverage shall have been paid and the Director has given his authority in writing to withdraw such deposits or cancel such bonds.
- N. Reserve requirements.** Reserves required by A.R.S. § 20-1056 shall be deposited or maintained as cash, as Certificates of Deposit, or as securities eligible for investment of the capital of domestic insurers, pursuant to A.R.S. §§ 20-537 and 20-538.
- O. Insurers and hospital and medical service corporations – Certificate of Authority**
1. Insurers, Hospital Service Corporation, Medical Service Corporations, and Hospital and Medical Service Corporations, holding current Certificates of Authority to do business in this state may organize and operate Health Care Services Organizations jointly or severally without compliance with the deposit and reserve requirements of the statute, if the application contains an affirmative showing that the applicant organization has complied with comparable provisions of Title 20, and is an appropriate mechanism to achieve an effective Health Care Plan.
  2. The provisions of statute and this rule applying to Certificates of Authority and Application therefor, shall apply to all insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations doing business in this state.
  3. Organizations claiming exemption or partial exemption pursuant to A.R.S. § 20-1063(c) shall file with the Director simultaneously with the application for Certificate of Authority, a statement affirmatively showing that the applicant has complied with provisions of Title 20 A.R.S. comparable to or more restrictive than the provisions of Title 20, Chapter 4, Article 9, and shall have received the written approval of the Director for such exemption or partial exemption.
- P. Application, examination and licensing of agents**
1. No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization, unless, prior to making any solicitation or transaction, he has been appointed agent by a Health Care Services Organization holding a current valid Certificate of Authority and has been licensed as herein provided. Persons directly or indirectly representing or acting for a Health Care Services Organization and not licensed as herein provided, or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.
  2. Any person applying for a license as an agent of a Health Care Services Organization shall do so by filing with the Department of Insurance the following:
    - a. An application for such license on a form approved by the Director of the Department of Insurance;
    - b. The required fees for such license;
    - c. Such additional information as the Director may deem necessary.
  3. The licensing of an agent of a Health Care Services Organization shall not become effective until such applicant shall have satisfactorily passed a written examination in accordance with A.R.S. § 20-292 as supplemented by A.R.S. § 20-167.
  4. The examination shall be given in such places and at such times as the Director shall from time to time designate.

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5. The form of examination and the manual may be altered and amended from time to time, so as to represent a fair test of the applicant's qualifications.
  6. Every applicant for license shall satisfactorily complete the examination given with a grade of at least 70%, or such other percentage as may be fixed from time to time by the Director prior to the examination commensurate with the nature of the examination given.
  7. License and examination fees shall be in accordance with A.R.S. § 20-167.
  8. Report of the results of any examination given pursuant to this rule shall be mailed to the applicant and to the applicant's Health Care Services Organization at the address shown on the application.
  9. Except as modified by this rule, the provisions for examination, licensing, annual fees and disciplinary procedures of Chapter 2, Article 3 of Title 20, shall apply.
  10. Any agent licensed in this state shall immediately report to the Director any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or other violation affecting his license and all complaints or charges of misconduct lodged with his employer, any public agency of the state, or another state.
  11. The Director may reject any application or suspend or revoke, or refuse to renew any agent's license for inducements or statements which are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation, or are untrue or misleading.
  12. The rules, standards and guidelines governing any proceeding relating to the suspension or revocation of the license of a life insurance agent, where applicable, shall also govern any proceedings for suspension or revocation of the license of an agent of a Health Care Services Organization.
  13. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
  14. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
- Q. Forms**
1. The forms prescribed by this rule and the instructions applicable thereto are adopted as requirements of the Director and necessary for the protection of citizens of this state. Such forms, instructions, manuals or examinations are those currently in use, but the same may be amended without reference to this rule and when approved as amended are incorporated in this rule by reference. The form of manual or examination of agents, or any form adopted by the Director may be reproduced for the purpose of reporting or for other purposes.
  2. For good cause shown, the Director may authorize the filing of forms and reports on dates other than required by this rule, if applied for in writing not less than 10 days prior to the due date of such report and statement, exhibit, return or accounting.
- R. Severability.** In any provision of this rule or the forms, statements, returns or reports made part of this rule, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions of applications of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.
- S. Effective date.** This rule became effective on the 7th day of May, 1973. Amendments to this rule shall become effective upon filing with the Secretary of State.
- Historical Note**
- Former General Rule 73-33; Amended subsections (E), (P), (R), (S), and (T) effective August 12, 1981 (Supp. 81-4). R20-6-405 recodified from R4-14-405 (Supp. 95-1).
- R20-6-406. Expired**
- Historical Note**
- Adopted effective May 18, 1978 (Supp. 78-3). R20-6-406 recodified from R4-14-406 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).
- R20-6-407. Service Companies**
- A. Scope.** This rule shall apply to all service companies except those which are exempt under A.R.S. § 20-1095.02.
- B. Definitions.**
1. "Gray Market" auto means an imported motor vehicle which has not been certified for all safety, emission, and other federal and state standards prior to the arrival of the vehicle into the United States.
  2. "Service" within the meaning of Article 11, Chapter 4, Title 20 includes reimbursement for towing, car rental, lodging or travel breakdown expenses.
  3. The "Contract Holder" means the consumer as defined in A.R.S. § 20-1095(1).
- C. Application for service company permit.**
1. The application for a service company permit under this rule shall be on the form designated by the director which shall contain the following information:
    - a. The name of applicant;
    - b. Arizona address of applicant;
    - c. The home office address of applicant;
    - d. Type of entity (e.g. corporation, partnership);
    - e. Type of equipment to be serviced;
    - f. Fiscal year of applicant;
    - g. A list of suspensions, revocations or other disciplinary or rehabilitative actions against the service company in this or any other jurisdiction. The application form shall be signed under oath and acknowledged by the chief executive officer, chairman of the board of directors, or other person having power of attorney, in which case the power of attorney shall be attached.
  2. The following items shall be attached to the application form and shall complete the application:
    - a. A copy of the service company's most recent financial statement, sworn to and certified by the owner, duly elected officers, or a certified public accountant.
    - b. Evidence of having deposited cash or acceptable securities pursuant to A.R.S. § 20-1095.04.
    - c. Surety bond in lieu of deposit under subparagraph (b) on a form acceptable to the Director.
    - d. Initial nonrefundable permit fee of \$100 with each new application.
    - e. A biographical affidavit, on a form approved by the director, for each officer, director, manager or person owning 25% or more of the service company, and for each officer, director, manager or person owning 25% or more of an entity which owns the service company.

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- f. A copy of the service company's service contract, application, claim forms, brochures, and other forms used in connection with the sale.
- D. Deposit.** A service company providing a deposit of cash or alternatives to cash pursuant to A.R.S. § 20-1095.04 shall maintain the deposit in the amount required and such deposit shall not be encumbered. The deposit shall not be released except pursuant to one of the following:
1. The service company provides a bond or mechanical reimbursement policy which covers the outstanding service contract liabilities.
  2. All outstanding service contracts and liabilities thereunder have been assumed by a service company, in good standing, with the approval of the director, acknowledged by the assuming service company's administrator and acknowledged by endorsement by the mechanical reimbursement insurer or surety.
  3. Evidence satisfactory to the director that:
    - a. All outstanding service contracts and liabilities have expired or been cancelled in accordance with the service contract terms,
    - b. That all claims have been settled,
    - c. That there is no reason to believe there are any unreported claims, and
    - d. That the service company is financially able and agrees to be financially responsible for any valid unreported claims.
- E. The service contract, approval of forms.**
1. Each service company holding a service company permit or applying for such permit shall submit all contract, claim and application forms, brochures and other advertising material to the Director for approval not less than 30 days prior to the proposed effective date thereof. No form, brochure or other printed material may be used until approved by the Director or has been on file with the Director more than 30 days.
  2. No service contract shall be approved unless it contains a provision permitting the cancellation of the contract. The cancellation provision shall provide for a pro rata refund after deducting for administrative expenses associated with the cancellation. No claim incurred or paid shall be deducted from the amount to be returned. The cancellation provision shall not contain both cancellation penalty and a cancellation fee.
  3. No service contract or application shall be approved unless it:
    - a. Is written in nontechnical, readily understood language, using words with common everyday meanings;
    - b. Provides for the performance of services within a reasonable period of time of the request for such services by the holder of the contract;
    - c. Discloses on the face of the application and the contract:
      - i. The name, address and telephone number of the service company;
      - ii. The name, address and telephone number of the service contract administrator, if any;
      - iii. The name of the individual who sold the service contract.
    - d. Clearly, conspicuously and plainly states:
      - i. The services to be performed by the service company and the terms and conditions of such performance;
      - ii. The service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair.
      - iii. Each of the systems, products, appliances and components covered by the contract;
      - iv. The period during which the contract will remain in effect;
      - v. All limitations respecting the performance of services, including any restrictions as to time periods when services may be required or will be performed;
      - vi. The cost of the service contract;
      - vii. Those specific items or components which are excluded from coverage in large bold type;
      - viii. The conditions, if any, under which the service contract or coverage may be reinstated after coverage has been voided by acts or omissions by the service contract holder;
      - ix. The material acts or omissions by the contract holder which cancel or void coverage;
4. No service contract shall be approved if:
- a. The coverage may be cancelled or voided due to acts or omissions of the service company, its assignees or subcontractors for their failure to provide correct information of their failure to perform the services or repairs provided in a timely, competent, workmanlike manner;
  - b. Parts or components repaired or replaced under the service contract are excluded;
  - c. The contract can be cancelled or voided by the service company or its representatives for the following reasons including but not limited to:
    - i. Pre-existing conditions;
    - ii. Prior use or unlawful acts relating to the product;
    - iii. Misrepresentation by either the service company or its subcontractors;
    - iv. Ineligibility for the program, including gray market, high performance and GM diesel autos.
- F. Disapproval of contracts, applications or advertising.** The director may disapprove any service contract, application or advertising material that is in violation of this rule by issuing an order specifying in what respect the service contract, application or advertising material violates this rule. Any person aggrieved by such an order can demand a hearing thereon in accordance with A.R.S. § 20-1095.09.
- G. Permit expiration; renewal.**
1. Each permit issued pursuant to this rule shall expire at midnight on the last day of the service company's fiscal year. Thereafter, the service company shall have 90 days in which to file its completed renewal application including its certified financial statement and pay the renewal fee of \$100. A permit shall remain in effect upon the service company's timely payment of the renewal fee, timely filing of its annual financial statement and completed renewal application. An incomplete application will not be considered received until it is complete.
  2. Any late filing of the renewal application, financial report or late payment of the renewal fee shall be subject to a late fee of \$25 per day. Such late fee shall not release the service company of liability for other violations of these rules or other laws.

**Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Former Section R4-14-407 repealed and a new Section R4-14-407 adopted effective July 2, 1987 (Supp. 87-3). R20-6-

407 recodified from R4-14-407 (Supp. 95-1).

**R20-6-408. Motor Vehicle Service Contract Program**

**A.** Scope. This rule shall apply to all motor vehicle service contract programs as defined in A.R.S. § 20-1095(5).

**B.** Definitions.

1. "Gray Market" auto means an automobile which has not been certified for all safety, emission, and other federal and state standards prior to the arrival of the vehicle into the United States.
2. "Service" within the meaning of Article 11, Chapter 4, Title 20 includes reimbursement for towing, car rental, lodging or travel breakdown expenses.
3. The "Contract Holder" means the consumer as defined in A.R.S. § 20-1095(1).

**C.** Application for motor vehicle service contract program.

1. The application for approval of a motor vehicle service contract program under this rule shall be on the form designated by the director which shall contain the following information:
  - a. Name of administrator;
  - b. Arizona address of administrator;
  - c. Home office of administrator;
  - d. The type of entity (e.g. corporation, partnership);
  - e. Whether the administrator is an insurer;
  - f. The name of the program. The application form shall be signed under oath and acknowledged by the chief executive officer, chairman of the board of directors, or other natural person having power of attorney to represent the entity, in which case the power of attorney shall be attached to the application.
2. The following items shall be attached to the application form and shall complete the application:
  - a. Mechanical reimbursement insurance policy with an Arizona endorsement on a form acceptable to the Director, or an Arizona bond on a form acceptable to the Director which will be issued to each dealer or cash or securities deposited with the state treasurer through the Director's office in lieu of the policy or bond.
  - b. Initial nonrefundable permit fee of \$100 with each application. A separate and complete application and fee must be submitted for each service contract form.
  - c. A list of the dealers who propose to sell the motor vehicle service contract program, if known.
  - d. The service contract program, including all contract forms, claims forms, applications, brochures, and other forms used in connection with the sale.
  - e. Biographical affidavits, on a form approved by the Director, for each person owning 25% or more of the administrator or insurer.
  - f. The name and address of its statutory agent in Arizona for the purpose of service of process.
3. If the administrator or insurer elects to use a mechanical reimbursement insurance policy, then the following applies to meet the requirements of A.R.S. § 20-1095.06(B):
  - a. An application shall not be submitted before an insurance company has had its rules, rates and forms approved. The insurance company must file the mechanical reimbursement policy forms, rules and rates for approval.
  - b. The cancellation procedure in the mechanical reimbursement policy, any procedure manual and the service contract shall be consistent.

- c. The insurance company shall give insureds 30 days prior notice of any rate revisions to take effect.
- d. Mechanical reimbursement policies which void coverage if the dealer, its own authorized repair facility, or its subcontractor provide incorrect or unverifiable information shall not be approved.
- e. A mechanical reimbursement policy must be issued by the insurance company to each dealer selling a service contract program.

4. An administrator or an insurer applying for approval pursuant to A.R.S. § 20-1095.06 of a motor vehicle service contract program, which is insured by a mechanical reimbursement policy or surety bond, shall certify that the policy or surety bond is effective prior to the sale of contracts by the dealer.
5. In the event that a surety bond, cash or securities are used to meet the requirements of A.R.S. § 20-1095.06(B), the administrator or insurer shall file with the Director within 90 days after the end of the motor vehicle dealer's accounting year a report stating the number of contracts in force at the end of the year and that the surety bond, cash or securities has been increased as required by A.R.S. § 20-1095.06.

**D.** Approval of forms.

1. Each administrator or insurer applying for approval of its motor vehicle service contract program, or amendment thereof, shall submit all contract, claim, and application forms, brochures and other advertising material to the Director for approval not less than 30 days prior to the proposed effective date thereof. No form, brochure or other printed material may be used until approved by the Director or has been on file with the Director more than 30 days.
2. No service contract shall be approved unless it contains a provision permitting the cancellation of the contract. The cancellation provision shall provide for a pro rata refund after deducting for administrative expenses associated with the cancellation. No claim incurred or paid shall be deducted from the amount to be returned. The cancellation provision shall not contain both a cancellation penalty and a cancellation fee.
3. No service contract or application shall be approved unless it:
  - a. Is written in nontechnical, readily understood language, using words with common everyday meanings;
  - b. Provides for the performance of services within a reasonable period of time of the request for such services by the holder of the contract;
  - c. Discloses on the face of the application and the contract:
    - i. The name, address and telephone number of the motor vehicle dealer, if any;
    - ii. The name, address and telephone number of the contract administrator, if any;
    - iii. The name of the individual who sold the service contract.
  - d. Clearly, conspicuously and plainly states:
    - i. The services to be performed by the motor vehicle dealer and the terms and conditions of such performance;
    - ii. The service fee or deductible charge, if any, to be charged, or applied, for each covered repair;
    - iii. Each of the systems and components covered by the contract;

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- iv. The period during which the contract will remain in effect;
  - v. All limitations respecting the performance of services, including any restrictions as to time periods when services may be required or will be performed;
  - vi. The cost of the service contract;
  - vii. Those specific items or components which are excluded from coverage in large bold type;
  - viii. The conditions, if any, under which the service contract or coverage may be reinstated after coverage has been voided by acts or omissions by the service contract holder;
  - ix. The material acts or omissions by the contract holder which cancel or void coverage;
4. No service contract shall be approved if:
- a. The coverage may be cancelled or voided due to acts or omissions of the motor vehicle dealer, its assignees or subcontractors for their failure to provide correct information or their failure to perform the services or repairs promised in a timely, competent, and workmanlike manner;
  - b. Parts or components repaired or replaced under the service contract are excluded;
  - c. The contract can be cancelled or voided by the administrator, insurer or its representatives for reasons which are within the knowledge and/or control of the motor vehicle dealer including but not limited to:
    - i. Pre-existing conditions;
    - ii. Prior use or the odometer has been tampered with prior to purchase;
    - iii. Misrepresentation by either the motor vehicle dealer or its subcontractors;
    - iv. Ineligibility for the program, including gray market, high performance and GM diesel autos.
- E. Disapproval of contracts, applications or advertising. The director may refuse to approve or disapprove program or advertising material that is in violation of this Rule by issuing an order specifying in what respect the motor vehicle service contract program or advertising material violates this Rule. Any person aggrieved by such an order can demand a hearing thereon in accordance with A.R.S. § 20-1095.09.
- F. Motor vehicle dealer's notice of intent. The motor vehicle dealer's notice of intent required by A.R.S. § 20-1095.07(B) shall be certified by an individual having authority to represent the dealer and shall include the following information:
- 1. The dealer's name, address and dealer's license number;
  - 2. The name of the administrator;
  - 3. The name or other identification of each motor vehicle service contract program which it intends to sell;
  - 4. The name of the insurer(s), the policy number(s) and the expiration date(s) of its mechanical reimbursement policy or bond;
  - 5. Confirmation that the dealer will notify the director by certified mail prior to effecting any change in the information provided in its notice of intent. The notice of intent shall be continuous until withdrawn or amended by the motor vehicle dealer.

**Historical Note**

Former Section R4-14-408 renumbered as Section R4-14-409; a new Section R4-14-408 adopted effective July 15, 1987 (Supp. 87-3). R20-6-408 recodified from R4-14-408 (Supp. 95-1).

**R20-6-409. Hospital, Medical, Dental, and Optometric Ser-****vice Corporations**

- A. Applicability. This rule applies to all subscription contracts issued by hospital, medical, dental and optometric service corporations.
- B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the requirements of the following rules:
  - 1. R20-6-201. Advertisements of disability insurance.
  - 2. R20-6-209. Unfair sex discrimination.
  - 3. R20-6-210. Group coverage discontinuance and replacement.
  - 4. R20-6-213. Unfair discrimination on the basis of blindness, partial blindness, or physical disability.
  - 5. R20-6-216. Life and disability insurance policy language simplification.
  - 6. R20-6-302. Valuation of reserves for disability policies.
  - 7. R20-6-606. Medicare supplement insurance disclosure and minimum standards.
  - 8. R20-6-607. Reasonableness of benefits in relation to premium charged.
- C. Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**Historical Note**

Adopted effective July 9, 1982 (Supp. 82-4). Former Section R4-14-408 renumbered without change as Section R4-14-409 effective July 15, 1987 (Supp. 87-3). R20-6-409 recodified from R4-14-409 (Supp. 95-1).

**ARTICLE 5. THE INSURANCE CONTRACT****R20-6-501. Ten-day Period to Examine Disability Insurance Policy**

For the purpose of implementing A.R.S. §§ 20-442, 20-443, 20-826, 20-1111 and 20-1113 and to make more specific the regulation therein provided relative to policies of individual disability insurance (accident and sickness, hospitalization, medical, surgical and loss of time) issued in the State of Arizona and further to provide satisfactory public remedy against the hazards of misunderstanding by an applicant, of deception and coercion by an agent and of certain policy exclusions and limitations that cheapen the value of coverage, the Insurance Department of Arizona adopts the following rule:

- 1. Each policy of individual disability insurance, except one for which no provision for renewal is made, issued for delivery in the State of Arizona on or after October 1, 1961, by an insurance company or by a hospital or medical service corporation shall have printed on the first page thereof or attached thereto or endorsed thereupon in prominent style a notice declaring that, during a period of 10 days (or, at the insurer's option, a longer period) from the date of delivery to the policyholder, such policy may be returned for cancellation to the insurer at its home office (or, at the insurer's option, to its branch office or to the agent through whom it was purchased) and declaring further that in the event of such return the insurer will refund the entirety of any premium paid therefor, including any policy fees or other charges, and that the policy shall be deemed void from the beginning and that the parties shall be returned to their original position as if no policy had been issued.
- 2. The Insurance Department does not specify the particular language the notice shall contain but prefers usage of a

phraseology approximately along the lines of either the longer (Form A) or shorter (Form B) sample below:

**Sample Form A**

**NOTICE OF TEN-DAY RIGHT TO EXAMINE POLICY**

The \_\_\_\_\_ Insurance Company urges you to read this policy carefully and trusts that upon doing so you will fully understand, and will be pleased with, its coverage. If, however, questions arise or information is desired, do not hesitate to consult the selling agent. In addition, should the policy for any reason be unsatisfactory, by surrendering it within ten days following receipt to our office at \_\_\_\_\_ or to the selling agent, immediately full premium will be refunded and the policy will be cancelled and deemed void and as never in force and effect.

**Sample Form B**

**IMPORTANT NOTICE**

If for any reason this policy is unsatisfactory, it may be returned for cancellation within ten days following receipt – in which case the entire premium will be refunded.

**Historical Note**

Former General Rule 61-7. R20-6-501 recodified from R4-14-501 (Supp. 95-1).

**ARTICLE 6. TYPES OF INSURANCE CONTRACTS**

**R20-6-601. Regulations Governing Bail Transactions**

**A. General provisions**

1. Effective date
  - a. These regulations are effective November 1, 1960. On and after date, no bail transaction or severable portion thereof shall be conducted, directly or indirectly except in full conformity herewith.
  - b. No surety insurer shall furnish for use and no bail bond agent shall use any forms or documents which contain any provisions contrary to these regulations on or after the effective date hereof.
2. Authority. Authority for these regulations is A.R.S. §§ 20-142, 20-143 and 20-257 and A.R.S. Chapter 2, Article 3.
3. Public interest served. These regulations serve the public interest by prohibiting inequities in bail transactions and by establishing standards of licensing and conduct for bail bond agents.
4. Regulations as severable. These regulations shall be construed as severable, such that, where one or more Sections are held invalid, such remaining Sections will not be adversely affected.
5. Penalty. Violation of these regulations will subject the guilty party to the penalties of A.R.S. §§ 20-114, 20-220 and 20-316 and to the enforcement procedures of A.R.S. §§ 20-152 and 20-160 through 20-166.

**B. Definitions**

1. "Bail transaction" defined. As used in these regulations, the term "bail transaction" includes solicitation and inducement, preliminary negotiation and effectuation of a contract of surety insurance and the transaction of matters subsequent thereto and arising therefrom – all in connection with the release of persons arrested or confined.
2. "Bail bond agent" defined. As used in these regulations, the term "bail bond agent" means any person who engages in a bail transaction on behalf of a surety insurer or representative thereof.
3. "Arrestee" defined. As used in these regulations, the term "arrestee" means any person arrested or detained whose release on bail is solicited or procured or concerning whose release negotiations are commenced.

4. "Director" defined. As used in these regulations, the term "Director" means the Director of Insurance of the state.

**C. Licensing**

1. Application for license. Each application for original or renewal license as a bail bond agent shall be on a form furnished by the Director, and each applicant for such license shall furnish such supplementary information and supporting statements as the Director may require.
2. Prohibited associations. A bail bond license shall not be issued to, renewed for or maintained by any person who associates regularly with criminals, gamblers or persons of poor repute – except to the extent such association is required by business or professional duty and responsibility.
3. Transactions by unlicensed persons prohibited. No bail bond agent shall directly or indirectly permit any person on his behalf to solicit or negotiate bail transactions unless such person is duly licensed by the Director.
4. Employees. Employees of bail bond agents performing only clerical duties need not be licensed hereunder and shall be deemed not engaged in bail transactions.

**D. Conduct of bail bond agents**

1. Disclosure of business. Every bail bond agent shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting.
2. Control of employees. A bail bond agent shall exercise direct supervision over his employees and keep informed of their actions as his employees.
3. Prohibited employees. No bail bond agent shall have in his employ at any time any criminal, gambler or person of poor repute.
4. Acting for attorney. No bail bond agent shall receive, or collect for an attorney any money or other item of value for attorney's fee, costs or any other purpose on behalf of an arrestee, unless a receipt is given therefor.
5. Informants prohibited. No bail bond agent shall for any purpose, directly or indirectly, enter into an arrangement of any kind or have an understanding with a law enforcement officer, with a newspaper employee, with a messenger service or employee thereof, with a trusty in a jail, with other person incarcerated in a jail, or with any person whatever, to inform or notify any bail bond agent directly or indirectly of:

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- a. The existence of a criminal complaint;
  - b. The fact of an arrest; or
  - c. The fact that an arrest of any person is pending or contemplated; or
  - d. Any information pertaining to matters set forth in (a), (b), and (c) hereof or to the persons involved therewith.
- 6. Compliance with rules of public authority. No bail bond agent shall solicit any person in a bail transaction in a prison or jail or other place of detention, court or public institution connected with the administration of justice unless said bail bond agent has fully complied with every rule, regulation and ordinance issued by each public authority governing the conduct of persons in or about said premises.
- 7. Representations to public authority
  - a. No bail bond agent shall make any misleading or untrue representation to a court or to a public official with respect to a bail transaction, nor for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred.
  - b. Every bail bond agent shall truthfully and fully answer every question asked him by the Director or his representative respecting his bail transactions and matters relating to the conduct of his bail business. Any bail bond agent may have his attorney present when he answers any such question.
- 8. Maintenance of records. Every bail bond agent shall keep complete records of all business done under authority of his license. Such records shall be open to inspection or examination by the Director or his representatives at all reasonable times at the principal place of business of the bail bond agent as designated in his license.
- E. Charges, collateral, refunds and rebates
  - 1. Rates
    - a. No bail bond agent shall issue or deliver a bail bond except at the premium rates most recently filed and approved by the Director in accordance with A.R.S. § 20-357.
    - b. Every bail bond agent shall post the premium rates of the surety insurer he represents in a conspicuous manner at his place of business.
  - 2. Charges permitted. No bail bond agent shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:
    - a. To pay the premium at the rates established by the surety insurer and approved by the Director.
    - b. To provide collateral.
    - c. To reimburse himself for actual and reasonable expenses incurred in connection with the individual bail transaction, including:
      - i. Guard fees after the first 12 hours following release of an arrestee on bail;
      - ii. Notary fees, recording fees, necessary long distance telephone expenses, telegram charges, and travel expenses for other than local community travel.
      - iii. Any other actual expenditure necessary to the bail transaction which is not usually and customarily incurred in connection with the ordinary operation and conduct of bail transactions.
  - 3. Delivery of documents to arrestee
    - a. Every bail bond agent shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or to the principal person with whom negotiations were made, if other than the arrestee, a copy of the bail bond premium agreement, which shall include:
      - i. The name of the surety insurer and the name and business address of the bail bond agent.
      - ii. The amount of bail and the premium thereof.
  - b. The bail bond agent shall also deliver at such time a statement detailing all charges in addition to the premium, the amount received on account, the unpaid balance if any, and a description of and a receipt for any collateral received.
- 4. Collateral
  - a. Any bail bond agent who receives collateral in connection with a bail transaction shall do so in a fiduciary capacity and, prior to any forfeiture of bail, shall keep such collateral separate and apart from any other funds, assets or property of such bail bond agent.
  - b. Any collateral received shall be returned to the person who deposited it with the bail bond agent or any assignee as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged. Where such collateral has been deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated, or, if any bail bond agent fails to cooperate fully with any authorized official to secure the termination of such liability, immediately upon the accrual of any right to secure an order of termination of liability.
  - c. When such collateral has been deposited as security for unpaid premium or charges and, if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the bail bond agent, collateral other than cash may be levied upon in the manner provided by law and cash collateral up to the amount of such unpaid premium on charges may be applied in payment thereof.
  - d. If collateral received by a bail bond agent is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon application of the collateral to the forfeiture subject, however, to any claim of the bail bond agent for unpaid premium or charges as provided in subparagraph (c) of paragraph (4) of subsection (E), or as agreed to in writing by the bail bond agent and arrestee or his indemnitor.
- 5. Premium refund upon surrender of arrestee. No bail bond agent shall surrender an arrestee to custody prior to the time specified in the bail bond for the appearance of the arrestee, or prior to any other occasion when the presence of the arrestee in court is lawfully required, without returning all premium paid therefor, unless as a result of judicial action, or material misrepresentation by the arrestee or his indemnitor with respect to the execution of the bail bond agreement, or a material and substantial increase in the hazard assumed. Failure of the arrestee to pay the premium, or charges permitted under these regulations or any part thereof, and failure to furnish collateral required by the bail bond agent, shall not be considered a material and substantial increase in the hazard assumed.
- 6. Rebating prohibited. No bail bond agent shall pay or allow in any manner, directly or indirectly, to any person

who is not also a bail bond agent any commission or valuable consideration on or in connection with a bail transaction. This Section shall not prohibit payments by a bail bond agent to an unlicensed person of charges by such persons for services of the kind specified in paragraph (2) subsection (E) of this Section.

#### Historical Note

Former General Rule 60-5. R20-6-601 recodified from R4-14-601 (Supp. 95-1).

#### R20-6-602. Nationwide Inland Marine Definition

- A. Applicability. This rule applies to risks and coverages which may be classified or identified as Marine, Inland Marine or Transportation insurance but shall not be construed to mean that the kinds of risks and coverages are solely Marine, Inland Marine or Transportation insurance in all instances. This rule shall not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and license whether used separately, in combination or otherwise.
- B. Marine and/or transportation policies may cover under the following conditions:
  1. Imports.
    - a. Imports may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.
    - b. An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and shall be deemed to have been completed when such property has been:
      - i. Sold and delivered by the importer, factor or consignee; or
      - ii. Removed from place of storage and placed on sale as part of the importer's stock in trade at a point of sale or distribution; or
      - iii. Delivered for manufacture, processing or change in form to premises of the importer or of another for any such purposes.
  2. Exports.
    - a. Exports may be covered wherever the property may be located without restriction as to time, provided the coverage of each issuing company includes hazards of transportation.
    - b. An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this rule respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, e.g., cotton.
  3. Domestic shipments.
    - a. Domestic shipments on consignment, for sale or distribution, exhibit, or trial, or approval or auction, while in transit, while in the custody of others and while being returned, provided the coverage of each issuing company includes hazards of transportation, and further provided that in no event shall the policy cover domestic shipments on consignment on premises owned, leased or operated by the consignor.
    - b. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, and further provided that such shipments shall not be covered at manufacturing premises nor after arrival at premises owned, leased or operated by assured or purchaser.
4. Bridges, tunnels and other instrumentalities of transportation and communication excluding buildings, their improvements and betterments, their furniture and furnishings, fixed contents and supplies held in storage. The foregoing includes:
  - a. Bridges, tunnels, other similar instrumentalities, including auxiliary facilities and equipment attendant thereto.
  - b. Piers, wharves, docks, slips, dry docks and marine railways.
  - c. Pipelines, including on-line propulsion, regulating and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating or conditioning plants.
  - d. Power transmission and telephone and telegraph lines, excluding all property at generating, converting or transforming stations, substations and exchanges.
  - e. Radio and television communication equipment in use as such including towers and antennae with auxiliary equipment, and appurtenant electrical operating and control apparatus.
  - f. Outdoor cranes, loading bridges and similar equipment used to load, unload and transport.
5. Personal Property Floater Risks covering individuals and/or generally
  - a. Personal Effects Floater Policies
  - b. The Personal Property Floater
  - c. Government Service Floater
  - d. Personal Fur Floaters
  - e. Personal Jewelry Floaters
  - f. Wedding Present Floaters for not exceeding 90 days after the date of the wedding.
  - g. Silverware Floaters.
  - h. Fine Arts Floaters, covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit.
  - i. Stamp and Coin Floaters.
  - j. Musical Instrument Floaters. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
  - k. Mobile Articles, Machinery and Equipment Floaters, excluding vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use, covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
  - l. Installment Sales and Leased Property Policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not



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- extend beyond the termination of the seller's or lessor's interest.
- m. Live Animal Floaters.
  6. Commercial Property Floater Risks covering property pertaining to a business, profession or occupation.
    - a. Radium Floaters.
    - b. Physicians' and Surgeons Instrument Floaters. Such policies may include coverage of such furniture, fixtures and tenant assured's interest in such improvements and betterments of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.
    - c. Pattern and Die Floaters.
    - d. Theatrical Floaters, excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes.
    - e. Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
    - f. Salesmen's Samples Floaters.
    - g. Exhibition Policies on property while on exhibition and in transit to or from such exhibitions.
    - h. Live Animal Floaters.
    - i. Builders Risks and/or Installation Risks covering interest of owner, seller or contractor, against loss or damage to machinery, equipment, building materials or supplies, being used with and during the course of installation, testing, building, renovating or repairing. Such policies may cover at points or places where work is being performed, while in transit and during temporary storage or deposit, of property designated for and awaiting specific installation, building, renovating or repairing.
      - i. Such coverage shall be limited to Builders Risks or Installation Risks where Perils in addition to Fire and Extended Coverage are to be insured.
      - ii. If written for account of owner, the coverage shall cease upon completion and acceptance thereof; or if written for account of a seller or contractor the coverage shall terminate when the interest of the seller or contractor ceases.
    - j. Mobile Articles, Machinery and Equipment Floaters, excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use and snow plows constructed exclusively for highway use covering identified property of a mobile or floating nature, not on sale or consignment, or in course of manufacture, which has come into the custody or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
    - k. Property in transit to and from and in custody of bailees not owned, controlled or operated by the bailor. Such policies shall not cover bailee's property at his premises.
    - l. Installment sales and leased property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased but excluding motor vehicles designed for highway use. Such policies must cover
- in transit but shall not extend beyond the termination of the seller's or lessor's interest. This Section is not intended to include machinery and equipment under certain "lease-back" contracts.
- m. Garment Contractors Floaters.
  - n. Furriers or Fur Storer's Customer's Policies, i.e., policies under which certificates or receipt are issued by furriers or fur storers covering specified articles the property of customers.
  - o. Accounts Receivable Policies, Valuable Papers and Records Policies.
  - p. Floor Plan Policies, covering property for sale while in possession of dealers under a Floor Plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:
    - i. Such merchandise is specifically identifiable as encumbered to the bank or lending institution.
    - ii. The dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution.
    - iii. That such policies cover in transit and do not extend beyond the termination of the dealer's interest.
    - iv. That such policies shall not cover automobiles or motor vehicles; merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.
  - q. Sign and Street Clock Policies, including neon signs, automatic or mechanical signs, street clocks, while in use as such.
  - r. Fine Arts Policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities and other similar interests.
  - s. Policies covering personal property which, when sold to the ultimate purchaser, may be covered specifically, by the owner, under Inland Marine Policies including:
    - i. Musical Instrument Dealers Policies, covering property consisting principally of musical instruments and their accessories. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
    - ii. Camera Dealers Policies, covering property consisting principally of cameras and their accessories.
    - iii. Furrier's Dealers Policies, covering property consisting principally of furs and fur garments.
    - iv. Equipment Dealers Policies, covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor; but excluding motor vehicles designed for highway use.
    - v. Stamp and Coin Dealers covering property of philatelic and numismatic nature.
    - vi. Jewelers' Block Policies.

## vii. Fine Arts Dealers.

Such policies may include coverage of money in locked safes or vaults on the Assured's premises. Such policies also may include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies and tenant insureds interest in improvements of buildings.

## t. Wool Growers Floaters.

## u. Domestic Bulk Liquids Policies, covering tanks and domestic bulk liquids stored therein.

## v. Difference in Conditions Coverage excluding fire and extended coverage perils.

## w. Electronic Data Processing Policies.

## C. Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:

1. Storage of assured's merchandise, except as hereinbefore provided.
2. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.
3. Furniture and fixtures and improvements and betterments to buildings.
4. Monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

**Historical Note**

Former General Rule 59-4; Amended effective August 30, 1985 (Supp. 85-4). R20-6-602 recodified from R4-14-602 (Supp. 95-1).

**R20-6-603. Repealed****Historical Note**

Former General Rule 69-18; Repealed effective July 27, 1981 (Supp. 81-4). R20-6-603 recodified from R4-14-603 (Supp. 95-1).

**R20-6-604. Definitions**

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

"Actual loss ratio" means incurred claims divided by earned premiums at rates in use.

"Actuarially equivalent" means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, "actuarially equivalent" means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.

"Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

"Earned premiums" means earned premiums at prima facie rates and earned premiums at rates in use.

"Earned premiums at prima facie rates" means an insurer's actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer's premium rates had equaled the prima facie rates in effect during the experience period.

"Earned premiums at rates in use" means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.

"Evidence of individual insurability" means information about a debtor's health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

"Experience" means an insurer's earned premiums and incurred claims during an experience period.

"Experience period" means a period of time for which an insurer reports income and expense information on the insurer's credit insurance business.

"Final adjusted rates" means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.

"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.

"Incurred claims" means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

"Plan of credit insurance" means an insurance plan based on one of the following rate and coverage categories:

Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;

Credit life insurance on revolving accounts;

Credit life insurance on an age-graded basis;

Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;

Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.

"Preexisting condition" means a condition:

For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and

From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.

"Prima facie adjusted loss ratio" means incurred claims divided by earned premiums at prima facie rates.

"Prima facie rates" means the rates established by the Director as prescribed in R20-6-604.03.

"Reasonableness standard" means the requirement in A.R.S. § 20-1610(B) that an insurer's premiums for credit insurance

shall not be excessive in relation to the benefits provided under the policy.

“Rule of Anticipation” means the product of the gross single premium per \$100 of indebtedness for a debtor’s remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

#### Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### Exhibit A. Repealed

#### Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### R20-6-604.01. Rights and Treatment of Debtors

##### A. Creditor Obligations.

1. Multiple plans of insurance. If a creditor makes more than one plan of credit insurance available to debtors, the creditor shall inform each debtor of each plan for which the debtor is eligible and of the premium and charges for each plan.
2. Substitution. If a creditor requires a debtor to have credit insurance as additional security for a debt, the creditor shall inform the debtor in writing of the debtor’s right to obtain alternative coverage as prescribed in A.R.S. § 20-1614 before the loan transaction is completed.
3. Remittance of premiums. If a creditor adds an insurance charge or premium to a debt, the creditor shall remit the insurance charge or premium to the insurer within 60 days after it is added to the debt.

##### B. Creditor and insurer obligations regarding insurance on refinanced debt.

1. If a debt is discharged because the debtor refinances the debt before the scheduled maturity date, the creditor shall notify the insurer that issued the credit insurance on the discharged debt.
2. An insurer shall not issue any credit insurance that covers the refinanced debt with an effective date preceding the termination date of the insurance on the original debt.
3. The insurer issuing the coverage on the discharged debt shall refund to or credit the debtor with all unearned insurance charges or premium according to R20-6-604.06.
4. If a debt is refinanced, the effective date of the policy provisions in any new insurance covering the refinanced debt shall be the first date on which the debtor became insured under the previous policy. An insurer may apply any new exclusion period or preexisting condition limita-

tion only to the portion of the new loan that exceeds the previous loan.

##### C. Required policy provisions.

1. Termination provisions for group policies. A group credit insurance policy shall provide for continued coverage of debtors covered under the policy if the policy terminates, as follows:
    - a. For a policy with a single premium payment, or any other payment method that prepays coverage for more than one month, a provision requiring continued insurance coverage for the entire period for which the premium has been paid; and
    - b. For a policy with a monthly premium payment, a provision requiring the insurer to send the debtor a termination notice at least 30 days before the effective date of termination, unless an insurer is issuing replacement coverage in at least the same amount, without lapse of coverage.
  2. Maximum aggregate provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.
- ##### D. Creditor and insurer obligations when debtor prepays debt.
1. Except as provided in subsection (D)(2), if a debtor prepays a debt in full, any credit insurance covering the debt shall terminate on the date of prepayment. The creditor and insurer shall refund to or credit the debtor with any unearned premium according to R20-6-604.06.
  2. If a debt is fully prepaid because of the debtor’s death or any other lump-sum credit insurance payment, a creditor or insurer is not required to refund premium for the coverage under which the lump sum was paid.
  3. If a claim under credit disability coverage is in progress at the time of prepayment, the insurer:
    - a. May calculate the refund as if the prepayment did not occur until the end of the period for payment of benefits, and
    - b. Is not required to refund premiums for any period for which credit disability benefits are payable.

##### E. Benefits payable on revolving account. If a debtor is paying for credit insurance coverage on a revolving account and dies, the insurer shall pay a benefit amount equal to the amount of indebtedness outstanding on the date of death. The insurer may exclude preexisting conditions occurring within six months of any advance on the revolving account, running separately for each advance or charge.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### R20-6-604.02. Satisfying the Reasonableness Standard

- A. An insurer shall comply with all requirements of A.R.S. § 20-1610 regarding premium and insurance charges.
- B. An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(B) if the insurer’s premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.
- C. While in effect, the rates described in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08 are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.

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- D.** An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05. An insurer that wishes to provide nonstandard coverage shall:
1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
  2. Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.03. Determination of Prima Facie Rates**

- A.** The Director shall, by order, establish prima facie rates as prescribed in this Section.
- B.** At least once every three years, the Director shall:
1. Determine the rate of expected claims on a statewide basis;
  2. Compare the rate of expected claims with the rate of actual claims for the past three years determined from the incurred claims and earned premiums at prima facie rates; and
  3. If the Director determines that the prima facie rates require adjustment, issue a notice of hearing and proposed order adjusting the actual statewide prima facie rates. The hearing date on the proposed order shall be no earlier than 45 days from the date of the notice.
- C.** The Director shall mail a copy of the notice and proposed order to:
1. Each insurer that reported transaction of credit insurance on its annual statement immediately preceding the date of the notice, and
  2. Any other person who sends the Director a written request for notice of proceedings to adjust the prima facie rates.
- D.** Any person may submit written comments to the Director or appear at the hearing and provide oral comments on the record. Written comments shall be received no later than the close of record date specified in the notice of hearing.
- E.** The Director shall:
1. Consider written and oral comments; and
  2. Issue a final order setting prima facie rates no later than 30 days after the close of record date specified in the notice of hearing.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.04. Credit Life Insurance Rates and Provisions**

- A.** Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit life insurance.
- B.** The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C.** A credit life insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of being eligible;
  2. Have no exclusions other than for:

- a. Suicide within six months after the effective date of coverage, or
  - b. A preexisting condition;
3. Have no age restrictions, except the following permissible exclusions:
- a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
  - b. An age restriction for a revolving credit life insurance policy that:
    - i. Excludes a class of debtors determined by age, or
    - ii. Provides for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70; and
4. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.05. Credit Disability Insurance Rates and Provisions**

- A.** Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit disability insurance.
- B.** The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C.** A credit disability insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible;
  2. Include a definition of disability that is no more restrictive than the following:
    - a. For the first 12 months of disability, the inability of the insured to perform the essential functions of the insured's occupation; and
    - b. After the first 12 months of disability, the inability of the insured to perform the essential functions of any occupation for which the insured is reasonably suited by virtue of education, training, or experience;
  3. Not include any employment requirement that a debtor be employed more than full-time on the effective date of coverage, with a definition of "full-time" as a regular work week of at least 30 hours;
  4. Have no exclusions other than for disabilities resulting from:
    - a. Normal pregnancy,
    - b. Intentionally self-inflicted injury, or
    - c. A preexisting condition;
  5. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any

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exclusion period or preexisting condition limitation shall run separately for each advance or charge;

6. Have no age restrictions, except the following permissible exclusion:  
An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and
7. Include a provision for a daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.06. Refund Methods**

- A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods:
  1. For insurance paid by a single premium, the Rule of Anticipation method; and
  2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.
- B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.
- C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.
- D. An insurer is not required to refund any amount less than \$5.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.07. Experience Reports**

- A. By April 1 of each year, an insurer that transacts credit insurance in this state shall file with the Director an experience report, on a form specified by the Director, for each class of business that the insurer transacts as provided in this Section.
  1. In this Section, a "class of business" means:
    - a. Credit unions;
    - b. Banks, savings and loan institutions, and mortgage companies;
    - c. Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5);
    - d. Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods; and
    - e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).
  2. The report shall include the following information:
    - a. Mode of premium payment,
    - b. Plan of benefits description,
    - c. Earned premiums,
    - d. Incurred claims,
    - e. Loss ratios, and
    - f. For credit life insurance, mean insurance in force.
- B. For each day a report is late, the Director may assess a penalty as prescribed in A.R.S. § 20-223.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.08. Use of Prima Facie Rates; Rate Deviations**

- A. Use of rates greater than prima facie rates. An insurer may file for approval and use of any deviated rates that are higher than

the prima facie rates referred to in R20-6-604.04 and R20-6-604.05 as prescribed in A.R.S. § 20-1610.

1. The deviated rates shall meet the minimum loss ratio standards and other requirements prescribed by R20-6-604.02.
2. The filing shall specify the accounts to which the rates apply.
3. The rates may be:
  - a. Applied uniformly to all accounts of the insurer; or
  - b. Applied on an equitable basis approved by the Director to accounts of the insurer for which the insurer's experience has been less favorable than expected.
- B. Approval period of deviated rates. An insurer may use a deviated rate for the same period of time as the experience period used to establish the rate, not to exceed a period of three years from the date of approval. An insurer may file for a new deviated rate before the end of the approval period, but not more often than once in any 12 month period.
- C. Approval is non-transferable. The Director's approval of a deviated rate is not transferable to another insurer. If an insurer acquires an account for which another insurer obtained a deviated rate, the successor insurer may not charge the deviated rate without obtaining approval for the deviated rate as prescribed in subsection (B).
- D. Use of rates lower than filed rates. An insurer may use a rate that is less than its filed rate without notice to the Director.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.09. Supervision of Consumer Credit Insurance Operations**

- A. At least once every three years, an insurer transacting credit insurance in Arizona shall review the credit insurance operations of each creditor with whom the insurer does business to ensure that each creditor is complying with applicable credit insurance laws. The insurer shall review the following:
  1. The creditor does not charge rates in excess of the prima facie rates or any deviated rates for which the insurer obtains approval;
  2. The creditor makes benefit payments as prescribed in the policy; and
  3. The creditor refunds unearned premiums as prescribed in R20-6-604.06.
- B. The insurer shall maintain for the Director's inspection a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least three years following the end of the review.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.10. Prohibited Transactions**

- A. The practices listed in this Section are deemed unfair trade practices under A.R.S. § 20-442. An insurer that commits any of the following practices is subject to penalties as prescribed in A.R.S. § 20-456:
  1. Offering or providing a creditor with any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than payment of commissions;
  2. Agreeing to deposit with a bank or financial institution, the insurer's money or securities as a substitute for a deposit of money or securities that the financial institution would otherwise require from the creditor as a com-

pensating balance or deposit offset for a loan or other advancement; or

3. Depositing money or securities without interest or at a lesser rate of interest than the creditor, bank, or financial institution is currently paying on other similar deposits.

- B.** This Section does not prohibit an insurer from maintaining demand deposits or premium deposit accounts that are reasonably necessary for use in the ordinary course of the insurer's business.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

### R20-6-605. Emergency Expired

#### Historical Note

Former General Rule 72-26. Repealed effective December 4, 1986 (Supp. 86-6). Adopted as an emergency effective January 9, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days; re-adopted as an emergency with changes effective March 26, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days (Supp. 90-1). Re-adopted as an emergency without change effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. R20-6-605 recodified from R4-14-605 (Supp. 95-1).

### R20-6-606. Repealed

#### Historical Note

Adopted effective July 1, 1980 (Supp. 80-3). Amended effective June 1, 1981. See also subsection (G) (Supp. 81-1). Amended subsections (D), (E)(3)(a), (F)(2)(b), (3)(a), (4)(e), (G), and (H) effective January 11, 1982 (Supp. 82-1). Amended subsections (G) and (H) as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired.

Amended and readopted as an emergency effective November 18, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Corrected and readopted as an emergency effective February 10, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Amended effective August 4, 1989 (Supp. 89-3). Amended and adopted as an emergency effective September 13, 1989 (Supp. 89-3). Emergency expired (Supp. 89-4). Amended effective November 19, 1990 (Supp. 90-4). Repealed by emergency action effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Repealed again by emergency action effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Repealed effective May 28, 1992 (Supp. 92-2).

R20-6-606 recodified from R4-14-606 (Supp. 95-1).

### R20-6-607. Reasonableness of Benefits in Relation to Premium Charged

- A.** Applicability. This rule shall apply to individual disability insurance (as defined in A.R.S. § 20-253) policy forms and rates.
- B.** When rate filing is required. Every individual policy form, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.
- C.** General contents of all rate filings. Each rate submission shall include an actuarial memorandum describing the basis on

which rates were determined and shall indicate and describe the calculation of the ratio, hereinafter called "anticipated loss ratio," of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this state and that the benefits are reasonable in relation to the premiums.

- D.** Previously approved forms. Filings of rate revisions for a previously approved policy, rider or endorsement form shall also include the following:

1. A statement of the scope and reason for the revision, and an estimate of the expected average effect on premiums including the anticipated loss ratio for the form.
2. A statement as to whether the filing applies only to new business, only to in-force business, or both, and the reasons therefor.
3. A history of the experience under existing rates, including at least the data indicated in subsection (D). The history may also include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates. Additional data might include: substitution of actual claim run-offs for claim reserves and liabilities; determination of loss ratios with the increase in policy reserves (other than unearned premium reserves) added to benefits rather than subtracted from premiums; accumulations of experience funds; substitution of net level policy reserves for preliminary term policy reserves; adjustment of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data.
4. The date and magnitude of each previous rate change, if any.

- E.** Experience records. Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit to the NAIC annual statement convention blank. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued, except the data for calendar years prior to the most recent five years may be combined.

- F.** Evaluation experience data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
4. The mix of business by risk classification.

- G.** Anticipated loss ratio standard. With respect to a new form or a currently approved form, except currently approved non-cancelable policy forms, under which the average annual pre-

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mium (as defined below) is expected to be at least \$200, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical expense	60%	55%	55%	50%
Loss of income and other	60%	55%	50%	45%

For a policy form including riders and endorsements, under which the expected average annual premium per policy is \$100 or more but less than \$200, subtract 5 percentage points from the numbers in the table above, or if less than \$100, subtract 10 percentage points.

The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

The above anticipated loss ratio standards do not apply to a class of business which is regulated by specific statutes or regulations mandating loss ratios for such business, e.g., Medicare Supplement and Credit Life and Disability.

#### Definitions of Renewal Clause

OR – Optionally Renewable: renewal is at the option of the insurance company.

CR – Conditionally Renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health.

GR – Guaranteed Renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC – Non-Cancelable: renewal cannot be declined nor can rates be revised by the insurance company.

#### H. Rate revisions. With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided both the following loss ratios meet the standards in subsection (F) above.

1. The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;
2. The anticipated loss ratio derived by dividing (a) by (b) where
  - a. Is the sum of the accumulated benefits, from the original effective date of the form or the effective date of this regulation, whichever is later, to the effective date of the revision, and the present value of future benefits, and
  - b. Is the sum of the accumulated premiums from the original effective date of the form or the effective date of the regulation, whichever is later, to the effective date of the revision, and the present value of future premiums.

Such present values shall be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest shall be used in the calculation of these accumulated benefits and premi-

ums and present values only if it is a significant factor in the calculation of this loss ratio.

- I. Anticipated loss ratios lower than those indicated in subsections (H) and (I) will require justification based on the special circumstances that may be applicable.
  1. Examples of coverages requiring special consideration are as follows:
    - a. Accident only;
    - b. Short term nonrenewable, e.g., airline trip, student accident;
    - c. Specified peril, e.g., common carrier;
    - d. Other special risks.
  2. Examples of other factors requiring special consideration are as follows:
    - a. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
    - b. Extraordinary expenses;
    - c. High risk of claim fluctuation because of the low loss frequency of the catastrophic, or experimental nature of the coverage;
    - d. Product features such as long elimination periods, high deductibles and high maximum limits;
    - e. The industrial or debit method of distribution;
    - f. Forms issued prior to the effective date of this rule. Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.
  3. Notwithstanding the foregoing paragraphs to the contrary, hospital indemnity and cancer and other dread diseases policies shall develop the loss ratios pursuant to subsection (G).
- J. Severability provision. If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.
- K. Effective date. This rule shall become effective upon filing with the Secretary of State and shall apply to all individual disability policy form and rate filings submitted on and after said date.

#### Historical Note

Adopted effective July 14, 1981 (Supp. 81-1). R20-6-607 recodified from R4-14-607 (Supp. 95-1).

#### ARTICLE 7. LICENSING PROVISIONS AND PROCEDURES

##### R20-6-701. Repealed

#### Historical Note

Former General Rule 56-1; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-701 recodified from R4-14-701 (Supp. 95-1).

##### R20-6-702. Expired

#### Historical Note

Former General Rule 56-2. R20-6-702 recodified from R4-14-702 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

##### R20-6-703. Expired

#### Historical Note

Former General Rule 61-6. R20-6-703 recodified from R4-14-703 (Supp. 95-1). Section expired under A.R.S. §

41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-704. Expired**

**Historical Note**

Former General Rule 6-19. R20-6-704 recodified from R4-14-704 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-705. Expired**

**Historical Note**

Former General Rule 66-13. R20-6-705 recodified from R4-14-705 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-706. Expired**

**Historical Note**

Former General Rule 69-15; Repealed effective February 22, 1977 (Supp. 77-1). New Section R4-14-706 adopted effective November 5, 1980 (Supp. 80-5). R20-6-706 recodified from R4-14-706 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-707. Expired**

**Historical Note**

Former General Rule 69-18; Amended effective March 17, 1981 (Supp. 81-2). R20-6-707 recodified from R4-14-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

**R20-6-708. Licensing Time-frames**

**A. Definitions.** The definitions listed below apply in this Section.

1. *"Administrative completeness review time frame" means the number of days from the Department's receipt of an application for a license until the Department determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies* A.R.S. § 41-1072 (1).
2. *"License" has the meaning prescribed in A.R.S. § 41-1001(10).*
3. *"Overall time frame" means the number of days after the Department's receipt of an application for a license during which the Department determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame* A.R.S. § 41-1072 (2).
4. *"Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which the Department determines whether an application or applicant for a license meets all substantive criteria required by state or rule* A.R.S. § 41-1072(3).

**B.** The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review.

**C.** Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing of whether the application is complete or incomplete. If the application is incomplete, the Department

shall issue a notice of deficiency to the applicant specifying what information or component is required to make the application administratively complete.

1. If the Department determines that an application for a license is not administratively complete, the Department shall include a comprehensive list of the specific deficiencies in the written notice provided under subsection (C). If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives the missing information from the applicant.
2. If an applicant does not make some response to each specific deficiency in a notice of deficiency issued during an administrative completeness review, the Department may issue a notice to the applicant within 10 days after receipt of the applicant's response, stating that the response is inadequate. The notice of inadequate response shall identify each specified deficiency to which the applicant did not make some response.
  - a. If the Department issues a notice of inadequate response under this subsection, the suspension of the administrative completeness review time-frame and the overall time-frame is not terminated.
  - b. If the Department does not issue a notice of inadequate response under this subsection, the Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.
3. If an applicant does not make some response to each specified deficiency in a notice of deficiency issued under subsection (C)(2) within 60 days after the date of a notice of deficiency or within 60 days after a notice of inadequate response issued under subsection (C)(2), the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- D.** Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.
  1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives the additional information from the applicant.
  2. If an applicant does not make some response to each component or item of information requested in a comprehensive written request for additional information, the Department may issue a notice to the applicant within 10 days after receipt of the applicant's response stating that the response is inadequate. The notice of inadequate response shall identify each component or item of information required, to which the applicant did make some response.
    - a. If the Department issues a notice of inadequate response under this subsection, the suspension of the substantive review time-frame and overall time-frame is not terminated.
    - b. If the Department does not issue a notice of inadequate response under this subsection, the Department is not precluded from later issuing supplemental requests by mutual agreement for



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additional information, during the substantive review.

3. If an applicant does not make some response to each component or item of information required in a comprehensive written request or a supplemental request for additional information, within 60 days after the date of a comprehensive written request or within 60 days after the date of the supplemental request, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- E. Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.

- F. In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal holiday.
- G. This rule applies to applications filed on or after January 1, 1999.

**Historical Note**

Former General Rule 70-22; Correction, original publication did not include Exhibit C. (Supp. 76-1). Repealed effective January 8, 1980 (Supp. 80-1). R20-6-708 recodified from R4-14-708 (Supp. 95-1). Amended effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4).

**R20-6-709. Repealed****Historical Note**

Former General Rule 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-709 recodified from R4-14-709 (Supp. 95-1).

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**Table A. Licensing Time-frames Table**

License	Relevant A.R.S.	Administrative Completeness	Substantive Review	Overall Time-frame
Certificate of Authority*	§ 20-216	210	90	300
Certificate of Exemption	§ 20-401.05	92	30	122
Reinsurance Intermediary	§ 20-486.01	120	60	180
Hospital, Medical, Dental, and Optometric Service Corporation	§ 20-825	210	90	300
Prepaid Dental Plan Organization	§ 20-1004	210	90	300
Life Care Provider Permit*	§ 20-1803	60	30	90
Health Care Services Organization	§ 20-1052	210	90	300
Mechanical Reimbursement Reinsurer	§ 20-1096.04	210	90	300
Prepaid Legal Insurer*	§ 20-1097.02	45	15	60
Service Representative	§ 20-285	120	60	180
Managing General Agent-Firm	§ 20-284	120	60	180
Managing General Agent-Individual	§ 20-288	120	60	180
Risk Management Consultant	§ 20-289	120	60	180
Agent, Broker and Solicitor	§ 20-291	120	60	180
Nonresident Agent and Broker	§ 20-303	120	60	180
Vending Machine	§ 20-306	120	60	180
Limited Travel Agent	§ 20-306.01	120	60	180
Adjuster	§ 20-312	120	60	180
Bail Bond Agent	§ 20-319	120	60	180
Surplus Lines Broker	§ 20-411	120	60	180
Title Insurance Agent	§ 20-1580	120	60	180
Credit Life and Disability Agents	§ 20-1612	120	60	180
Variable Contract Agent	§ 20-2662	120	60	180
Utilization Review Agent	§ 20-2505	30	90	120
Rating Organization*	§ 20-361	30	30	60
Rate Service Organization	§ 20-389	60	60	120
Qualifying Surplus Lines Insurer	§ 20-413	45	30	75
Third Party Administrator	§ 20-485.12	45	45	90
Service Companies	§ 20-1095.01	30	30	60
Risk Retention Group (Foreign)*	§ 20-2403	60	0	60
Risk Purchasing Groups	§ 20-2407	30	30	60

\* Statutory time-frames

**Historical Note**

Table 1 adopted effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4).

**ARTICLE 8. PROHIBITED PRACTICES, PENALTIES****R20-6-801. Unfair Claims Settlement Practices**

- A.** Applicability. This rule applies to all persons and to all insurance policies, insurance contracts and subscription contracts except policies of Worker's Compensation and title insurance. This rule is not exclusive, and other acts not herein specified, may also be deemed to be a violation of A.R.S. § 20-461, The Unfair Claims Settlement Practices Act.
- B.** Definitions

1. "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.
2. "Claimant" means either a first party claimant, a third party claimant, or both and includes such claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant.
3. "Director" means the Director of Insurance of the State of Arizona.

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4. "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency of loss covered by such policy or contract.
  5. "Insurance policy or insurance contract" has the meaning of A.R.S. § 20-103.
  6. "Insurer" has the meaning of A.R.S. § 20-106(C).
  7. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
  8. "Notification of claim" means any notification, whether in writing or other means, acceptable under the terms of any insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.
  9. "Person" has the meaning of A.R.S. § 20-105.
  10. "Third party claimant" means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.
  11. "Worker's compensation" includes, but is not limited to, Longshoremen's and Harbor Worker's Compensation.
- C.** File and record documentation. The insurer's claim files shall be subject to examination by the Director or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.
- D.** Misrepresentation of policy provisions
1. No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.
  2. No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.
  3. No insurer shall deny a claim on the basis that the claimant has failed to exhibit the damaged property to the insurer, unless the insurer has requested the claimant to exhibit the property and the claimant has refused without a sound basis therefor.
  4. No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.
  5. No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.
  6. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language that releases the insurer or its insured from its total liability.
- E.** Failure to acknowledge pertinent communications
1. Every insurer, upon receiving notification of a claim shall, within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.
- Notification given to an agent of an insurer shall be notification to the insurer.
2. Every insurer, upon receipt of any inquiry from the Department of Insurance respecting a claim shall, within fifteen working days of receipt of such inquiry, furnish the Department with an adequate response to the inquiry.
  3. An appropriate reply shall be made within 10 working days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.
  4. Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within 10 working days of notification of a claim shall constitute compliance with paragraph (1) of this subsection.
- F.** Standards for prompt investigation of claims. Every insurer shall complete investigation of a claim within 30 days after notification of claim, unless such investigation cannot reasonably be completed within such time.
- G.** Standards for prompt, fair and equitable settlements applicable to all insurers
1. Notice of acceptance or denial of claim.
    - a. Within fifteen working days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.
    - b. If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall also notify the first party claimant within fifteen working days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, 45 days from the date of the initial notification and every 45 days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.
    - c. Where there is a reasonable basis supported by specific information available for review by the Director for suspecting that the first party claimant has fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of subparagraphs (a) and (b) above. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.
  2. If a claim is denied for reasons other than those described in subparagraph (a) above, and is made by any other means than writing, an appropriate notation shall be made in the claim file of the insurer.
  3. Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others, except as may otherwise be provided by policy provisions.
  4. Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or

contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's right. Such notice shall be given to first party claimants 30 days and to third party claimants 60 days before the date on which such time limit may expire.

5. No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of the provision of a statute of limitations.

**H. Standards for prompt, fair and equitable settlements applicable to automobile insurance**

1. When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:
  - a. The insurer may elect to offer a replacement automobile which is a specific comparable automobile available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.
  - b. The insurer may elect a cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost may be determined by:
    - i. The cost of a comparable automobile in the local market area when a comparable automobile is available in the local market area.
    - ii. One of two or more quotations obtained by the insurer from two or more qualified dealers located within the local market area when a comparable automobile is not available in the local market area.
  - c. When a first party automobile total loss is settled on a basis which deviates from the methods described in subparagraphs (a) and (b) above, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.
2. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's policy or insurance contract.
3. Insurers shall not require a claimant to travel unreasonably either to inspect a replacement automobile, to obtain a repair estimate or to have the automobile repaired at a specific repair shop.
4. Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect

such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.

5. If an insurer prepares an estimate of the cost of automobile repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant the names of one or more conveniently located repair shops.
6. When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.
7. When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.
8. The insurer shall not use as a basis for cash settlement with a first party claimant an amount which is less than the amount which the insurer would pay if the repairs were made, other than in total loss situations, unless such amount is agreed to by the insured.
- I. Severability. If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons and circumstances shall not be affected.
- J. Effective date. This rule shall become effective 90 days from the date of filing with the Secretary of State.

**Historical Note**

Adopted effective January 12, 1982 (Supp. 81-5). R20-6-801 recodified from R4-14-801 (Supp. 95-1).

**R20-6-802. Emergency Expired**

**Historical Note**

Emergency rule adopted effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency rule readopted without change effective September 5, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. R20-6-802 recodified from R4-14-802 (Supp. 95-1).

**ARTICLE 9. TERMINATION OR DISSOLUTION**

**R20-6-901. Reserved**

**ARTICLE 10. LONG-TERM CARE INSURANCE**

**R20-6-1001. Applicability and Scope**

Except as otherwise specifically provided, this Article applies to all long-term care insurance policies delivered or issued for delivery in this state.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1001 recodified from R4-14-1001 (Supp. 95-1). Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1002. Definitions**

The definitions in A.R.S. § 20-1691 and the following definitions apply in this Article.

1. "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy, with value measured as of the date of issue.

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2. "Long-term care benefit classification" means one of the following:
  - a. Institutional long-term care – benefits only;
  - b. Non-institutional long-term care – benefits only; or
  - c. Comprehensive long-term care benefits.
3. "Managed care plan" means a health care or assisted living agreement designed to coordinate patient care or control costs through utilization review, case management, use of specific provider networks, or a combination of these methods.
4. "Personal information" has the same meaning prescribed in A.R.S. § 20-2102(19).
5. "Privileged information" has the same meaning prescribed in A.R.S. § 20-2102(22).
6. "Qualified actuary" means a member in good standing of the American Academy of Actuaries.
7. "Similar policy forms" means all long-term care insurance policies and certificates that are issued by a particular insurer and that have the same long-term care benefit classification as a policy form being reviewed.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1002 recodified from R4-14-1002 (Supp. 95-1).

Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1003. Policy Terms**

- A. A long-term care insurance policy delivered or issued for delivery in this state shall not use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:
  1. "Activities of daily living" means eating, toileting, transferring, bathing, dressing, or continence.
  2. "Acute condition" means that an individual is medically unstable and requires frequent monitoring by medical professionals, such as physicians and registered nurses, to maintain the individual's health status.
  3. "Adult day care" means a program of social and health-related services for six or more individuals, that is provided during the day in a community group setting, for the purpose of supporting frail, impaired, elderly, or other disabled adults who can benefit from the services and care in a setting outside the home.
  4. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
  5. "Bathing" means washing oneself by sponge bath, or in a tub or shower, and includes the act of getting in and out of the tub or shower.
  6. "Cognitive impairment" means a deficiency in a person's:
    - a. Short or long-term memory;
    - b. Orientation as to person, place, or time;
    - c. Deductive or abstract reasoning; or
    - d. Judgment as it relates to safety awareness.
  7. "Continence" means the ability to maintain control of bowel and bladder function, or when unable to maintain control, the ability to perform associated personal hygiene, such as caring for a catheter or colostomy bag.
  8. "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.
  9. "Eating" means feeding oneself by getting food into the body from a receptacle such as a plate, cup, or table, or by a feeding tube or intravenously.
  10. "Guaranteed renewable" means the insured has the right to continue a long-term-care insurance policy in force by the timely payment of premiums and the insurer has no

unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that the insurer may revise rates on a class basis.

11. "Hands-on assistance" means physical help to an individual who could not perform an activity of daily living without help from another individual, and includes minimal, moderate, or maximal help.
  12. "Home health services" means the services described A.R.S. § 36-151.
  13. "Level premium" means that an insurer does not have any right to change the premium, even at renewal.
  14. "Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.
  15. "Noncancellable" means the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally cancel or make any change in any provision of the insurance or in the premium rate.
  16. "Personal care" means the provision of hands-on assistance to help an individual with activities of daily living in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
  17. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing tasks associated with personal hygiene.
  18. "Transferring" means moving into or out of a bed, chair, or wheelchair.
- B. Any long-term care policy delivered or issued for delivery in this state shall include the following policy terms and provisions as specified in this subsection:
    1. "Home care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
    2. "Intermediate care" shall be defined in relation to the level of skill required, the nature of the care, and the setting in which the care must be delivered.
    3. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
    4. "Skilled nursing care," shall be defined in relation to the level of skill required, the nature of the care and the setting in which care is delivered.
    5. Service providers, including "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services and may require that the provider be appropriately licensed or certified.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1003 recodified from R4-14-1003 (Supp. 95-1).

Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1004. Required Policy Provisions**

- A. Renewability

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1. An individual long-term care insurance policy shall contain a renewability provision, which shall be either "guaranteed renewable" or "noncancellable." The renewability provision shall be appropriately captioned, shall appear on the first page of the policy, and shall state that the coverage is guaranteed renewable or noncancellable. This requirement does not apply to a long-term care insurance policy that is part of or combined with a life insurance policy that does not contain a renewability provision and that reserves the right not to renew solely to the policyholder.
  2. An insurer shall not use the terms "guaranteed renewable" and "noncancellable" in any individual long-term care insurance policy without further explanatory language according to the disclosure requirements of this Article.
  3. A qualified long-term care insurance policy shall have the guaranteed renewability provisions specified in Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986 in the policy.
  4. A long-term care insurance policy or certificate shall include a statement that premium rates are subject to change, unless the policy does not afford the insurer the right to raise premiums.
- B. Limitations and Exclusions**
1. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."
  2. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility not prohibited by A.R.S. §§ 20-1691.03 and 20-1691.05 shall describe the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."
  3. A policy shall not be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:
    - a. Preexisting conditions or disease;
    - b. Mental or nervous disorders; however, this shall not permit exclusion or limitation of the benefits on the basis of Alzheimer's Disease;
    - c. Alcoholism and drug addiction;
    - d. Illness, treatment or medical condition arising out of:
      - i. War, declared or undeclared, or act of war;
      - ii. Participation in a felony, riot or insurrection;
      - iii. Service in the armed forces or auxiliary units;
      - iv. Suicide, attempted suicide, or intentionally self-inflicted injury; or
      - v. Aviation, if non-fare-paying passenger.
    - e. Treatment provided in a government facility, unless otherwise required by law;
    - f. Services for which benefits are available under Medicare or other governmental program, except Medicaid;
    - g. Any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law;
    - h. Services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;
    - i. Expenses for services or items available or paid under another long-term care insurance or health insurance policy; or
    - j. In the case of a qualified long-term care insurance policy, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be reimbursable but for the application of a deductible or coinsurance amount;
  4. Subsection (B)(2) does not prohibit exclusions and limitations by type of provider or territorial limitations.
- C. Extension of benefits.** A long-term care insurance policy shall provide that termination of long-term care insurance is without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. An insurer may limit this extension of benefits period to the duration of the benefit period, if any, or to payment of the maximum benefits and the insurer may still apply any policy waiting period and all other applicable provisions of the policy.
- D. Reinstatement.** A long-term care insurance policy shall include a provision for reinstatement of coverage if a lapse occurs if the insurer receives proof that the insured was cognitively impaired or had a loss of functional capacity before expiration of the grace period in the policy. The option to reinstate shall be available to the insured for at least five months after the date of termination and shall allow for the collection of past due premiums, as appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria for these conditions set forth in the original long-term care policy.
- E. Continuation or conversion**
1. A group long-term care insurance policy shall provide covered individuals with a basis for continuation or conversion of coverage as specified in this subsection.
  2. The policy shall include a provision that maintains coverage under the existing group policy when the coverage would otherwise terminate, subject only to the continued timely payment of premiums when due. A group policy that restricts provision of benefits and services to, or has incentives to use certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits and, in doing so, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.
  3. The policy shall include a provision that an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuation of the group policy in its entirety or with respect to an insured class, who has been insured under the group policy (and any group policy which it replaced), is entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.
  4. A converted policy shall be an individual policy of long-term care insurance providing benefits identical to or benefits that the Director determines to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incen-

- tives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans provider system arrangements, service availability, benefit levels and administrative complexity, and other plan elements.
5. An insurer may require an individual seeking a conversion policy to make a written application for the converted policy and pay the first premium due, if any, as directed by the insurer not later than 31 days after termination of coverage under the group policy. The insurer shall issue the converted policy effective on the day following the termination of coverage under the group policy. The converted policy shall be renewable annually.
  6. Unless the group policy from which conversion is made replaced previous group coverage, the insurer shall calculate the premium for the converted policy on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. If the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.
  7. An insurer is required to provide continuation of coverage or issuance of a converted policy as provided in this subsection, unless:
    - a. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
    - b. The terminating coverage is replaced not later than 31 days after termination, by group coverage that
      - i. Is effective on the day following the termination of coverage;
      - ii. Provides benefits identical to or benefits the Director determines to be substantially equivalent to or in excess of those provided by the terminating coverage; and
      - iii. Has a premium calculated in a manner consistent with the requirements of subsection (E)(6).
  8. Notwithstanding any other provision of this Section, a converted policy that an insurer issues to an individual who at the time of conversion is covered by another long-term care insurance policy providing benefits on the basis of incurred expenses, may contain a provision that reduces benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. An insurer may include this provision in the converted policy only if the converted policy also provides for a premium decrease or refund that reflects the reduction in payable benefits.
  9. The converted policy that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group remained in force and effect.
  10. Notwithstanding any other provision of this Section, any insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, is entitled to continuation of coverage under the group policy upon if the qualifying relationship terminates by death or dissolution of marriage.
- F. Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:
    1. Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and
    2. Shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.
  - G. Premium Increases
    1. An insurer shall not increase the premium charged to an insured because of:
      - a. The insured aging beyond age 65; or
      - b. The duration of coverage under the policy.
    2. Purchase of additional coverage is not considered a premium rate increase, however, for the calculation required under R20-6-1019, an insurer shall add to and consider the portion of the premium attributable to the additional coverage as part of the initial annual premium.
    3. A reduction in benefits is not considered a premium change, however, for the calculation required under R20-6-1019, an insurer shall base the initial annual premium on the reduced benefits.
  - H. Electronic enrollment for group policies
    1. For coverage offered to a group defined in A.R.S. § 20-1691(5)(a), any requirement that an insurer or insurance producer obtain an insured's signature is satisfied if:
      - a. The group policyholder or insurer obtains the insured's consent by telephonic or electronic enrollment, and provides the enrollee with verification of enrollment information within five business days of enrollment; and
      - b. The telephonic or electronic enrollment process has safeguards to assure the accuracy, retention, and prompt retrieval of records, and the confidentiality of personal and privileged information.
    2. If the Director requests, the insurer shall make available records showing the insurer's ability to confirm enrollment and coverage amounts.
  - I. Minimum standards for home health care benefits.
    1. If an insurer issues a long-term care insurance policy or certificate that provides benefits for home-health care, the policy or certificate shall not, limit or exclude benefits by any of the following:
      - a. Requiring that the insured would need skilled care in a skilled nursing facility if home health services are not provided;
      - b. Requiring that the insured first or simultaneously receive nursing or therapeutic services in a home or community setting before home health services are covered;
      - c. Requiring that eligible services be provided by a registered nurse or licensed practical nurse;
      - d. Requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of licensure or certification;
      - e. Requiring that the insured have an acute condition before home health services are covered;
      - f. Limiting benefits to services provided by Medicare-certified agencies or providers;

- g. Excluding coverage for personal care services provided by a home health aide;
  - h. Requiring that home health care services be provided at a level of certification or licensure greater than that required by the eligible service; or
  - i. Excluding coverage for adult day care services.
2. An insurer may apply home health care coverage to non-home health care benefits in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.
- J. Appeals. Policy shall include a clear description of the process for appealing and resolving benefit determinations.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1004 recodified from R4-14-1004 (Supp. 95-1).

Amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1005. Unintentional Lapse

- A. An insured may designate in writing at least one person to receive notice of lapse and termination of a long-term care insurance policy for nonpayment of premium, in addition to the insured. Designation shall not constitute acceptance of any liability by the third-party notice recipient for services provided to the insured.
- B. An insurer shall not issue a long-term care insurance policy until the applicant has provided either a written designation of at least one person in addition to the applicant, who shall receive notice of lapse or termination, with the person's full name and home address, or the applicant's written waiver, dated and signed, indicating that the applicant chooses not to designate a notice recipient.
- C. The insurer shall use a form for written designation or waiver that provides space clearly delineated for the designation. The insurer shall include the following language on the form for waiver of the right to name a designated recipient: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that this notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."
- D. At least once every two years, an insurer shall notify the insured of the right to change the person designated to receive notice in subsection (A). An insured may add, delete, or change a designated recipient or change a designated recipient at any time by notifying the insurer in writing, and providing the name and home address for the new designated recipient or the designated recipient to be deleted.
- E. If the insured pays premiums for the long-term care insurance policy through a payroll or pension deduction plan, the insurer is not required to comply with the requirements in subsections (A) through (D) until 60 days after the insured is no longer on the payment plan.
- F. An individual long-term care insurance policy shall not lapse or be terminated for nonpayment of premium unless the insurer gives the insured and any recipient designated under subsections (A) through (D) written notice at least 30 days before the effective date of termination or lapse, by first class mail, postage prepaid. An insurer shall not give notice until 30 days after the date on which a premium is due and unpaid. Notice is deemed given five days after the date of mailing.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1005 recodified from R4-14-1005 (Supp. 95-1). Section

R20-6-1005 renumbered to R20-6-1006; new Section R20-6-1005 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1006. Inflation Protection

- A. An insurer shall not offer a long-term care insurance policy unless the insurer offers, at the time of purchase, in addition to any other inflation protection, the option to purchase a policy with an inflation protection provision to address the reduction or limitation on the value of benefits that may result from inflation over time. The terms of the required provision shall be no less favorable than the following:
  - 1. A provision that provides for increases in benefit levels compounding annually at a rate of no less than 5%;
  - 2. A provision that allows an insured to periodically increase benefit levels without providing evidence of insurability or health status, if the insured did not decline the option for the previous period. The increased benefit shall be no less than the difference between the existing benefit and that benefit compounded annually at a rate of no less than 5% from the purchase of the existing benefit until the year in which the offer is made; or
  - 3. A provision for coverage of a specified percentage of actual or reasonable charges that is not subject to a maximum indemnity amount or limit.
- B. If the policy is issued to a group, the insurer shall extend the offer required by subsection (A) to the group policyholder; except, if the policy is issued under A.R.S. § 20-1691.04(C) to a group, other than to a continuing care retirement community, the insurer shall make the offer to each proposed certificate-holder.
- C. An insurer is not required to make the offer in subsection (A) for life insurance policies or riders with accelerated long-term care benefits.
- D. An insurer shall include the information listed in this subsection in or with the outline of coverage.
  - 1. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.
  - 2. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall provide a revised schedule of attained-age premiums. An insurer may use a hypothetical or a graphic demonstration for this disclosure.
- E. Inflation-protection benefit increases shall continue without regard to an insured's age, claim status, claim history, or length of time insured under the policy.
- F. An insurer's offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. The insurer shall disclose in the offer in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.
- G. An insurer shall include in a long-term care insurance policy inflation protection as provided in subsection (A)(1) unless an insurer obtains a rejection of inflation protection signed by the insured as required in subsection (H). The rejection may be either on the application form or on a separate form.
- H. A rejection of inflation protection is deemed part of an application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I



reviewed Plans [insert description of plans], and I reject inflation protection.”

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1006 recodified from R4-14-1006 (Supp. 95-1). R20-6-1006 renumbered to R20-6-1007; new Section R20-5-1006 renumbered from R20-6-1005 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1007. Required Disclosure Provisions

- A. Riders and endorsements. Except for riders or endorsements by which an insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, if an insurer adds a rider or endorsement to an individual long-term care insurance policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy, the insurer shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall require the signed written agreement of the insured unless the increased benefits or coverage are required by law. If the insurer charges a separate additional premium for benefits provided in connection with riders or endorsements, premium charge shall be set forth in the policy, rider, or endorsement.
- B. Payment of Benefits. A long-term care insurance policy that provides for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary” or words of similar import shall define the terms and explain them in its accompanying outline of coverage.
- C. Disclosure of tax consequences. For life insurance policies that provide an accelerated benefit for long-term care, an insurer shall provide a disclosure statement at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted, that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax adviser. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.
- D. Benefit triggers. A long-term care insurance policy shall use activities of daily living and cognitive impairment to measure an insured’s need for long-term care. The long-term care insurance policy or certificate shall describe these terms and provisions in a separate paragraph in the policy or certificate labeled “Eligibility for the Payment of Benefits” that includes and explains:
  1. Any additional benefit triggers;
  2. Benefit triggers that result in payment of different benefit levels;
  3. Any requirement that an attending physician or other specified person certify a certain level of functional dependency for the insured to be eligible for benefits.
- E. A long-term care insurance policy or certificate shall contain a disclosure statement in the policy and in the outline of coverage indicating whether it is intended to be a qualified long-term care insurance contract as specified in the outline of coverage in Appendix J, paragraph 3.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1007 recodified from R4-14-1007 (Supp. 95-1). Former Section R20-6-1007 renumbered to R20-6-1010; new Section R20-6-1007 renumbered from R20-6-1006 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

Supp. 04-4).

#### R20-6-1008. Required Disclosure of Rating Practices to Consumers

A. This Section applies as follows:

1. Except as provided in subsection (A)(2), this Section applies to any long-term care policy or certificate issued in this state on or after May 10, 2005.
  2. For certificates issued under an in-force, long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the provisions of this Section apply on the first policy anniversary that occurs on or after November 10, 2005.
- B. Unless a policy is one for which an insurer can not increase the applicable premium rate or rate schedule, the insurer shall provide the information listed in this subsection to the applicant at the time of application or enrollment. If the method of application does not allow for delivery at that time, the insurer shall provide the information to the applicant no later than at the time of delivery of the policy or certificate.
1. A statement that the policy may be subject to rate increases in the future.
  2. An explanation of potential future premium rate revisions, and the policyholder’s or certificateholder’s option if a premium rate revision occurs.
  3. The premium rate or rate schedules applicable to the applicant that will be in effect until the insurer makes a request for an increase.
  4. A general explanation for applying premium rate or rate schedule adjustments that includes:
    - a. A description of when premium rate or rate-schedule adjustments will be effective (e.g., next anniversary date, next billing date); and
    - b. The insurer’s right to a revised premium rate or rate schedule as provided in subsection (B)(3) if the premium rate or rate schedule is changed.
  5. Information regarding each premium rate increase on this policy form or similar policy form over the past 10 years for this state or any other state, that, at a minimum, identifies:
    - a. The policy forms for which premium rates have been increased;
    - b. The calendar years when the form was available for purchase; and
    - c. The amount or percent of each increase, which may be expressed as a percentage of the premium rate before the increase, or as minimum and maximum percentages if the rate increase is variable by rating characteristics.
  6. The insurer may, in a fair manner, provide explanatory information related to the rate increases in addition to the information required under subsection (B)(5).
- C. An insurer may exclude from the disclosure required under subsection (B)(5), premium rate increases applicable to:
1. Blocks of business acquired from other nonaffiliated insurers; and
  2. Policies acquired from other nonaffiliated insurers if the increases occurred before the acquisition.
- D. If an acquiring insurer files for a rate increase on a long-term care insurance policy form or a block of policy forms acquired from a nonaffiliated insurer on or before the later of the January 10, 2005, or the end of a 24-month period following the acquisition of the policies or block of policies, the acquiring insurer may exclude that rate increase from the disclosure required under subsection (B)(5). However, the nonaffiliated insurer that sells the policy form or a block of policy forms shall include that rate increase in the disclosure required under

- subsection (B)(5). If the acquiring insurer files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from a nonaffiliated insurer or block of policy forms acquired from nonaffiliated insurers, the acquiring insurer shall make all disclosures required by subsection (B)(5), including disclosure of the earlier rate increase.
- E. Unless the method of application does not allow an insured to sign an acknowledgement that the insurer made the disclosures required under subsection (B) at the time of application, the applicant shall sign an acknowledgement of disclosure at that time. Otherwise, the applicant shall sign a disclosure acknowledgement no later than at the time of delivery of the policy or certificate.
  - F. An insurer shall use the forms in Appendix A and Appendix B to comply with the requirements of subsections (B) through (E). The text and format of an insurer's forms shall be substantially similar to the text and format of Appendices A and B.
  - G. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days before the effective date of the increase. The notice shall include the information required by subsection (B).
- ii. If the gross premiums for certain age groups appear to be inconsistent with this requirement, the Director may request a demonstration under subsection (C) based on a standard age distribution; and
- 5. A statement that the premium rate schedule:
    - a. Is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or
    - b. A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.
  - C. The Director may require an insurer to provide an actuarial demonstration that benefits provided under a long-term care policy are reasonable in relation to premiums charged. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1009 recodified from R4-14-1009 (Supp. 95-1). Section R20-6-1009 renumbered to R20-6-1012; new Section R20-6-1009 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1010. Requirements for Application Forms and Replacement Coverage

- R20-6-1009. Initial Filing Requirements**
- A. This Section applies to any long-term care policy issued in this state on or after May 10, 2005.
  - B. At the time of making a filing under A.R.S. § 20-1691.08, an insurer shall provide the Director a copy of the disclosure documents required under R20-6-1008 and an actuarial certification that includes the following:
    - 1. The initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;
    - 2. The policy design and coverage provided have been reviewed and taken into consideration;
    - 3. The underwriting and claims adjudication processes have been reviewed and taken into consideration;
    - 4. A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:
      - a. Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;
      - b. A statement that the assumptions used for reserves contain reasonable margins for adverse experience;
      - c. A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and
      - d. A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;
        - i. An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;
- A. An insurer's application form for a long-term care insurance policy shall include the questions listed in this Section to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other health or long-term care policy or certificate presently in force. An insurer may include the questions in a supplementary application or other form to be signed by the applicant and insurance producer, except where the coverage is sold without an insurance producer. For a replacement policy issued to a group as defined in A.R.S. § 20-1691(5)(a), the insurer may modify the questions only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificate holder has been notified of the replacement.
    - 1. Do you have another long-term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?
    - 2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?
      - a. If so, with which company?
      - b. If that policy lapsed, when did it lapse?
    - 3. Are you covered by Medicaid?
    - 4. Do you intend to replace any of your medical or health insurance coverage with this policy or certificate?
  - B. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan the applicant selects.
  - C. An insurance producer shall list any other health insurance policies the insurance producer has sold to the applicant, including:
    - 1. Policies that are still in force.
    - 2. Policies sold in the past five years that are no longer in force.
  - D. On determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation

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methods, or its insurance producer shall furnish the applicant, before issuing or delivering of the individual long-term care insurance policy, a notice that substantially conforms to the form prescribed in Appendix C regarding replacement of health or long-term care coverage. The insurer shall:

1. Give one copy of the notice to the applicant; and
  2. Keep an additional copy signed by the applicant.
- E.** Insurers using direct response solicitation methods shall deliver a notice regarding replacement of health or long-term care coverage to the applicant upon issuance of the policy.
- F.** If replacement is intended, the replacing insurer shall send the existing insurer written notice of the proposed replacement within five working days from the date the replacing insurer receives the application or issues the policy, whichever is sooner. The notice shall identify the existing policy by name of the insurer and the insured, and policy number or insured's address including zip code.
- G.** A life insurance policy that accelerate benefits for long-term care shall comply with this Section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Title 20, Chapter 6, Article 1.1. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with the requirements of this Section and with Title 20, Chapter 6, Article 1.1.
- H.** If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits if similar exclusions are satisfied under the original policy.
- I.** Reporting requirements
1. An insurer shall maintain the following records for each insurance producer:
    - a. The amount of the insurance producer's replacement sales as a percent of the insurance producer's total annual sales; and
    - b. The amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales.
  2. No later than June 30 of each year, on the forms specified in Appendix E and Appendix F, an insurer shall report the following information for the preceding calendar year to the Department:
    - a. The 10% of its insurance producers licensed in Arizona with the greatest percentages of lapses and replacements as measured by subsection (H)(1); and
    - b. The number of lapsed policies as a percent of the total annual sales and as a percent of the insurer's total number of policies in force as of the end of the preceding calendar year.
    - c. The number of replacement policies sold as a percent of the insurer's total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year; and
    - d. For qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied.
- J.** In subsection (I),
1. "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;
  2. "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet

the waiting period or because of an applicable preexisting condition;

3. "Policy" means only long-term care insurance; and
4. "Report" means on a statewide basis.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1010 recodified from R4-14-1010 (Supp. 95-1). R20-6-1010 renumbered to R20-6-1013; new Section R20-6-1010 renumbered from R20-6-1007 and amended by final by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1011. Prohibition Against Post-claims Underwriting**

- A.** An application for a long-term care insurance policy or certificate that is not guaranteed issue shall meet the requirements of this Section.
1. The application shall contain clear and unambiguous questions designed to ascertain the applicant's health condition.
    - a. If the application has a question asking whether the applicant has had medication prescribed by a physician, the application shall also ask the applicant to list the prescribed medication.
    - b. If the insurer knew or reasonably should have known that the medications listed in the application are related to a medical condition for which coverage would otherwise be denied, the insurer shall not rescind the policy or certificate for that condition.
  2. The application shall include the following language which shall be set out conspicuously and in close conjunction with the applicant's signature block: "Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy."
  3. The policy or certificate shall contain the following language, or language substantially similar to the following, set out conspicuously: "Caution: The issuance of this long-term care insurance [policy] [certificate] is based on your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]."
- B.** Before issuing a long-term care insurance policy or certificate that is not guaranteed issue to an applicant age 80 or older, the insurer shall obtain one of the following:
- a. A report of a physical examination;
  - b. An assessment of functional capacity;
  - c. An attending physician's statement; or
  - d. Copies of medical records.
- C.** The insurer or its insurance producer shall deliver a copy of the completed application or enrollment form, as applicable to the insured no later than at the time of delivery of the policy or certificate unless the insurer gave a copy to the applicant it at the time of application.
- D.** An insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state- and country-wide, except those which the insured voluntarily effectuated.
- E.** On or before March 31 of each year, an insurer shall report the following information to the Director for the preceding calendar year, using the form prescribed in Appendix G:

1. Insurer name, address, phone number;
2. As to each rescission except those voluntarily effectuated by the insured:
  - a. Policy form number;
  - b. Policy and certificate number;
  - c. Name of the insured;
  - d. Date of policy issuance;
  - e. Date claim submitted;
  - f. Date of rescission; and
  - g. Detailed reason for rescission.
3. Signature, name and title of the preparer, and date prepared.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1011 recodified from R4-14-1011 (Supp. 95-1). R20-6-1011 renumbered to R20-6-1014; new Section R20-6-1011 renumbered from R20-6-1008 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1012. Discretionary Powers of Director

The Director may, on written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provision of this Article with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1. The modification or suspension would be in the best interest of the insureds; and
2. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and
  - a. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or
  - b. The policy or certificate is to be issued to residents of a life-care or continuing-care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or
  - c. The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1012 recodified from R4-14-1012 (Supp. 95-1). R20-6-1012 renumbered to R20-6-1016; new Section R20-6-1012 renumbered from R20-6-1009 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1013. Reserve Standards

- A. If long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders an insurer shall determine, policy reserves for long-time care benefits are determined under A.R.S. § 20-510. An insurer shall establish claim reserves shall be established for a policy or rider in claim status.
- B. An insurer shall base reserves for policies and riders under subsection (A) on the multiple decrement model using all relevant decrements except for voluntary termination rates. An insurer may use single decrement approximations if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The insurer, when calculating reserves, may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. The insurer shall not set the reserves for the

long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

- C. In the development and calculation of reserves for policies and riders subject to this Section, an insurer shall give due regard to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which impact projected claim costs including the following:
  1. Definition of insured events;
  2. Covered long-term care facilities;
  3. Existence of home convalescence care coverage;
  4. Definition of facilities;
  5. Existence or absence of barriers to eligibility;
  6. Premium waiver provision;
  7. Renewability;
  8. Ability to raise premiums;
  9. Marketing method;
  10. Underwriting procedures;
  11. Claims adjustment procedures;
  12. Waiting period;
  13. Maximum benefit;
  14. Availability of eligible facilities;
  15. Margins in claim costs;
  16. Optional nature of benefit;
  17. Delay in eligibility for benefit;
  18. Inflation protection provisions;
  19. Guaranteed insurability option; and
  20. Other similar or comparable factors affecting risk.
- D. A member of the American Academy of Actuaries shall certify an insurer's use of any applicable valuation morbidity table as appropriate as a statutory valuation table.
- E. When long-term care benefits are provided other than as described in subsection (A), an insurer shall determine reserves under A.R.S. § 20-508.

#### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1013 recodified from R4-14-1013 (Supp. 95-1). Section R20-6-1013 renumbered to R20-6-1017; new Section R20-6-1013 renumbered from R20-6-1010 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1014. Loss Ratio

- A. This Section applies to policies and certificates issued any time prior to May 10, 2005.
- B. Benefits under an individual long-term care insurance policy is deemed reasonable in relation to premiums if the expected loss ratio is at least 60% calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, the director shall consider to all relevant factors, including:
  1. Statistical credibility of incurred claims experience and earned premiums;
  2. The period for which rates are computed to provide coverage;
  3. Experienced and projected trends;
  4. Concentration of experience within early policy duration;
  5. Expected claim fluctuation;
  6. Experience refunds, adjustments, or dividends;
  7. Renewability features;
  8. All appropriate expense factors;
  9. Interest;
  10. Experimental nature of the coverage;
  11. Policy reserves;
  12. Mix of business by risk classification; and

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13. Product features such as long elimination periods, high deductibles, and high maximum limits.
- C.** Subsection (B) does not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is deemed to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following:
1. The interest credited internally to determine cash value accumulations, including long-term care, if any, is guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy.
  2. The portion of the policy that provides life insurance benefits complies with the nonforfeiture requirements of A.R.S. § 20-1231;
  3. The policy complies with the disclosure requirements of A.R.S. § 20-1691.06(A) through (E);
  4. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes the following information:
    - a. A description of the basis on which the long-term care rates were determined;
    - b. A description of the basis for the reserves;
    - c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
    - d. A description and a table of each actuarial assumption used; for expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;
    - e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
    - f. The estimated average annual premium per policy and the average issue age;
    - g. A statement as to whether underwriting is performed, including:
      - i. Time of underwriting;
      - ii. A description of the type of underwriting used, such as medical underwriting or functional assessment underwriting; and
      - iii. For a group policy, whether an enrollee's dependents are subject to underwriting; and
    - h. A description of the effect of the long-term care policy provisions on the required premiums, nonforfeiture values, and reserves on the underlying life insurance policy, both for active lives and those in long-term care status.
- Historical Note**  
Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1014 recodified from R4-14-1014 (Supp. 95-1). Section repealed; R20-6-1014 renumbered from R20-6-1011 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).
- R20-6-1015. Premium Rate Schedule Increase**
- A.** In this Section, "exceptional increase" means a rate increase that an insurer has filed and that the Director has determined is justified because of changes in laws applicable to long-term care insurance, or increased and unexpected utilization that affects the majority of insurers of similar products. The Director may request independent actuarial review on the issue of whether an increase should be deemed an exceptional increase. The Director may also determine whether there are any potential offsets to higher claims costs.
- B.** This Section applies to any individual long-term care policy or certificate issued in this state on or after May 10, 2005.
- C.** An insurer shall notify the Director of a proposed premium rate schedule increase, including an exceptional increase, at least 30 days before issuing notice to its policyholders. The notice to the Director shall include:
1. Information required by R20-6-1008;
  2. Certification by a qualified actuary that:
    - a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;
    - b. The premium rate filing complies with the provisions of this Section;
  3. An actuarial memorandum justifying the rate schedule change request that includes:
    - a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase and the method and assumptions used in determining the projected values, including the following:
      - i. Any assumptions that deviate from those used for pricing other forms currently available for sale;
      - ii. Annual values for the five years preceding and the three years following the valuation date, provided separately,
      - iii. Development of the lifetime loss ratio, unless the rate increase is an exceptional increase;
      - iv. A demonstration of compliance with subsection (D); and
    - b. For exceptional increases, the actuarial memorandum shall also include:
      - i. The projected experience that is limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and
      - ii. If the Director determines under subsection (A) that offsets may exist, the insurer shall use appropriate net projected experience;
    - c. Disclosure of how reserves have been incorporated in this rate increase when the rate increase will trigger contingent benefit upon lapse;
    - d. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and any other actions of the insurer on which the actuary has relied;
    - e. A statement that the actuary has considered policy design, underwriting, and claims adjudication practices; and
  4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless the insurer provides the Director with documentation justifying the greater rate; and
  5. Upon the Director's request, other similar and related information the Director may require to evaluate the premium rate schedule increase.
- D.** The following requirements apply to all premium rate schedule increases:
1. The insurer shall return 70% of the present value of projected additional premiums from an exceptional increase to policyholders in benefits;

2. The sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, shall not be less than the sum of the following:
  - a. The accumulated value of the initial earned premium times 58%;
  - b. 85% of the accumulated value of prior premium rate schedule increases on an earned basis;
  - c. The present value of future projected initial earned premiums times 58%; and
  - d. 85% of the present value of future projected premiums not in subsection(D)(2)(c) on an earned basis;
3. If a policy form has both exceptional and other increases, the values in subsection (D)(2)(b) and (D)(2)(d) shall also include 70% for exceptional rate increase amounts; and
4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in the NAIC Accounting Practices and Procedures Manual to which insurers are subject under A.R.S. § 20-223. The actuary shall disclose the use of any appropriate averages in the actuarial memorandum required under subsection (B)(3).
- E.** For each rate increase that is implemented, the insurer shall file for approval by the Director updated projections, as defined in subsection (C)(3)(a), annually for the next three years and shall include a comparison of actual results to projected values. The Director may extend the reporting period beyond three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection (K), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.
- F.** If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, the insurer shall file lifetime projections, as defined in subsection (C)(3)(a), for the Director's approval every five years following the end of the required period in subsection (E). For group insurance policies that meet the conditions in subsection (L), the insurer shall provide the projections required by this subsection to the policyholder instead of filing with the Director.
- G.** If the Director finds that the actual experience following a rate increase does not match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection (D), the Director may require the insurer to implement premium rate schedule adjustments or other measures to reduce the difference between the projected and actual experience. In determining whether the actual experience matches the projected experience, the Director shall consider subsection (C)(3)(e), if applicable.
- H.** If the majority of the policies to which the increase applies are eligible for the contingent benefit upon lapse, the insurer shall file:
  1. A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form experience requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Director may impose the condition in subsections (I) through (K); and
  2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection (D) had the greater of the original anticipated lifetime loss ratio or 58% has been used in the calculations described in subsection (D)(2)(a) and (D)(2)(c).
- I.** For a rate increase filing that meets the criteria listed in this subsection, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if lapsation in excess of projected lapsation has occurred or is anticipated:
  1. The rate increase is not the first rate increase requested for the specific policy form or forms;
  2. The rate increase is not an exceptional increase; and
  3. The majority of the policies or certificates to which the increase applies are eligible for the contingent benefit upon lapse.
- J.** If the Director finds excess lapsation under subsection (I), the Director may find that a rate spiral exists and may require the insurer to offer, without underwriting, to all in-force insureds subject to the rate increase, the option to replace existing information communicating the offer are subject to the Director's approval. The offer shall:
  1. Be based on actuarially sound principles, but not on attained age; and
  2. Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy; and
  3. Allow the insured the option of retaining the existing coverage.
- K.** The insurer shall maintain the experience of the insureds whose coverage was replaced under subsection (J) separate from the experience of insureds originally issued the policy forms. If the insurer requests a rate increase on the policy form, the rate increase shall be limited to the lesser of:
  1. The maximum rate increase determined based on the combined experience; and
  2. The maximum rate increase determined based only on the experience of the insureds originally issued the form, plus ten percent.
- L.** If the Director finds that an insurer has exhibited a history or pattern of filing inadequate initial premium rates for long-term care insurance, after considering the total number of policies filed over a period of time and the percentage of policies with inadequate rates, the Director may, in addition to remedies available under subsections (I) through (K), prohibit the insurer from the following:
  1. Filing and marketing comparable coverage for a period of up to five years; and
  2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.
- M.** Subsections (B) through (L) shall not apply to a policy for which long-term care benefits provided by the policy are incidental, as provided under subsection (A), if the policy complies with all of the following provisions:
  1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
  2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the applicable nonforfeiture requirements under state law, including A.R.S. §§ 20-1231, 20-1232 and 20-2636;
  3. The policy meets the disclosure requirements of A.R.S. § 20-1691.06;

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4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the disclosure requirements as applicable in the following:
    - a. Title 20, Chapter 6, Article 1.2; and
    - b. Title 20, Chapter 16, Article 2.
  5. At the time of making a filing under A.R.S. § 20-1691.08, the insurer files an actuarial memorandum that includes:
    - a. Description of the bases on which the actuary determined the long-term care rates and the reserves;
    - b. A summary of the type of policy, benefits, renewability provisions, general marketing method, and limits on ages of issuance;
    - c. A description and a table of each actuarial assumption used, with the percent of premium dollars per policy and dollars per unit of benefits, if any, for expenses;
    - d. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
    - e. The estimated average annual premium per policy and the average issue age;
    - f. A statement as to whether the insurer performs underwriting at the time of application with an explanation of the following:
      - i. Whether underwriting is used, and, if used, a description of the type of underwriting, such as medical underwriting or functional assessment underwriting; and
      - ii. For a group policy, whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
    - g. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values, and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.
1. Establish marketing procedures to assure that any comparison of policies by its insurance producers is fair and accurate, and that excessive insurance is not sold or issued.
  2. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following language: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
  3. Provide the applicant with copies of the disclosure forms in Appendices A and B.
  4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance.
  5. Provide an explanation of contingent benefit upon lapse as provided for in R20-6-1019(E).
  6. Provide written notice to an applicant or prospective policyholder or certificateholder advising of this state's senior insurance counseling program (SHIP), and the name, address, and phone number for the SHIP, at the time of solicitation.
  7. Establish auditable procedures for verifying compliance with this Section (A).
- B.** In addition to the practices prohibited in A.R.S. § 20-441 et seq., the following acts and practices are prohibited:
1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
  2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
  3. Cold lead advertising. Making use directly or indirectly or any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.
  4. Misrepresentation. Misrepresenting a fact in selling or offering to sell a long-term care insurance policy.
- C.** An insurer shall not market or issue a long-term care policy or certificate to an association unless the insurer files the information required under R20-6-1016(B) and annually certifies that the association has complied with the requirements of this Section.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1015 recodified from R4-14-1015 (Supp. 95-1). Section R20-6-1015 renumbered to R20-6-1022; new Section R20-6-1015 made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1016. Filing Requirements for Group Policies**

- A.** Out-of-State Policies. Before an insurer or similar organization may offer group long-term care insurance to a resident of this state under A.R.S. § 20-1691.02(D), the insurer or organization shall file with the Director evidence that a state with statutory or regulatory long-term care insurance requirements substantially similar to those of this state has approved the group policy or certificate for use in that state.
- B.** Associations. For long-term policies marketed or issued to associations, the insurer or organization shall file with the insurance department the policy, certificate, and corresponding outline of coverage.

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). R20-6-1016 recodified from R4-14-1016 (Supp. 95-1). Section R20-6-1016 renumbered to R20-6-1023; new Section R20-6-1016 renumbered from R20-6-1012 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1017. Standards for Marketing**

- A.** Every insurer marketing long-term care insurance coverage in this state, directly or through an insurance producer shall:

1. Establish marketing procedures to assure that any comparison of policies by its insurance producers is fair and accurate, and that excessive insurance is not sold or issued.
  2. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following language: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
  3. Provide the applicant with copies of the disclosure forms in Appendices A and B.
  4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has health or long-term care insurance and the types and amounts of any such insurance.
  5. Provide an explanation of contingent benefit upon lapse as provided for in R20-6-1019(E).
  6. Provide written notice to an applicant or prospective policyholder or certificateholder advising of this state's senior insurance counseling program (SHIP), and the name, address, and phone number for the SHIP, at the time of solicitation.
  7. Establish auditable procedures for verifying compliance with this Section (A).
- B.** In addition to the practices prohibited in A.R.S. § 20-441 et seq., the following acts and practices are prohibited:
1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
  2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
  3. Cold lead advertising. Making use directly or indirectly or any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.
  4. Misrepresentation. Misrepresenting a fact in selling or offering to sell a long-term care insurance policy.
- C.** An insurer shall not market or issue a long-term care policy or certificate to an association unless the insurer files the information required under R20-6-1016(B) and annually certifies that the association has complied with the requirements of this Section.

**Historical Note**

New section R20-5-1017 renumbered from R20-6-1013 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**R20-6-1018. Suitability**

- A.** This Section does not apply to life insurance policies that accelerate benefits for long-term care.
- B.** Every insurer or other person marketing long-term care insurance, including an insurance producer or managing general agent, (the "issuer") shall:

1. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;
  2. Train its insurance producers in the use of its suitability standards; and
  3. Maintain a copy of its suitability standards and make them available for inspection upon the Director's request.
- C. To determine whether an applicant meets an issuer's suitability standards, the insurance producer and issuer shall develop procedures that take the following into consideration:
1. The applicant's ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;
  2. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and
  3. The values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.
- D. The issuer shall make reasonable efforts to obtain the information set out in subsection (C)(1), including giving the applicant the "Long-Term Care Insurance Personal Worksheet" prescribed in Appendix A, to complete before or at the time of application. The issuer shall use a personal worksheet that contains, at a minimum, the information contained in Appendix A, in substantially the same text and format, in not less than 12 point type. The issuer may ask the applicant to provide additional information to comply with its suitability standards. An issuer shall file a copy of its personal worksheet with the Director.
- E. An issuer shall not consider an applicant for coverage until the issuer has received the applicant's completed personal worksheet, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.
- F. No one shall sell or disseminate information obtained through the personal worksheet outside the issuer that obtains the worksheet.
- G. The issuer shall use its suitability standards to determine whether issuance of long-term care insurance coverage to a particular applicant is appropriate.
- H. An insurance producer shall use the suitability standards developed by the issuer in marketing long-term care insurance.
- I. When giving an applicant a personal worksheet, the issuer shall also provide the applicant with a disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance." The form shall be in substantially the same format and text contained in Appendix H, in not less than 12 point type.
- J. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter that is substantially similar to Appendix I. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent to purchase the long-term care policy. The issuer shall have either the applicant's returned Appendix I letter or a record of the alternative method of verification as part of the applicant's file.
- K. The issuer shall report annually to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who

chose to confirm after receiving a suitability letter as prescribed in subsection (J).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1019. Nonforfeiture Benefit Requirement

- A. This Section does not apply to life insurance policies or riders containing accelerated long-term care benefits.
- B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of A.R.S. § 20-1691.11, an insurer shall meet the following requirements:
1. A policy or certificate offered with nonforfeiture benefits shall have the same coverage elements, eligibility, benefit triggers and benefit length as a policy or certificate issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection (I).
  2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.
- C. If the offer required to be made under A.R.S. § 20-1691.11 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Section.
- D. If a prospective policyholder rejects the offer of a nonforfeiture benefit, the insurer shall provide the contingent benefit upon lapse described in this Section for individual and group policies without the nonforfeiture benefit, issued after January 10, 2005.
- E. If a group policyholder elects to make the nonforfeiture benefit an option to a certificateholder, the certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.
- F. The contingent benefit on lapse is triggered when:
1. An insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in the chart below, based on the insured's issue age; and
  2. The policy or certificate lapses within 120 days of the due date of the increased premium.

Triggers for a Substantial Premium Increase		
Issue Age		Percent Increase Over Initial Premium
29 and under		200%
30-34		190%
35-39		170%
40-44		150%
45-49		130%
50-54		110%
55-59		90%
60		70%
61		66%
62		62%
63		58%
64		54%
65		50%
66		48%
67		46%



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68		44%
69		42%
70		40%
71		38%
72		36%
73		34%
74		32%
75		30%
76		28%
77		26%
78		24%
79		22%
80		20%
81		19%
82		18%
83		17%
84		16%
85		15%
86		14%
87		13%
88		12%
89		11%
90 and over		10%

- G.** Unless otherwise required, an insurer shall notify policyholders at least 30 days before the due date of the premium reflecting the rate increase.
- H.** On or before the effective date of a substantial premium increase as defined in subsection (F), an insurer shall:
1. Offer the insured the option of reducing policy benefits under the current coverage without additional underwriting so that required premium payments are not increased;
  2. Offer to convert the coverage to a paid-up status with a shortened benefit period according to the terms of subsection (I), which the insured may elect at any time during the 120-day period referenced in subsection (F)(2); and
  3. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subsection (F)(2) is deemed to be the election of the offer to convert under subsection (H)(2).
- I.** In this Section, "benefits continued as nonforfeiture benefits," including contingent benefits upon lapse, mean any of the following:
1. Attained age rating is defined as a schedule of premiums starting from the issue date that increases age at least one percent per year before age 50, and at least three percent per year beyond age 50.
  2. The nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subsection (I)(3).
  3. The standard nonforfeiture credit equals 100% of the sum of all premiums paid, including the premiums paid before any change in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. The minimum nonforfeiture

credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection (J).

4. The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years, and thereafter.
  5. Notwithstanding subsection (I)(4), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:
    - a. The end of the tenth year following the policy or certificate issue date; or
    - b. The end of the second year following the date the policy or certificate is no longer subject to attained age rating.
  6. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.
- J.** All benefits paid by the insurer while the policy or certificate is in premium-paying status and in the paid-up status shall not exceed the maximum benefits that would be payable if the policy or certificate had remained in premium-paying status.
- K.** There shall be no difference in the minimum nonforfeiture benefits for group and individual policies.
- L.** The requirements in this Section are effective on or after November 10, 2005 and shall apply as follows:
1. Except as provided in subsection (L)(2), this Section applies to any long-term care policy issued in this state on or after January 10, 2005.
  2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a group long-term care insurance policy as defined in A.R.S. § 20-1691(5)(a), that was in force on January 10, 2005.
- M.** Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of R20-6-1014, treating the policy as a whole.
- N.** To determine whether contingent nonforfeiture upon lapse provisions are triggered under subsection (F), a replacing insurer that purchased or otherwise assumed a block of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium the insured paid when first buying the policy from the original insurer.
- O.** An insurer shall offer a nonforfeiture benefit for a qualified long-term care insurance contract that is a level premium contract and the benefit shall meet the following requirements:
1. The nonforfeiture provision shall be separately captioned using the term "nonforfeiture benefit" or a substantially similar caption.
  2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the insurer may adjust the amount of the benefit initially granted only as needed to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the Director under to A.R.S. § 20-1691.08 for the same contract form; and
  3. The nonforfeiture provision shall provide at least one of the following:
    - a. Reduced paid-up premiums,
    - b. Extended term insurance,
    - c. Shortened benefit period; or

- d. Other similar offerings that the Director has approved.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1020. Standards for Benefit Triggers

- A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Except as otherwise provided in R20-6-1021, eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.
- B. Activities of daily living shall include at least the following as defined in R20-6-1003 and in the policy:
1. Bathing;
  2. Continence;
  3. Dressing;
  4. Eating;
  5. Toileting; and
  6. Transferring;
- C. An insurer may use additional activities of daily living to trigger covered benefits if the activities are defined in the policy.
- D. An insurer may use additional provisions to determine when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements in subsections (A) and (B).
- E. For purposes of this Section the determination of a deficiency shall not be more restrictive than:
1. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
  2. If the deficiency is due to the presence of a cognitive impairment, requiring supervision or verbal cueing by another person to protect the insured or others.
- F. Licensed or certified professionals, such as physicians, nurses or social workers, shall perform assessments of activities of daily living and cognitive impairment.
- G. The requirements in this Section are effective on and after November 10, 2005 and shall apply as follows:
1. Except as provided in subsection (G)(2), the provisions of this Section apply to a long-term care policy issued in this state on or after January 10, 2005.
  2. The provisions of this Section do not apply to certificates issued on or after January 10, 2005, under a long-term care insurance policy issued to a group as defined in A.R.S. § 20-1691(5)(a), which policy was in force on January 10, 2005.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1021. Additional Standards for Benefit Triggers for Qualified Long-term Care Insurance Contracts

- A. A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided under a plan of care prescribed by a licensed health care practitioner.
- B. A qualified long-term care insurance contract shall condition the payment of benefits on a certified determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

- C. Licensed or certified professionals, including physicians, registered professional nurses, and licensed social workers, shall perform the certified determinations regarding activities of daily living and cognitive impairment required under subsection (B).
- D. Certified determinations required under to subsection (B) may be performed at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certified determination may not be rescinded and additional certified determinations may not be performed until after the expiration of the 90-day period.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1022. Standard Format Outline of Coverage

- A. The outline of coverage prescribed in A.R.S. § 20-1691.06 shall be a free-standing document, using no smaller than 10 point type, and shall contain no advertising or promotional material.
- B. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that give prominence equivalent to capitalization or underscoring.
- C. An insurer shall use the text and sequence of text in the standard format outline of coverage prescribed in Appendix J, unless otherwise specifically indicated.

#### Historical Note

New Section R20-6-1022 renumbered from R20-6-1015 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1023. Requirement to Deliver Shopper's Guide

- A. All prospective applicants of a long-term care insurance policy or certificate shall receive a long-term care shopper's guide approved by the Director. This requirement may be satisfied by delivery of the current edition of the long-term care shopper's guide in the format developed by the National Association of Insurance Commissioners.
1. In the case of insurance producer solicitation, an insurance producer shall deliver the shopper's guide before presenting an application or enrollment form.
  2. In the case of direct response solicitations, the insurer shall provide the shopper's guide with any application or enrollment form.
- B. A prospective applicant for a life insurance policy or rider containing accelerated long-term care benefits is not required to receive the guide described in subsection A, but shall receive the policy summary required under A.R.S. § 20-1691.06.

#### Historical Note

New Section R20-6-1023 renumbered from R20-6-1016 and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

#### R20-6-1024. Instructions for Appendices

Information that is designated as a "Drafting Instruction" in a form appended to this Article is not required to be included as part of the form. Any person using the form shall abide by the instructions when drafting, preparing, or completing the form.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

## Department of Insurance

## Appendix A. Long-term Care Insurance Personal Worksheet

Long-term Care Insurance  
Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

## Premium Information

Policy Form Numbers \_\_\_\_\_

The premium for the coverage you are considering will be [\$\_\_\_\_\_ per month, or \$\_\_\_\_\_ per year,] [a one-time single premium of \$\_\_\_\_\_.]

Type of Policy (noncancellable/guaranteed renewable): \_\_\_\_\_

## The Company's Right to Increase Premiums:

\_\_\_\_\_ [The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

## Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

**(Drafting Instruction:** A company may use the first bracketed sentence above only if it has never increased rates under any prior policy forms in this state or any other state. The issuer shall list each premium increase it has instituted on this or similar policy forms in this state or any other state during the last 10 years. The list shall provide the policy form, the calendar years the form was available for sale, and the calendar year and the amount (percentage) of each increase. The insurer shall provide minimum and maximum percentages if the rate increase is variable by rating characteristics. The insurer may provide, in a fair manner, additional explanatory information as appropriate.)

## Questions Related to Your Income

How will you pay each year's premium?

☐ From my Income ☐ From my Savings/Investments ☐ My Family will Pay

[☐ Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%?]

**(Drafting Instruction:** The issuer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancellable policy.)

What is your annual income? (check one) ☐ Under \$10,000 ☐ \$[10-20,000] ☐ \$[20-30,000] ☐ \$[30-50,000] ☐ Over \$50,000

**(Drafting Instruction:** The issuer may choose the numbers to put in the brackets to fit its suitability standards.)

How do you expect your income to change over the next 10 years? (check one)

☐ No change ☐ Increase ☐ Decrease

*If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.*

**Will you buy inflation protection?** (check one) ☐ Yes ☐ No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

☐ From my Income ☐ From my Savings/Investments ☐ My Family will Pay

*The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.*

**(Drafting Instruction:** The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.)

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**What elimination period are you considering?** Number of days \_\_\_\_\_ Approximate cost \$ \_\_\_\_\_ for that period of care.

**How are you planning to pay for your care during the elimination period? (check one)**

☐ From my Income☐ From my Savings/Investments☐ My Family will Pay

## Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)

☐ Under \$20,000☐\$20,000-\$30,000☐ \$30,000-\$50,000☐ Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

□ Stay about the same

☐ Increase☐ Decrease

*If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.*

## Disclosure Statement

☐ The answers to the questions above describe my financial situation.

**or**

☐ I choose not to complete this information.  
(Check one.)

☐ I acknowledge that the carrier and/or its agent (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] **I understand the above disclosures. I understand that the rates for this policy may increase in the future.** (This box must be checked).

Signed: \_\_\_\_\_

(Applicant)

(Date)

☐ I explained to the applicant the importance of completing this information.

Signed:

(Insurance Producer)

(Date)

Insurance Producer's Printed Name: \_\_\_\_\_

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.

Signed: \_\_\_\_\_

(Applicant)

(Date)

**(Drafting Instruction:** Choose the appropriate sentences depending on whether this is a direct mail or insurance producer sale.)

*The company may contact you to verify your answers.*

**(Drafting Instruction:** When the Long-term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading “Disclosure Statement” to the end of the page may be removed.)

### Historical Note

Adopted effective August 10, 1992 (Supp. 92-3). Former Appendix A renumbered to Appendix C; new Appendix A made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

## Appendix B. Long-term Care Insurance Potential Race Increase Disclosure Form

## Long-term Care Insurance Potential Rate Increase Disclosure Form

**Instructions:**

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

**Insurers shall provide all of the following information to the applicant:**

## Long-term Care Insurance Potential Rate Increase Disclosure Form

1. **[Premium Rate] [Premium Rate Schedules]:** [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [approved] for an increase [is][are] [on the application][\$\_\_\_\_\_])
2. **The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.**
3. **Rate Schedule Adjustments:**  
The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): \_\_\_\_\_.
4. **Potential Rate Revisions:**  
**This policy is Guaranteed Renewable.** This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

**If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:**

- Pay the increased premium and continue your policy in force as is.
- Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- Exercise your contingent nonforfeiture rights.\* (This option may be available if you do not purchase a separate nonforfeiture option.)

### Contingent Nonforfeiture

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- You lapse (not pay more premiums) within 120 days of the increase.

**Turn the Page**

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you have paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered “paid-up” with no further premiums due.

**Example:**

- You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- Your “paid-up” policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

**Turn the Page**

<b>Contingent Nonforfeiture</b> <b>Cumulative Premium Increase over Initial Premium</b> <b>That qualifies for Contingent Nonforfeiture</b> (Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)	
<b>Issue Age</b>	<b>Percent Increase Over Initial Premium</b>
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). Former Appendix B renumbered to Appendix D; new Appendix B made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**Appendix C. Notice to Applicant Regarding Replacement of Individual Health or Long-term Care Insurance****NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL HEALTH OR LONG-TERM CARE INSURANCE****[Insurance company's name and address]****SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides [thirty (30)] days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, even though a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probation periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its insurance producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
(Signature of Insurance Producer or Other Representative)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Typed Name and Address of Insurance Producer)

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

**Historical Note**

Adopted effective August 10, 1992 (Supp. 92-3). New Appendix C renumbered from Appendix A and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**Appendix D. Notice to Applicant Regarding Replacement of Health or Long-term Care Insurance****NOTICE TO APPLICANT REGARDING REPLACEMENT OF HEALTH OR LONG-TERM CARE INSURANCE****[Insurance company's name and address]****SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing health or long-term care insurance and replace it with the long-term care insurance policy being delivered and issued by [company name] Insurance Company. Your new policy gives you thirty (30) days to decide, without cost, whether you want to keep the policy. For your own information and protection, you should be aware of and seriously consider certain facts which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all health coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, even though a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

[COMPANY NAME]

**Historical Note**

New Appendix D renumbered from Appendix B and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).



## Department of Insurance

**Appendix E. Long-Term Care Insurance Replacement and Lapse Reporting Form****Long-term Care Insurance  
Replacement and Lapse Reporting Form**

For the State of \_\_\_\_\_  
 For the Reporting Year of \_\_\_\_\_

Company Name: \_\_\_\_\_ Due: June 30 annually  
 Company Address: \_\_\_\_\_ Company NAIC Number: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone Number: (\_\_\_\_) \_\_\_\_\_

**Instructions**

The purpose of this form is to report on a statewide basis information regarding long-term care insurance policy replacements and lapses. Every insurer shall maintain the following records for each insurance producer: (1) amount of long-term care insurance replacement sales as a percent of the insurance producer's total annual sales and (2) the amount of lapses of long-term care insurance policies sold by the insurance producer as a percent of the insurance producer's total annual sales. The tables below should be used to report the ten percent (10%) of the insurer's insurance producers with the greatest percentages of replacements and lapses.

**Listing of the 10% of Insurance Producers with the Greatest Percentage of Replacements**

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Replaced By This Insurance Producer	Number of Replacements as % of Number of Policies Sold By This Insurance Producer

**Listing of the 10% of Insurance Producers with the Greatest Percentage of Lapses**

Insurance Producer's Name	Number of Policies Sold By This Insurance Producer	Number of Policies Lapsed By This Insurance Producer	Number of Lapses As % of Number Sold By This Insurance Producer

**Company Totals**

Percentage of Replacement Policies Sold to Total Annual Sales \_\_\_\_%  
 Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year) \_\_\_\_%  
 Percentage of Lapsed Policies to Total Annual Sales \_\_\_\_%  
 Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) \_\_\_\_%

**Historical Note**

New Appendix E made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

## Department of Insurance

## Appendix F. Long-term Care Insurance Claims Denial Reporting Form

Long-term Care Insurance  
Claims Denial Reporting FormFor the State of \_\_\_\_\_  
For the Reporting Year of \_\_\_\_\_Company Name: \_\_\_\_\_ Due: June 30 annually  
Company Address: \_\_\_\_\_Company NAIC Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Line of Business: IndividualGroup

## Instructions

The purpose of this form is to report all long-term care claim denials under in-force long-term care insurance policies. "Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.

		State Data	Nationwide Data <sup>1</sup>
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long-Term Care Claim Denied due to:		
8	• Long-Term Care Services Not Covered under the Policy <sup>2</sup>		
9	• Provider/Facility Not Qualified under the Policy <sup>3</sup>		
10	• Benefit Eligibility Criteria Not Met <sup>4</sup>		
11	• Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

## Historical Note

New Appendix F made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

## Department of Insurance

## Appendix G. Rescission Reporting Form for Long-term Policies

RESCISSION REPORTING FORM FOR  
LONG-TERM CARE POLICIESFOR THE STATE OF \_\_\_\_\_  
FOR THE REPORTING YEAR \_\_\_\_\_

Company Name \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Due: March 1 annually

## Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission:

---

---

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\_\_\_\_\_  
Signature\_\_\_\_\_  
Name and Title (please type)\_\_\_\_\_  
Date**Historical Note**

New Appendix G made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

## Appendix H. Things You Should Know Before You Buy Long-term Care Insurance

**Things You Should Know Before You Buy  
Long-term Care Insurance****Long-Term  
Care  
Insurance**

- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

- [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

**(Drafting Instruction:** For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.)

- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

**Medicare**

- Medicare does **not** pay for most long-term care.

**Medicaid**

- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

- Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

- When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

**Shopper's  
Guide**

- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

**Counseling**

- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

**Historical Note**

New Appendix H made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

**Appendix I. Long-term Care Insurance Suitability Letter****Long-term Care Insurance Suitability Letter**

Dear [Applicant]:

Your recent application for long-term care insurance included a “personal worksheet,” which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet “Shopper’s Guide to Long-Term Care Insurance” and the page titled “Things You Should Know Before Buying Long-Term Care Insurance.” Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

**(Drafting Instruction:** Choose the paragraph that applies.)

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

*Please check one box and return in the enclosed envelope.*

☐ Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

**Drafting Instruction:** Delete the phrase in brackets if the applicant did not answer the questions about income.

☐ **No.** I have decided not to buy a policy at this time.

\_\_\_\_\_  
APPLICANT’S SIGNATURE

\_\_\_\_\_  
DATE

*Please return to [issuer] at [address] by [date].*

**Historical Note**

New Appendix I made by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

## Appendix J. Long-term Care Insurance Outline of Coverage

[COMPANY NAME]  
[ADDRESS - CITY & STATE]  
[TELEPHONE NUMBER]  
LONG-TERM CARE INSURANCE

## OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, shall appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] [a group policy] which was issued in the [indicate jurisdiction in which group policy was issued].
2. **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you **READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!**
3. **FEDERAL TAX CONSEQUENCES**

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended.

or

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED**

- (a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

- (1) Policies and certificates that are guaranteed renewable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE.** This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, **IT MAY INCREASE THE PREMIUM YOU PAY.**

- (2) [Policies and certificates that are noncancellable shall contain the following statement:] **RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE.** This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

- (b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy:]

- (c) [Describe waiver of premium provisions or state that there are not such provisions:]

5. **TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS**

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.**

- (a) [Provide a brief description of the right to return - "free look" provision of the policy.]

- (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. **THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

- (a) [For insurance producers] Neither [insert company name] nor its [agents or insurance producers] represent Medicare, the federal government or any state government.

- (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. **LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute-care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. **BENEFITS PROVIDED BY THIS POLICY**

- (a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

- (b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.]

[Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

#### 10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities and providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

#### **THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

#### 12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

#### 13. PREMIUM.

- (a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

#### 14. ADDITIONAL FEATURES.

- (a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

#### 15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

#### **Historical Note**

New Appendix J renumbered from Appendix C and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4).

### **ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE**

#### **R20-6-1101. Incorporation by Reference and Modifications**

- A. The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, October 2008 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.
- B. The Model Regulation is modified as follows:
  - 1. In addition to the terms defined in the Model Regulation, the following definitions apply:
    - a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
    - b. "Commissioner" means the Director of the Arizona Department of Insurance.
    - c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
    - d. "Regulation" means Article.

#### 2. Section 8A(7)(c) reads:

- c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

#### 3. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for

delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

4. Section 8.1(A)(7)(c) is revised to read as follows:  
Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 186(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.
5. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:  
The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.
6. Subsection G of Section 15 is revised as follows:  
G. An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.
7. Tables for PLAN F or HIGH DEDUCTIBLE PLAN F are revised as follows:
  - a. For the table entitled "PARTS A & B" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\* PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\*] PLAN PAYS."
  - b. For the table entitled "PARTS A & B" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,\*\* YOU PAY" to "[IN ADDITION TO \$[2000] DEDUCTIBLE,\*\*] YOU PAY."
  - c. For the table entitled "OTHER BENEFITS - NOT COVERED BY MEDICARE" a column heading is revised from "AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\* PLAN PAYS" to "[AFTER YOU PAY \$[2000] DEDUCTIBLE,\*\*] PLAN PAYS."
  - d. For the table entitled "OTHER BENEFITS - NOT COVERED BY MEDICARE" a column heading is revised from "IN ADDITION TO \$[2000] DEDUCTIBLE,\*\* YOU PAY" to "[IN ADDITION TO \$[2000] DEDUCTIBLE,\*\*] YOU PAY."
8. Section 23 is revised as follows:

- A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.
- B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

#### Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1101 recodified from R4-14-1101 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 15 A.A.R. 996, effective June 2, 2009 (Supp. 09-2).

#### R20-6-1102. Repealed

#### Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1102 recodified from R4-14-1102 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

#### R20-6-1102.01 Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

#### R20-6-1103. Repealed

#### Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1103 recodified from R4-14-



1103 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1104. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1104 recodified from R4-14-1104 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1105. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1105 recodified from R4-14-1105 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1106. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1106 recodified from R4-14-1106 (Supp. 95-1). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1107. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1107 recodified from R4-14-1107 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1108. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for

only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1108 recodified from R4-14-1108 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1109. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1109 recodified from R4-14-1109 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1110. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1110 recodified from R4-14-1110 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1111. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1111 recodified from R4-14-1111 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1112. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1112 recodified from R4-14-1112 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1113. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28,

1992 (Supp. 92-2). R20-6-1113 recodified from R4-14-1113 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1114. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1114 recodified from R4-14-1114 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1115. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1115 recodified from R4-14-1115 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1116. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1116 recodified from R4-14-1116 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1117. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1117 recodified from R4-14-1117 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1118. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1118 recodified from R4-14-1118 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

05-3).

**R20-6-1119. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1119 recodified from R4-14-1119 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1120. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1120 recodified from R4-14-1120 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**R20-6-1121. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix A. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and correction made to heading of form on last page of Appendix A effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix A repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix B. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and corrections made to Plan C (Medicare (Part B) - Medical Services - Per Calendar Year) and Plan J (Other Benefits) effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Appendix B repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix C. Repealed**

## Department of Insurance

**Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix C repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix D. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix D repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix E. Repealed****Historical Note**

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix E repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**Appendix F. Repealed****Historical Note**

Appendix F adopted effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Appendix F repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

**ARTICLE 12. HIV/AIDS: PROHIBITED AND REQUIRED PRACTICES****R20-6-1201. Definitions**

- A. "AIDS" means Acquired Immune Deficiency Syndrome.
- B. "Applicant" means an applicant for a life or disability insurance policy or coverage under a health care plan, as well as any potential certificate holder or dependent covered under such policy or plan.
- C. "Insurer" means life and disability insurers (including but not limited to health insurers), hospital and medical service corporations, and health care services organizations, including all employees, contractors, and agents thereof.
- D. "Person" means any individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or entity.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1201 recodified from R4-14-1201 (Supp. 95-1).

**R20-6-1202. Applications for Insurance**

- A. Insurers shall not use questions on applications for life or disability policies or health care plans that inquire directly or indirectly about:

1. The sexual orientation of an applicant;
2. An applicant's receipt of transfusions of blood or blood products; or
3. Whether or not the applicant has had any HIV-related test, except as provided in subsection (B) of this rule.

- B. Insurers may include specific questions on applications for life or disability insurance policies or health care plans asking if the applicant has ever been diagnosed or treated for AIDS or AIDS-related conditions or tested positive for the presence of HIV antibodies, antigens, or the virus. No adverse underwriting decision shall be made on the basis of any prior positive HIV-related test or tests unless the insurer has verified that the prior test(s) consisted of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturer's directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

**Historical Note**

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1202 recodified from R4-14-1202 (Supp. 95-1).

**R20-6-1203. Testing for HIV; Consent Form**

- A. An insurer may test for HIV infection in the same way that the insurer tests for other conditions that affect mortality and morbidity. No adverse underwriting decision shall be made on the basis of a positive result to an HIV-related test unless the result consists of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturers' directions for use, including but not limited to the manufacturers' specified interpretation of positivity.
- B. If an applicant is requested to take an HIV-related test in connection with an application for a life or disability insurance policy or a health care plan, the insurer shall reveal the use of such test to the applicant and shall obtain the written consent of the applicant prior to the administration of such test. The insurer shall allow the applicant up to 10 days within which to decide whether or not to sign the consent form, and no adverse underwriting decision may be made on the basis of the applicant's delay during this time period. Insurers need not provide pretest counseling to applicants but shall advise applicants of the availability of counseling in accordance with subsection (C) of this rule.
- C. The written consent form, which shall be approved by the Director in advance of its use, shall contain the following information:
  1. Purpose of the consent form. The form shall contain a clear disclosure that the test to be performed is a test for the presence of HIV antibodies, antigens, or the virus, and that underwriting decisions will be based on the results of such test. The form shall further provide notice of a period of not less than 10 days during which the applicant may decide whether or not to sign the form, along with a disclosure that the applicant's refusal to be tested may be used as a reason to deny coverage.
  2. Information on HIV. The form shall provide clear, concise, and accurate information on how the disease is spread and what behavior places persons at risk of contracting the virus.
  3. Pretest counseling considerations. The written consent form shall contain information advising the applicant that counseling is recommended by many public health orga-

nizations and that the applicant may obtain such counseling at the applicant's own expense. The form shall contain current information as provided by the Department regarding the availability in Arizona of free confidential or anonymous counseling through county health departments and through other governmental or government-funded agencies.

4. Disclosure of test results. The form shall advise the applicant that all test results shall be treated confidentially and that results shall be released only to the applicant and the named insurer or upon the applicant's written consent or as otherwise required or allowed by law, including but not limited to the release of information to the Department of Health Services as provided by law.
5. Meaning of positive test results. The form shall advise the applicant of the type of test (including but not limited to antibody, antigen, or viral culture) to be used, and that a positive test result indicates that the applicant has been infected with HIV but does not necessarily have AIDS. The form shall explain that a positive test result will adversely affect the application for insurance.
6. Consent. The consent form shall contain an attestation to be signed by the applicant or, if the applicant lacks legal capacity to consent, a person authorized pursuant to law to consent on behalf of the applicant, that he or she has read and understands the written consent form and voluntarily consents to the performance of a test for HIV and to the disclosure of the test results as described in the consent form. The applicant or the applicant's legal representative shall have the right to request and receive a copy of the written consent form. A photocopy of the form shall be as valid as the original.
7. Optional release of information to personal physician. In addition to the release of information to the insurer provided in the consent form, the applicant may, at the applicant's option, consent to the release of information to the applicant's personal physician. The form shall provide for such release to be separately signed and dated by the applicant, or if the applicant lacks legal capacity to consent, by a person authorized pursuant to law to consent on behalf of the applicant.
8. Time period during which release of information is effective. The consent form shall specify the time period during which any and all release provisions of the consent form shall be effective, but in no case shall such time period exceed 180 days from the date the consent form is signed by the applicant or the applicant's legal representative. No HIV-related information shall be released to any person after the expiration of that time period unless the insurer obtains the express written consent, pursuant to R20-6-1204, of the applicant or, if the applicant lacks legal capacity to consent, by a person authorized by law to consent on behalf of the applicant.

#### Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1203 recodified from R4-14-1203 (Supp. 95-1).

#### **R20-6-1204. Release of Confidential HIV-related Information; Release Form**

- A. Except as required by law or authorized pursuant to a written consent to be tested, an insurer shall not disclose confidential HIV-related information to any person unless a written release form is executed by the applicant or, if the applicant lacks legal capacity to consent to such release, by a person authorized by law to consent to the release of information on behalf of the applicant. The applicant or the applicant's legal representative shall be entitled to receive a copy of the release. A photocopy shall be as valid as the original.

sentative shall be entitled to receive a copy of the release. A photocopy shall be as valid as the original.

- B. Such written release form shall contain the following information:

1. The name and address of the person to whom the information shall be disclosed;
2. The specific purpose for which disclosure is to be made; and
3. The time period during which the written release is to be effective but in no case shall such time period exceed 180 days from the date the release is signed by the applicant or the applicant's legal representative;
4. The signature of the applicant or of the person authorized by law to consent to such release, and the date the release form was signed.

#### Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1204 recodified from R4-14-1204 (Supp. 95-1).

#### **R20-6-1205. Benefits; Prohibited Practices**

- A. Life and disability insurance policies or health care plans that provide benefits for prescription drugs shall provide benefits for any and all drugs and pharmaceutical forms of treatment for HIV and/or AIDS approved by the Food and Drug Administration pursuant to 21 U.S.C. Chapter 9 or licensed by the Food and Drug Administration pursuant to 42 U.S.C. Chapter 6A, including but not limited to Zidovudine, formerly Azidothymidine ("AZT"), Didanosine (ddI) and Zalcitabine (ddC), to the same extent as other prescription drugs and treatments.
- B. Insurers shall provide benefits for HIV, AIDS, and AIDS-related conditions in the same manner and to the same extent as those benefits provided for all other diseases.

#### Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1205 recodified from R4-14-1205 (Supp. 95-1).

### **ARTICLE 13. RESERVED**

### **ARTICLE 14. INSURANCE HOLDING COMPANY**

#### **R20-6-1401. Definitions**

- A. "The Act" means the Insurance Holding Company Systems Act, A.R.S. §§ 20-481 through 20-481.32.
- B. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- C. "Ultimate controlling person" means that person which is not controlled by any other person.
- D. Unless the context otherwise requires, other terms found in these regulations and in A.R.S. § 20-481 are used as defined in the Act. Other nomenclature or terminology is according to Title 20, A.R.S. or industry usage if not defined by Title 20, A.R.S.

#### Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1401 recodified from R4-14-1401 (Supp. 95-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

#### **R20-6-1402. Acquisition of Control – Statement Filing**

- A. A person required to file a statement pursuant to A.R.S. § 20-481.02 shall furnish the required information on Form A, attached hereto as Appendix A and on Form E, attached hereto as Appendix E, and described in subsections (D) and (E) of this section.

- B. The applicant shall promptly advise the Director of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Director's disposition of the application.
- C. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of A.R.S. § 20-481.02(G), the name of the domestic insurer on the cover page should be indicated as follows: "[ABC Insurance Company], a subsidiary of [XYZ Holding Company]." Where a A.R.S. § 20-481.02(G) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.
- D. If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to A.R.S. § 20-481.02(A), that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to A.R.S. § 20-481.25(C).
- E. Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to A.R.S. § 20-481.25, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of A.R.S. § 20-481.25 as set forth in A.R.S. § 20-481.25(B).
- F. In addition to the information required by Form E, the Director may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

#### Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1402 recodified from R4-14-1402 (Supp. 95-1).  
Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

#### R20-6-1403. Annual Registration of Insurers – Statement Filing

- A. An insurer required to file an annual registration statement pursuant to A.R.S. § 20-481.09 shall furnish the required information on Form B, attached hereto as Appendix B, in accordance with the instructions contained in Appendix G.
- B. Amendments to Form B shall be filed in the Form B format with only those items which are being amended reported. Each such amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the amendment and not the date of the original filings.

#### Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1403 recodified from R4-14-1403 (Supp. 95-1).  
Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

#### R20-6-1404. Summary of Registration – Statement Filing

An insurer required to file an annual registration statement pursuant to A.R.S. § 20-481.09 is also required to furnish information required on Form C, attached hereto as Appendix C.

#### Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1404 recodified from R4-14-1404 (Supp. 95-1).  
Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

#### R20-6-1405. Alternative and Consolidated Registrations

- A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under A.R.S. § 20-481.09. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if such

insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

1. The statement or report contains substantially similar information required to be furnished on Form B; and
  2. The filing insurer is the principal insurance company in the insurance holding company system.
- B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.
  - C. With the prior approval of the Director, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection (A) above.
  - D. Any insurer may take advantage of the provisions of A.R.S. §§ 20-481.15 or 20-481.16 without obtaining the prior approval of the Director. The Director, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

#### Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1405 recodified from R4-14-1405 (Supp. 95-1).  
Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

#### R20-6-1406. Disclaimers and Termination of Registration

- A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person, hereinafter referred to in this rule as the "subject," shall contain the following information:
  1. The number of authorized, issued and outstanding voting securities of the subject;
  2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
  3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
  4. A statement explaining why the person should not be considered to control the subject.
- B. A request for termination of registration shall be deemed to have been granted unless the director, within 30 days after receipt of the request, notifies the registrant otherwise.

#### Historical Note

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1406 recodified from R4-14-1406 (Supp. 95-1).  
Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

#### R20-6-1407. Transactions Subject to Prior Notice – Notice Filing

- A. An insurer required to give notice of a proposed transaction pursuant to A.R.S. § 20-481.12 shall furnish the required information on Form D, attached hereto as Appendix D, in accordance with the instructions in Appendix G.
- B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

## Department of Insurance

1. Identify the person providing services and the nature of such services;
  2. Set forth the methods to allocate costs;
  3. Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
  4. Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
  5. State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
  6. Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;
  7. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;
  8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
  9. Include standards for termination of the agreement with and without cause;
  10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
  11. Specify that, if the insurer is placed in receivership or seized by the Director under the Arizona Receivership Act:
    - a. All of the rights of the insurer under the agreement extend to the receiver or Director; and,
    - b. All books and records will immediately be made available to the receiver or the Director, and shall be turned over to the receiver or Director immediately upon the receiver or Director's request;
  12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the Arizona Receivership Act; and
  13. Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Director under the Arizona Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.
2. The date established for payment of the dividend;
  3. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
  4. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
    - a. The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
    - b. Surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;
    - c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
    - d. If the insurer is not a life insurer, the net investment income, net realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
    - e. If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.
  5. A balance sheet and statement of income for the period intervening from the last annual statement filed with the Director and the end of the month preceding the month in which the request for dividend approval is submitted; and
  6. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- B.** Subject to A.R.S. § 20-481.19, each registered insurer shall report to the Director all dividends and other distributions to shareholders within 5 business days following the declaration thereof and at least 10 business days before payment of the dividend or distribution, including the same information required by subsection (A)(4)(a) through (e) of this rule.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1407 recodified from R4-14-1407 (Supp. 95-1).

Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1408. Enterprise Risk Report**

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to A.R.S. § 481.10(D) shall furnish the required information on Form F, attached hereto as Appendix F.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1408 recodified from R4-14-1408 (Supp. 95-1). R20-6-1408 repealed; new Section R20-6-1408 made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1409. Extraordinary Dividends and Other Distributions**

**A.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

1. The amount of the proposed dividend;

**Historical Note**

New Section made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**R20-6-1410. Adequacy of Surplus**

The factors set for in A.R.S. §§ 20-481.01(F) and 20-481.24 are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Director instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Director will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Director will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

**Historical Note**

New Section made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

## Appendix A. Form A - Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer

**STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER  
WITH A DOMESTIC INSURER**

[Name of Domestic Insurer]

By

[Name of Acquiring Person (Applicant)]

Filed with the Arizona Department of Insurance

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

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**ITEM 1. METHOD OF ACQUISITION**

[State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired. State the federal identification number and the NAIC number of the domestic insurer.]

**ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT**

- [(a) State the name and address of the applicant seeking to acquire control over the insurer.]
- [(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.]
- [(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant, including NAIC numbers for all insurers. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.]

**ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT**

[On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual, or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

- (a) Name and business address;
- (b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on;
- (c) Material occupations, positions, officer or employment during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on: if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;
- (d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

Such persons may also submit fingerprints and the fingerprint processing fee in accordance with A.R.S. § 20-481.03(B).]

**ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION**

- [(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.]
- [(b) Explain the criteria used in determining the nature and amount of such consideration.]
- [(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.)

**ITEM 5. FUTURE PLANS OF INSURER**

[Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.]

**ITEM 6. VOTING SECURITIES TO BE ACQUIRED**

[State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.]

**ITEM 7. OWNERSHIP OF VOTING SECURITIES**

[State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.]

**ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER**

[Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.]

**ITEM 9. RECENT PURCHASES OF VOTING SECURITIES**

[Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefore. State whether any such shares so purchased are hypothecated.]

**ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE**

[Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.)

**ITEM 11. AGREEMENTS WITH BROKER-DEALERS**

[Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.]

**ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS**

- [(a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.]
- [(b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. The statements may be prepared on either an individual basis, or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.



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The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.]

- [(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Appendix G.)

**ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT**

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen (15) days after the end of the month in which the acquisition of control occurs.

**ITEM 14. SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

**SIGNATURE**

Pursuant to the requirements of A.R.S. § 20-481.02 \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_  
(Name of Applicant) (Title of Officer)

of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**Appendix B. Form B - Insurance Holding Company System Annual Registration Statement**  
**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT**

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name	Address
_____	_____
_____	_____
_____	_____

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____
_____
_____

**ITEM 1. IDENTITY AND CONTROL OF REGISTRANT**

[Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the federal identification number and the NAIC number of each, the home office address and principal executive offices of each; the date on which each Registrant became part of the insurance holding company system; and the method(s) by which control of each Registrant was acquired and is maintained.]

**ITEM 2. ORGANIZATIONAL CHART**

[Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., - corporation, trust, partnership) and the state or other jurisdiction of domicile.]

**ITEM 3. THE ULTIMATE CONTROLLING PERSON**

[As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;
- (e) The principal business of the person;
- (f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and
- (g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.]

**ITEM 4. BIOGRAPHICAL INFORMATION**

[If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his

or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations.]

**ITEM 5. TRANSACTIONS AND AGREEMENTS**

[Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the Registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the Registrant's business;
- (e) All management agreements, service contracts and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and
- (i) Any pledge of the Registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of A.R.S. § 20-481.09.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving 1/2 of 1% or less of the Registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

The description shall be in a manner as to permit the proper evaluation thereof by the Director and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the Registrant.]

**ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

[A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.]

**ITEM 7.a. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS**

[The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.]

**ITEM 7.b. STATEMENT REGARDING CORPORATE GOVERNANCE AND INTERNAL CONTROLS**

[The insurer shall furnish a statement that the insurer's board of directors oversees corporate governance and internal controls of the insurer and that the insurer's officers or senior management have approved, implemented and maintain and monitor corporate governance and internal control procedures.]

**ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS**

- [(a) Financial statements and exhibits shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

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If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Director otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Director. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Director otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary State and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

- (c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Forms B and G.]

**ITEM 9. FORM C REQUIRED**

[A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.]

**ITEM 10. SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

**SIGNATURE**

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant \_\_\_\_\_ has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

## Department of Insurance

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_  
(Name of Applicant) (Title of Officer)  
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

## Appendix C. Form C - Summary of Registration Statement

**SUMMARY OF CHANGES TO REGISTRATION STATEMENT**

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name Address

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Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

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[Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Director, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.]

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.]

**SIGNATURE AND CERTIFICATION**

[Signature and certification required as follows:]

Pursuant to the requirements of A.R.S. § 20-481.09, Registrant \_\_\_\_\_ has caused this annual registration statement to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

Name of Applicant

BY \_\_\_\_\_  
(Name)\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)\_\_\_\_\_  
(Title)

CERTIFICATION

## Department of Insurance

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_  
(Name of Applicant) (Title of Officer)  
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type or print name beneath)

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

## Appendix D. Form D - Prior Notice of a Transaction

**PRIOR NOTICE OF A TRANSACTION**

Filed with the Insurance Department of the State of Arizona

By

[Name of Registrant]

On Behalf of Following Insurance Companies

Name          Address

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Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

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**ITEM 1. IDENTITY OF PARTIES TO TRANSACTION**

[Furnish the following information for each of the parties to the transaction:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.;
- (e) A description of the nature of the parties' business operations;
- (f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;
- (g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.]

**ITEM 2. DESCRIPTION OF THE TRANSACTION**

[Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under A.R.S. § 20-481.12(B);
- (b) A statement of the nature of the transaction;
- (c) If a notice for amendments or modifications, the reasons for the change and the financial impact on the domestic insurer;
- (d) A statement of how the transaction meets the "fair and reasonable" standard of A.R.S. § 20-481.12(A)(1); and
- (e) The proposed effective date of the transaction.]

**ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS**

[Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.



No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

#### ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE

[If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.]

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.]

#### ITEM 5. REINSURANCE

[If the transaction is a reinsurance agreement or modification thereto, as described by A.R.S. § 20-481.12(B)(3)(b), or a reinsurance pooling agreement or modification thereto as described by A.R.S. § 20-481.12(B)(3)(a), furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.]

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.]

#### ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS

[For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed;
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.]

[For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement;
- (b) A description of the period of time during which the agreement is to be in effect;
- (c) A brief description of each party's expenses or costs covered by the agreement;
- (d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;]
- (e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
- (f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
- (g) A statement regarding compliance with the NAIC Accounting Practices and Procedure Manual regarding expense allocation.]

#### ITEM 7. SIGNATURE AND CERTIFICATION

[Signature and certification required as follows:]

##### SIGNATURE

Pursuant to the requirements of A.R.S. § 20-481.09, \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## Department of Insurance

(SEAL)

By \_\_\_\_\_  
Name of Applicant\_\_\_\_\_  
(Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)\_\_\_\_\_  
(Title)**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_,  
20\_\_\_\_\_, for and on behalf of \_\_\_\_\_; that (s)he is the \_\_\_\_\_

(Name of Applicant)

(Title of Officer)

of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Amended by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**Appendix E. Form E - Pre-acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-domiciliary Insurer Doing Business in this State or by a Domestic Insurer**

**PRE-ACQUISITION NOTIFICATION FORM  
REGARDING THE POTENTIAL COMPETITIVE IMPACT  
OF A PROPOSED MERGER OR ACQUISITION BY A  
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS  
STATE OR BY A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of Other Person Involved in Merger or Acquisition

**Filed with the Arizona Department of Insurance**

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, title, address and telephone number of person completing this statement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. NAME AND ADDRESS**

[State the name and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.]

**ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES**

[State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.]

**ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION**

[State the nature and purpose of the proposed merger or acquisition.]

**ITEM 4. NATURE OF BUSINESS**

[State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.]

**ITEM 5. MARKET AND MARKET SHARE**

[State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in A.R.S. § 20-481.25(D). If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.]

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). Appendix E. *Instructions on Forms*, renumbered to Appendix G; new Appendix E. Form E made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

## Appendix F. Form F - Enterprise Risk Report

**ENTERPRISE RISK REPORT**

Filed with the Arizona Department of Insurance

\_\_\_\_\_  
Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name            Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**ITEM 1. ENTERPRISE RISK**

[The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in A.R.S. § 20-481(4), provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;

Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities with the insurance holding company system;

Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities;

Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system'

Business plan of the insurance holding company system and summarized strategies for next 12 months;

Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in last year;

Identification of insurance holding company system capital resources and material distribution patterns;

Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (include both the rating score and outlook);

Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

[The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.]

**ITEM 2. OBLIGATION TO REPORT**

[If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.]

**Historical Note**

Appendix F, Form F made by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**Appendix G. Instructions on Forms A, B, C, D, E and F****INSTRUCTIONS ON FORMS A, B, C, D, E AND F****FORMS - GENERAL REQUIREMENTS**

Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by A.R.S. §§ 20-481.02, 20-481.09, 20-481.12 and 20-481.25. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

One original paper statement excluding exhibits, and all other papers and documents shall be filed with the Director. The statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement. All paper filings shall be by personal delivery or mail addressed to: Arizona Department of Insurance, Financial Affairs Division.

In addition to the filed paper statement, a copy of the statement, including exhibits, and all other papers and documents filed as a part thereof, shall be filed electronically.

All filed documents shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

If an applicant requests a hearing on a consolidated basis under A.R.S. § 20-481.07, in addition to filing the Form A with the Director, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

**FORMS - INCORPORATION BY REFERENCE, SUMMARIES AND OMISSIONS**

Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Director which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Director which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

**FORMS - INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH**

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Director as a separate document:

- (1) Identifying the information, document or report in question;
- (2) Stating why the filing thereof at the time required is impractical; and
- (3) Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Director within 60 days after receipt thereof enters an order denying the request.

**FORMS - ADDITIONAL INFORMATION AND EXHIBITS**

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Director may request such further information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the forms. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

**Historical Note**

Appendix G. *Instructions on Forms*, renumbered from Appendix E. *Instructions on Forms*, with heading amended to include new Appendix F, by exempt rulemaking at 21 A.A.R. 54, effective February 14, 2015 (Supp. 14-4).

**ARTICLE 15. RESERVED****ARTICLE 16. CREDIT FOR REINSURANCE****R20-6-1601. Credit for Reinsurance – Reinsurer Licensed in Arizona**

Pursuant to A.R.S. § 20-261.05(B), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in Arizona as of any date on which statutory financial statement credit for reinsurance is claimed.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1601 recodified from R4-14-1601 (Supp. 95-1).  
Amended effective October 9, 1998 (Supp. 98-4).  
Amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1602. Credit for Reinsurance – Accredited Reinsurers**

- A. Pursuant to A.R.S. § 20-261.05(C), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Arizona as of the date on which statutory financial statement credit for reinsurance is claimed.
- B. An accredited reinsurer must:
  1. File a properly executed Form AR-1, attached as Appendix A to this Article, as evidence of its submission to the Director's jurisdiction and to the Director's authority to examine its books and records;
  2. File with the Director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
  3. File annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
  4. Maintain a surplus as regards policyholders in an amount not less than \$20 million, or obtain the affirmative approval of the Director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.
- C. If the Director determines that the assuming insurer has failed to meet or maintain any of these qualifications, the Director may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this Section if the assuming insurer's accreditation has been revoked by the Director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Director.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1602 recodified from R4-14-1602 (Supp. 95-1). R20-6-1602 renumbered to R20-6-1607; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1603. Credit for Reinsurance – Reinsurer Domiciled in Another State**

- A. Pursuant to A.R.S. § 20-261.05(D), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial credit for reinsurance is claimed:
  1. Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under A.R.S. §§ 20-261.01 through 20-261.08 and this Article;
  2. Maintains a surplus as regards policyholders in an amount not less than \$20 million; and
  3. Files a properly executed Form AR-1 (Exhibit A) with the Director as evidence of the submission to the Director's authority to examine its books and records.
- B. The provisions of this Section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this Section, "substantially similar" standards means credit for reinsurance standards that the Director determines equal or exceed the standards of A.R.S. §§ 20-261.01 through 20-261.08 and this Article.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1603 recodified from R4-14-1603 (Supp. 95-1). R20-6-1603 renumbered to R20-6-1608; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1604. Credit for Reinsurance – Reinsurers Maintaining Trust Funds**

- A. Pursuant to A.R.S. § 20-261.05(E), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in A.R.S. § 20-261.03, for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund.
- B. The following requirements apply to the following categories of assuming insurer:
  1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million, except as provided in subsection (B)(2) of this Section.
  2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of

## Department of Insurance

- U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusted surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities, attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.
3. The trust fund for a group including incorporated and individual unincorporated underwriters:
    - a. Shall consist of:
      - i. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;
      - ii. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this Article, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and
      - iii. In addition to these trusts, the group shall maintain a trusted surplus of which \$100 million shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.
    - b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Director:
      - i. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or
      - ii. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.
  4. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10 billion (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:
    - a. Consist of funds in trust in an amount no less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;
    - b. Maintain a joint trusted surplus of which \$100 million shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and
    - c. File a properly executed Form AR-1 (Exhibit A) as evidence of the submission to the Director's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.
    - d. Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.
  - C. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.
    1. The trust instrument shall provide that:
      - a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States;
      - b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;
      - c. The trust shall be subject to examination as determined by the commissioner;
      - d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
      - e. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.
    2. Notwithstanding any other provisions in the trust instrument;
      - a. If the trust fund is inadequate because it contains an amount less than the amount required by this Section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.
      - b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with

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- the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.
- c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
  - d. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.
- D.** For purposes of this Section, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:
1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:
    - a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
    - b. Reserves for losses reported and outstanding;
    - c. Reserves for losses incurred but not reported;
    - d. Reserves for allocated loss expenses; and
    - e. Unearned premiums.
  2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:
    - a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
    - b. Aggregate reserves for accident and health policies;
    - c. Deposit funds and other liabilities without life or disability contingencies; and
    - d. Liabilities for policy and contract claims.
- E.** Assets deposited in trusts established pursuant to A.R.S. § 20-261.05 and this Section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in A.R.S. § 20-261.03, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution as defined in A.R.S. § 20-261.03, and investments of the type specified in this subsection (E), but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subsections (E)(1)(e), (E)(3), (E)(6)(b) or (E)(7) of this Section, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of A.R.S. § 261.05 shall be invested only as follows:
1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:
    - a. The United States or by any agency or instrumentality of the United States;
    - b. A state of the United States;
    - c. A territory, possession or other governmental unit of the United States;
  - d. An agency or instrumentality of a governmental unit referred to in subsections (E)(1)(b) and (E)(1)(c) of this Section if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection (E)(1)(d) if payable solely out of special assessments on properties benefited by local improvements; or
  - e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:
    - a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
    - b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in Arizona and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
    - c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;
  3. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;
  4. An investment made pursuant to the provisions of subsections (E)(1), (E)(2) or (E)(3) of this Section shall be subject to the following additional limitations:
    - a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5% of the assets of the trust;
    - b. An investment in any one mortgage-related security shall not exceed 5% of the assets of the trust;
    - c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and
    - d. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution’s obligations are eligible as investments under subsections (E)(2)(a) and (E)(2)(c) of this Section, but shall not exceed 2% of the assets of the trust.



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5. As used in this Section:
  - a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
    - i. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that: (1) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and (2) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. 1703; or
    - ii. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (E)(5)(a)(i) of this Section;
  - b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.
6. Equity interests.
  - a. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
    - i. Its obligations and preferred shares, if any, are eligible as investments under this Section; and
    - ii. The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. 78a - 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this Section an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;
  - b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:
    - i. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and
    - ii. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;
  - c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection (E)(6), when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection (E)(6), shall not exceed 10% of the assets in the trust;
7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.
8. Investment companies
  - a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. 80a, are permissible investments if the investment company:
    - i. Invests at least 90% of its assets in the types of securities that qualify as an investment under subsection (E)(1), (E)(2) or (E)(3) of this Section or invests in securities that are determined by the Director to be substantively similar to the types of securities set forth in subsection (E)(1), (E)(2) or (E)(3) of this Section; or
    - ii. Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subsection (E)(6)(a) of this Section;
  - b. Investments made by a trust in investment companies under this subsection (E)(8) shall not exceed the following limitations:
    - i. An investment in an investment company qualifying under subsection (E)(8)(a)(i) of this Section shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust, and
    - ii. Investments in an investment company qualifying under subsection (E)(8)(a)(ii) of this Section shall not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subsection (E)(6)(a) of this Section.
9. Letters of Credit
  - a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for

- the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
- b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

- F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section R20-6-1606 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this Section.

#### Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1604 recodified from R4-14-1604 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4). R20-6-1604 renumbered to R20-6-1609; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

#### R20-6-1605. Credit for Reinsurance – Certified Reinsurers

- A. Pursuant to A.R.S. §§ 20-261.05(F), (G) and (H), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in Arizona at all times for which statutory financial statement credit for reinsurance is claimed under this Section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Director. The security shall be in a form consistent with the provisions of A.R.S. §§ 20-261.05(F), (G) and (H), 20-261.06 and Sections R20-6-1608, R20-6-1609 or R20-6-1610. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1.
 

Ratings	Security Required
Secure-1	0%
Secure-2	10%
Secure-3	20%
Secure-4	50%
Secure-5	75%
Vulnerable-6	100%
2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
3. The Director shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.
4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Director. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:
  - a. Line 1: Fire
  - b. Line 2: Allied Lines
  - c. Line 3: Farmowners multiple peril

- d. Line 4: Homeowners multiple peril
- e. Line 5: Commercial multiple peril
- f. Line 9: Inland Marine
- g. Line 12: Earthquake
- h. Line 21: Auto physical damage
5. Credit for reinsurance under this Section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this Section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
6. Nothing in this Section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

#### B. Certification Procedure

1. The Director shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Director may not take final action on the application until at least thirty days after posting the notice required by this subsection (B)(1).
2. The Director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection A of this Section. The Director shall publish a list of all certified reinsurers and their ratings.
3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
  - a. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the Director pursuant to subsection C of this Section.
  - b. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250 million calculated in accordance with subsection (B)(4)(h) of this Section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250 million and a central fund containing a balance of at least \$250 million.
  - c. The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the Director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
    - i. Standard & Poor's;
    - ii. Moody's Investors Service;
    - iii. Fitch Ratings;
    - iv. A.M. Best Company; or

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- v. Any other Nationally Recognized Statistical Rating Organization.
- d. The certified reinsurer must comply with any other requirements reasonably imposed by the Director.
- 4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:
  - a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Rat-ings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulner-able – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

- b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- c. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- d. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (instructions attached as Exhibit C) (for property/casualty reinsurers) or Form CR-S (instructions attached as Exhibit D) (for life and health reinsurers);
- e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables,

- including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- f. Regulatory actions against the certified reinsurer;
- g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(4)(h) below;
- h. For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Director will consider audited financial statements for the last three years filed with its non-U.S. jurisdiction supervisor;
- i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
- j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
- k. Any other information deemed relevant by the Director.
- 5. Based on the analysis conducted under subsection (B)(4)(e) of this Section of a certified reinsurer's reputation for prompt payment of claims, the Director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the Director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subsection (B)(4)(a) of this Section if the Director finds that:
  - a. more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed \$100 thousand for each cedent; or
  - b. the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds \$50 million.
- 6. The assuming insurer must submit a properly executed Form CR-1 (attached as Exhibit B) as evidence of its submission to the jurisdiction of Arizona, appointment of the Director as an agent for service of process in Arizona, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Director shall not certify any assuming insurer that is domiciled in a jurisdiction that the Director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
- 7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the Director, both with respect to an initial application for certification and on an ongoing basis. All information

submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under A.R.S. § 20-158 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

- a. Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;
  - b. Annually, Form CR-F or CR-S, as applicable;
  - c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (B)(7)(d) below;
  - d. Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;
  - e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
  - f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and
  - g. Any other information that the Director may reasonably require.
8. Change in Rating or Revocation of Certification.
- a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (B)(4)(a) of this Section.
  - b. The Director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this Section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
  - c. If the rating of a certified reinsurer is upgraded by the Director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Director, the Director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
  - d. Upon revocation of the certification of a certified reinsurer by the Director, the assuming insurer shall

be required to post security in accordance with Section R20-6-1607 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section R20-6-1604, the Director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Director to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

1. If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Director shall publish notice and evidence of such recognition in an appropriate manner. The Director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
2. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the Director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Director, include but are not limited to the following:
  - a. The framework under which the assuming insurer is regulated.
  - b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
  - c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
  - d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
  - e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Director in particular.
  - f. The history of performance by assuming insurers in the domiciliary jurisdiction.
  - g. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Director has determined that it does not adequately and

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promptly enforce final U.S. judgments or arbitration awards.

- h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
- i. Any other matters deemed relevant by the Director.
- 3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The Director shall consider this list in determining qualified jurisdictions. If the Director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Director shall provide thoroughly documented justification with respect to the criteria provided under subsections (C)(2)(a) through (i) of this Section.
- 4. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.
- D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.
  - 1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 (Exhibit B) and such additional information as the Director requires. The assuming insurer shall be considered to be a certified reinsurer in Arizona.
  - 2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in Arizona as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Director of any change in its status or rating within ten days after receiving notice of the change.
  - 3. The Director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (B)(8) of this Section.
  - 4. The Director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Director suspends or revokes the certified reinsurer's certification in accordance with subsection (B)(8) of this Section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in Arizona.
- E. Mandatory Funding Clause. In addition to the clauses required under Section R20-6-1611, reinsurance contracts entered into or renewed under this Section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this Section for reinsurance ceded to the certified reinsurer.
- F. The Director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1605 recodified from R4-14-1605 (Supp. 95-1). R20-6-1605 renumbered to R20-6-1610; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3,

effective November 30, 2015 (Supp. 15-4).

**R20-6-1606. Credit for Reinsurance Required by Law**

Pursuant to A.R.S. § 20-261.05(I), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. §§ 20-261.05(B) through (H) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this Section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1606 recodified from R4-14-1606 (Supp. 95-1). R20-6-1606 renumbered to R20-6-1611; new Section made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1607. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections R20-6-1601 through R20-6-1606**

- A. Pursuant to A.R.S. § 20-261.06, the Director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of A.R.S. § 20-261.05 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in A.R.S. § 20-261.03. This security may be in the form of any of the following:
  - 1. Cash;
  - 2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
  - 3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in A.R.S. § 20-261.03, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or
  - 4. Any other form of security acceptable to the Director.
- B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this Section shall be allowed only when the requirements of Section R20-6-1611 and the applicable portions of Sections R20-6-1608, R20-6-1609 or R20-6-1610 have been satisfied.

**Historical Note**

Adopted effective February 3, 1993 (Supp. 93-1). R20-6-1607 recodified from R4-14-1607 (Supp. 95-1). Section R20-6-1607 renumbered to R20-6-1612; new Section R20-6-1607 renumbered from R20-6-1602 and amended

by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1608. Trust Agreements Qualified under Section R20-6-1607**

**A.** As used in this Section:

1. "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator.
2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
3. "Obligations," as used in subsection (B)(11) of this Section, means:
  - a. Reinsured losses and allocated loss expenses paid by the ceding company but not recovered from the assuming insurer;
  - b. Reserves for reinsured losses reported and outstanding;
  - c. Reserves for reinsured losses incurred but not reported; and
  - d. Reserves for allocated reinsured loss expenses and unearned premiums.

**B.** Required conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution as defined in A.R.S. § 20-261.03.
2. The trust agreement shall create a trust account into which assets shall be deposited.
3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.
4. The trust agreement shall provide that:
  - a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
  - b. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
  - c. It is not subject to any conditions or qualifications outside of the trust agreement; and
  - d. It shall not contain references to any other agreements or documents except as provided for in subsections (B)(11) and (12) of this Section.
5. The trust agreement shall be established for the sole benefit of the beneficiary.
6. The trust agreement shall require the trustee to:
  - a. Receive assets and hold all assets in a safe place;
  - b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;
  - c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
  - d. Notify the grantor and the beneficiary within ten days, of any deposits to or withdrawals from the trust account;
  - e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the

beneficiary and deliver physical custody of the assets to the beneficiary; and

- f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
7. The trust agreement shall provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.
8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.
9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.
10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.
11. Notwithstanding other provisions of this Section, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
  - a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
  - b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
  - c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in A.R.S. § 20-261.03 apart from its general assets, in trust for such uses and purposes specified in subsections (11)(a) and (b) above as may remain executory after such

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withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this Section, when a trust agreement is established to meet the requirements of Section R20-6-1607 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- a. To pay or reimburse the ceding insurer for:
  - i. The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
  - ii. The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provision of the policies reinsured under the reinsurance agreement.
- b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer, or
- c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in subsections (12)(a) and (b) above as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this subsection must be included in the reinsurance agreement.

**C. Permitted conditions**

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the

beneficiary of a written notice of removal, effective not less than ninety days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
  3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subsection (D)(1)(b) of this Section.
  4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
  5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.
- D. Additional conditions applicable to reinsurance agreements:**
1. A reinsurance agreement may contain provisions that:
    - a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
    - b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
    - c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
    - d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

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- i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; and
  - ii. To pay or reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
  - iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding reinsurer; or
  - iv. To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
- 2. The reinsurance agreement also may contain provisions that:
  - a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
    - i. The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
    - ii. After withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.
  - b. Provide for the return of any amount withdrawn in excess of the actual amounts required for subsection (D)(1)(d) of this Section, and for interest payments at a rate not in excess of the prime rate of interest on such amounts;
  - c. Permit the award by any arbitration panel or court of competent jurisdiction of:
    - i. Interest at a rate different from that provided in subsection (D)(2)(b) of this Section;
    - ii. Court or arbitration costs;
    - iii. Attorney's fees; and
    - iv. Any other reasonable expenses.
- E. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Director in compliance with the provisions of this Article when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
- F. Existing agreements. Notwithstanding the effective date of this Article, any trust agreement or underlying reinsurance agreement in existence and approved by the Director prior to the effective date of this Article will continue to be acceptable until December 31, 2016, at which time the agreements will have to fully comply with this Section for the trust agreement to be acceptable.
- G. The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (A)(1) of this Section shall not be construed to affect any actions or rights that the Director may take or possess pursuant to the provisions of the laws of Arizona.

**Historical Note**

New Section R20-6-1608 renumbered from R20-6-1603 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1609. Letters of Credit Qualified under Section R20-6-1607.**

- A. The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined A.R.S. § 20-261.03. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subsection (H)(1) of this Section. As used in this Section, "beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).
- B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.
- C. A letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
- D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for no less than thirty days' notice prior to expiration date or nonrenewal.
- E. The letter of credit shall state whether it is subject to and governed by the laws of Arizona or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98). This incorporation by reference contains no future additions or amendments. All drafts of letters of credit drawn according to UCP 600 or ISP98 shall be presentable at an office in the United States of a qualified United States financial institution.
- F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP 600 occur.



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**G.** If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection A of this Section, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
2. The “evergreen clause” shall provide for thirty days notice prior to expiration date or nonrenewal.

**H.** Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
  - a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;
  - b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
    - i. To pay or reimburse the ceding insurer for the assuming insurer’s share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
    - ii. To pay or reimburse the ceding insurer for the assuming insurer’s share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
    - iii. To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
    - iv. Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer’s entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer’s share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsections (H)(1)(b)(i), (ii) and (iii) of this Section as may remain after withdrawal and for any period after the termination date.
  - c. All of the provisions of subsections (H)(1)(a) and (b) of this Section shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subsection (H)(1) of this Section shall preclude the ceding insurer and assuming insurer from providing for:

- a. An interest payment, at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (H)(1)(b) of this Section; or
- b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

**Historical Note**

New Section R20-6-1609 renumbered from R20-6-1604 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1610. Other Security**

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

**Historical Note**

New Section R20-6-1610 renumbered from R20-6-1605 by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-1611. Reinsurance Contract**

Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections R20-6-1601 through R20-6-1605 or R20-6-1607 of this Article or otherwise in compliance with A.R.S. § 20-261.05 after the adoption of this Article unless the reinsurance agreement:

1. Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to A.R.S. § 20-261(C);
2. Includes a provision pursuant to A.R.S. § 20-261.05 whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and
3. Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**Historical Note**

New Section R20-6-1611 renumbered from R20-6-1606 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**R20-6-6012. Contracts Affected**

All new and renewal reinsurance transactions entered into after the effective date of this Article shall conform to the requirements of A.R.S. §§ 20-261.01 through 20-261.08 and this Article if credit is to be given to the ceding insurer for such reinsurance.

**Historical Note**

New Section R20-6-1612 renumbered from R20-6-1607 and amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**Exhibit A. Form AR-1, Certificate of Assuming Insurer**

# FORM AR-1, CERTIFICATE OF ASSUMING INSURER

I, \_\_\_\_\_, \_\_\_\_\_,  
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in

\_\_\_\_\_, hereby certify that  
(name of state)

\_\_\_\_\_, (“Assuming Insurer”):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Director of Insurance of the State of Arizona as its lawful attorney upon whom may be served any lawful process in any action, suit or legal proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Submits to the authority of the Insurance Director of Arizona to examine its books and records and agrees to bear the expense of any such examination.
4. Submits with this form a current list of insurers domiciled in

(ceding insurer's state of domicile)

undertakes to submit additions to or deletions from the list to the Insurance Director at least once per calendar quarter.

Dated: \_\_\_\_\_

(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)

(title of officer)

### Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). Exhibit A amended by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**Exhibit B. Form CR-1, Certificate of Certified Reinsurer**

# FORM CR-1, CERTIFICATE OF CERTIFIED REINSURER

I, \_\_\_\_\_,  
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer under  
(name of assuming insurer)

a reinsurance agreement with one or more insurers domiciled in \_\_\_\_\_  
(name of state)

in order to be considered for approval in this state, hereby certify that \_\_\_\_\_ (“Assuming Insurer”):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_ for the adjudication of any issue arising out of the (ceding insurer's state of domicile) reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of \_\_\_\_\_ (ceding insurer's state of domicile) as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.

4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefore.

5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with this Article.

6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.

7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with this Article.

8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: \_\_\_\_\_

(name of assuming insurer)

(name of officer)

(title of officer)

### Historical Note

Adopted effective February 3, 1993 (Supp. 93-1). Exhibit B repealed; new Exhibit B made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**Exhibit C. Form CR-F Instructions****Form CR-F Instructions****Part 1 - Assumed Reinsurance as of December 31, Current Year (000 Omitted)**

Create a spreadsheet with the following columns (total each column 5 through 15):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Name of Reinsured
4. Domiciliary Jurisdiction
5. Assumed Premium
6. Reinsurance on Paid Losses and Loss Adjustment Expenses
7. Reinsurance on Known Case Losses and LAE
8. Cols. 6 + 7
9. Contingent Commissions Payable
10. Assumed Premium Receivable
11. Unearned Premium
12. Funds Held By or Deposited With Reinsured Companies
13. Letters of Credit Posted
14. Amount of Assets Pledged or Compensating Balances to Secure Letters of Credit
15. Amount of Assets Pledged or Collateral Held in Trust

Each row shall list each insurer for which reinsurance is assumed for the calendar year.

**Part 2 - Ceded Reinsurance as of December 31, Current Year (000 Omitted)**

Create a spreadsheet with the following columns (total each column 6 through 19):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Name of Reinsurer
4. Domiciliary Jurisdiction
5. Reinsurance Contracts Ceding 75% or More of Direct Premiums Written
6. Reinsurance Premiums Ceded
7. Reinsurance Recoverable on Paid Losses
8. Reinsurance Recoverable on Paid LAE
9. Reinsurance Recoverable on Known Case Loss Reserves
10. Reinsurance Recoverable on Known Case LAE Reserves
11. Reinsurance Recoverable on IBNR Loss Reserves
12. Reinsurance Recoverable on IBNR LAE Reserves
13. Reinsurance Recoverable on Unearned Premiums
14. Reinsurance Recoverable on Contingent Commissions
15. Cols. 7 through 14 Totals
16. Reinsurance Payable Ceded Balances Payable
17. Reinsurance Payable Other Amounts Due to Reinsurers
18. Net Amount Recoverable From Reinsurers, Cols. 15 – [16 + 17]
19. Funds Held by Company Under Reinsurance Treaties

Each row shall list each insurer to whom reinsurance was ceded for the calendar year.

**Historical Note**

Exhibit C made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**Exhibit D. Form CR-S Instructions****Form CR-S Instructions**

**Part 1 – Section 1.** Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsured Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 7 through 12):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Reinsured
5. Location
6. Type of Reinsurance Assumed
7. Amount of In Force at End of Year
8. Reserve
9. Premiums
10. Reinsurance Payable on Paid and Unpaid Losses
11. Modified Coinsurance Reserve
12. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was assumed (life insurance, annuities, deposit funds and other liabilities without life or disability contingencies, and related benefits) for the calendar year.

**Part 1 – Section 2.** Reinsurance Assumed Accident and Health Insurance Listed by Reinsured Company as of December 31, Current Year

Please create a spreadsheet with the following columns (total columns 7 through 12):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Reinsured
5. Domiciliary Jurisdiction
6. Type of Reinsurance Assumed
7. Premiums
8. Unearned Premiums
9. Reserve Liability Other Than For Unearned Premiums
10. Reinsurance Payable on Paid and Unpaid Losses
11. Modified Coinsurance Reserve
12. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was assumed (accident and health insurance) for the calendar year.

**Part 2.** Reinsurance Recoverable on Paid and Unpaid Losses Listed by Reinsuring Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 6 and 7):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location
6. Paid Losses
7. Unpaid Losses

Each row shall list each insurer for which reinsurance on paid and unpaid losses is recoverable.

**Part 3 – Section 1.** Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits Listed by Reinsuring Company as of December 31, Current Year

Create a spreadsheet with the following columns (total each column 7 through 14):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date

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4. Name of Company
5. Location
6. Type of Reinsurance Ceded
7. Amount in Force at End of Year
8. Reserve Credit Taken Current Year
9. Reserve Credit Taken Prior Year
10. Premiums
11. Outstanding Surplus Relief Current Year
12. Outstanding Surplus Relief Prior Year
13. Modified Coinsurance Reserve
14. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was ceded (life insurance, annuities, deposit funds and other liabilities without life or disability contingencies and related benefits).

**Part 3 – Section 2.** Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year  
Create a spreadsheet with the following columns (total each column 7 through 13):

1. ID Number/Company Code
2. This column is intentionally left blank
3. Effective Date
4. Name of Company
5. Location
6. Type
7. Premiums
8. Unearned Premiums (Estimated)
9. Reserve Credit Taken other than for Unearned Premiums
10. Outstanding Surplus Relief Current Year
11. Outstanding Surplus Relief Prior Year
12. Modified Coinsurance Reserve
13. Funds Withheld Under Coinsurance

Each row shall list each insurer for which reinsurance was ceded (accident and health insurance).

**Historical Note**

Exhibit D made by final exempt rulemaking, under Laws 2015, Ch. 119, § 3, effective November 30, 2015 (Supp. 15-4).

**ARTICLE 17. EXAMINATIONS****R20-6-1701. Definitions**

- A. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the Director.
- B. "Examination" shall be defined for purposes of this Article to mean any examination relating to the financial condition of a company.
- C. "Examiner" means any individual or firm having been authorized by the Director to conduct an examination under this Article.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1701 recodified from R4-14-1701 (Supp. 95-1).

**R20-6-1702. Authority, Scope, and Scheduling of Examinations**

- A. The Director shall examine an insurer under A.R.S. § 20-156(A) at least once every five years.
- B. Instead of the examination under subsection (A), the Director may accept the most recent examination report prepared by the National Association of Insurance Commissioners insurance regulatory authority of another state on any foreign or alien insurer if:
  - 1. The insurance regulatory authority was accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program at the time of the examination,
  - 2. A National Association of Insurance Commissioners accredited insurance regulatory authority supervised the examination, or
  - 3. At least one examiner employed or contracted by a National Association of Insurance Commissioners accredited insurance regulatory authority:
    - a. Participated in and reviewed the examination work papers and report, and
    - b. Signed an affidavit stating that the examination was performed in a manner consistent with the standards and procedures required by the National Association of Insurance Commissioners accredited insurance regulatory authority.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1).  
 Amended effective October 27, 1993 (Supp. 93-4). R20-6-1702 recodified from R4-14-1702 (Supp. 95-1).  
 Amended by final rulemaking at 11 A.A.R. 2975, effective September 10, 2005 (Supp. 05-3).

**R20-6-1703. Conduct of Examinations**

- A. Upon determining that an examination should be conducted, the Director or the Director's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination.
- B. Nothing contained in this Article shall be construed to limit the Director's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state or to pursue such action concurrent with the examination.
- C. The Director may disclose the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country or to law enforcement officials of this or any other state or agency of the federal government at any time. Prior to

making such disclosure, the Director may require such other department or office to agree in writing to hold as confidential the examination report, preliminary examination report or results or any matter relating thereto until such time as the examination report, preliminary examination report or results or matter relating thereto are made public by the Director.

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1703 recodified from R4-14-1703 (Supp. 95-1).

**R20-6-1704. Examination Reports**

- A. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find warranted from the facts.
- B. No later than 60 days following completion of the examination, the examiner in charge shall submit to the Department a verified written report of examination under oath. Upon receipt of the verified report, the Department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not less than 10 days nor more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.
- C. Within 30 days after the end of the period allowed for the receipt of written submissions or rebuttals, the Director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and shall:
  - 1. File the examination report as submitted or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the Director, the Director may order the company to take any action necessary and appropriate to cure such violation; or
  - 2. Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and resubmission pursuant to subsection (B).

**Historical Note**

Adopted effective February 22, 1993 (Supp. 93-1). R20-6-1704 recodified from R4-14-1704 (Supp. 95-1).

**ARTICLE 18. PREPAID DENTAL PLAN ORGANIZATIONS****R20-6-1801. Definitions**

In this Chapter, the following definitions apply:

"Appointment" means a first-available, initial, non-emergent, diagnostic visit to a dentist.

"Board certified" means a dentist who is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association.

"Board eligible" means a dentist who successfully completes an approved training program in a specialty field recognized by the American Dental Association.

"Chief executive officer" means the person who has the authority and responsibility for the operation of a prepaid dental plan Organization according to applicable legal requirements and policies approved by the governing authority.

"Dental hygienist" means a person who is licensed to practice dental hygiene under A.R.S. § 32-1281 et seq.

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“Dentist” means a person who is licensed to practice dentistry under A.R.S. § 32-1201 et seq.

“Department” means the Arizona Department of Insurance.

“Diagnostic service” means a dental service intended to identify a dental abnormality, and includes a radiograph and a clinical exam.

“Director” means the director of the Arizona Department of Insurance.

“Emergency dental service” means a dental service intended to evaluate and stabilize a dental condition of recent onset, control bleeding, and relieve pain, and includes the provision of local anesthesia, and elimination of acute infection, but does not mean a medication that is prescribed by the dentist.

“General dentist” means a dentist whose practice is not limited to a specific area and who is not board certified.

“Governing authority” means the persons, including a board of trustees or board of directors, who have the ultimate authority and responsibility for the direction of a prepaid dental plan Organization.

“Organization” means a prepaid dental plan organization as defined in A.R.S. § 20-1001.

“Patient” means a person who is being attended by a dentist or dental hygienist to receive an examination, diagnosis, or dental treatment, or a combination of an examination, diagnosis, and dental treatment.

“Preventive service” means dental care intended to maintain dental health and prevent dental disease, including any combination of oral hygiene education, routine prophylaxis, and application of fluorides.

“Prophylaxis” means cleaning the teeth of a patient with healthy tissue using mild abrasives and dental instruments to remove plaque, calculus, and stains above the gum line.

“Provider directory” means an Organization’s published listing of all contracted network dentists.

“Radiograph” means a picture produced on a sensitive surface by a form of radiation other than light, including x-ray.

“Restorative service” means the use of a metal or composite filling or crown.

“Specialist” means a dentist whose practice is limited to one of the nine specialty categories recognized by the American Dental Association: endodontics, oral and maxillofacial surgery, oral and maxillofacial radiology, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.

“Treatment plan” means a statement of the services to be performed to eliminate or alleviate a patient’s symptoms or disease, based on a dentist’s assessment of the patient’s dental history, the clinical examination, and the dentist’s diagnosis.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

#### R20-6-1802. Application for Certificate of Authority

- A. A person who wishes to operate as prepaid dental plan organization in Arizona shall file an application for certificate of authority under A.R.S. § 20-1003 for the director’s review and approval under A.R.S. § 20-1004. The application shall contain all the information required in A.R.S. § 20-1003 and R20-6-1802.

- B. An authorized insurer shall issue the fidelity bond required under A.R.S. § 20-1004(A)(4).
- C. An Organization shall not commence operation of, or service under, a prepaid dental plan without approval of the director under A.R.S. § 20-1004.
- D. An application is deemed filed with the director when the director receives it. The applicant shall include fees under A.R.S. § 20-167 with the application.
- E. An applicant not domiciled in this state shall file a power of attorney as required by A.R.S. § 20-1003(A)(11) on a Department-prescribed form, with the application.
- F. Within 180 days after the director issues a certificate of authority to an Organization, the Organization shall notify the director in writing of each member appointed to the board of directors for the Organization under A.R.S. § 20-1003(A)(4).
- G. At the time it submits its application for certificate of authority, an Organization shall submit a written program of compliance with supporting documents that specify how the Organization will comply with the provisions of this Article. The written program of compliance shall contain the following:
1. The responsibilities of and qualifications for the following positions:
    - a. The Organization’s chief executive officer, and
    - b. The Organization’s dental director;
  2. A plan for provision of basic dental services required under R20-6-1806(A) and a copy of the schedule of benefits required under R28-6-1806(B);
  3. A description of the system for delivery of services under R20-6-1807;
  4. A description of the geographic area designated under R20-6-1808;
  5. A plan for compliance with contract requirements under R20-6-1809 and a copy of a contract with a general dentist and a specialist;
  6. A plan for compliance with records requirements under R20-6-1810; and
  7. The Organization’s quality improvement plan under R20-6-1811.
- H. An application shall include the following information:
1. The proposed number of members, and
  2. A copy of a letter from each network dentist that documents the dentist’s intent to contract with the Organization to provide services to patients under the Organization’s prepaid dental plan.
- I. The director may require that an applicant for a certificate of authority under A.R.S. § 20-1003(A)(14) submit information that discloses biographical, employment and business financial history, criminal activity, fingerprints, or any information that relates to the ability to operate a prepaid dental plan for principals, principal officers, controlling persons, and insurance producers of the applicant, if necessary for the protection of residents of this State.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

#### R20-6-1803. Chief Executive Officer

- A. The governing authority shall appoint a chief executive officer (CEO). The CEO shall have:
1. The education and experience to manage the Organization, and
  2. Responsibility for the geographic area in Arizona that the Organization serves, including:
    - a. Implementing the policies of the governing authority, and



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- b. Maintaining adequate personnel to ensure compliance with applicable Arizona statutes and rules.
- B. The governing authority shall notify the Department within ten days after the effective date of a change in the appointment of the CEO.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1804. Dental Director**

- A. The governing authority or CEO shall appoint as the Organization's dental director a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia.
- B. The dental director shall perform at least the following functions for the Organization's geographic area in Arizona:
  - 1. Participate on the Organization's quality improvement committee required under R20-6-1811;
  - 2. Oversee the Organization's program and processes for:
    - a. Maintaining and improving clinical quality of care, including continuity of care;
    - b. Provider relations;
    - c. Facility and dental record reviews; and
    - d. Provider credentialing and recredentialing;
  - 3. Be knowledgeable about and participate in decisions regarding the Organization's operations;
  - 4. Comply with A.R.S. § 20-2510(B) and (C) when directly denying, on the basis of medical necessity, a health care provider's request for prior authorization; and
  - 5. Timely respond to matters within the Organization's Arizona geographic area that require personal onsite attention or ensure that a designee who meets the requirements specified in subsection (D) timely responds to those matters.
- C. Matters that require personal onsite attention include:
  - 1. Urgent patient care issues that require examination of dental records or X-rays;
  - 2. Prompt personal discussion with a provider of urgent concerns relating to credentialing, disciplinary problems, access to care, or quality of care.
- D. Any designee acting under subsection (B)(5) shall:
  - 1. Be a dentist licensed to practice dentistry in any state or territory of the United States or the District of Columbia;
  - 2. Have expedient access to the dental director, the CEO, and other organization management personnel as necessary to resolve any matter requiring personal onsite attention; and
  - 3. Have the education, experience, and Organizational knowledge required to address the matter requiring personal onsite attention.
- E. The Organization shall notify the Department in writing within ten days after the effective date of a change in the appointment of the dental director or any designee.
- F. The requirements for a designee under subsections (B)(5), (D), and (E) shall not apply to an Organization with fewer than 2,000 members in Arizona.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1805. Required Reporting**

- A. An Organization shall submit to the Department in writing for review any proposed change to the program of compliance. The Department shall notify the Organization in writing within 30 days of receipt of the proposed change whether the submission is administratively complete. The Department shall com-

plete its substantive review and notify the Organization of approval or disapproval of the proposed change within 60 days of notification of administrative completeness.

- B. An Organization shall provide the following information about the prepaid dental plan to the Department quarterly:
  - 1. The total number of members and the number of members assigned to each general dentist's office;
  - 2. A list of all contracted network general dentists and specialists that notes those who have been added or deleted since the previous quarterly report;
  - 3. Verification that each specialist added to the network since the last quarterly report has graduated from a specialty graduate program accredited by the American Dental Association; Documentation of the Organization's quality improvement activities, including the number of providers who have been credentialed or re-credentialed since the last quarterly report, the number of facility reviews, and the number of chart reviews;
  - 4. The average wait time measured in weeks for an appointment for each network dentistry office;
  - 5. A copy of the current provider directory; and
  - 6. A complaint log with a summary of Organization responses by complaint category.
- C. An Organization shall submit the following information to the Department at least annually:
  - 1. Member satisfaction survey results and supporting data;
  - 2. Results of a survey of network general dentistry offices with supporting data confirming a recall system under R20-6-1809(B)(2);
  - 3. An electronic database that lists the name, address, and telephone number of each provider and whether the provider is accepting new members. The Organization shall submit the database for general dentists and specialists separately. The Organization shall submit any changes to this database to the Department quarterly; and
  - 4. A report that compiles all the copays listed in all the schedules of benefits offered by the Organization, with comparisons of the copays to the usual, customary, and reasonable fees, as determined by the Organization, for the procedures listed on the schedule of benefits.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1806. Basic Dental Services**

- A. A prepaid dental plan shall provide the basic dental services listed below:
  - 1. Emergency dental services on a 24-hour-per-day basis,
  - 2. Diagnostic services,
  - 3. Preventive services, and
  - 4. Restorative services.
- B. An Organization shall publish and make available to its members and purchasers a schedule of benefits that includes the dental plan's basic dental services and other available dental services and any associated copays.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1807. System for Delivery of Services**

- A. An Organization shall have a system for delivery of services that includes:
  - 1. An adequate network of general dentists. To determine network adequacy, the Department shall consider the following:

- a. Geographic distribution of network general dentists' offices,
  - b. The number of dental offices accepting new members,
  - c. The percentage of all network members who are able to schedule an appointment within nine weeks,
  - d. The availability of trained clinical support staff in the Arizona geographic area,
  - e. The ratio of population growth to the increase or decrease in the number of dentists in the Arizona geographic area, and
  - f. Current availability for appointments in all general dentist practices in Arizona; and
2. Provision for using specialists for dental services that cannot be provided by the Organization's network of contracted specialists, if the services are covered benefits.
- B.** If a network dental office that is open to new members has an appointment wait time of longer than nine weeks, for three consecutive calendar quarters, the director may require the Organization to close the office to new members until the wait time is less than nine weeks.
- C.** If more than 15% of the network offices that are open to new members have an appointment wait time of longer than nine weeks, the Organization shall submit a plan to the Department under which the Organization will, within 90 days, reduce the wait time to less than nine weeks. If the Organization does not reduce the wait time to less than nine weeks within the 90 day period the Organization shall refer the members who are waiting for an appointment to another network general dentist or a non-network general dentist who can schedule the member for an appointment in less than nine weeks. The member may choose to continue dental care under the prepaid dental plan with the referred dentist for the remainder of the member's enrollment period. The Organization shall provide the non-network services to the referred member at a cost that is no greater than if the services are provided by the member's assigned network dentist.
- D.** An Organization shall pay for emergency dental services provided to a member by a dentist licensed in the jurisdiction where the services are provided, subject to plan limitations disclosed in the dental care plan, including emergency dental services that occur:
1. Within the geographic area served by the member's designated provider but the provider is unavailable, or
  2. Occurs outside of the member's designated geographic service area.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1808. Geographic Areas**

- A.** An Organization shall designate the geographic areas in Arizona in which the Organization intends to provide dental services that are reasonably convenient to the prospective members. The Organization shall provide a description of the geographic areas and locations of all facilities in which dental care will be provided under the prepaid dental plan. This information shall accompany or be included in any advertisements or sales materials provided to prospective employer groups and prospective members.
- B.** An Organization shall define its geographic areas by citing at least one of the following:
1. Local government jurisdictions, such as cities or counties;
  2. Street boundaries; or
  3. Area within a specified radius of an intersection.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1809. Contract Requirements**

- A.** An Organization shall have a written contract with each provider that documents the requirements for providing services under the prepaid dental plan and the terms of the agreements between the parties. The Organization shall ensure that the provider complies with all contract requirements.
- B.** In addition to the requirements in subsection (A), an Organization shall ensure that its contract with a provider includes the following provisions:
1. That the Organization has authority to review the provider's records,
  2. That the provider is responsible to implement and maintain a process to inform assigned members of the need to schedule periodic preventive dental services based on the member's oral health status, and
  3. That the provider is responsible to complete any procedure undertaken upon a member if the contract is terminated or expires.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1810. Records**

- A.** Dental records are the property of the provider and shall not be removed from the provider's possession, except:
1. With the patient's permission, including for routing records to a dental or medical practitioner for consultation or evaluation; or
  2. When subpoenaed by a court or BODEX.
- B.** An Organization shall maintain at its principal office a copy of each issued or delivered advertising matter or sales material, letter of solicitation, evidence of coverage, provider directory, certificate, agreement, or contract. The Organization shall note the date each advertising matter or sales material is filed with the Department and the date of distribution to any person. The advertising matter or sales material shall be maintained for at least three years.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1811. Quality Improvement**

- A.** An Organization shall have a governing authority.
- B.** The governing authority shall appoint a quality improvement committee that consists of the chief executive officer or designee, the dental director, the person who manages the Organization's quality improvement process, and at least one dental health professional. The committee may also include network allied health professionals and members of the plan.
- C.** The quality improvement committee shall:
1. Meet at least quarterly,
  2. Review and evaluate dental services delivered under the Organization's plan, and
  3. Establish procedures for recordkeeping and distribution of committee reports.
- D.** An Organization shall provide the director with a copy of the minutes of each quality improvement committee meeting within 30 days of the quality improvement committee meeting.
- E.** An Organization shall maintain a written quality improvement plan that contains procedures for each of the following:

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1. Ensuring that a dentist licensed in any state or territory of the United States or District of Columbia reviews and evaluates dental care and services provided by each contracted general dentist at least once every three years;
2. Allocation of the Organization's resources to analyze a problem or any identified deficiency;
3. Implementing a corrective action plan and methods for monitoring improvement;
4. Notifying a member in writing of the member's responsibility to cooperate with those providing dental care services and of the member's rights to:
  - a. Voice concerns about the Organization or care provided;
  - b. Be provided with information about the Organization, its services, providers, and member rights and responsibilities;
  - c. Participate in decisions about the member's dental care; and
  - d. Be treated with respect and have the right to privacy recognized;
5. Monitoring and improving membership satisfaction;
6. Maintaining an accurate provider directory that meets at least the following requirements:
  - a. Lists only credentialed providers who are currently scheduling members for diagnosis and treatment; and
  - b. Clearly designates providers who are not accepting new members;
7. Review by the dental director of the following for initial credentialing of network providers:
  - a. Query to the National Practitioner Data Bank;
  - b. Query to BODEX;
  - c. Valid United States Drug Enforcement Administration certificate, if applicable;
  - d. Evidence of current malpractice insurance; and
  - e. Documentation that each specialist has graduated from an accredited specialty graduate program as required by BODEX.
8. Recredentialing, at least every three years, that updates information obtained in subsections (E)(7)(b) through (d), for the dental director's review.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1812. Confidentiality of Records**

An Organization shall not disclose information obtained pertaining to the diagnosis, treatment, or health of a member to any person except:

1. To the extent necessary to carry out this Article;
2. Upon the express written consent of the member, applicant, provider, or Organization, as appropriate; or
3. Under statute or court order for the production or discovery of evidence or as part of a civil or criminal investigation.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**R20-6-1813. Assignment of Members**

- A. Within 30 days of enrollment, an Organization shall assign a member to the provider the member chooses. The Organization, however, shall choose and assign a provider to a member within 30 days of any of the following:

1. Receipt of a member enrollment form that does not designate a provider, or receipt of a member enrollment form that designates a provider who is unavailable;
  2. The date of the notice that the member's assigned provider intends to cease providing services; or
  3. The date the member's assigned provider becomes unavailable, for any reason.
- B. An Organization shall give each member the option of selecting a network provider other than the provider assigned by the Organization under subsection (A).
  - C. An Organization shall maintain a continuous assignment process in compliance with subsection (A) and (B), allowing no more than 4% of members to be unassigned at any time.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 463, effective January 10, 2002 (Supp. 02-1).

**ARTICLE 19. HEALTH CARE SERVICES ORGANIZATIONS OVERSIGHT****R20-6-1901. Applicability**

- A. This Article applies to:
  1. All proposed and existing health care services organizations (HCSOs), and
  2. Each product offered by an HCSO under the HCSO's certificate of authority.
- B. The Department shall not issue a certificate of authority to an HCSO unless the HCSO meets the requirements of this Article.
- C. The Department shall not require an existing HCSO to re-file information already on file with the Department, but the HCSO shall modify its operations and procedures as may be necessary to comply with this Article and file with the Department all additional information necessary to make statements complete and current.
- D. This Article applies to inpatient emergency care, but does not apply to emergency services.
- E. This Article applies only to covered services.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1902. Definitions**

In this Article, the following definitions apply:

"Access" or "accessibility" means the extent to which an enrollee can obtain timely covered services from a contracted provider at the appropriate level of care, and appropriate location.

"Adult" means an enrollee in the age group the HCSO has designated for an adult.

"Adult PCP" means a primary care provider practicing in any specialty the HCSO designates as adult primary care.

"Ancillary provider" means a provider of laboratory, radiology, pharmacy or rehabilitative services, physical therapy, occupational therapy, or speech therapy, home health services, dialysis, and durable medical equipment or medical supplies dispensed by order or prescription of a provider with the appropriate prescribing authority.

"Available" or "availability" means the extent to which the plan has contracted providers of the appropriate type and numbers at geographic locations to afford members access to timely covered services.

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“Chief executive officer” or “CEO” means the person who has the authority and responsibility for the operation of the health care services organization according to applicable legal requirements and policies approved by the governing authority.

“Child” means an enrollee in the age group the HCSO has designated for children.

“Contracted” means a provider has a current written agreement or an employment arrangement with an HCSO to provide covered services to an enrollee, or a current written agreement or an employment arrangement with a contracted provider to provide covered services to an enrollee.

“Covered” or “covered services” means the health care services described as covered benefits in the HCSO’s evidence of coverage.

“Day” means calendar day unless specified otherwise.

“Department” means the Department of Insurance.

“Effective process” means written policies and procedures that:

- Outline the steps that the HCSO implements and consistently follows internally,

- The HCSO subjects to internal quality improvement, and

- The HCSO communicates to providers when established or changed.

“Emergency services” has the meaning in A.R.S. § 20-2801(3).

“Enrollee” means an individual who is enrolled in a health plan operated by an HCSO.

“Facility” means an institution that is licensed or authorized to furnish health care services in this state, including general hospitals, special hospitals, residential treatment centers, residential rehabilitation centers, skilled nursing facilities, urgent care centers, and ambulatory surgical treatment centers.

“Governing authority” means a person or body such as a board of trustees or board of directors in whom the ultimate authority and responsibility for the direction of the HCSO is vested.

“HCSO” means a health care services organization.

“Health care services” has the meaning in A.R.S. § 20-1051(6).

“High profile” means one of no fewer than four specialties designated by the HCSO, and does not include obstetrics-gynecology. An HCSO may designate a specialty as high profile on the basis of high volume or other basis the HCSO reasonably determines is directly related to providing covered services to a member.

“Hospital” means a facility that provides inpatient care, medical services, and continuous nursing services for the diagnosis and treatment of patients.

“Inpatient care” means the covered services that an enrollee who is admitted to a hospital receives for at least 24 consecutive hours.

“Inpatient emergency care” means covered services that would be emergency services if provided in a licensed hospital emergency facility.

“License” means documented authorization issued by the appropriate state of Arizona agency to operate a facility in Arizona, or to practice a health care profession in Arizona.

“Medically necessary” has the meaning set forth in the HCSO’s evidence of coverage.

“Network” means the group of providers contracted with an HCSO to provide covered services to an enrollee covered under the HCSO’s health benefit plan.

“Network exception” means an enrollee receives covered services from a non-contracted provider either:

- Because there is no contracted provider accessible or available that can provide the enrollee timely covered services, or

- For any reason the HCSO determines it is in the enrollee’s best interests to receive care from a non-contracted provider.

“Non-contracted” means a provider that does not have a contract with an HCSO to provide services to an enrollee.

“Normal business hours” means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state or national holidays.

“Outpatient care” means covered services that an enrollee who is not an inpatient receives.

“Pediatric primary care provider” means a physician or practitioner practicing in any specialty the HCSO designates as pediatric primary care.

“Physician” means a licensed doctor of allopathic, chiropractic, optometric, osteopathic, or podiatric medicine.

“Practitioner” means any individual other than a physician who is licensed to furnish health care services, including behavioral health care services, in this state.

“Preventive care” means health maintenance care the HCSO provides or arranges to prevent illness and to improve the general health of an enrollee, including:

- Immunizations,

- Health education,

- Health evaluation and follow-up,

- Early disease detection,

- Screening tests appropriate for a person’s age and gender, and

- Periodic health care examinations.

“Primary care” means any specialty the HCSO designates as primary care.

“Primary care physician” or “PCP” means a physician or practitioner practicing in a specialty the HCSO designates as primary care.

“Provider” means any physician, practitioner, ancillary provider, or facility.

“Quality improvement” means an HCSO’s system for assessing and improving the level of performance of key process and outcomes.

“Routine care” means covered primary care for an enrollee’s non-urgent, symptomatic condition.

“Rural” means a zip code area with fewer than 1,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.

“Service area” means any geographic area designated by any HCSO and approved by the Director under A.R.S. § 20-1053(A)(11).

“Specialty care provider” or “SCP” means a physician or practitioner who has education, training, or qualifications in a specialty, other than primary care, beyond the education or qualifications required for the license.

“Specialty” or “specialty care” means a specific area of medicine practiced by a physician or practitioner who has education, training, or qualifications in that specific area of medicine in addition to the education or qualifications required for the physician’s or practitioner’s license.

“Special hospital” means a hospital that is licensed to provide hospital services within a specific area of medicine, or limits patient admission according to age, gender, type of disease, or medical condition.

“Suburban area” means any zip code area with 1,000-3,000 persons per square mile, as calculated annually by a population data gathering service designated by the Director.

“Telemedicine” means diagnostic, consultation, and treatment services that occur in the physical presence of an enrollee on a real-time basis through interactive audio, video, or data communication.

“Timely” means services are provided at the time when medically necessary.

“Travel expenses” has the meaning set forth in writing by an HCSO.

“Urban area” means a zip code with more than 3,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.

“Urgent care” means unscheduled services for an enrollee’s condition that requires medical attention not amenable to scheduling in order to avoid a serious risk of harm.

#### Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### R20-6-1903. Documentation

The CEO shall ensure that the HCSO’s policies, procedures, plans, class specifications, orders, reports, minutes of meetings, contracts, agreements, records, and duty schedules are in writing, compiled and indexed in one or more manuals, and readily available for inspection by the Director.

#### Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### R20-6-1904. Health Care Plan

- A. An HCSO shall submit a statement to the Department that describes the proposed health care plan.
- B. The HCSO shall have an organized system for the delivery of health care services contained in subsection (D) that includes the following:
  1. Contracted providers that provide services under the plan;
  2. An effective process to promote a continuing relationship between an enrollee and the same PCP; and
  3. An effective process for referrals that ensures continuity of care to an enrollee.
- C. The HCSO shall list:
  1. The proposed or actual enrollment;

2. The number and names of contracted, employed, or HCSO-owned providers that will serve the enrollees and the board eligibility or certification of each physician, if applicable; and
  3. The plan for providing covered services to enrollees as required under this Article.
- D. The HCSO’s health care plan shall provide within the geographic area served the following basic health care services covered by the monthly charges in the evidence of coverage:
    1. Emergency care that includes emergency services and inpatient emergency care;
    2. Inpatient care;
    3. Specialty care, primary care, or ancillary care that includes diagnostic and therapeutic services;
    4. Outpatient care;
    5. Preventive care; and
    6. Emergency ambulance services under A.R.S. § 20-2801(2), and other ambulance services when approved by a plan physician.
  - E. The HCSO shall provide appropriate coverage for out-of-area emergency care to an enrollee traveling outside the area served by the HCSO.

#### Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). R20-6-1904 repealed; new Section R20-6-1904 renumbered and amended from R20-6-1906 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### R20-6-1905. Geographic Area

- A. An applicant shall describe the proposed geographic area in at least one of the following ways:
  1. Legal description,
  2. Local governmental jurisdiction such as city or county,
  3. Census tracts,
  4. Street boundaries, or
  5. Area within a specified radius of a specified intersection or a specified primary care center.
- B. An applicant shall submit a map that shows the boundaries for the proposed geographic area.
- C. An applicant shall submit a description of the proposed network including the data required under R20-6-1913(A)(2) and (A)(3).
- D. All advertising matter and sales material provided a prospective enrollee shall include a description of the geographic area in terms readily understandable by the general public.

#### Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). R20-6-1905 repealed; new Section R20-6-1905 renumbered and amended from R20-6-1907 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### R20-6-1906. Chief Executive Officer

- A. The governing authority shall appoint a CEO who has appropriate education and experience to manage the HCSO. The governing authority shall define the authority and duties of the CEO in writing. The CEO is the appointed representative of the governing authority and is the executive officer of the HCSO.
- B. The CEO shall have at least the following duties and responsibilities:
  1. Manage the HCSO;
  2. Establish and implement policies, procedures, and effective processes of the HCSO;

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3. Act as liaison between the governing authority and the providers of healthcare and other services to the HCSO; and
  4. Establish a written plan of authority that will be in place in the CEO's absence.
- C. When there is a change of CEO, the governing authority shall notify Department within 10 days after the effective date of change.
- D. The HCSO shall ensure that all HCSO employees and contracted providers are knowledgeable about and qualified to perform the duties assigned to them through employment or by contract.
- E. The HCSO shall designate a central place of business within the major geographic area served at which the CEO shall be based and from which the HCSO shall direct administrative activities.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1906 renumbered to R20-6-1904; new Section R20-6-1906 renumbered and amended from R20-6-1908 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1907. Medical Director**

- A. The HCSO shall designate a physician as medical director.
- B. The medical director shall be responsible for planning and implementing the method for the continuing review and evaluation of health care provided by the HCSO and the continuing education of its providers of health care services. The medical director may also serve as the CEO if the medical director has appropriate education and experience to manage the HCSO.
- C. The medical director responsibilities include:
1. Supervising medical staff;
  2. Performance planning and evaluating medical staff;
  3. Coordinating medical staff activities; and
  4. Developing medical care policies.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1907 renumbered to R20-6-1905; new Section R20-6-1907 renumbered and amended from R20-6-1909 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1908. Quality Assurance**

- A. The HCSO shall provide an effective process for a continuing review and evaluation of the covered services it provides to enrollees to ensure that:
1. Treatment and level of covered services are appropriate and adequate and
  2. The quality of covered services is acceptable to the HCSO.
- B. The HCSO shall have a quality assurance committee that includes at least the CEO or designee, the medical director, and representative network providers. The quality assurance committee shall:
1. Arrange for physicians or practitioners to review and evaluate covered services provided by others physicians or practitioners within the respective disciplines.
  2. Adopt administrative procedures covering frequency of meetings, recordkeeping, committee reports, and disseminating the reports.
- C. The HCSO's effective process in subsection (A) shall include the following:
1. Standards for health care;

2. Monitoring of care;
3. Analysis of any deficiency;
4. Correcting a deficiency including submitting a schedule for correcting the deficiency, requiring continuing education for the provider, if appropriate, and follow-up and periodic reassessment of the deficiency.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1908 renumbered to R20-6-1906; new Section R20-6-1908 renumbered and amended from R20-6-1911, by final rulemaking at 11 A.A.R. 4861, effective December 31, 2006 (Supp. 05-4).

**R20-6-1909. Evaluation of Network**

Each HCSO shall have an effective process to evaluate the adequacy of its network to provide an enrollee with timely covered services.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Former R20-6-1909 renumbered to R20-6-1907; new Section R20-6-1909 made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1910. Process for Referral, Prior Authorization, Precertification, or Network Exception**

- A. An HCSO shall have an effective process for assisting an enrollee to obtain timely covered services when the enrollee or enrollee's referring provider cannot find a contracted provider who is timely accessible or available.
- B. An HCSO shall have an effective process during normal business hours for handling referrals, prior authorizations, precertifications, or network exceptions necessary for timely routine care. This process may include the HCSO's procedure for standing referrals required in A.R.S. § 20-1057.01.
- C. Each HCSO shall have an effective process to handle referrals or network exceptions necessary for timely urgent care seven days a week.
- D. An HCSO that requires prior authorization or precertification for urgent care shall have an effective process to handle requests for prior authorization or precertification 24 hours a day, seven days a week.
- E. An HCSO shall have an effective process for handling network exceptions that ensures the HCSO reimburses an enrollee for any out-of-network cost the enrollee incurs that the enrollee would not have incurred if the enrollee had received the services in-network.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1911. HCSO Communication with Providers**

An HCSO shall have an effective process for communicating with contracted providers regarding the following:

1. The providers in the network,
2. Contractual or administrative changes relating to enrollee access or provider availability, and
3. Procedures for handling claims and grievances submitted by providers.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Former R20-6-

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1911 renumbered to R20-6-1908; new R20-6-1911 made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1912. Network Directories**

A. An HCSO shall publish a provider network directory as follows:

1. An HCSO shall list the name, address, telephone number, specialty, and hospital affiliation for all in-area contracted physicians or practitioners.
2. An HCSO may list ancillary providers by corporate or group name and is not required to list individual physicians or practitioners.
3. An HCSO is not required to list physicians or practitioners in the following areas of specialties or areas of practice:
  - a. Emergency medicine;
  - b. Anesthesiology, except anesthesiologists who provide pain management services;
  - c. Hospital-based pathology;
  - d. Hospital-based radiology; and
  - e. Hospitalists.
4. An HCSO that lists any of the physicians or practitioners in subsections R20-6-1912(A)(3)(a) through (A)(3)(e) may list by corporate or group name and is not required to list individual physicians or practitioners.
5. An HCSO that uses hospitalists is not required to list the hospital affiliations of PCPs who do not admit or attend hospitalized members.
6. An HCSO shall publish a provider network directory that lists all its contracted facilities and contains:
  - a. The name, address, and telephone number of each facility;
  - b. For each hospital at which the HCSO uses hospitalists, if any, a statement that the HCSO uses hospitalists at that hospital;
  - c. For an HCSO that uses hospitalists and does not list them in the directory, information on how an enrollee can find out what hospitalists or group of hospitalists it uses at each hospital;

B. The network directory shall conspicuously state in the directory the following:

1. Changes occur in the network after the directory is published and some providers listed in the directory may no longer be contracted,
2. Enrollee coverage may depend on the contract status of the provider,
3. Where the enrollee can obtain more recent directory information,
4. The effective date of the network directory, and
5. The method for an enrollee or prospective enrollee to find out which PCPs are accepting new enrollees from the HCSO.

C. Each HCSO shall make its network directory available on paper to enrollees or prospective enrollees requesting it. The HCSO shall:

1. Publish the paper directory at least once a year;
2. Update or supplement the information in the paper directory at least every six months;
3. Explain in the paper directory how an enrollee or prospective enrollee can use or get assistance using the HCSO's online or telephone directories, if any; and
4. Have discretion to list physicians' or practitioners' hospital affiliations in its paper directory.

D. Each HCSO that has an online network directory shall:

1. Update the online directory at least monthly;

2. Make the online directory easy to use and user friendly; and
3. Explain, in the online directory, how an enrollee or prospective enrollee can obtain a paper directory.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1913. Demographic Information Reports**

A. An HCSO shall report the following data to the Department:

1. For each enrollee, report annually:
  - a. Street address,
  - b. Zip code,
  - c. Gender, and
  - d. Year of birth.
2. For all contracted providers, report semiannually:
  - a. Provider name,
  - b. Street address or addresses at which the provider provides covered services,
  - c. Zip code, and
  - d. Arizona license number,
3. For all contracted physicians or practitioners, report semiannually:
  - a. Specialty, and
  - b. Medical or other applicable degree or information that designates the type of physician or practitioner.

B. The HCSO shall report the information in subsection (A) to the Department by the following deadlines:

1. For information in subsection (A)(1) as of December 31 of each calendar year, by February 15 of the next calendar year.
2. For information in subsection (A)(2) as of June 30, by August 15 of the same calendar year.
3. For information in subsection (A)(2) as of December 31, by February 15 of the next calendar year.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1914. Access**

An HCSO shall provide to or arrange for its enrollees services or appointments for services as follows:

1. For preventive care services from a contracted PCP, an appointment date within 60 days of the enrollee's request, or sooner if necessary, for the enrollee to be immunized on schedule.
2. For routine-care services from a contracted PCP, an appointment date within 15 days of the enrollee's request to the PCP or sooner if medically necessary.
3. For specialty care services from a contracted SCP, an appointment date within 60 days of the enrollee's request or sooner if medically necessary.
4. In-area urgent care services from a contracted provider seven days per week.
5. Timely non-emergency inpatient care services from a contracted facility.
6. Timely services from a contracted physician or practitioner in a contracted facility including inpatient emergency care.
7. Services from a contracted ancillary provider during normal business hours, or sooner if medically necessary.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6 1915. Alternative Access**

- A. As an alternative to providing access to covered services from a physician, an HCSO may provide access to covered services from an appropriately licensed practitioner.
- B. As an alternative to providing access to covered services at a hospital under R20-6-1914, an HCSO may provide access to covered services at another appropriately licensed facility.
- C. As an alternative to providing access to covered services from a physician or practitioner who sees an enrollee in person under R20-6-1914, an HCSO may provide access to necessary covered services through:
  - 1. Telephone calls and messages,
  - 2. Electronic mail,
  - 3. Communication with the physician's or practitioner's staff,
  - 4. Coverage by another physician or practitioner, or
  - 5. Telemedicine,
- D. An HCSO that panels enrollees to PCPs may panel enrollees to appropriately licensed practitioners.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1916. Availability Ratios**

- A. An HCSO shall maintain a ratio of contracted adult PCPs to adults that is adequate to provide those adults with covered services. An HCSO with a Medicare Advantage (MA) plan may have one ratio that applies to both its insured and MA populations, or a separate ratio for each.
- B. An HCSO shall maintain a ratio of contracted pediatric PCPs to children that is adequate to provide those children enrollees with covered services.
- C. An HCSO shall maintain a ratio of contracted high profile SCPs to enrollees that is adequate to provide those enrollees with covered services that include services at contracted facilities. An HCSO with a MA plan may have one ratio that applies to both its insured and MA populations, or a separate ratio for each.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1917. Geographic Availability in an Urban Area**

An HCSO shall provide each enrollee living in an urban area of the HCSO's service area the following:

- 1. Primary care services from a contracted PCP located within 10 miles or 30 minutes of the enrollee's home;
- 2. High profile specialty care services from a contracted SCP located within 15 miles or 45 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted general hospital, or contracted special hospital, within 25 miles or 75 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1918. Geographic Availability in a Suburban Area**

Each HCSO shall provide each enrollee member living in a suburban area within the HCSO's service area the following:

- 1. Primary care from a contracted PCP located within 15 miles or 45 minutes of the enrollee's home;

- 2. High profile specialty care services from a contracted SPC within 20 miles or 60 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted hospital, or a contracted special hospital within 30 miles or 90 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1919. Geographic Availability in a Rural Area**

An HCSO shall provide each enrollee living in a rural area with primary care services from a contracted physician or practitioner within 30 miles or 90 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1920. Travel Requirements**

- A. An HCSO may require an enrollee to travel a greater distance in-area to obtain covered services from a contracted provider than the enrollee would have to travel to obtain equivalent services from a non-contracted provider, except where a network exception is medically necessary. Nothing in this Section creates an exception to R20-6-1918 through R20-6-1920.
- B. If the HCSO prior-authorizes services that require an enrollee to travel outside the HCSO service area because the services are not available in the area, the HCSO shall reimburse the enrollee for travel expenses. Except as provided under R20-6-1904(E)(6), an HCSO is not required to reimburse an enrollee for travel expenses the enrollee incurs to obtain covered services in-area.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1921. Enforcement Consideration**

In determining the appropriate enforcement action or penalties for failure to comply with these rules, the Department shall consider any documentation the HCSO provides regarding:

- 1. Whether seasonal shifts in demand affect access and availability of covered services;
- 2. Whether the HCSO's demographic information has changed significantly since the HCSO's most recent report;
- 3. Whether an enrollee has refused to accept covered services the HCSO has offered in the time-frames or locations required of the HCSO by this Article;
- 4. Whether an enrollee has requested and obtained covered services from a contracted provider whose location, or appointment availability, or capacity result in the HCSO's non-compliance; and
- 5. Whether market factors indicate that on a short-term basis, compliance is not possible. Market factors include shortage of providers, enrollee or provider location, and provider practice or contracting patterns.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).



**ARTICLE 20. CAPTIVE INSURERS****R20-6-2001. Reserved****R20-6-2002. Fees; Examination Costs**

- A. A corporation applying for a license to do business as a captive insurer, under A.R.S. § 20-1098, shall pay a nonrefundable fee of \$1,000.00 to the Department for issuance of the license. A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098, also shall pay to the Department a nonrefundable fee of \$1,000 for each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(B)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.
- B. A captive insurer shall pay a nonrefundable annual renewal fee of \$5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of \$2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.
- C. A captive insurer shall pay a nonrefundable fee of \$200.00 to the Department at the time of filing for issuance of an amended certificate of authority.
- D. In addition to the fees prescribed in subsections (A) and (B), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination the Director conducts, under A.R.S. § 20-1098.08.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2478, effective July 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 2977, effective September 13, 2005 (Supp. 05-3). Subsection (A) corrected at request of the Department, Office File No. M11-252, filed July 20, 2011 (Supp. 11-3).

**ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM**

*Article 21, consisting of R20-6-2101 through R20-6-2104, made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).*

**R20-6-2101. Definitions**

The following definitions apply in this Article:

1. "Consumer" means an individual, or the individual's legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information. Consumer can include a prospective applicant, policyholder, certificateholder, insured, or claimant.
2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means nonpublic personal information and privileged information about a customer whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic, or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).

6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, but does not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a licensee.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**R20-6-2102. Customer Information Security Program**

A licensee shall implement a comprehensive written customer information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**R20-6-2103. Objectives of Customer Information Security Program**

A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**R20-6-2104. Guidelines for Methods of Development and Implementation**

A licensee may implement the requirements of R20-6-2102 and R20-6-2103 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
  - a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
  - b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
  - c. Assessing the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.
2. A licensee may manage and control risk by:

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- a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
  - b. Training staff to implement the licensee's information security program; and
  - c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The licensee shall determine the frequency and nature of these tests or other monitoring practices by the licensee's risk assessment.
3. A licensee may oversee service provider arrangements by:
    - a. Exercising appropriate due diligence in selecting its service providers; and
    - b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
  4. A licensee may monitor, evaluate, and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

**ARTICLE 22. MILITARY PERSONNEL****R20-6-2201. Military Sales Practices**

- A. The Department incorporates by reference the National Association of Insurance Commissioners (NAIC) Military Sales Practices Model Regulation June 2007 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85018 and available from the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108.
- B. The Model Regulation is modified as follows:
  1. In addition to the terms defined in the Model Regulation, the following definitions apply:
    - a. "Commissioner" means the Director of the Arizona Department of Insurance.
    - b. "Regulation" means Article.
  2. Section 3 is modified to insert "A.R.S. § 20-106, 20-142 and 20-143" after "of."
  3. Section 7(E)(5)(b) is modified to insert "A.R.S. § 20-1241 et seq., R20-6-202, and R20-6-209" after "requirements of."
  4. Subsection 7(F)(5) of the Model Regulation is excluded from this Section.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 4215, effective January 5, 2008 (Supp. 07-4).

**ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE****R20-6-2301. Applicability; Definitions**

- A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:
  1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or A.R.S. § 20-1404(A), except health insurance issued to an association or its individual members as described in R20-6-2301(B)(7)(b);
  2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
  3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).
- B. In this Article, the following definitions apply:
  1. "Department" means the Arizona Department of Insurance.
  2. "Blanket disability insurance" has the meaning prescribed in A.R.S. § 20-1404(A).
  3. "CMS" means the Centers for Medicare & Medicaid Services.
  4. "Federal medical loss ratio standard" means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
  5. "Health insurance" means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in A.R.S. § 20-1051(5) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
  6. "Health insurer" means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
  7. "Individual health insurance" means health insurance that a health insurer issues to either:
    - a. An individual, to cover:
      - i. The individual, or
      - ii. The individual's dependents, or
      - iii. The individual and the individual's dependents.
    - b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
  8. "PHS Act" means Part A of Title XXVII of the Public Health Service Act, 42 U.S.C. Chapter 6A.
  9. "Product" means a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.
  10. "Preliminary justification" means a justification that consists of the parts described in R20-6-2302(A).
  11. "Rate increase" means an increase of the rates for an individual health insurance product that a health insurer offers in Arizona that:
    - a. Results from a change to the underlying rate structure of the product, and
    - b. May result in premium changes for the product.
  12. "Secretary" means the Secretary of the United States Department of Health and Human Services.

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13. "Threshold rate increase" means a rate increase that meets or exceeds an Arizona-specific threshold as noticed by the Secretary in 45 CFR 154.200, provided:
  - a. The average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold; and
  - b. If a rate increase that does not otherwise meet or exceed the Arizona-specific threshold meets or exceeds the Arizona-specific threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the Arizona-specific threshold and is subject to threshold rate review that shall include a review of the aggregate rate increases during the applicable 12-month period.
14. "Threshold rate review" means the review by the Department under this Article of a threshold rate increase.
15. "Unreasonable rate increase" means a rate increase that results in benefits that are not reasonable in relation to the premium the health insurer charges for the product. The following factors are relevant in determining whether a rate increase results in benefits that are unreasonable in relation to premium:
  - a. The rate increase results in a projected medical loss ratio below the federal medical loss ratio standard after accounting for any adjustments allowable under federal law;
  - b. One or more of the assumptions on which the health insurer based the rate increase is not supported by sound actuarial reasoning, data and analysis;
  - c. The choice of assumptions or combination of assumptions on which the insurer based the rate increase is unreasonable;
  - d. The health issuer provides data or documentation that is incomplete, inadequate or otherwise does not provide a basis upon which the Department can determine the reasonableness of a rate increase; or
  - e. The increase results in premium differences between insureds within similar risk categories that are unfairly discriminatory under A.R.S. Title 20, Chapter 2, Article 6.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2302. Disclosure of Preliminary Justification**

- A. Preliminary Justification. For each threshold rate increase for each affected product, a health insurer shall submit to the Department and to CMS, on a form and in the manner prescribed by the Secretary in 45 CFR 154.215, a preliminary justification that contains all of the following:
  1. Preliminary Justification Part I. A summary of the content of the threshold rate increase that includes:
    - a. Historical and projected claims experience;
    - b. Trend projections related to utilization, and service or unit cost;
    - c. Any claims assumptions related to benefit changes;
    - d. Allocation of the overall rate increase to claims and non-claims costs;
    - e. Per enrollee per month allocation of current and projected premium; and
    - f. Three year history of rate increases for the product associated with the rate increase.

2. Preliminary Justification Part II. A written description that justifies the rate increase and that contains a simple and brief narrative describing the data and assumptions the health insurer used to develop the rate increase, and includes the following:
  - a. An explanation of the most significant factors causing the rate increase, including a brief description of the relevant claims and non-claims expense increases reported in subsection (A)(1); and
  - b. A brief description of the overall experience of the policy, including historical and projected expenses, and loss ratios.
- B. A health insurer may submit a single, combined preliminary justification that contains all the information in subsections (A)(1) and (2) for threshold rate increases that affect more than one product if the health insurer has aggregated the claims experience of all products to calculate the rate increases and the rate increases are the same for all products.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2303. Timing for Submission of Preliminary Justification**

- A. If R20-6-607 applies to a threshold rate increase, the health insurer shall submit its preliminary justification to the Department and to CMS on the date on which the health insurer files the rate increase request under R20-6-607.
- B. If R20-6-607 does not apply to a threshold rate increase, the health insurer shall submit the preliminary justification to the Department and to CMS at least 60 days prior to the date the health insurer intends to implement the threshold rate increase in Arizona.
- C. The Department shall provide access from its website to the Parts I and II of the Preliminary Justifications of the proposed rate increases that it reviews and have a mechanism for receiving public comments on those proposed rate increases.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2304. Response to Unreasonableness Determination**

If the health insurer receives from CMS a notice that the Department has determined that the health insurer's threshold rate increase is unreasonable, the health insurer shall select one of the following three options:

1. Option to not implement the rate increase determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS that it will not implement the rate increase and request the Department to withdraw the rate increase request;
2. Option to implement a smaller rate increase than the rate determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS, on a form and in the manner prescribed by the Secretary, that it intends to implement a rate increase that is smaller than the one determined unreasonable. One of the following shall apply to this option:
  - a. If the health insurer selects this option and the smaller rate increase is not a threshold rate increase, the smaller rate increase is not subject to this Article;
  - b. If the health insurer selects this option, and R20-6-607 applied to the rate increase the Department determined to be unreasonable, the health insurer

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- shall revise the rate increase filing to reflect the smaller rate increase or file a new rate increase. If the smaller rate increase is a threshold rate increase, the health insurer shall submit a new preliminary justification on the date the health insurer revises the rate increase filing or files a new rate increase; or
- c. If the health insurer selects this option, and R20-6-607 did not apply to the rate increase the Department determined to be unreasonable, and the smaller increase is a threshold rate increase, the health insurer shall submit to the Department and to CMS a new preliminary justification at least 60 days prior to the date the health insurer intends to implement the smaller increase in Arizona.
3. Option to implement the rate increase determined unreasonable. Within 10 business days after the health insurer either implements the rate increase that the Department determined unreasonable, or receives from CMS the Department's determination, the health insurer shall:
    - a. Submit, to the Department and to CMS, a final justification in response to the Department's determination. The information in the final justification shall be the same as the information submitted by the insurer under R20-6-2302(A)(1) and (2) in the preliminary justification supporting the rate increase; and
    - b. Prominently post on its website, on a form and in the manner prescribed by the Secretary under 45 CFR 154.230 the following information:
      - i. The Department's determination that the rate increase is unreasonable and Department's explanation of the Department's analysis of the relevant factors set forth in R20-6-2305(A)(1) and (2), and
      - ii. The health insurer's final justification for implementing the rate increase.
    - c. Continue to make the information in subsection (3)(b) available to the public on its website for at least three years.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R.  
2721, effective October 3, 2012 (Supp. 12-4).

**R20-6-2305. Threshold Rate Increase Documentation****Requirements**

- A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
  1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
  2. The health insurer's data related to past projections and actual experience.
- B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
  1. The impact of medical trend changes by major service categories;
  2. The impact of utilization changes by major service categories;
  3. The impact of cost-sharing changes by major service categories;
  4. The impact of benefit changes;
  5. The impact of changes in enrollee risk profile;
  6. The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
  7. The impact of changes in reserve needs;
  8. The impact of changes in administrative costs related to programs that improve health care quality;
  9. The impact of changes in other administrative costs;
  10. The impact of changes in applicable taxes, licensing or regulatory fees;
  11. Medical loss ratio;
  12. The health insurance insurer's capital and surplus; and
  13. Other relevant documentation at the discretion of the Director.
- C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:
  1. The health insurer submits the preliminary justification required under R20-6-2302, or
  2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).

**Historical Note**

New Section made by final rulemaking at 18 A.A.R.  
2721, effective October 3, 2012 (Supp. 12-4).